Citation: *JT v Canada Employment Insurance Commission*, 2025 SST 315

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	J. T.
Representative:	D. T.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (698363) dated January 13, 2025 (issued by Service Canada)

Tribunal member:	Peter Mancini
Type of hearing:	Videoconference
Hearing date:	February 18, 2025
Hearing participants:	Appellant Appellant's Representative
Decision date:	February 28th 2025
File number:	GE-25-265

Decision

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

[2] The Appellant hasn't shown that he is available for work while taking training. The General Division of the Tribunal does not have the authority to deal with the Appellant's argument that he should qualify for benefits because the program falls under section 25 of the Act. This means that he can't receive Employment Insurance (EI) benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant is disentitled from receiving EI regular benefits as of September 2nd, 2024, because he wasn't available for work. An Appellant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that an Appellant has to be searching for a job.

[4] I have to decide whether the Appellant has proven that he is available for work. The Appellant 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 is available for work.

[5] The Commission says that the Appellant isn't available because he was in training full-time.

[6] The Appellant disagrees and says that he is available for work. He also says, and this is the crux of the issue, he should be eligible for benefits because other individuals who are in the same training program are receiving benefits, which is unfair. He would have been eligible for benefits if he had time to apply for the program through section 25 of the Act.

Issues

[7] Is the Appellant available for work while taking training? Can I direct the Appellant to be eligible for benefits through the approved training program.

Analysis issue 1 is the Appellant available for work.

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

[9] First, the *Employment Insurance Act* (Act) says that an Appellant 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.

[10] Second, the 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.[3] Case law gives three things an Appellant has to prove to show that they are "available" in this sense.[4] I will look at those factors below.

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

[12] In addition, the Federal Court of Appeal has said that Appellants who are in training full-time are presumed to be unavailable for work.[5] This is called the "presumption of non-availability." It means we can suppose that students aren't available for work when the evidence shows that they are taking training full-time.

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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] 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 *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

[13] I will start by looking at whether I can presume that the Appellant wasn't available for work. Then, I will look at whether he was available based on the two sections of the law on availability.

Presuming full-time students aren't available for work.

[14] The presumption that students aren't available for work applies only to full-time students.

[15] The Appellant is an intelligent and ambitious young man. He was employed until the end of August 2024, when he was unexpectedly laid off from his job. 17 months prior to the lay off he had applied to a training program that involved fire rescue. Two days after he was laid off, he was notified that a spot had opened up in the program. He decided to take the opportunity.

[16] The Appellant saw this opportunity as one that would lead to meaningful employment and wanted to better himself. I was impressed with the Appellant's work ethic and desire to improve his situation.

[17] The course involves on the ground training, and some online training. There are only 16 students in the class. The course description says the hours of study are from 9am to 4pm, although the Appellant said in the hearing that the hours are usually 9am to 3pm, Monday through Friday.

[18] The program costs in the range of $12,000-$15,000 plus living expenses. The Appellant also has other expenses, such as a car payment.

[19] The Appellant agrees that he is in a course that is classified as full-time, so he is a full-time student, and I see no evidence that shows otherwise. So, I accept that the Appellant is taking training full-time.

[20] The presumption applies to the Appellant.

– **The Appellant is a full-time student.**

[21] The Appellant is a full-time student. But the presumption that full-time students aren't available for work can be rebutted (that is, shown to not apply). The Federal Court of Appeal says that I have to do a contextual analysis when deciding whether the Appellant has rebutted the presumption of non-availability.[6]

[22] The Appellant said he would leave the course if he found full time work. He also said he worked when in school in the past, while at Memorial University from 2018 to 2021. The Appellant also said he was looking for work while at the training course.

[23] The Commission says the Appellant initially said he wanted to finish his course and it was his priority. The Commission also says that the Appellant has not made the usual and customary efforts to find work.

[24] I find that although the Appellant said he worked while attending Memorial University, I do not have evidence of that before me. The Appellant referenced work at three employers, but all of those were in 2022 or 2023. The Appellant was at MUN in 2018 for a few years. I do not think the Appellant was trying to mislead the Tribunal, but I believe he could not remember where he may have worked. As a result, I have no evidence to rely on except the records of employment, when determining this issue. Those records do not support the Appellant's claim.

[25] The Commission said the Appellant provided contradictory statements about his willingness to look for work. The Appellant explained this and said the Commission may have misunderstood him. I accept that if the Appellant found full time work, he would leave the training program. He has debts that concern him and would like to pay those debts down. But I do not find those to be extraordinary circumstances.

[26] The Appellant hasn't rebutted the presumption that he is unavailable for work.

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

[27] I am now going to continue on to decide the sections of the law dealing with availability.

Reasonable and customary efforts to find a job.

