[TRANSLATION]

Citation: *IB v Canada Employment Insurance Commission*, 2025 SST 772

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	I. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (677043) dated July 24, 2024 (issued by Service Canada)

Tribunal member:	Jean Yves Bastien
Type of hearing:	Teleconference
Hearing date:	July 22, 2025
Hearing participants:	Appellant
Decision date:	July 29, 2025
File number:	GE-25-1732

Decision

[1] The appeal is dismissed. The General Division disagrees with the Appellant.

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

Overview

[3] The Appellant worked as a personal support worker at a seniors' residence in Quebec. She injured her shoulder in 2023, aggravating an injury she already had. She applied for EI sickness benefits on November 28, 2023. She received these benefits until April 29, 2024.

[4] When the Appellant's sickness benefits ended in April 2024, she first provided the Canada Employment Insurance Commission (Commission) with a medical certificate exempting her from work until May 12, 2024. She then provided another medical certificate limiting her to light duties from May 12, 2024, to June 12, 2025.

[5] Unfortunately, the employer told the Appellant that it didn't have any positions that would allow her to do only light work. So, the Appellant asked the Commission to convert her claim to EI regular benefits.

[6] The Commission decided that the Appellant was disentitled from receiving EI regular benefits from May 13, 2024, because she 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.

[7] I must decide whether the Appellant has proven that she was available for work from May 13, 2024. The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she was available for work.

[8] The Commission says that the Appellant wasn't available because she didn't make "reasonable and customary efforts" to find a suitable job and hasn't proven that she was "capable of and available for work," but wasn't able to find a suitable job.[1]

[9] The Appellant disagrees and argues that her medical certificate didn't prevent her from doing certain tasks; it said she had to **avoid** those tasks. She says that she didn't set conditions that might have unduly (in other words, overly) limited her chances of going back to work. She says that she was very motivated to find a new job and that she made considerable efforts. But employers didn't want to hire her because of her temporary medical restrictions.

Issue

[10] Was the Appellant available for work?

Analysis

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

[12] First, the *Employment Insurance Act* (Act) says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.[2] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[3] I will look at those criteria below.

[13] 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.[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.

---

[1] See section 18(1)(a) of the *Employment Insurance Act* (Act).
[2] See section 50(8) of the Act.
[3] See section 9.001 of the *Employment Insurance Regulations* (Regulations).
[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.

[14] The Commission decided that the Appellant was disentitled from receiving benefits because she wasn't available for work based on these two sections of the law.

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

Reasonable and customary efforts to find a job

[16] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.[6] I have to look at whether her efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[17] The Appellant says that her efforts were enough to prove that she was available for work.

[18] The Commission says that the Appellant didn't do enough to try to find a job. It says that the Appellant's actions were **not sustained** and weren't directed toward finding a suitable job. The Commission says that the Appellant mentioned only one interview and didn't really apply for other jobs. The Commission argues that, even though the Appellant had the opportunity to provide tangible proof of her efforts to find a suitable job, she didn't do so. The Commission says that, even if the Appellant said that she wanted to work, her efforts weren't enough to meet the requirements of the law. So, the Commission finds that its decision to deny the Appellant benefits was well founded in fact and law.

[19] I have to consider the Appellant'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:[7]

- preparing a résumé or cover letter
- networking
- contacting employers who may be hiring

[6] See section 9.001 of the Regulations.
[7] See section 9.001 of the Regulations.

- applying for jobs

[20] I accept that the Appellant updated her résumé, that she networked with friends, potential employers, and her former employer, and that she did contact employers who may be hiring, like convenience stores.

[21] The Appellant testified that she is [translation] "hard-working" and that she was prepared to work anywhere, especially since she had bills to pay and food to buy. She says that she was involved in a government orientation program to explore other career paths. But she wasn't able to say which department was offering this program or whether it was a federal or provincial program.

[22] The Appellant acknowledges that she injured her shoulder and didn't want to reinjure it to cause permanent damage. She said that she spoke to her former employer about returning to work, but the employer didn't want her to return until she had medical clearance to work without restrictions.

[23] The Appellant testified that she didn't want to pretend to be in perfect health just so she could return to work with her former employer.

