Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *GG v Canada Employment Insurance Commission*, 2017 SSTGDEI 777

Tribunal File Number: GE-16-1917

BETWEEN:

G. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Martin Bugden

HEARD ON: November 8, 2016

DATE OF DECISION: January 26, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant (claimant), G. G., failed to appear for the teleconference hearing. The Member waited for 20 minutes for the Appellant to appear. The Appellant appeared at the first hearing but it was adjourned as the Appellant's witness was not available. The Tribunal verified through Canada Post that the second Notice of Hearing was delivered. The Notices of Hearing were delivered to the same address the Appellant submitted with his application for Employment Insurance benefits (GD3-4) and on his appeal to the Tribunal (GD2-3). The Member is satisfied that the Appellant received the Notices of Hearing. Being satisfied that the Appellant had received notices of the hearing, the Member proceeded under the authority of section 12(1) of the Social Security Tribunal Regulations that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing.

On November 18, 2016 the Appellant sent an adjournment request to the Tribunal. The reasons provided by the Appellant did not establish the exceptional circumstances required for another adjournment. The request was denied and the Appellant was notified in a letter dated December 22, 2016. All possible steps had been taken, there are grounds to decide the appeal and it is in the interest of justice to bring finality to the appeal. The decision will be rendered on the merits.

The Respondent (Commission) did not attend the hearings.

INTRODUCTION

[1] On October 7, 2015 the Appellant submitted a claim for Employment Insurance benefits.

[2] In a letter, dated December 15, 2015, the Canada Employment Insurance Commission (Commission) notified the Appellant that they were unable to pay him Employment Insurance benefits from September 28, 2015 because he could not be reached by telephone to answer questions about why he had not returned to work for the X, which meant he had not proven his availability for work.

[3] In a letter, dated December 17, 2015, the Commission notified the Appellant that they were unable to pay him Employment Insurance benefits from September 28, 2015 because he had failed to prove that he was unable to obtain suitable employment with the X. Therefore, he had not proven that he was unable to find suitable employment. He cannot be paid benefits until he proves otherwise.

[4] The Appellant filed a Request for Reconsideration which was also rejected by the Commission in a letter dated April 14, 2016.

[5] The Appellant subsequently applied to the Social Security Tribunal (the Tribunal).

[6] After reviewing the evidence and submissions of the parties to the appeal, the hearing was held by Teleconference for the reasons provided in the Notices of Hearing dated July 19, 2016 and August 23, 2016.

ISSUE

[7] The Appellant is appealing the Commission's decision resulting from his request for reconsideration under section 112 of the *Employment Insurance Act* (the Act) regarding a disentitlement imposed pursuant to sections 18 and 50 of the Act and section 9.001 of the *Employment Insurance Regulations* (the Regulations) because the Commission determined that he failed to prove his availability for work.

EVIDENCE

[8] On October 7, 2015 the Appellant submitted an application for Employment Insurance benefits.

[9] On a medical note, dated September 30, 2015 and received by Service Canada on November 13, 2015, it was indicated that the Appellant was medically fit to return to work, preferably on the afternoon shift (GD3-13).

[10] On December 15, 2015 the Commission noted that they had attempted to contact the Appellant by telephone, using two different phone numbers, twice on December 14, 2015 and twice more on December 15, 2015 (GD3-14).

[11] In a letter, dated December 15, 2015, the Commission notified the Appellant that they were unable to pay him Employment Insurance benefits from September 28, 2015 because he could not be reached by telephone to answer questions about why he had not returned to work for the X, which meant he had not proven his availability for work (GD3-15).

[12] On December 17, 2015 the Appellant stated to the Commission that he had not returned to work with the X when his medical note, dated September 30, 2015, indicated as the employer needed him to get a Transport Canada Mariner Seafarers Medical certificate. He then needed to see his family physician for additional information to give to the employer. He cannot provide this information because he does not have the $180.00 needed to pay for the Mariner Seafarers Medical certificate and he applied for regular Employment Insurance to get the money. Once he gets all of his medical information required by X, he must schedule a meeting with M. M., (the employer), before he is allowed to go back to work. He has not paid his union dues so he cannot get help from them. He cannot borrow money from anyone (GD3-16 to GD3-17).

