Citation: *HT v Canada Employment Insurance Commission*, 2025 SST 403

Social Security Tribunal of Canada
General Division—Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (704503) dated November 25, 2024 (issued by Service Canada)

Tribunal member:	Katherine Parker
Type of hearing:	Videoconference
Hearing date:	January 2, 2025
Hearing participant:	Appellant
Decision date:	January 10, 2025
File number:	GE-24-3947

Decision

[1] The appeal is allowed. The General Division agrees with the Appellant.

[2] The Appellant has shown that he was available for work. This means that he isn't disentitled from receiving Employment Insurance (EI) benefits. So, the Appellant may be entitled to benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving Employment Insurance (EI) regular benefits as from July 1, 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 must decide whether the Appellant has proven that he was 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 was available for work.

[5] The Commission says that the Appellant wasn't available because he wasn't actively seeking employment. It said he wasn't looking for a full-time job.

[6] The Appellant disagrees and states that he was available for work, and he worked during the summer months for his employer. He also made a pledge to return to his employer in September 2024, when the school year started up again.

Matter I have to consider first

The Appellant sent documents after the hearing

[7] The Appellant sent documents after the hearing. I accepted them because they were discussed at the hearing. The Appellant testified that he did look for work, and that he made a ledge to return to his employer in September. This document in GD6 is relevant to the issue and accepting the document doesn't cause prejudice to any party. I

agreed during the hearing that the Appellant could send them to me. He did so promptly.

Issue

[8] Was the Appellant available for work?

Analysis

[9] 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.

[10] 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.

[11] 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 a Appellant has to prove to show that they are "available" in this sense.[4] I will look at those factors below.

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

[13] I will now consider these two sections myself to determine whether the Appellant was available for work.

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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.

Reasonable and customary efforts to find a job

[14] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.[5] I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[15] 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 activities are the following:[6]

- assessing employment opportunities
- contacting employers who may be hiring
- applying for jobs.

[16] The Commission says that the Appellant didn't do anything to try to find a job. It said that the Appellant was satisfied with his employer even if it didn't have a full-time job for him. The Commission said that the Appellant refused to seek out alternate employment opportunities. He refused to quit so he could secure another job.

[17] The Appellant disagrees. He was laid off from his work on June 28, 2024. He had been working as a part-time bus driver for the same company for more than two years. He applied for work during the summer and asked for weekday charters, summer camps and summer school routes.[7] He continued searching for jobs on Indeed, and tried to work as an Uber Driver. He didn't stop being available and wanted to work.

[18] The Appellant worked for his employer over the summer. He provided evidence of his work in GD5. He had provided this evidence to the Commission, but it wasn't included in GD3.

[19] The Appellant says that his efforts were enough to prove that he was available for work.

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[5] See section 9.001 of the Regulations.
[6] See section 9.001 of the Regulations.
[7] See GD6-3 to GD6-5 for the Appellant's application to work during the summer.

[20] I find that the Appellant made reasonable and customary efforts to remain employed while he was laid off from his seasonal job.

- The Appellant had worked for more than two years for the same employer. He worked part-time and seasonally. He returned to his job every year.
- He applied for summer work with his employer and made himself available to work at any time, any day of the week, and as often as needed.
- He worked for his employer during the summer and provided proof.
- The Appellant continued his job search on Indeed and other job sites. The available jobs weren't suitable because they were temporary and paid less.
- He tried to work at being an Uber Driver, but the insurance was too high to be sustained.

[21] The Appellant has proven that his efforts to find a job were reasonable and customary. He doesn't have to look for full-time work because he was already working part-time. However, he did seek full-time work in the summer.

[22] The Appellant didn't depend on a secure seasonal job that guaranteed work after a period of lay-off. He continued looking for work contrary to what the Commission said.

Capable of and available for work

[23] 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:[8]

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

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

[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.

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

[24] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[9]

– **Wanting to go back to work**

[25] The Appellant has shown that he wanted to go back to work as soon as a suitable job was available.

- The Appellant made a pledge to return to his employer. He made this pledge on June 4, 2024. It guaranteed him a job beginning the first day back to school in September.[10]

- The Appellant worked any and all jobs that were offered to him over the summer months.[11]

- The Appellant didn't depend on recall as the best avenue to employment. He actively applied for work and accepted jobs as they became available.

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

[26] The Appellant made enough effort to find a suitable job.

[27] 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.[12]

[28] The Appellant's efforts to find a new job included applying for summer work, and working for his employer while laid off. He looked for part-time work, which is what he had been working the last two years prior to applying for benefits. I explained these

[9] 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.
[10] See GD6-1 to GD6-3.
[11] See GD5 for proof of work.
[12] 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.

reasons above when looking at whether the Appellant has made reasonable and customary efforts to find a job.

[29] Those efforts are enough to meet the requirements of this second factor because the Appellant didn't wait to be called in to work. He worked during the summer and was employed for jobs with his employer. He looked for work outside of his usual employer. He tried to be an Uber Driver and looked at retail and service industry jobs that were available.

[30] He pledged to return to his employer so he could continue working. He got work from his employer over the summer as it was available.

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

[31] The Appellant hasn't set personal conditions that might have unduly limited his chances of going back to work.

[32] The Appellant says he hasn't done this because he was working, he made himself available, he actively looked for work, and he pledged to return to work.

[33] The Commission says the Appellant would only work for his current employer. It said he had to consider working somewhere else to avoid unemployment.

[34] It's true that a claimant can't stop making himself available while waiting to be recalled while on lay-off. But this isn't the situation with this claimant.

[35] I find that the Appellant was looking for work, he found work, and he returned to work immediately when his job became available. The Appellant can look for part-time work when he has been working part-time.

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

[36] Based on my findings on the three factors, I find that the Appellant has shown that he was capable of and available for work.

Conclusion

[37] The Appellant has shown that he was available for work within the meaning of the law. Because of this, I find that the Appellant isn't disentitled from receiving EI benefits. So, the Appellant may be entitled to benefits.

[38] This means that the appeal is allowed.

Katherine Parker
Member, General Division—Employment Insurance Section