Citation: *OS v Canada Employment Insurance Commission*, 2025 SST 286

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	O. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (695646) dated December 12, 2024 (issued by Service Canada)

Tribunal member:	Audrey Mitchell
Type of hearing:	Teleconference
Hearing date:	February 19, 2025
Hearing participant:	Appellant
Decision date:	February 24, 2025
File number:	GE-25-284

Decision

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

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

Overview

[3] The Appellant applied for and received sickness benefits. She asked the Canada Employment Insurance Commission (Commission) to convert her sickness benefits to regular benefits for when she returned to work but only worked partial days.

[4] The Commission decided that the Appellant is disentitled from receiving EI regular benefits from July 28 to September 7, 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.

[5] I must decide whether the Appellant has proven that she is available for work. 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 is available for work.

[6] The Commission says the Appellant isn't available because she hasn't proven that was looking for work outside her regular employment.

[7] The Appellant disagrees and states she's ready, willing, and able to work. She says her employer could only give her four-hour shifts because her full-time shifts weren't available until September 8, 2024.

Issue

[8] Was the Appellant available for work?

Analysis

[9] 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.

[10] 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.[1] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[2]

[11] The Commission says it disentitled the Appellant under section 50 of the Act along with section 9.001 of the Regulations for failing to prove her availability for work. In its submissions, it says it may require a claimant to prove that they are making reasonable and customary efforts to obtain suitable employment.

[12] The Commission's notes don't reflect that it asked the Appellant to prove her availability by sending a detailed job search record.

[13] I find a decision of the Appeal Division on disentitlements under section 50 of the Act persuasive. The decision says the Commission can ask a claimant to prove that they have made reasonable and customary efforts to find a job. It can disentitle a claimant for failing to comply with this request. But it has to ask the claimant to provide this proof and tell the claimant what kind of proof will satisfy its requirements.[3]

[14] I don't find that the Commission asked the Appellant to provide her job search record to prove her availability. So, I don't find that she is disentitled under this part of the law.

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[1] See section 50(8) of the *Employment Insurance Act* (Act).
[2] See section 9.001 of the *Employment Insurance Regulations* (Regulations).
[3] *L. D. v. Canada Employment Insurance Commission*, 2020 SST 688

[15] Second, the Act says 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.

Capable of and available for work

[16] 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:[6]

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

b) She made efforts to find a suitable job.

c) She didn't set personal conditions that might unduly (in other words, overly) limit her chances of going back to work.

[17] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[7] But before I look at the factors, I will look first at whether the Appellant was capable of working and what would be a suitable job for her as a result.

Capable of working

[18] I have to consider whether the Appellant is capable of working.[8]

[19] The Appellant applied for and received sickness benefits after a cancer diagnosis. She got her maximum entitlement to sickness benefits.

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[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.
[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.
[8] See section 18(1)(a) of the Act.

[20] The Appellant asked the Commission to convert her sickness benefits to regular benefits. At the time, she declared that she had returned to work on August 6, 2024, and was working four hours a day until September 6, 2024. She submitted a return to work authorization at her employer's request that her doctor completed. It confirmed that the Appellant would work four hours a day until September 7, 2024, and she would then increase her shifts to eight hours with the same light duties as before. The Appellant confirmed at the hearing that she gave the return to work authorization to her employer.

[21] The Commission decided that the Appellant hadn't proven her availability for work because she was unable to work full workdays. It maintained this decision on reconsideration.

[22] On appeal, the Appellant said she worked four hours a day because her employer didn't have a full-time line available for her until September. The employer sent an unsigned letter confirming this.

[23] The Appellant also included an undated letter from her doctor with her notice of appeal. It says that on review of the Appellant's medical history, the Appellant was able and willing to work starting August 7, 2024. The doctor added that it had put her on modified hours as a precaution and those were the hours her employer had available at the time. The Appellant testified that she got this letter around the time she filed her appeal.

[24] The Appellant testified that when she first went to see her doctor to get the return to work authorization, she told the doctor that she was willing and able to return to work. But she said she told the doctor that it was the norm where she worked for people who had been off work sick to return gradually. She testified that there was nothing stopping her from returning to work full-time then.

[25] The Appellant testified that her last treatment was completed on July 5, 2024. She said even though she was ready to return to work then, she took a month to take a personal break after which she would return to work.

[26] I acknowledge the Appellant's statements to the Commission confirming that she could not work full-time hours or more than four hours a day. But even though the doctor's letter is undated, I accept it as a valid updated opinion from the doctor that the return to work authorization was completed the way it was as a precaution. And I accept the Appellant's testimony under oath saying that she had recovered enough to work full-time as of August 6, 2024. For this reason, I find that the Appellant was capable of working from then and a suitable job for her was one with no restrictions in hours of work.

Available for work

– Wanting to go back to work

[27] The Appellant has shown that she wanted to go back to work as soon as a suitable job is available.

[28] As noted above, the Appellant had a job to return to. After she took some personal time following her medical treatment, she returned to that job. She worked only four hours a day even though she said she could have and wanted to work full-time.

[29] The Appellant confirmed that she didn't look for work outside the job she returned to. I'll look at that below. But I'm satisfied that she wanted to go back to work as soon as a suitable job was offered.

– Making efforts to find a suitable job

[30] The Appellant didn't make any effort to find a suitable job.

[31] When the Appellant returned to her job, she worked only four hours a day, Monday to Friday. She testified that the full-time line she used to work was no longer available due to her lengthy absence from work. She said her employer assured her that another full-time line would be available within a month of her return.

[32] I confirmed with the Appellant that she wanted to get EI benefits to supplement her income for the time she was working four hours a day. She said her understanding was that because her employer could not give her full-time hours, she could get EI benefits.

[33] I asked the Appellant if she had looked for work within or outside her place of work. She said she did not. She said this wasn't possible where she worked because all full-time positions were posted for all employees. And she said she didn't look anywhere else because she knew that there would be a full-time position for her soon that she would get.

[34] I accept the Appellant's evidence as fact that she didn't look for work. So, she doesn't meet the requirements of this factor.

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

[35] The Appellant set personal conditions that might have unduly limited her chances of going back to work.

[36] For the period in question, the Appellant said she didn't look for work because she knew she would get a full-time job with her employer. The Commission said a claimant can't restrict their re-employment only to their employer if there are other permanent or temporary opportunities elsewhere.

[37] I understand why the Appellant would want to stay with her employer, believing that she would get a full-time line shortly. And this is what she testified has happened. But since she is asking for EI benefits for partial days she didn't work, I agree with the Commission. I find that choosing to wait for a full-time line with her employer was a personal condition that might have unduly limited the Appellant's chances of going back to full-time work.

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

[38] 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

[39] 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.

[40] This means that the appeal is dismissed.

Audrey Mitchell
Member, General Division – Employment Insurance Section