[13] On December 17, 2015 the employer, M. M., stated to the Commission that the Appellant is not back at work because he has not provided any of the required medical information to her. The Appellant must provide a completed (by the Appellant's doctor) an employee medical assessment (EMA) form and a Seafarers Medical certificate to clear him for return to duty because he had been away for over 30 days. The EMA is a X internal document and the Seafarers Medical certificate is required by Transport Canada. The Seafarers Medical clearance is not a new requirement. It is issued every two years unless an employee is off for 30 days. The employee must get reassessed by a special doctor for the certificate. Since she does not have these required documents, she does not know if he has been cleared to go back to work. She keeps in contact with the Appellant via e-mail. His telephones are disconnected. She had contact with him October 22, 2015, December 2, 2015 and that same day, December 17, 2015. The Seafarers certificate cost $199 but the employer will reimburse the cost upon seeing the actual certificate. If the Appellant is permanently unable to go to sea they would look at his medical information and job vacancies to see if see if he can be accommodated. The Appellant must also meet with her after he provides the two required medical documents. There were "unfinished issues" from May 2015 involving how the Appellant called in sick. It needed to be addressed

before he can return to work. He has a history of not following policy for calling in sick (GD3-18 to GD3-19).

[14] On December 17, 2015 the Appellant stated to the Commission that he did not submit a medical note with all of the information required by the employer because M. M. stated it is not sufficient and that she needs an EMA. He confirmed the information from the conversation between the Commission and employer from earlier that same day was accurate. He does not like talking with her (M. M.) because he gets frustrated and she accuses him of things he had not done (GD3-20 to GD3-21).

[15] In a letter, dated December 17, 2015, the Commission notified the Appellant that they were unable to pay him Employment Insurance benefits from September 28, 2015 because he had failed to prove that he was unable to obtain suitable employment with the X. Therefore, he had not proven that he was unable to find suitable employment. He cannot be paid benefits until he proves otherwise (GD3-22).

[16] In a Request for Reconsideration (RFR), dated January 13, 2016, the Appellant submitted that he is capable of working but his employer asked him to get a Seafarer's medical first because it is a Transport Canada requirement. He does not have the money because their decision passed the estimated wait time. He told Service Canada that, if they could just pay him a week so he could get his Seafarer's medical, he could go back to work and pay it back. He stated "You (the Commission) deduct money from him every pay cheque, he is not asking for much and being told no". He is a long-tenured worker and, if he collected Employment Insurance in January 2009, he is entitled to have his weeks of benefits. He waited three months and was told his claim was denied. If he had been told sooner he would have asked his employer to pay his Seafarer's medical (GD3-23 to GD3-25).

[17] On March 31, 2016 the employer stated to the Commission that the Appellant's position was terminated after a discussion with him. It was a mutual decision, made in February (2016), that the Appellant (was) no longer employed with the employer as he was unable to provide an adequate medical to support that he was able to meet the requirements of the position. He submitted medicals but was not supportive for him to return to employment with (the employer).

There were no positions that the Appellant would have been able to be hired for without passing the medical threshold requirements (GD3-26).

[18] On March 31, 2016 the Appellant stated to the Commission that he disputes he was able to return to work at the end of September. He submitted a medical to the employer as requested and was told he needed another medical. The Commission advised the Appellant to submit a job search to support that he was actively seeking employment between October 2015 and the end of March 2016 (GD3-27).

On March 31, 2016, in support of his submissions, the Appellant submitted a hand-written fax of his job search listing nine jobs with the employer's names. There are no dates (GD3-29).

[19] In a letter, dated April 14, 2016, the Commission notified the Appellant that their decision dated December 15, 2015 had not changed and was being maintained (GD3-30 to GD3-31).

