Citation: *TS v Canada Employment Insurance Commission*, 2025 SST 368

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (698004) dated January 10, 2025 (issued by Service Canada)

Tribunal member:	Angela Ryan Bourgeois
Type of hearing:	Teleconference
Hearing date:	February 11, 2025
Hearing participant:	Appellant
Decision date:	February 25, 2025
File number:	GE-25-225

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 graduated from high school in June 2024. Over the summer she had a full-time summer job. Her job ended in late August 2024. She then started a full-time course at Nova Scotia Community College. She also applied for EI regular benefits.

[4] To get EI regular benefits claimants must prove that they are available for work. This means that a claimant has to want to return to work, must be looking for a job, and must not have any restrictions that unduly limit their chances of getting back to work. There is a presumption that full-time students are not available for work.

[5] The Canada Employment Insurance Commission (Commission) decided that the Appellant is disentitled from receiving EI regular benefits as of September 1, 2024, because she wasn't available for work.

[6] I have to 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.

[7] The Commission says that the Appellant isn't available because she is in school full-time.

[8] The Appellant disagrees. The Appellant states that she is willing to work. She argues that she has been actively looking for work but hasn't had any success.

Issue

[9] Is the Appellant available for work while in school?

Analysis

[10] The *Employment Insurance Act* (Act) says that a claimant has to prove that they are "capable of and available for work" but can't find a suitable job.[1]

[11] Case law says that a claimant must prove these three things to show that they are "available" in this sense:[2]

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

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

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

[12] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[3]

[13] Also, the Federal Court of Appeal has said that claimants who are in school full-time are presumed to be unavailable for work.[4] This is called the "presumption of non-availability."[5] It means we can suppose that students aren't available for work when the evidence shows that they are in school full-time.

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[1] See section 18(1)(a) of the Act. Section 50(8) of the Act says that to prove that they are available for work, the Commission may ask claimants to prove that they are making reasonable and customary efforts to obtain suitable employment. The Commission mentioned this section of law but it didn't set out how or why the Appellant was disentitled under this section. So, I decided that the disentitlement was only under section 18(1)(a) of the Act.
[2] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision paraphrases the three factors for plain language.
[3] 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.
[4] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.
[5] Claimants who are attending referred training under section 25 of the Act do not need to prove that they are available for work. This section doesn't apply to the Appellant because she was not referred for her training under that section of law. See page GD3-20.

Presuming full-time students aren't available for work

[14] The Appellant is a full-time student at Nova Scotia Community College. There is no dispute about this.

[15] This means that the presumption applies to the Appellant. But the presumption can be rebutted (that is, shown to not apply).

[16] 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] I must consider if the Appellant is willing to give up school to accept a job offer, if they have a history of being regularly employed while attending school and are looking for similar work hours, and if they are able to follow classes online at the time of their choice, as well as other relevant considerations.[7]

[17] The Appellant says she is willing to work and has been actively looking for a job.[8] She says that if a good paying job came along, she would take it without a doubt.[9]

[18] The Commission says that the Appellant has failed to rebut the presumption of non-availability while attending a full-time course because she is placing undue restrictions on her job search efforts and prioritizing her non-referred training over finding suitable employment. It argues that the Appellant considers the part-time jobs she has applied for to be suitable only if they occur outside her training program and has only applied for one full-time position since the program began. The Commission points out that the Appellant has no history of working while in school, having only held summer jobs. It adds that the Appellant has failed to prove availability to the extent required to receive benefits.[10]

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[6] See *Page* v *Canada (Attorney General)*, 2023 FCA 169.
[7] See *Page v Canada (Attorney General)*, 2023 FCA 169.
[8] See page GD2-5.
[9] See page GD2-5.
[10] See page GD4-7.

[19] I find that the Appellant has not rebutted the presumption of non-availability. I have considered all the circumstances relevant to the Appellant's training and how they affect her availability for work. I have also considered the three availability factors listed above.

– **Her work history does not rebut the presumption**

[20] The Appellant doesn't have a regular history of working while attending school. She graduated from high school in June 2024 and started college in September 2024. She confirmed at the hearing that she did not work while attending high school. Her work experience is in babysitting and two full-time summer jobs.

[21] This consideration points away from rebutting the presumption of non-availability. This is because the Appellant wants to work part-time, but she did not qualify for benefits with part-time employment that she did while attending school. She has not shown that finding a job is her main priority, or that her course obligations would not unduly restrict her availability for employment.

– **Desire to return to work as soon as a suitable job is offered**

[22] The Appellant has not shown that she has a real desire to return to the workforce.

[23] The Appellant told the Commission that it was her intention to find a full-time job while taking her course.[11] But at the hearing, she stated that she didn't mean this. Her goal is to find a part-time job she can do around her course schedule.

[24] The Appellant confirmed that she would leave her course for a full-time job, but only if it were worth her while. She states that "absolutely if a good paying job came along" she would take it.[12] But her ambition is to improve her situation by completing her course.

[11] See page GD3-24.
[12] See page GD2-5.

[25] The Appellant didn't apply for any jobs between the time her summer job ended on August 30, 2024, and November 23, 2024. This delay shows that she does not want to find a suitable job as soon as one becomes available.

