Citation: *NH v Canada Employment Insurance Commission*, 2025 SST 431

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	N. H.
Representative:	J. K.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (703350) dated January 9, 2025 (issued by Service Canada)

Tribunal member:	Adam Picotte
Type of hearing:	Videoconference
Hearing date:	January 29, 2025
Hearing participants:	Appellant Appellant's representative
~~**Decision date:**~~	~~January 30, 2025~~
Corrigendum date:	**[February 10, 2025]**
File number:	GE-25-141

Decision

[1] The appeal is allowed in part. The General Division agrees with the Claimant.

[2] The Claimant is entitled to Employment Insurance (EI) for the period of November 7, 2024 to December 15, 2024. This means that he isn't disentitled from receiving Employment Insurance (EI) benefits for this period. So, the Claimant may be entitled to benefits. **[The Claimant is not entitled to EI for the period of August 6, 2024 to November 6, 2024 as he was in receipt of earnings through his employer's insurance policy.]**

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving Employment Insurance (EI) regular benefits as of November 7, 2024 because he wasn't available for work. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[4] I must decide whether the Claimant has proven that he was available for work. The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he was available for work.

[5] The Commission says that the Claimant wasn't available because he was not actively looking for employment.

[6] The Claimant disagrees and states that he did look for some work following his application for EI benefits but he also believed his time off from work would be quite short.

[7] When the Claimant first went off work, he was advised that his place of employment would be reopening after a short period of time. This was due to restoration work required following a fire in the building where he worked. Initially, the Appellant and his colleagues were advised that the store would reopen in mid-January 2025. To emphasize this, his employer purchased a Supplementary Unemployment Benefits

("SUB") for all staff to ensure they remained attached to the employer. The SUB was purchased and meant to last for three months. However, by December 15, 2024, it became clear that the store would remain closed for a longer period.

Issue

[8] Was the Claimant available for work?

Analysis

[9] To be considered available for work for purposes of regular EI benefits, the Appellant must show he is capable of and available of work and unable to obtain suitable employment.[1]

[10] There is no question that the Appellant was capable of work during this time.[2] So I will proceed directly to the availability analysis to assess his entitlement to regular EI benefits from November 7, 2024. **[From August 6, 2024 to November 6, 2024 the Claimant was in receipt of wages through his employer's insurance policy. The wages received were income under the *Employment Insurance Act*. The wages were paid because the Claimant was employed with the Employer and was prescribed under the insurance policy. I am satisfied there is a sufficient connection between his employment and the sum received such that he cannot qualify for EI during this time.[3]]**

[11] The *Employment Insurance Act* (Act) says that an appellant has to prove that they are "capable of and available for work" but aren't able to find a suitable job.[4] Case law gives three things a claimant has to prove to show that they are "available" in this sense.[5] I will look at those factors below.

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[1] Section 18(1)(a) of the *Employment Insurance Act* (EI Act).
[2] There is no indication the Appellant was medically unable or otherwise prevented from working during this time.
[3] See *Canada (A.G.) v. Roch*, 2003 FCA 356.
[4] See section 18(1)(a) of the Act.
[5] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[12] The Commission decided that the Claimant was disentitled from receiving benefits because he wasn't available for work based on this section of the law.

[13] I will now consider this section myself to determine whether the Claimant was available for work.

Capable of and available for work

[14] Case law sets out three factors for me to consider when deciding whether the Claimant was capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:[6]

a) He wanted to go back to work as soon as a suitable job was available.

b) He has made efforts to find a suitable job.

c) He hasn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[15] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.[7]

– Wanting to go back to work

[16] The Claimant has shown that he wants to go back to work. When his workplace closed down due to a fire, he was maintained on wages through the company insurance policy for three months. Following this, he was provided with a SUB benefit by his employer to ensure he would maintain his employment while the worksite was closed down. The fact that he maintained payment of this benefit with the assurance of payment of this benefit demonstrates that he wanted to go back to work.

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[6] These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision paraphrases those three factors for plain language.
[7] Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

– **Making efforts to find a suitable job**

[17] The Claimant has made enough effort to find a suitable job.

[18] From November to mid-December, the Appellant applied for three positions. He applied at a Thrifty's Store, a Cannabis store, and a liquor store.

[19] In a recent Federal Court of Appeal decision, the Court said there is no hard-and-fast rule that a claimant must immediately engage in a job search in all circumstances. There are situations in which claimants should be given a reasonable period before starting to look for work to see if they will be recalled.[8]

[20] This means that, in certain circumstances, an appellant may – for a reasonable period of time, consider the promise of being recalled as the most likely way to get a job again, and act accordingly. I find such circumstances existed for the Appellant.

[21] As of November 7, 2024, the Appellant was in receipt of a SUB with an anticipated return to work date of January 2025. This is supported by the fact that the SUB purchased for employees was only for three months.

[22] The Appellant holds a supervisory role with his employer. During the oral hearing, his employer provided evidence to illustrate that the Appellant was a trusted and valued employee. He wanted him to return as a supervisor when the store reopened.

[23] However, by December 15, 2024, it became clear that the store would be closed for an unknown and longer period of time. On December 15, 2024, the employer called a meeting with his staff and advised them that the store would not be reopening in January as he though. During the oral hearing, he told me that this may have been an over optimistic plan. He also confirmed that more work needed to be completed with the restoration before the store could be reopened. As a result, he has purchased a further SUB for his staff that remain unemployed.

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[8] See *Page v Canada (Attorney General)*, 2023 FCA 169.

[24] By December 15, 2024, the Appellant would have become aware that his return to employment would not be imminent. As a result, it was incumbent on him to start applying for further positions. He has not done so. Given his lack of applications since mid-December, I am not satisfied that he has made efforts to find a suitable job.

– **Unduly limiting chances of going back to work**

[25] For the reasons set out above, I am satisfied that until December 15, 2024, the Appellant did not unduly limit his changes of going back to work. By December 15, 2024, the lack of an imminent recall to work became clear. As of that date, it was incumbent on the Appellant to start applying for alternate work.

– **So, was the Claimant capable of and available for work?**

[26] Based on my findings on the three factors, I find that the Claimant has shown that he was capable of and available for work but unable to find a suitable job **[from November 7, 2024]** until December 15, 2024. **[He is not entitled to benefits from August 6 to November 6 as he was in receipt of income under his employer's insurance policy during this time.]**

Conclusion

[27] The Claimant has shown that he was available for work within the meaning of the law. Because of this, I find that the Claimant isn't disentitled from receiving EI benefits until December 15, 2024. So, the Claimant may be entitled to benefits.

[28] This means that the appeal is allowed in part.

Adam Picotte

Member, General Division – Employment Insurance Section