SUBMISSIONS

[20] The Appellant submitted that:

a) The Appellant failed to appear at the hearing.

b) He was available for work. He got the Seafarer's Medical done and faxed it to his employer. He still did not get any work. As he did not work for 30 days his Seafarer's Medical expired too. He did not work and he was not paid Employment Insurance (GD2-4).

[21] The Respondent submitted that:

a) For the purpose of proving availability under paragraph 18(1)(a) of the Act, subsection 50(8) of the Act states that the Commission may require the claimant to prove that he is making reasonable and customary efforts to obtain suitable employment.

b) Section 9.001 of the Regulations lists specific criteria for determining whether the efforts that the claimant is making to obtain suitable employment constitute reasonable and

customary efforts. Those criteria include whether the claimant's efforts are: 1) sustained, 2) directed toward obtaining suitable employment and 3) consistent with nine specified activities that can be used to assist claimants to obtain suitable employment.

c) Availability is a question of fact, which should normally be disposed of on the basis of an assessment of the evidence. It is determined by analyzing three factors:
1. the desire to return to the labour market as soon as a suitable job is offered;
2. the expression of that desire through efforts to find a suitable job; and
3. not setting personal conditions that might unduly limit the chances of returning to the labour market.

d) In the case at hand the claimant applied for regular benefits to be effective September 28, 2015. (Pages GD3-3 to GD3-12) The evidence shows that the claimant was required to provide his employer, X, with specific medical documents to show that he met the requirements to resume his employment from September 30, 2015; however, he did not so do and ultimately his employment with X ended in February 2016. (Pages GD3-13 to GD3-27) The evidence from both parties indicates that the claimant was not able to be certified as fit to resume his regular duties and the employer was unable to accommodate modified duties (Pages GD3-26 to GD3-27).

e) The claimant is requesting that regular benefits be paid to him from when he has been certified as medically fit to return to work. (Pages GD3-27) However, he has provided limited information as to his job search activities from his recovery date of September 30, 2015 onward. The requested job search for the period October 2015 to March 2016 was sparse consisting of 9 (nine) job contacts listing only the name of the employer and the position. The job search contacts are not dated as requested and there has been no explanation provided by the claimant to explain why the job search is so minimal for the six-month period - September 30, 2015 to March 31, 2015 – he was to provide (Pages GD3-27).

f) The claimant asserts that he was available for work and that it was the employer's requirement that he have a seafarer's medical and that EI (sic) did not pay him that

rendered him unable to return to work with X (Pages GD2-4; GD3-16 to GD3-17; GD3-20; GD3-24 to GD3-25; GD3-27).

g) The Commission does not accept this as a valid argument finding that the evidence supports the clamant was not actively seeking a return to work with his former employer as his actions in providing the required documentation were sporadic and not indicative of one desirous of returning to work as soon as possible. He did not maintain regular contact with his employer or follow through with providing them with the requested documents or timely updates to his situation (Pages GD3-18 to GD3-19).

h) The Commission does not find that the evidence supports that the claimant was actively seeking work elsewhere either during this period and so cannot find that he meets the availability requirement for regular benefits from the date of renewal for regular benefits September 28, 2015. The claimant has provided little information as to what his job search activities entailed during the period he was certified as fit to return to work (September 30, 2015) up to present and thus the Commission maintains that the availability requirement has not been proven.

i) It is the Commission's position that the claimant's job search activities were passive and restricted to trying to resume employment with X that was unobtainable due to his inability to provide the required documentation of medical clearance. There has been no evidence presented to support he was actively seeking employment elsewhere that he was capable of obtaining.

j) The Commission submits that the jurisprudence supports its decision. The Federal Court of Appeal enumerated the criteria to be analyzed in assessing the evidence of a claimant's availability and re-affirmed the principle that the claimant must demonstrate the desire to return to the labour market as soon as a suitable job is offered through efforts to find a suitable job.

k) Furthermore, the Court held that the burden on the claimant to prove availability is a statutory requirement of the legislation that cannot be ignored. In order to obtain

employment insurance benefits a claimant must be actively seeking suitable employment, even if it appears reasonable for the claimant not to do so.

