Citation: *DC v Canada Employment Insurance Commission*, 2025 SST 326

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (691629) dated December 9, 2024 (issued by Service Canada)

Tribunal member:	Susan Stapleton
Type of hearing:	Videoconference
Hearing date:	February 18, 2025
Hearing participant:	Appellant
Decision date:	February 27, 2025
File number:	GE-25-240

Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) can review the Appellant's claim. They also acted judicially when they decided to review the Appellant's claim for benefits, so I cannot interfere in their decision to do a review.

[3] The Appellant has not proven his availability for work because he was not making sufficient efforts to find work. This means he is disentitled from receiving benefits from March 25, 2024.

Overview

[4] The Appellant established a renewal claim for employment insurance benefits effective March 24, 2024.

[5] The employer issued a Record of Employment (ROE) on June 28, 2024, that stated "job abandonment" in the comments section.[1]

[6] This led the Commission to investigate the Appellant's availability for work.

[7] Following their investigation, the Commission decided that the Appellant wasn't available for work from March 25, 2024. This decision resulted in an overpayment.

[8] The Appellant says he was available for work every day, between 1:00pm and 6:00am, and that he was searching for work. He had to be home to care for his child between 7:00am and 1:00pm, while his wife worked mornings. He says he understands if the Commission finds he wasn't available after he refused his employer's recall offer to return to work in June 2024. But he says he was available from March 25, 2024, and he doesn't think he should have to repay the benefits he received from March 25, 2024, until the date he could have returned to work with his employer in June 2024.

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[1] See GD3-14.

Matters I considered first

50(8) Disentitlement

[9] 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 making reasonable and customary efforts to find suitable employment.

[10] 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.

[11] 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.

[12] 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.

[13] 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 him under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

Post-hearing document

[14] At the hearing, the Appellant agreed to submit his job search record. He did so after the hearing.[2]

Issues

[15] Can the Commission go back and review the Appellant's claim?

[16] Did the Commission conduct its review judicially?

[17] Has the Appellant proven his availability for work from March 25, 2024?

Analysis

Review of the Appellant's claim

[18] The Commission may review a claim for benefits, for any reason, within 36 months after benefits have been paid.[3]

[19] The period of benefits under review started on March 25, 2024. The decision made by the Commission regarding their review of the Appellant's benefits is dated August 13, 2024.[4]

[20] The review, any recalculation on the claim, and notifying the Appellant with a decision, must be done within the 36-month window.[5] I find that the Commission was within this 36-month window, so they could go back and review the Appellant's claim.

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[2] See GD7.
[3] See section 52(1) of the *Employment Insurance Act* (Act).
[4] See GD3-54.
[5] See *Canada (Attorney General) v LaForest*, A-607-87 and *Briere v Canada (Attorney General)*, A-637-86.

Did the Commission perform their review judicially?

[21] The Commission must conduct their review judicially. This means the Commission cannot have acted in bad faith or for an improper purpose or motive, taken into account an irrelevant factor or ignored a relevant factor, or acted in a discriminatory manner. Any discretionary decision that is not made "judicially" should be set aside.[6]

Bad Faith

[22] I explained to the Appellant at the hearing that "bad faith" is a legal term which means an intentional dishonest act by not fulfilling some legal obligation or purposely misleading someone.

[23] I asked the Appellant if he thought the Commission acted in bad faith when it decided to go back and review his claim. He responded that if the Commission "thought they had the right reasons to go back, then they had the right reasons."

[24] There is no evidence that the Commission acted in bad faith.

[25] I find that it was not bad faith for the Commission to decide to investigate the Appellant's claim. The employer submitted an ROE indicating "job abandonment," which called in to question the Appellant's availability for work.

[26] I find it is part of the Commission's role in administering the EI program to ensure people who get paid EI benefits are entitled to receive them. I find that the Commission didn't act in bad faith when it decided to review the Appellant's claim.

Improper purpose or motive

[27] I find the Commission did not act for an improper purpose or motive.

[28] The Appellant didn't argue that the Commission acted for an improper purpose or motive.

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[6] See *Canada (Attorney General) v Purcell,* 1 FCR 644.

[29] The Commission is responsible for administering the EI program. They must determine whether claimants qualify to establish a benefit period, and whether they are entitled to receive benefits.

