



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. L. v Canada Employment Insurance Commission*, 2019 SST 256

Tribunal File Number: GE-19-624

BETWEEN:

G. L.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: February 22, 2019

DATE OF DECISION: February 22, 2019

DECISION

[1] The appeal is dismissed. The Claimant is not entitled to benefits because he did not prove he was available for work and making reasonable and customary efforts to find suitable employment.

OVERVIEW

[2] The Claimant is taking a part-time training program to upgrade his skills, after being laid off from his employment. He made an initial claim for employment insurance (EI) regular benefits, but the Canada Employment Insurance Commission (Commission) determined he was disentitled from receiving benefits because he did not prove he was available for work while attending training. The Commission upheld its decision on reconsideration. The Claimant appeals the decision to the Social Security Tribunal (Tribunal), arguing he was available for work and the Commission relied on misinformation in making its decision.

PRELIMINARY MATTERS

[3] The Claimant authorized a representative to present his case. The Claimant's Representative confirmed the Claimant chose not to attend the teleconference hearing, which was the form of hearing requested on the Notice of Appeal, and declined the offer of another form of hearing to better accommodate the Claimant's preference of face to face communication.

ISSUES

[4] **Issue #1** – Was the Claimant capable of and available for work and unable to obtain suitable employment as of September 24, 2018?

[5] **Issue #2** – Has the Claimant made reasonable and customary efforts to find work from September 24, 2018, onward?

ANALYSIS

[6] To be entitled to receive regular EI benefits, claimants have to prove that, for each working day, they are capable of and available for work and unable to obtain suitable employment.¹ A working day is any day of the week except Saturday and Sunday.² Claimants also have to prove that it is more likely than not that they are making reasonable and customary efforts to obtain suitable employment.³ To determine whether a claimant's efforts are reasonable and customary, I must compare his activities to the criteria listed in the Regulations.⁴ The Regulations also provide criteria for determining whether an employment is suitable employment.⁵

Issue 1: Was the Claimant capable of and available for work and unable to obtain suitable employment as of September 24, 2018?

[7] The Claimant has not proven he was capable of and available for work and unable to find suitable employment as of September 24, 2018.

[8] Availability is not defined in the legislation. The Claimant can establish his availability by proving his desire to return to the labour market as soon as a suitable job is offered, through demonstrating efforts to find a suitable job, and by not setting personal conditions that might limit his chances of returning to the labour market.⁶

[9] The Claimant was laid off from his employment on August 18, 2018. He decided to pursue an upgrading course, to allow him to apply for further education. The Claimant registered for a part-time course with Nova Scotia Community College, to run from September 5, 2018, until April 19, 2019. The Claimant submitted to the Commission that he was in class from 8:30am until 9:30am and 10:30am until 12:30pm on Mondays, 8:30am until 9:30am and 1:00pm until 2:00pm on Tuesdays, 8:30am until 11:30am on Wednesdays, and 8:30am until 12:30pm on Thursdays,

¹ *Employment Insurance Act* (Act), paragraph 18(1)(a)

² Act, section 32

³ Act, subsection 50(8); *Canada (Attorney General) v. Renaud*, 2007 FCA 328

⁴ *Employment Insurance Regulations* (Regulations), section 9.001

⁵ Regulations, section 9.002

⁶ *Faucher v. Canada (Attorney General)*, A-56-96

amounting to 12 hours per week. He also stated to the Commission that he spends two to three additional hours per week studying.

[10] The Claimant stated on the initial claim for EI benefits form that he was not available for work and capable of working under the same or better conditions as he was before he started his course because he is in school Monday through Thursday. He stated that considering his scheduled classes and time spent studying, he was available to work on Friday, Saturday, and Sunday only. The Representative, affirmed to give testimony, stated at the hearing that the Claimant's father assisted in completing the claim form, and did not properly understand the questions. She submits the Claimant is available to work every day, with modified hours while in school.