ANALYSIS

[22] The relevant legislative provisions are reproduced in the Annex to this decision.

[23] In the absence of a definition of the notion of "availability" in the Act, the criteria developed in the case law can be used to establish a person's availability for work as well as their entitlement to receive Employment Insurance benefits. Availability is a question of fact that requires that three general criteria established in the case law be taken into account.

[24] In Faucher (A-56-96), the Federal Court of Appeal (the Court) set out three factors to be considered in determining whether a claimant has proved his or her availability for work. In this case (A-56-96), the Court stated as follows:

> "There being no precise definition in the Act, this Court has held on many occasions that availability must be determined by analyzing three factors - the desire to return to the labour market as soon as a suitable job is offered, the expression of that desire through efforts to find a suitable job, and not setting personal conditions that might unduly limit the chances of returning to the labour market - and that the three factors must be considered in reaching a conclusion."

[25] In Whiffen (A-1472-92), the Court stated as follows:

> "… Availability is usually described, in the case law, either as a sincere desire to work demonstrated by attitude and conduct and accompanied by reasonable efforts to find a job, or as a willingness to reintegrate into the labour force under normal conditions without unduly limiting one's chances of obtaining employment … It is to be noted that the notion of "suitable employment" in these provisions is defined in part with reference to the personal circumstances of the claimant and, more importantly still, that it is a notion that may vary as the period of unemployment is prolonged. … It is a well-established general rule, and one imposed by the legislation as well as the most common understanding of what a sincere desire to work may imply, that a claimant who imposes unreasonable restrictions

> regarding the type of work he or she is looking or the area in which he or she wishes to be employed fails to prove availability. Bearing in mind that availability is to be assessed on the basis of attitude and conduct and taking into account all circumstances, the reasonableness of a restriction placed by a claimant to his or her willingness to return to the labour market has to be assessed in like manner."

[26] The case law clearly states that availability is assessed by working day in a benefit period in which the claimant can prove that he or she was capable of and available for work on that day and unable to obtain suitable employment (Cloutier, 2005 FCA 73; Boland, 2004 FCA 251).

[27] In Bertrand (A-613-81), the Court stated as follows:

> "The question of availability is an objective one – whether a claimant is sufficiently available for suitable employment to be entitled to unemployment insurance benefits – and it cannot depend upon the particular reasons for the restrictions on availability, however these may evoke sympathetic concern. If the contrary were true, availability would be a completely varying requirement depending on the view taken of the particular reasons in each case for the relative lack of it."

[28] In Cornellisen O'Neill (A-652-93), the Court cited the Chief Umpire's statement in Godwin (CUB 13957) that:

> "... the Act is quite clear that to be eligible for benefits a claimant must establish his availability for work, and that requires a job search."

[29] In De Lamirande (2004 FCA 311), the Court stated as follows:

> "The case law holds that a claimant cannot merely wait to be called in to work but must seek employment in order to be entitled to benefits …"

[30] In its assessment of the evidence, the Tribunal considered the three criteria mentioned above that are used to establish a person's availability for work. These criteria are: the desire to return to the labour market as soon as a suitable job is offered; the expression of that desire through efforts to find a suitable job; and not setting personal conditions that might unduly limit the chances of returning to the labour market.

[31] In this case, the Appellant did not meet any of the above criteria. He did not return to work with X when his medical note, dated September 30, 2015, indicated that he could as the employer required him to get a Transport Canada Mariner Seafarers Medical certificate. He then needed to see his family physician for additional information to give to the employer. The Appellant submitted that he could not provide this information because he did not have the $180.00 needed to pay for the Mariner Seafarers Medical certificate and he applied for regular Employment Insurance to get the money.