[30] Qualifying to establish a benefit period and being able to be paid benefits are two different concepts. A claimant may meet the requirements to establish a benefit period, but there may be something preventing them from being paid benefits.

[31] An ROE saying the Appellant abandoned his job could suggest an inability to work and raise questions about his availability for work.

[32] I find that the Commission wasn't acting for an improper purpose or motive when it reviewed the Appellant's claim to determine whether he was available for work. The Commission reviewed the Appellant's claim for the proper purpose of ensuring that he met the requirements to receive EI benefits.

Irrelevant and relevant factors

[33] The Appellant says the Commission didn't consider an irrelevant factor.

[34] I see no evidence that the Commission considered an irrelevant factor.

[35] The Appellant says the Commission ignored a relevant factor when they made their decision to review his claim. He says the Commission assumed he was not available because he had to take care of his daughter in the mornings. He says they ignored that there was a daycare crisis happening, and that he was able to work afternoons, evenings, and overnight. He doesn't think the Commission considered that when they decided to go back and review his claim.

[36] I find the Commission did not ignore a relevant factor. The Commission noted in their Record of Decision that the Appellant reported there was a daycare crisis in his

area, and that he had been looking for employment outside of the hours he had to care for his daughter.[7]

[37] I see no evidence that the Commission ignored a relevant factor in deciding to review the Appellant's claim.

Discrimination

[38] The Appellant says that he doesn't feel the Commission acted in a discriminatory manner when they decided to review his claim.

[39] I find the Appellant was not discriminated against. I see no evidence the Commission singled out the Appellant's claim for review due to any protected characteristic, such as his race, gender or age.

Did the Commission act judicially?

[40] I find the Commission did act judicially when they made their decision to go back and review the Appellant's claim, as they did not act in bad faith, or for an improper purpose or motive, they did not take into account an irrelevant factor or ignore a relevant factor, and they did not act in a discriminatory manner.

[41] This means I cannot interfere with the Commission's decision to go back and review the Appellant's claim. In other words, I cannot change their decision to review the claim.

Capable of and available for work

[42] 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:[8]

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[7] See GD3-52-53.
[8] 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.

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

b) He was making efforts to find a suitable job.

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

[43] 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,[9] (March 25, 2024, onward).[10]

Wanting to go back to work

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

[45] The Commission says the Appellant hasn't demonstrated a desire to go back to work, because he told his employer he couldn't return to work until September 2024, due to childcare issues.

[46] The Appellant told the Commission he was unable to work until September 2024, when his daughter would have a place in daycare. He said he should be entitled to EI benefits because he had been laid off from his job. When the Commission officer told him he had to be capable of available for work, and searching for suitable employment, the Appellant responded, "come on, it's only a couple of weeks until she goes to daycare." He then said he had been looking for employment in the evenings.[11]

[47] The Appellant testified that he wanted to work after he was laid off from his job. He said he is a working person. He said he was looking for work that would accommodate the fact that he had nobody to watch his daughter while his wife worked in the mornings.

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[9] See *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.
[10] See GD3-54.
[11] See GD3-16.

[48] However, the Appellant also testified that he only applied for three jobs from March 25, 2024, to mid-September 2024, when he returned to work with a new employer.

[49] I don't accept that the Appellant wanted to work from March 25, 2024, until he returned to work in September 2024. The fact he only applied for three jobs in a six-month period doesn't show he had a desire to return to the labour force. I find it reasonable to conclude that if a person had a desire to work, they would apply for more than three jobs in a six-month period.

Making efforts to find a suitable job

[50] The Appellant was not making enough efforts to find a suitable job from March 25, 2024.

[51] The Commission says the Appellant doesn't meet this factor, because he hasn't proven that he was actively searching for and applying for suitable employment. It says a job search record was requested of the Appellant on multiple occasions, however, the Appellant failed to provide it.[12]

[52] The Appellant is only required to look for suitable employment. Suitable employment is that which is not incompatible with the Appellant's family obligations.[13]

[53] The Appellant testified that he had an obligation to care for his infant daughter between 7:00am and 1:00pm each day, after his wife returned to work. He said his wife worked mornings and therefore, he could work between 1:00pm and 6:00am of the following day.

[54] I accept the Appellant's testimony that he had to care for his daughter between 7:00am and 1:00pm, while his wife was working, and that he was available for work every day from 1:00pm until 6:00am the following day.

