



[TRANSLATION]

Citation: *AN v Canada Employment Insurance Commission*, 2025 SST 766

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: A. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (738638) dated May 29, 2025
(issued by Service Canada)

Tribunal member: Jean Yves Bastien

Type of hearing: Teleconference

Hearing date: July 24, 2025

Hearing participants: Appellant

Decision date: July 25, 2025

File number: GE-25-1953

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown that he was available for work. This means that he can't receive Employment Insurance (EI) benefits.

Overview

[3] The Claimant worked in the custom plastic manufacturing industry in Quebec. He was laid off on May 31, 2024, because of a shortage of work. The Claimant told the Canada Employment Insurance Commission (Commission) that he wasn't available for work from November 4, 2024, to January 11, 2025. Family obligations prevented him from accepting a job.

[4] The Commission decided that the Claimant was disentitled from receiving EI regular benefits from November 4, 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 actively searching for a job.

[5] I have to 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.

[6] The Commission says that it is clear that the Claimant doesn't meet the availability criteria set out in the *Employment Insurance Act* (Act), since he admitted that he wasn't available for work or was in a situation that prevented him from accepting a job.

[7] The Claimant disagrees with the Commission. He says that his sister was critically ill at the time and that this situation prevented him from returning to work. He believes that he should be entitled to benefits because of this. Normally, a person in the Claimant's situation could be entitled to EI family caregiver benefits. But the Claimant says that he doesn't have the necessary medical certificates to qualify.

Tribunal's jurisdiction

[8] The Tribunal's powers are set out in the Act. I can only consider issues under this law. I don't have the power to change or rewrite the law.

[9] Under section 112 of the Act, a claimant can ask the Commission to reconsider its decision. Under section 113, the claimant can then appeal the reconsideration decision to the Tribunal if they are dissatisfied with it.

[10] This means that I can only consider the Commission's reconsideration decision, which was the following: [translation] "We can't pay you EI benefits from November 3, 2024, to January 11, 2025, since you haven't shown that you were available for work because your family obligations prevented you from accepting a job."

[11] So, the only issue I can consider in this appeal is whether the Claimant was available for work from November 4, 2024, to January 11, 2025.

Issue

[12] Was the Claimant available for work?

Analysis

[13] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Claimant was disentitled under both of these sections. So, he has to meet the criteria of both sections to get benefits.

[14] First, the Act says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.¹ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.² I will look at those criteria below.

¹ See section 50(8) of the *Employment Insurance Act* (Act).

² See section 9.001 of the *Employment Insurance Regulations* (Regulations).

[15] Second, the Act says that a claimant has to prove that they are “capable of and available for work” but aren’t able to find a suitable job.³ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁴ I will look at those factors below.

[16] The Commission decided that the Claimant was disentitled from receiving benefits because he wasn’t available for work based on these two sections of the law.

[17] I will now consider these two sections myself to determine whether the Claimant was available for work.

Reasonable and customary efforts to find a job

[18] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts were reasonable and customary.⁵ I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Claimant has to have kept trying to find a suitable job.

[19] I also have to consider the Claimant’s efforts to find a job. The Regulations list nine job-search activities I have to consider. Some examples of those activities are the following:⁶

- contacting employers who may be hiring
- applying for jobs
- attending interviews

[20] The Commission says that the Claimant didn’t do anything to try to find a job. He simply informed it that he wasn’t available for work from November 3, 2024, to January 11, 2025, because of family obligations. He said that he had to look after his sister who was critically ill.

³ See section 18(1)(a) of the Act.

⁴ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁵ See section 9.001 of the Regulations.

⁶ See section 9.001 of the Regulations.

[21] The Claimant disagrees. He says that from November 2024 to January 2025, he was his sister's only caregiver and that she was completely dependent on him for her care. The Claimant says that his efforts were enough to prove that he was available for work.

[22] I prefer the Commission's evidence over the Claimant's. I agree that the Claimant made no efforts to find work, let alone reasonable and customary ones. But I sympathize with the Claimant. His dedication and sense of duty to his sister are understandable. Unfortunately, to receive benefits, the Claimant still has to meet the strict requirements of the law.

[23] So, I have no choice but to find that the Claimant is disentitled from receiving benefits under section 50(8) of the Act.

[24] The Claimant hasn't shown that he made reasonable and customary efforts to find a job.

Capable of and available for work

[25] 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:⁷

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

⁷ 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.

[26] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.⁸

– **Wanting to go back to work**

[27] The Claimant hasn't shown that he wanted to go back to work as soon as a suitable job was available.

[28] The Claimant said that he wasn't available for work from November 3, 2024, to January 11, 2025. He had family obligations and had to look after his critically ill sister.

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

[29] The Claimant hasn't made any effort to find a suitable job.

[30] I have considered the list of job-search activities given above in deciding this second factor. For this factor, that list is for guidance only.⁹

[31] As he told the Commission and confirmed in his testimony, the Claimant could not make efforts to find a suitable job because he was fully dedicated to his ill sister and her care.

[32] I find that the Claimant doesn't meet the requirements of this second factor because he admitted that he didn't make efforts to find a suitable job during the period in question.

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

[33] The Claimant did set personal conditions that might have unduly limited his chances of going back to work.

⁸ 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.

⁹ I am not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

[34] The Claimant chose to care for his critically ill sister instead of looking for work. He decided that this responsibility took precedence over everything else, and this personal choice unduly limited his chances of going back to work.

– **The Claimant's attitude and conduct**

[35] The Claimant's attitude and conduct were consistent with his conviction that he had to act as a caregiver for his critically ill sister.

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

[36] It is highly commendable that the Claimant wanted to give his sister the help she needed. But, in accordance with the law and based on my findings on the three factors, I find that the Claimant hasn't shown that he was capable of and available for work but unable to find a suitable job.

[37] The question of availability is purely objective. It can't be influenced by specific reasons that limit availability. Payment of benefits is based on availability for work, not on the explanation the claimant may give for not having been available.

[38] A Federal Court of Appeal decision says the following:

The question of availability is an objective one - whether a claimant is sufficiently available for suitable employment to be entitled to unemployment insurance benefits - and it cannot depend upon the particular reasons for the restrictions on availability, however these may evoke sympathetic concern. If the contrary were true, availability would be a completely varying requirement depending on the view taken on the particular reasons in each case for the relative lack of it.¹⁰

[39] So, I find that the Claimant hasn't shown that he was capable of and available for work.

¹⁰ See *Canada (Attorney General) v Gagnon*, 2005 FCA 321.

Conclusion

[40] I sympathize with the Claimant. I am aware of the difficult situation he faced. But, and consistent with past Tribunal decisions, the rules governing availability are strict and inflexible. They can't be changed to provide social benefits, no matter how deserving a person may otherwise be.¹¹

[41] Unfortunately, the Claimant hasn't shown that he was available for work under the law. The law says that claimants have to be ready to work and looking for a job on a sustained basis. For the reasons I have already explained, the Claimant wasn't in this position. Because of this, I find that the Claimant can't receive EI benefits.

[42] This means that the appeal is dismissed.

Jean Yves Bastien

Member, General Division – Employment Insurance Section

¹¹ See CUBs 18405, 26153, and 58348.