[11] The EI claim form asks what a claimant would do if he was offered a full-time job. The Claimant had the option of choosing to drop the course and accept the job, finish the course and refuse the employment, accept the job with a deferred start date to allow him to finish his course, or of changing his course schedule to accept the job. He chose the response that he would finish his course over accepting employment. The Claimant also told a Commission agent on November 5, 2018, that he would reject an offer of full-time employment if it conflicted with the program.

[12] The Claimant further stated on the claim form that he made efforts to find work since the start of his course. In contrast, in a conversation with the Commission on November 5, 2018, he stated he had not applied for work anywhere since being laid off and was not looking for work due to his course load. He stated he responded that he was looking for work on the claim form because he had the opportunity to return to his previous job but declined because he was in school. The Representative explained the Claimant was called and offered employment from his previous employer, but it was only one or two hours of employment on a single day and it conflicted with his school schedule. The Representative stated the Claimant was not offered full or part time consistent work.

[13] The Claimant spoke to a different Commission agent on December 5, 2018, and stated he had not looked for any work since he was laid off and had not looked for work since he last spoke to an agent on November 5, 2018. He also stated, again, that he would not quit school if he was offered a full time position.

[14] The Claimant submitted on the Notice of Appeal that he appealed because of the “misinformation” in the Commission’s decision letter of December 6, 2018. He wrote that he did not state that he was not seeking employment, nor was he unwilling to leave training for work. I find the Claimant repeatedly stated to the Commission that he was not seeking employment because of the training program, and that he would not accept employment if it conflicted with his training program, because he stated this on the EI claim form and is recorded as having repeated the same statement to different Commission agents. The evidence does not support his assertion on the Notice of Appeal that the Commission’s decision was made based on misinformation.

[15] The desire to return to work must be sincere, demonstrated by the attitude and the conduct of the Claimant.⁷ I accept that the Claimant stated to the Commission that he had not applied for any jobs after being laid off from his employment on August 18, 2018, aside from applying to one previous employer. While his Representative submitted that he applied for a few jobs in the fishing industry, and stated there are not many employment opportunities in the region, this does not satisfy either the requirement that the Claimant demonstrated he wanted to return to the labour market as soon as a suitable job was offered, or that he made efforts to find a suitable job.

[16] The Claimant’s class schedule as of September 24, 2018, was Monday through Thursday, at various times. While the Claimant was in class or studying 12 to 15 hours per week, his school schedule included hours which would normally be hours of employment. Where a Claimant is only available at certain times on certain days as a result of his studies, his availability is restricted and limits his chances of finding employment.⁸ Availability requires a willingness to re-enter the labour force under normal conditions without unduly limiting one’s chances of obtaining employment.⁹

[17] The Representative submitted that the Claimant was only in school 12 hours per week and was otherwise available for work. Given that the Claimant was not available to work a standard 9:00am to 5:00pm day and his class schedule included both morning and afternoon hours, I find the Claimant was not available for work under normal working conditions. Additionally, since the Claimant was required to attend classes and would not accept a job that interfered with his classes,

⁷ *Canada (Attorney General) v. Whiffen*, A-1472-92

⁸ *Duquet v. Canada (Employment and Immigration Commission)*, 2008 FCA 313

⁹ *Canada (Attorney General) v. Primard*, 2003 FCA 349

I find that the Claimant set personal conditions that unduly limited his chances of returning to the labour market.

[18] The Representative submitted the Claimant gets confused when he is not face to face with someone and may not have known what he was saying or comprehended the questions asked. She testified that she attended a Service Canada centre with the Claimant and recounted that when told by the Commission that he had stated he would not leave his course to accept full-time work, the Claimant was “bewildered.” She testified that she spoke to him outside of Service Canada centre and he said he had not known what he was saying.

[19] The Representative submitted the Commission usually allows a claimant to be in school for less than 15 hours per week without issue, so she did not understand why the Claimant was being penalized for being in class only 12 hours per week. I note that whether the Commission has a policy relative to the number of hours a Claimant may work while on an EI claim is irrelevant for my purposes; I am only able to consider the law regarding availability, and how that law applies to the facts of this case.