The Desire to Return to the Labour Market as soon as a Suitable Job is Offered.

[32] The Appellant failed to show his "desire to return to the labour market" as soon as a suitable job was offered. The Appellant failed to show this desire since he did not demonstrate that he expanded his job search. He waited for work at X. He submitted his job search but that was not until his claim for benefits had progressed from the initial claim up to an including his RFR.

[33] In its submissions, the Commission did not find that the evidence supports that the Appellant was actively seeking work elsewhere during the period, September 30, 2015 to March 31, 2015, and so could not find that he met the availability requirement for regular benefits from September 28, 2015.

[34] The Commission further submitted that the Appellant's job search activities were passive and restricted to trying to resume employment with X that was unobtainable due to his inability to provide the required documentation of medical clearance. There has been no evidence presented to support that he was actively seeking employment elsewhere that he was capable of obtaining.

[35] The evidence submitted shows that the Appellant determined on his own what he intended to accept or look for as suitable employment, even though the criteria defining the notion are clearly set out in section 9.002 of the Regulations. He demonstrated that his primary desire was to work for X and X alone.

[36] To determine what constitutes "suitable employment," paragraphs 9.002(e) and 9.002(f) of the Regulations stipulate as follows:

> "… For the purposes of paragraphs 18(1)(a) and 27(1)(a) to (c) and subsection 50(8) of the Act, the criteria for determining what constitutes suitable employment are the following: … (e) the employment is of a type referred to in section 9.003; and (f) the offered earnings correspond to the scale set out in section 9.004 and the claimant, by accepting the employment, will not be put in a less favourable financial situation than the less favourable of (i) the financial situation that the claimant is in while receiving benefits, and (ii) that which the claimant was in during their qualifying period."

[37] The Appellant submitted that he was available for work. He obtained the required medical clearance and faxed it to his employer. He still did not get any work. As he did not work for 30 days his Seafarer's Medical expired too. He did not work and he was not paid Employment Insurance.

[38] The employer submitted that the Appellant was not back at work because he had not provided any of the required medical information. The Appellant must provide a completed EMA form and a Seafarers Medical certificate to clear him for return to duty because he had been away for over 30 days.

[39] The Tribunal finds that the Appellant had to show his desire to return to the labour market as soon as a suitable job was offered without establishing his own criteria in that regard. The Tribunal reiterates that the notion of "suitable employment" is "a notion that may vary as the period of unemployment is prolonged". Whiffen, (A 1472 92).

[40] In summary, the Tribunal is of the view that as of September 30, 2015, the Appellant showed that he did not want to return to the labour market as soon as a suitable job was offered. The Appellant explanations indicate that he preferred to wait for work with X, where he was no longer medically cleared or qualified. He did not provide a bona-fide job search of work that did meet his abilities. Therefore, the Tribunal finds that he did not meet the requirements of the Act or the Regulations.

The Expression of that Desire Through Efforts to Find a Suitable Job.

[41] The Appellant also did not express his desire to return to the labour market through significant efforts to find a suitable job for each working day in his benefit period from September 30, 2015.

[42] When he completed his benefit claim, the Appellant received the following instruction:

> "… keep a detailed record as evidence that you made efforts to find a suitable job, since you could be asked to provide it at any time. The record of job searches must be kept for a period of six years."

[43] The Appellant was responsible for actively seeking a suitable job in order to be able to continue to obtain Employment Insurance benefits (Cornelissen O'Neil, A 652 93; De Lamirande, 2004 FCA 311). The evidence shows that the Appellant failed to fulfill this responsibility.

[44] The Appellant submitted a record of his job search efforts (GD3-29). The Tribunal notes that the job searches were not dated. It was a hand-written job search listing nine jobs with the names of employer's. There was no evidence to substantiate that job searches actually took place and, regardless, it was only nine jobs over a six-month period.

[45] The Tribunal finds that there was not enough evidence of a bona-fide job search. When there was evidence, it is brief and submitted after the Appellant had been requested to provide such a job search following his RFR.