[26] The Appellant's attitude and her job search efforts do not show that she has a real desire to get back to work. Her true desire is to continue in her course and fit in a job if she finds one that accommodates her school schedule. This falls short of what is required to rebut the presumption of non-availability and does not meet the requirements of this first availability factor.

– **Looking for a suitable job**

[27] The Appellant hasn't shown that her job search is enough to rebut the presumption of non-availability. She hasn't done enough to meet the second availability factor.

[28] The Appellant is looking for work using online job banks. She has an updated resume. The Commission's notes say that she is looking online so she can get her school assignments done.[13]

[29] The Appellant's full-time summer job ended on August 30, 2024. For the past five months, from September 2, 2024, until February 11, 2025, she has applied for eight positions, all but one being part-time jobs. She applied for three positions from November 23, 2024, to November 25, 2024, and applied for the remaining five positions in the first 2 weeks of January 2025. She claims she has been looking for employment but hasn't been able to find any jobs to apply for.

[30] The Commission provided job market information that shows there were positions available for a sales associate and a food counter attendant, as well as 20 call centre retail sales representatives.[14] The Appellant said that she is looking for any type

[13] See page GD3-44.
[14] See page GD3-36, GD3-39, GD3-38, GD3-45, GD3-48 to GD3-52

of work, including cashier and retail positions.[15] So, given the Appellant's limited work experience, these would be suitable positions for the Appellant.

[31] The Appellant didn't see or apply for these jobs. She says that she doesn't know how to navigate the Job Bank. Even if she couldn't find these exact jobs, given the labour market information in the file, I find it unlikely that there were no suitable jobs available in September, October or December. The Appellant hasn't provided sufficient evidence to support her claims that she has been looking but couldn't find any jobs to apply for during these months.

[32] The Appellant's job search efforts are not enough to rebut the presumption of non-availability, and they do not meet the requirements of this second factor. Her sporadic applications in November and January are not enough to show that she cannot find a suitable job.

– **Undue restrictions on her availability**

[33] The Appellant is focusing her job search on finding part-time work she can do around her school schedule. She hasn't proven that her school schedule doesn't unduly restrict her chances of getting back to the labour market.

[34] The Appellant spends about 24 hours a week on her course. She spends about four hours studying each week. She is obligated to attend class. Her class times are[16]

Monday – 8:30 a.m. to 3:00 p.m.

Tuesday - 8:30 a.m. to 11 a.m.

Wednesday 8:30 a.m. to 2 p.m.

Thursday 8:30 a.m. to 10:30 a.m.

[15] See page GD3-43.
[16] These are her class times since January 2025. Her first semester was similar, although the hours each day were a bit different.

Friday 8:30 a.m. to 12:30 p.m.

[35] The Appellant says she can work two to three shifts a week on evenings and weekends.

[36] The Appellant's circumstances around this third factor do not rebut the presumption of non-availability. She must attend her course in person and is focused on finding a job around her school hours.

[37] I find that the Appellant's course is a personal condition on her availability that unduly limits her chances of finding a job. She is only available evenings and weekends. She has not worked these hours before.[17] Over the past five months, she has only been able to find eight jobs that would accommodate her school schedule. The Commission has provided labour market information that shows there are many jobs she could have applied for if she did not have this restriction on her availability.

So, is the Appellant available for work?

[38] Based on my findings, I find that the Appellant hasn't shown that she is available for work. She hasn't rebutted the presumption of non-availability, and she hasn't met the three factors to prove availability.

[39] The Appellant argues that she knows people who volunteer to take a layoff to go to school and they are getting EI benefits.[18] She also chose to go back to school, and the rules should be the same for everyone.

[40] All claimants, including those taking a course, must prove that they are available for work. The only exception is when the claimant is taking approved (referred) training.[19] The Appellant isn't taking referred training.[20] So, she must prove that she is available for work.

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[17] The Appellant qualified for EI benefits working Monday to Friday, 7 a.m. to 3 p.m.
[18] See page GD2-5.
[19] See section 25 of the Act.
[20] See page GD3-20.

[41] The Appellant says that she has returned to school to better her life.[21] She doesn't know how she's expected to survive if she can't get EI benefits while taking her training. She argues that she is entitled to EI benefits because she is a working citizen who has paid into unemployment insurance. She says she is not refusing to work. [22]

[42] She says it is unjust to ask her to quit her education for nine months of EI. [23]

[43] I understand the Appellant's arguments. But no one is asking her to quit her education. EI benefits are not meant to supplement student loan programs. It is an insurance plan, and like other insurance plans, claimants must meet certain conditions to get benefits. One condition is that to be entitled to EI regular benefits, you must be capable of, available for, and unable to find a suitable job. Only those genuinely unemployed and actively looking for work receive benefits.[24] Unfortunately, the Appellant's conduct and attitude toward finding employment do not meet this condition.

Conclusion

[44] The Appellant has not rebutted the presumption of non-availability, and she has not met any of the three availability factors. This means she has not proven her availability for work as required by the law. Because of this, I find that the Appellant can't receive EI benefits.

[45] This means that the appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section

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[21] See page GD2-5.
[22] See page GD3-30.
[23] See page GD3-30.
[24] See *Canada (Attorney General) v Cornelissen-O'Neil, A-652-93.*