



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *I. M. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 103

Tribunal File Number: GE-16-4262

BETWEEN:

**I. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Takis Pappas

HEARD ON: May 3, 2017

DATE OF DECISION: June 30, 2017

## **REASONS AND DECISION**

**PERSONS IN ATTENDANCE: I. M., J. M.**

### **INTRODUCTION**

[1] The Appellant established a claim for Employment Insurance benefits on February 3, 2013.

[2] The Respondent imposed a disentitlement on the Appellant according to section 18 and 50 of the *Employment Insurance Act* (the Act) because he failed to prove his availability for work.

[3] On September 30, 2016, the Appellant requested a reconsideration of the Respondent's decision. The Respondent maintained its original decision and on November 15, 2016 the Appellant appealed to the General Division of the Social Security Tribunal.

[4] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue(s) under appeal.
- b) The fact that the appellant will be the only party in attendance.
- c) The information in the file, including the need for additional information.
- d) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

### **ISSUE**

[5] Whether a disentitlement should be imposed according to sections 18 and 50 of the Act because the Appellant failed to prove his availability for work.

## **EVIDENCE**

[6] The Appellant established a claim for Employment Insurance benefits on February 3, 2013.

[7] The Appellant was instructed to report for an interview with a Commission Integrity Service Investigator on May 6, 2013.

[8] At the interview, the Appellant revealed that he had been away from his area of residence for the period from April 16, 2013 to April 28, 2013. He stated he had travelled from X to X, in order to accompany his girlfriend who required surgery.

[9] The Respondent determined that benefits should not have been paid to the Appellant for the period from April 16, 2013 to April 28, 2013, because he was away from his area of residence and had not proven his availability for work. This decision caused an overpayment of benefits in the amount of \$821.00.

[10] After the Appellant's request for reconsideration, the Respondent contacted the Appellant. The Appellant confirmed that he had accompanied his girlfriend to X during the period in question. He stated that his girlfriend required surgery, and that he accompanied his girlfriend from X to X. He indicated that he had his laptop with him, and was looking for work during this period, and believed he should be considered available during this period (Page GD3-28).

[11] At the hearing the Appellant and his witness stated that because his girlfriend (now his wife) works for the Federal Government in an isolated post, under the "Government Housing Directive", persons in medical need are provided with an escort. If the Appellant needed to travel back to X for a job interview or a job offer, he would have left X and the government would have provided his girlfriend with an escort.

[12] Although the Respondent stated that he was not willing to return to X immediately for an employment opportunity because he needed to be in X with his girlfriend before, during, and after the surgery (GD3-28), he feels that there was a communication gap between the

Respondent's agent and himself. He always intended to return if a job interview or job offer came along while he was in X.

## **SUBMISSIONS**

[13] The Appellant submitted that:

- a) Even though he was way in another province, he was still able to apply for jobs and if something had of come up he would have been able to make it home in the 24 hour period for start a job or have an interview (Page GD2-3).
- b) The government would have provided his girlfriend with an escort.

[14] The Respondent submitted that:

- a) The Appellant made a personal choice to leave his normal area of residence (X) to accompany his girlfriend to X, because she required surgery.
- b) This decision resulted in him being unavailable for work as required by the employment insurance legislation.

## **ANALYSIS**

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

[16] 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.

[17] 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.

[18] For regular benefits, the Appellant was required to be capable of and available for work and unable to obtain suitable employment.

[19] The evidence before the Tribunal indicates that the Appellant, during the period of time between April 16, 2013 and April 28, 2013, was away from his area of residence to accompany his girlfriend to X, because she required surgery. The Respondent submitted that during this time period the Appellant was unavailable for work as required by the employment insurance legislation.

[20] The Respondent also submitted that the Appellant acknowledged that he would not have returned to X for work prior to the surgery, but that he would have been willing to start immediately upon his return (Page GD3-28).

[21] The Appellant, in his application to the Tribunal and his testimony at the hearing, disputes the Respondent's conclusion that he was not willing to leave his girlfriend in X and return to X if the need arose. He gave credible, direct evidence that if he needed to travel back to X for a job interview or a job offer, he would have left X and the government would have provided his girlfriend with an escort. Furthermore, he stated that he feels that there was a communication gap between the Respondent's agent and himself. He always intended to return if a job interview or job offer came along while he was in X (GD3-28).

[22] In this case, the Tribunal prefers and assigns more weight to the direct evidence of the Appellant and finds that the Appellant was still able to apply for jobs and if something had come up he would have been able to make it home in the 24 hour period to start a job or have an interview during the period in question.

[23] Based on all of the above, the Tribunal finds that the Appellant demonstrated that he was capable of and available for work between April 16, 2013 and April 28, 2013 because he was able to show his desire to return to the labour market by efforts to find and secure suitable employment. Therefore a definite disentitlement should not be imposed according to section 18(a) of the Act from April 16, 2013 to April 28, 2013.

## **CONCLUSION**

[24] The appeal is allowed.

*Takis Pappas*

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.