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[12] See GD4-3.
[13] See Section 9.002 of the *Employment Insurance Regulations* (Regulations).

[55] I find that based on his family obligations, jobs where he had to work between 7:00am and 1:00pm would not be suitable employment for the Appellant, since he had to care for his child during those hours. This would include the employer's recall to work effective June 3, 2024, because there was only one shift available to work, from 8:30am to 4:30pm.[14]

[56] However, despite this, I find the Appellant does not meet this factor, because he was not making sufficient efforts to try and find work from March 25, 2024.

[57] The first time the Appellant spoke to the Commission, on August 12, 2024, he said he couldn't return to work until September 2024, because his wife had returned to work, they had no daycare for their daughter, and he had to care for her while his wife was working. After the Commission officer explained his responsibilities to be actively looking for work, the Appellant stated he had been looking for work he could do in the evenings. He said he couldn't provide a job search, because he only looked at things online.[15]

[58] On December 3, 2024, the Appellant told the Commission he was looking for anything, like security work or warehouse work. He said he checked the job alerts through his email, used Indeed and Service Canada job banks to look for work, and that he had applied to "many employers" since he was laid off. He said he would submit a record of his job search.[16]

[59] On December 9, 2024, the Commission contacted the Appellant because he had still not submitted a job search record. He told the Commission's reconsideration officer that he was sick over the weekend, and busy the previous week, and did not get a chance to compose his job search record. He asked for another week to submit the record. The commission officer told him the initial decision would be maintained.[17]

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[14] See GD3-62.
[15] See GD3-16.
[16] See GD3-63.
[17] See GD3-65.

[60] The Appellant testified that at first, he was going on Indeed, the City of Ottawa's page, and the government website every day or two, for an hour or two, to see what was available out there with his criteria. He was looking for work he had the skills do, that would fit his schedule. He has a history driving, a bit of restoration, and land surveying. So, he'd look into those types of jobs, but he didn't have the credentials for some of them. He couldn't see anything in his search that was acceptable, and that he had the skills to do. He said he applied for three jobs (although he told the Commission he had applied for "many" jobs) - as a special constable for OC transpo, as a warehouse clerk, and as an armed guard. These were the only ones he saw that applied to him, but he didn't hear back from these employers after he applied. He didn't keep a job search record. He did update his resume, adding his last job to his employment history.

[61] The Appellant testified that he got a new job, which he started in mid-September. He bumped into someone he knew who told him about a security company that was hiring. He applied and got the job.

[62] The Appellant agreed at the hearing to submit a record of jobs he had applied for since March 25, 2024. The Appellant submitted a list of jobs that he typed up, broken down by weeks since April 8, 2024. These may have been job postings he looked at, but didn't apply for, since he testified that he only applied for three jobs, as I noted above. I place little value on this list in terms of the Appellant showing that he was actively searching for suitable employment. It is unclear why he didn't apply for the jobs on the list and the source of the information on the list isn't shown.

[63] The Act is quite clear that to be eligible for benefits a claimant must establish…availability for work, and that requires a job search...No matter how little chance of success a claimant may feel a job search would have, the Act is designed so that only those who are genuinely unemployed and actively seeking work will receive

benefits.[18] Someone who is actively trying to find work would apply for more than three jobs in a six-month period.

Unduly limiting chances of going back to work

[64] The Appellant didn't set any personal conditions that unduly (in other words overly) limited his chances of going back to work.

[65] As the Appellant is not required to accept work that is unsuitable, not being willing to work in jobs where he would have to work between 7:00am and 1:00pm, while he had to care for his child, is an acceptable personal condition, since such work is unsuitable.

[66] I do not see any other personal conditions set by the Appellant, so I find he meets this factor.

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

[67] Based on my findings on the three factors, I find that the Appellant has not shown that he is capable of and available for work but unable to find a suitable job.

[18] See *Canada (Attorney General) v Cornelissen-O'Neil, A-652-93*.

Conclusion

[68] The appeal is dismissed.

[69] The Commission can review the Appellant's claim, and they acted judicially when they decided to do so. This means I cannot interfere with their decision to do a review.

[70] The Appellant has not proven his availability for work form March 25, 2024, because he hasn't shown that he wanted to return to work as soon as a suitable job was available, and he was not making sufficient efforts to find work. This means he is disentitled from receiving benefits from March 25, 2024.

Susan Stapleton
Member, General Division – Employment Insurance Section