[24] The Appellant said that she contacted employers who may be hiring, like convenience stores. She said she looked [translation] "everywhere." She said that she had two interviews, one for a position as a family aid worker and another as a cook in a restaurant. She also said that she had distributed her résumé to other potential employers.

[25] But there is contradictory evidence. The Commission says that when it spoke to the Appellant on June 25, 2024, she said that she hadn't sent out any copies of her résumé or contacted any potential employers since she had been medically cleared to work (May 12, 2024). The Appellant explained that it wasn't because she didn't want to, but rather because her shoulder was restricting her.[8]

[8] See the Commission's supplementary information form dated June 25, 2024, at GD3-18.

[26] Case law says that I can't disregard contradictory evidence. In a decision called ***Bellefleur***, the Federal Court of Appeal says that, if I am faced with contradictory evidence, I can't disregard it. I have to consider it. If I decide that the contradictory evidence should be dismissed or assigned little or no weight at all, I have to explain why.[9]

[27] ***Bellefleur*** also tells me that I generally have to give more weight to a person's initial and spontaneous statements than to those made following an unfavourable decision by the Commission.

[28] The Commission gave the Appellant the opportunity to explain. It gave her seven days to prove that she was making sustained efforts to find work and that she could find a job that was suitable and adapted to her medical restrictions.[10]

[29] But the Appellant's first response was to tell the Commission that she could not visit prospective employers because she could not afford to put gas in her car or fill her fridge. She said that she needed more money before she could apply for jobs with prospective employers or attend job interviews. She added that she was entitled to EI benefits for the following reason [translation] "I have all my stamps."

[30] The Appellant also said that she had been waiting for two months for a response from her former employer

[31] The Commission argues that the Appellant isn't able to describe her job search in any detail. She said that she had tried four times in three months, including once at a convenience store, and that she wasn't able to work in a hairdressing salon. She also said that she had applied for a job as a cook in a restaurant, and I accept this.

[32] I prefer the Commission's evidence. While I find the Appellant credible, I have to give more weight to her initial statements. First, she said that she hadn't made any reasonable and customary efforts to find a job between her medical clearance to return to work on light duties on May 11, 2024, and her June 25, 2024, interview with the

[9] See *Bellefleur v Canada (Attorney General),* 2007 FCA 201.
[10] See the Commission's supplementary information form dated June 25, 2024, at GD3-19.

Commission. The Commission's decision letter denying the Appellant benefits is dated June 26, 2024. I have to give less weight to the Appellant's statements after that date.

[33] Section 9.001 of the Regulations describes what constitutes reasonable and customary efforts to find a job. Section 9.001(a) says right from the outset that efforts to find a job must be sustained.

[34] I find that the Appellant's efforts to find work weren't sustained as required by the Regulations. This is because, for the first 44 days, she made few concrete efforts to find a job. Instead, she waited for her former employer to offer her a job that would accommodate her medical restrictions.

[35] I find that the Appellant didn't make reasonable and customary efforts to find a job.

[36] So, I find that the Appellant hasn't proven that her efforts to find a job were reasonable and customary.

Capable of and available for work

[37] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:[11]

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

b) She has made efforts to find a **suitable** job.

c) She didn't set personal conditions that might have unduly limited her chances of going back to work.

[11] 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.

[38] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[12]

– **Wanting to go back to work**

[39] The Appellant has shown that she wanted to go back to work as soon as possible.

[40] The Appellant told the Commission that she wanted to go back to work at the seniors' residence because she felt a close bond with many of the residents. If that wasn't possible, she wanted to work in the same field as a family aid worker to help seniors at home. If she really could not do that, she would go work in a convenience store or restaurant.

[41] I have no doubt that the Appellant wanted to go back to work. She had bills to pay and was in a precarious financial position. She was motivated to earn an income.

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

[42] The Appellant hasn't made enough effort to find a **suitable** job.

[43] The Regulations define suitable employment as "employment in which a claimant can commute to a job **and perform its duties within the claimant's health and physical capabilities.** Before [considering] the [c]laimant's old job, or any job, to be 'suitable', [one] must first need to accept that the job is within [their] health and physical capabilities."[13]

[44] The Commission says that the Appellant hasn't shown that she made serious efforts to find a job. It says that she was waiting for her former employer to invite her back to work at the seniors' residence. But that employer had already told the Appellant

[12] 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.
[13] Although I am not bound by previous decisions of this Tribunal, they do provide good guidance. See *SA v Canada Employment Insurance Commission*, 2020 SST 524. Emphasis added.

that it could not accommodate her needs, since it didn't have a position that would allow her to perform only light duties.