[28] The first section of the law that I am going to consider says that Appellants have to prove that their efforts to find a job are reasonable and customary.[7]

[29] The law sets out criteria for me to consider when deciding whether the Appellant's efforts are reasonable and customary.[8] I have to look at whether his efforts are sustained and whether they are directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[30] I also 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 are the following:[9]

- preparing a résumé or cover letter
- registering for job-search tools or with online job banks or employment agencies
- attending job-search workshops or job fairs
- contacting employers who may be hiring.
- applying for jobs
- attending interviews

[31] The Commission says that the Appellant isn't doing enough to try to find a job. The Commission says the Appellant did not have a job search record. He did obtain an interview for a job for October 2024, but did not attend the interview as he had a quiz that day.

[32] The Appellant disagrees. He is looking for a job and has applied for a couple of positions. He says he reached out to a fire fighting position and a position at the local

[7] See section 50(8) of the Act.
[8] See section 9.001 of the Regulations.
[9] See section 9.001 of the Regulations.

gym. Both of these efforts were made in the fall of 2024. The Appellant says that his efforts are enough to prove that he is available for work.

[33] I find that the Appellant has made a few efforts to find part time work, but those efforts have not been sustained or ordinary.

[34] The Appellant hasn't proven that his efforts to find a job are reasonable and customary.

Capable of and available for work

[35] I also have to consider whether the Appellant is capable of and available for work but unable to find a suitable job.[10] Case law sets out three factors for me to consider when deciding this. The Appellant has to prove the following three things:[11]

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.

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

[36] 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.**

[37] The Appellant has shown that he wanted to go back to work as soon as a suitable job is available. I accept his evidence that he has bills and debts that are of concern to him.

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

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

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

[39] 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.[13]

[40] The Appellant's efforts to find a new job included talking to the local gym and those in his program who might be able to provide him work. I explained these reasons above when looking at whether the Appellant has made reasonable and customary efforts to find a job.

[41] Those efforts aren't enough to meet the requirements of this second factor because they are not customary or ordinary.

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

The Appellant has set personal conditions that might unduly limit his chances of going back to work.

[42] The Appellant says he hasn't done this because he has looked for a job at the local gym, and through his program.

[43] The Commission says the Appellant discounted work in retail or fast-food restaurants.

[44] I find that during the hearing the Appellant said he had worked in retail and service, but he was now looking for a more "mature" job and was looking for something in his field. So I find that the Appellant has set personal conditions that might limit his chance for obtaining suitable employment.

[13] 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.

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

[45] Based on my findings, I find that the Appellant hasn't shown that he is capable of and available for work but unable to find a suitable job.

Issue 2: Section 25 of the Act: Participating in an employment activity referred to by the Commission and retroactive approval.

[46] Towards the end of the hearing, it became clear that a main issue in this appeal deals with section 25 of the Act. That section deals with individuals who are participating in an employment activity to which the Commission or an authority that the Commission designates, has referred them. Those individuals are assumed to be capable of and available for work. Thus, they would qualify for benefits. There are students in the Appellant's program who are receiving benefits because they were referred to the program through section 25 of the act.

[47] The Appellant's representative said that all other matters (application for employment opportunities etc.) were moot. The real issue that the Appellant wanted addressed in the appeal was that the Appellant would have qualified for benefits if he had gone through the designated authority and if he had time to due the paperwork to qualify for benefits. However, he received a call two days before the start of the course and therefore could not do the paperwork to qualify for benefits while taking the course.

[48] The frustration of the Appellant is understandable. But for circumstances, he would not be going into debt to complete the program but would be receiving benefits to complete the program.

[49] I have reviewed section 25 of the Act and section 113 of the Act, which deals with the General Division's jurisdiction when reviewing appeals.

[50] I do not have the authority to allow the Appellant to qualify for the program through the designated authority. Section 25 (2) of the Act does not allow a decision of

the Commission about the referral of a claimant to a course to be subject to review in the reconsideration process. My ability to review the appeal is limited to the matters in the reconsideration process.[14] So, I cannot grant the Appellant's request.

[51] It does not appear that this issue was discussed with the Commission in the notes contained in GD 3; and I would encourage the Appellant and his representative to contact the Commission and see if a retroactive approval could be obtained by the Appellant.

Conclusion

[52] The Appellant hasn't shown that he is available for work within the meaning of the law, and I cannot consider the main issue raised by the Appellant dealing with section 25 of the act (referrals to approved programs and deemed eligible for benefits) Because of this, I find that the Appellant can't receive EI benefits.

[53] This means that the appeal is dismissed.

Peter Mancini
Member, General Division – Employment Insurance Section

[14] X v Canada Employment Insurance Commission and AA, 2020 SST 790