



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. D. v Canada Employment Insurance Commission*, 2019 SST 907

Tribunal File Number: GE-18-3721

BETWEEN:

N. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: January 7, 2019

DATE OF DECISION: January 30, 2019

DECISION

[1] The appeal is dismissed. The Claimant did not prove that he was available during a temporary shutdown at his employer.

OVERVIEW

[2] The Claimant applied for employment insurance regular benefits on July 30, 2018 after having been temporary laid off from his employment due to a plant shutdown. He returned to work with his employer on August 20, 2018. The Canada Employment Insurance Commission (Commission) denied the Claimant benefits because he did not prove his availability for work. He did not seek other employment during the shutdown. The Claimant requested that the Commission reconsider its decision arguing that he was available for work and that in fact; he worked for the employer on August 17, 2018 and was seeking other work. The Commission maintained its initial decision because the Claimant did not demonstrate that he was actively seeking employment. The Claimant disagreed and appealed to the Social Security Tribunal of Canada (Tribunal).

PRELIMINARY MATTERS

[3] Ms. Joanne Duong, assisted the Claimant throughout the hearing with Vietnamese translation.

ISSUE

[4] Was the Claimant available for work from July 30, 2018 to August 20, 2018?

ANALYSIS

[5] In order for a claimant to be entitled to benefits, they must demonstrate that they were capable of and available for work and unable to obtain suitable employment (Bois A-31-00; Cornelissen-O'Neil A-652-93; Bertrand A-631-81).

[6] The burden is on the claimant to prove their availability (Renaud A-369-06).

[7] Because there is no precise definition in the *Employment Insurance Act* (EI Act) for availability, the Federal Court of Appeal has consistently held that availability must be determined by analyzing three factors:

- (a) the desire to return to the labour market as soon as a suitable job is offered,
- (b) the expression of that desire through efforts to find a suitable job, and
- (c) not setting personal conditions that might unduly limit the chances of returning to the labour market (Faucher A-56-96; Poirier A-57-96).

[8] Further, the *Employment Insurance Regulations* (Regulations) provide direction as to what is considered 'reasonable and customary efforts' under section 9.001 and what is, and isn't considered 'suitable employment' under section 9.002.

[9] In this case, the Claimant submitted that he was available for work during the temporary plant shutdown.

Issue 1: Was the Claimant available for work from July 30, 2018 to August 20, 2018?

[10] No. The Claimant did not meet the onus of proving that he was available for work and unable to obtain suitable employment from July 30, 2018 to August 20, 2018. The Member determined that Claimant was not available for work during this period by analyzing the three factor noted above.

[11] First, although the Claimant expressed a willingness to work during the plant shutdown, he did not show a genuine desire to return to the labour market through his attitude and conduct (Whiffen A-1472-92). For instance, the Claimant testified that he did not know that he had to seek employment and document his efforts. Although understandable that the Claimant would want to return to his long-term employer, his lack of knowledge of his obligations and lack of action, are not demonstrative of someone who is eager to return to the labour market as soon as a suitable job is offered.

[12] Second, the Claimant did not demonstrate that he made reasonable and customary efforts to find suitable employment from July 30, 2018 until he returned to work on August 20, 2018. At the

hearing, the Member reviewed the requirements of section 9.001 of the Regulations with the Claimant.

[13] Section 9.001 of the Regulations provides direction as to what is considered to be “reasonable and customary efforts” when a claimant is seeking to obtain suitable employment. It specifically indicates that three criteria must be met when determining such efforts. The claimant’s efforts must (a) be sustained, (b) consist of specific activities listed therein and (c) be directed toward obtaining suitable employment.

[14] The Claimant testified that he was not engaged in any of the activities provided in section 9.001 of the Regulations. He reiterated what he had told the Commission. He called two employers to enquire but they were not hiring. He worked at his regular place of employment for four hours on August 17, 2018 and then returned to full-time hours on August 20, 2018. The Member finds that the Claimant did not provide convincing testimony or any documentary evidence to show that he met the requirements section 9.001 of the Regulations. The Claimant therefore has not demonstrated a desire to return to the labour market through a sustained job search effort directed toward finding suitable employment. He has not made reasonable and customary efforts to find suitable employment.

[15] Third, the Member finds that the Claimant set personal conditions that unduly limited his chances of returning to work. The Claimant testified that he did not simply stay at home and wait to return to work with his employer. The Member finds however, that his lack of effort to seek employment elsewhere, suggests otherwise. Further, by making himself available to work for the employer, and not applying anywhere else, the Claimant unduly limited himself to just his employer. By doing so, he limited his chances of returning to work.

[16] The Member finds that the Claimant (a) did not show a genuine desire to return to the labour market as soon as a suitable job was offered (b) did not make reasonable and customary efforts to find suitable work and (c) set personal conditions that unduly limited his chances of returning to work. The Claimant therefore, did not show that he was available for work from July 30, 2018 to August 20, 2018.

CONCLUSION

[17] The appeal is dismissed. The Claimant is disentitled to regular benefits from July 30, 2018 to August 20, 2018.

Eleni Palantzas

Member, General Division - Employment Insurance Section

HEARD ON:	January 7, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	N. D., Appellant