[45] The Commission adds that the Appellant is unable to describe her job search. She said that she had tried four times in three months, including once at a convenience store, where she was told that she could not be hired because of her medical condition.

[46] The Appellant argues that the restrictions listed on her medical certificate are just recommendations to avoid certain tasks, like lifting over five kilograms, repetitive movements, or cleaning. She says that the medical certificate doesn't explicitly prevent her from doing these tasks.

[47] But I can't read the medical certificate without considering the context. The Appellant's medical restrictions must be considered in the context of her medical history and the nature of the jobs she tried to find. A doctor checked the [translation] "return to work with light tasks" box. These words must be considered in light of the fact that the Appellant's restrictions are part of her recovery from her shoulder injury.

[48] The Appellant was off work and received sickness benefits from November 2023 to April 29, 2024. A doctor extended her leave from work until May 12, 2024.[14] A doctor then lifted some restrictions and prescribed a return to work with light tasks from May 12, 2024, to June 12, 2025.[15]

[49] The Appellant told the Commission that the second doctor had recommended that she look for another type of job. She said that this doctor didn't really want her to return to work. She was the one who insisted that she was capable because she could do other tasks than those that aggravated her left shoulder.[16]

[50] I find it more likely that the Appellant's doctors prescribed a gradual return to work with specific directions that she should not perform the tasks mentioned in the

[14] See the medical certificate dated April 2, 2024, at GD3-13.
[15] See the medical certificate dated May 11, 2024, at GD3-14.
[16] See the Commission's supplementary information dated June 25, 2024, at GD3-19.

medical certificate, no matter how politely or passively those directions were written on the medical certificate.

[51] The Appellant says that she tried to go back to her job as a personal support worker, become a family aid worker, and work in a convenience store or as a cook. These are all jobs that require more physical effort than the Appellant was capable of. The fact that her former employer told her that she could return to work only when she no longer had medical restrictions is evidence of this. The Appellant herself testified that employers, like convenience stores and restaurants, were reluctant to hire her because of her physical limitations.

[52] On May 27, 2024, the Appellant told the Commission that she was unable to do the work she had been doing before, under the same conditions. She said that she was medically restricted to light work.[17]

[53] So, I find it more likely than not that the jobs the Appellant was looking for, such as returning to her former employer or working as a family aide worker, weren't suitable for her. This is because those jobs were simply not within her health and physical capabilities. The Appellant herself said that she wasn't prepared to [translation] "throw out" her shoulder just for work.[18]

[54] So, the Appellant's efforts weren't enough to meet the requirements of this second factor for the reasons mentioned above.

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

[55] The Appellant hasn't set personal conditions that might have unduly limited her chances of going back to work.

[56] The Commission says that the Appellant's personal conditions are such that she has eliminated virtually all of her chances of finding a job.

---

[17] See para 8 of the Commission's supplementary information dated May 27, 2024, at GD3-16.
[18] See the Commission's supplementary information dated July 22, 2024, at GD3-26.

[57] But the Tribunal has already determined that a claimant who is unwilling to work at any job that would exceed their health and physical capabilities isn't setting "personal conditions." Physical limitations must not be confused with personal conditions.[19]

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

[58] Based on my findings on the three factors, I find that the Appellant hasn't shown that she was capable of and available for work but unable to find a suitable job.

Conclusion

[59] I sympathize with the Appellant and the difficult situation she found herself in. But the Tribunal's predecessor has already found that the rules around availability are strict and unforgiving. These rules can't be changed to give social benefits no matter how much a claimant might otherwise be deserving.[20]

[60] The Appellant hasn't shown that she was available for work within the meaning of the law. Because of this, I find that the Appellant can't receive EI benefits.

[61] This means that the appeal is dismissed.

Jean Yves Bastien
Member, General Division – Employment Insurance Section

[19] See *SA v Canada Employment Insurance Commission*, 2020 SST 524.
[20] See CUBs 18405, 26153, and 58348.