Citation: *AD v Canada Employment Insurance Commission*, 2026 SST 31

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. D.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (717708) dated March 21, 2025 (issued by Service Canada)

Tribunal member:	Gary Conrad
Type of hearing:	Teleconference
Hearing date:	January 14, 2026
Hearing participant:	Appellant
Decision date:	January 16, 2026
File number:	GE-25-3557

Decision

[1] The appeal is allowed.

[2] The Appellant has proven that he is available for work, so he should not be disentitled from Employment Insurance (EI) benefits for that reason.

Overview

[3] The Appellant works as a teacher. He applied for EI benefits for the 2024 Christmas school break.

[4] The Canada Employment Insurance Commission (Commission) said that they could not pay the Appellant benefits. They decided that he was not available for work, because he was restricting his job search to teaching positions with his school district. The Commission says this is too limited a job search and significantly reduces his chances of obtaining employment.

[5] The Appellant argues that he was always looking for work, just that there were no positions to apply for, but he was not sitting idly by, he was also working on his self-employment.

Matter I have to consider first

50(8) disentitlement

[6] In their submissions the Commission states they disentitled the Appellant under subsection 50(8) of the *Employment Insurance Act* (Act). Subsection 50(8) of the Act relates to a person failing to prove to the Commission that they were/are making reasonable and customary efforts to find suitable employment.

[7] In looking through the evidence, I do not see any requests from the Commission to the Appellant to prove his reasonable and customary efforts, or any explanations from the Commission to the Appellant about what kind of proof he would need to provide to prove his reasonable and customary efforts.

[8] While the Commission and Appellant did discuss his job search efforts, I find the reasoning in *TM v Canada Employment Insurance Commission*, 2021 SST 11 persuasive, in that it is not enough for the Commission to discuss job search efforts with the Appellant, instead they must specifically ask for proof from the Appellant and explain to him what kind of proof would meet a "reasonable and customary" standard.

[9] I also do not see any discussion about reasonable and customary efforts during the reconsideration process or explicit mention of disentitling the Appellant under section 50(8) of the Act, or anything about the Appellant's lack of reasonable and customary efforts in the reconsideration decision.

[10] Based on the lack of evidence the Commission asked the Appellant to prove his reasonable and customary efforts to find suitable employment under subsection 50(8) of the Act, the Commission did not disentitle the Appellant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

Issue

[11] Is the Appellant available for work?

Analysis

Available for work

[12] Case law sets out three factors for me to consider when deciding whether the Appellant is capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:[1]

a) He wants to go back to work as soon as a suitable job is available.

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

[1] 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.

c) He has not set personal conditions that might unduly (in other words, overly) limit his chances of going back to work.

[13] When I consider each of these factors, I have to look at the Appellant's attitude and conduct for the entire period of the disentitlement[2] (December 23, 2024, onward).[3]

Wanting to go back to work

[14] The Appellant has shown that he wants to go back to work as soon as a suitable job is available.

[15] The Appellant says that other than the 2024 winter break, summer 2025 break, and winter 2025 break, he was working as an occasional teacher with his school district five days a week. He also has self-employment that he does at nights, on weekends, and during the school breaks.

[16] I find the Appellant working when he is not on the school breaks, working at his self-employment after his regular workday is over and on weekends, and working at his self-employment during the school breaks, shows that he has a desire to work.

Making efforts to find a suitable job

[17] The Appellant is making enough effort to find a suitable job.

[18] The Appellant says that he consistently looks for work with his school district, and if any position opened up that he could apply for he would apply for it. He says that during the summer break of 2025 he was also looking for teaching positions with other institutions.

[19] I find the Appellant had no need to look for work for the periods when he was working because for those periods he already had a job; he did not need to find suitable

[2] 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.
[3] GD03-16 upheld by GD03-24.

employment, he already had it. I would note the Appeal Division also supports this reasoning,[4] which I find persuasive.

[20] For the periods when he was not working, so the winter break in 2024, the summer break in 2025, and the winter break in 2025, I find he was making sufficient efforts to look for work.

[21] His efforts of looking online for work, evaluating any opportunities he found, and applying to those opportunities, are all reasonable and sufficient efforts to find work.

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

[22] The Appellant did set a personal condition (only looking for work as a teacher in his school district) but it is not unduly (in other words overly) limiting his chances of returning to the labour market.

[23] The Commission says that the Appellant has an overly limiting condition on his job search; he is restricting himself to only seeking teaching positions with a single employer, his school district.

[24] I disagree with the Commission.

[25] I find the Appellant's testimony credible that there are over 200+ schools in his school district, because he lives in Toronto, and I can readily believe a city of that size has many, many schools. Even taking into consideration applying only for his speciality, which would be high school chemistry, science, and math, he says there are over 40 high schools, which I again find credible, since he lives in such a large city.

[26] This means the Appellant's restriction would still represent multiple positions at 40 plus possible employers. I do not find such a range of employment opportunities restrictive, so his decision to limit his employment search to his school district is not overly limiting. It is important to remember that the issue is not whether the Appellant has any restrictions, but whether any restrictions he has are overly limiting.

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[4] *EB v Canada Employment Insurance Commission*, 2024 SST 1517 at paras 24 to 28.

[27] Further, while the law says that after a reasonable period of time has elapsed from when a claimant became unemployed, even lower paying work outside of their regular occupation can be suitable,[5] I find the circumstances presented in this section do not appear in the Appellant's situation.

[28] This is because for the periods when he is not on break, he is employed, working five days a week. It is only when he is not working during the school breaks that he is unemployed, so the reasonable interval would start at the beginning of the school breaks, when he becomes unemployed. The longest of those break periods is the two months in the summer. I find, that if the Appellant chose to only look for work as a teacher in his school district over the break periods, even the longest of those (just over two months in the summer) would not be a long enough period since he became unemployed to be a reasonable interval. This means the section of the law saying lower paying work outside of a claimant's regular occupation can be suitable employment, would not come into play for the Appellant.

[29] Finally, I find the Appellant's self-employment is not an overly limiting condition as he says he can work on it at any time, so it does not impact his work. I find this statement credible, since the business is an online business, and he is currently working while running his business, which shows the self-employment does not impact his ability to work at a job.

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

[30] Based on my findings on the three factors, I find that the Appellant has shown that he is capable of and available for work but unable to find a suitable job. He clearly wants to work, and is making sufficient efforts to find work. Finally, his decision to only look for work in his school district is not overly limiting, as with the large number of schools in his school district, he has a significant number of potential employers that could offer employment.

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[5] Section 6(5) of the *Employment Insurance Act*.

Conclusion

[31] The Appellant has proven that he is available for work, so the appeal is allowed.

Gary Conrad

Member, General Division – Employment Insurance Section