Not Setting "Personal Conditions" that Might Unduly Limit the Chances of Returning to the Labour Market.

[46] While it may seem legitimate for the Appellant to focus on his employment with X, he had to comply with the Act and the Regulations to show his availability for work.

[47] His focus for employment with X limited his options and was a personal condition that might unduly limit the chances of returning to the labour market. He therefore set personal conditions that unduly limited his chances of returning to the labour market.

[48] The Tribunal finds that the Appellant's primary desire was to remain available to return to work for X. Therefore, he unduly limited his availability for full-time work.

[49] While knowing that he was unable to provide the medical certificates, which the employer and regulation required, and not seeking work elsewhere, these became personal conditions. The Appellant did not provide any evidence of a bona-fide job search. The requirements of the Appellant, for the X job that he wanted to obtain, limited his chances of finding a suitable job. Bertrand, (A-613-81).

[50] By stating the conditions in which he would be able to accept a job, while knowing that the lack of the required medical proof limited his ability and experience to accept such employment, he did not comply with the conditions set out in the Act and the Regulations, the Appellant therefore established, as of September 30, 2015, personal conditions that unduly limited his chances of returning to the labour market. Faucher, (A-56-96).

[51] The Tribunal considered all of the submissions of the Appellant, the Commission and the employer. The Tribunal finds that the submissions of the Commission are concise and consistent. Those of the Appellant are also concise and consistent. His focus was on obtaining the funding to obtain the necessary medical information and not seeking employment despite his submission that he was available for work.

[52] The Tribunal finds that the Appellant did not meet the legal test for availability pursuant to the Act and regulations.

[53] The Tribunal finds that the Appellant's entitlement to receive Employment Insurance regular benefits cannot be established because he failed to show his availability for work, pursuant to paragraph 18(1)(a) of the Act, from September 30, 2015.

[54] The appeal on this issue has no merit.

[55] The Appellant submitted that he had paid in to the system; the Commission deducted money from him every pay cheque, he is not asking for much, and was being told no. He is a long-tenured worker and, if he collected Employment Insurance in January 2009, he is entitled to have his weeks of benefits. While the Tribunal has sympathy for the Appellant's plight, paying

into the system does not necessarily mean entitlement to benefits. The Tribunal is supported in this conclusion by case law which had held that the purpose of benefits is that they are available to those persons who qualify to receive them (CUB 23419). The Tribunal finds that the Appellant did not fulfill the requirement of the Act because he failed to prove his availability for work to qualify for benefits. He was not entitled to receive benefits for as long as a condition or requirement was not fulfilled or complied with.

CONCLUSION

[56] The Tribunal finds that the Appellant failed to prove his availability for work.

[57] The appeal is dismissed.

Martin Bugden
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

18 (1) A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was

(a) capable of and available for work and unable to obtain suitable employment;

(b) unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work; or

(c) engaged in jury service.

(2) A claimant to whom benefits are payable under any of sections 23 to 23.2 is not disentitled under paragraph (1)(b) for failing to prove that he or she would have been available for work were it not for the illness, injury or quarantine.

50 (1) A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

(2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

(3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.

(4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

(5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.

(6) The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.

(7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.

(8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.

(8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.

(9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.

(10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.

9.001 For the purposes of subsection 50(8) of the Act, the criteria for determining whether the efforts that the claimant is making to obtain suitable employment constitute reasonable and customary efforts are the following:

(a) the claimant's efforts are sustained;

(b) the claimant's efforts consist of

(i) assessing employment opportunities,

(ii) preparing a resumé or cover letter,

(iii) registering for job search tools or with electronic job banks or employment agencies,

(iv) attending job search workshops or job fairs,

(v) networking,

(vi) contacting prospective employers,

(vii) submitting job applications,

(viii) attending interviews, and

(ix) undergoing evaluations of competencies; and

(c) the claimant's efforts are directed toward obtaining suitable employment.