Issue 2: Has the Claimant made reasonable and customary efforts to find work from September 24, 2018, onward?

[20] A Claimant’s efforts to find a job are considered reasonable and customary if they are sustained, directed toward obtaining suitable employment, and consist of certain activities. Those activities may include assessing employment opportunities, preparing a resume or cover letter, registering for job search tools or with electronic job banks or employment agencies, attending job search workshops or job fairs, networking, contacting prospective employers, attending interviews, and undergoing evaluations of competencies.¹⁰ The burden is on the Claimant to prove on a balance of probabilities that he made reasonable and customary efforts to obtain suitable employment.

[21] I find the Claimant has not proven he made a sustained effort directed at finding suitable employment. The Claimant stated to the Commission that he was not looking for employment because of his course work. The Representative submitted that she was told by the Claimant and

¹⁰ Regulations, section 9.001(b)

his parents that he visited two fishing businesses in search of work, and applied at local stores. The Representative was unable to provide further evidence of the alleged job search, including specific names of more than two businesses where the Claimant made applications, dates applications were made, or evidence of any follow-up by the Claimant on the applications.

[22] I find that the Claimant has not submitted evidence to prove, on a balance of probabilities, that his efforts to find employment were reasonable and customary. Further there is no evidence the Claimant had any limitations that would render some employment unsuitable. The Representative stated the Claimant's parents may have a document evidencing his job search, but the document was not provided to her. I asked whether the Representative wanted to obtain the document for the file, and explained that no further documentation will be accepted should this file proceed to further appellate levels. The Representative declined, and stated she was content to proceed based on the current contents of the file. Given this, the only evidence of a job search was the Representative's statement that she was verbally told by the Claimant's parents that he applied for two fishing business jobs and a few others in their local area.

[23] I find the Claimant has not proven he made reasonable and customary efforts to obtain suitable employment from September 24, 2018, because he stated to the Commission on December 5, 2018, that he did not perform any of the job search activities outlined above. The Representative was unable to state whether the Claimant conducted any of the job search activities outlined above, other than her statement that he attempted to find work with local fishing businesses. If I accept that the Claimant applied for a few jobs from September 24, 2018, onward, it does not satisfy the requirements of a sustained search for suitable employment because it is an extremely limited job search. Further, I place more weight on the Claimant's statement to the Commission that he had done none of the job searching activities due to his course and study workload, over the Representative's statement that he may have done a few of the activities, because he made the statement to the Commission and the Representative did not have any direct knowledge of what activities the Claimant purportedly completed.

[24] The Representative submitted the Claimant has issues understanding the EI process, and sometimes has difficulty communicating. I offered the Representative the opportunity to reschedule for an in-person hearing should that be preferable for the Claimant's participation, and

she chose to proceed with the hearing via teleconference as the Claimant made the choice not to attend. The Representative did not point to any medical reason or diagnosis as a reason why the Claimant may have not understood the questions being asked of him, or may have misspoken in his statements to the Commission. Given this, I have considered the evidence and find the Claimant's responses to the Commission's questions reflect that he did understand what was being asked of him. Perhaps his responses have led to a negative decision in his case, but he made the statements on multiple occasions, including on the initial claim form and in two telephone calls with different Commission agents. I find the Claimant's statements to be credible because they were spontaneous. His assertion on the Notice of Appeal that the Commission used misinformation to decide his claim is not supported by the facts.

[25] For the reasons above, I find the Claimant is disentitled from EI benefits under both paragraph 18(1)(a) and subsection 50(8) of the Act.

CONCLUSION

[26] The appeal is dismissed. The Claimant is not entitled to benefits because he did not prove he was available for work and making reasonable and customary efforts to find suitable employment as of September 24, 2018.

Candace R. Salmon
Member, General Division - Employment Insurance Section

HEARD ON:	February 22, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Josephine Kennedy, Representative for the Appellant