



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *O. O. v Canada Employment Insurance Commission*, 2019 SST 868

Tribunal File Number: GE-18-3845

BETWEEN:

**O. O.**

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: Angela Ryan Bourgeois

HEARD ON: January 25, 2019

DATE OF DECISION: February 22, 2019

## DECISION

[1] The appeal is allowed. The Appellant has proven that she meets the availability criteria and that she took prompt and reasonable steps to obtain a status in Canada that would allow her to work.

## OVERVIEW

[2] The Appellant, O. O. (Claimant) qualified to receive regular benefits under the *Employment Insurance Act* (Act). After paying the Claimant benefits, the Canada Employment Insurance Commission (Commission) determined that the Claimant had not been available for work from August 22, 2016, as her work permit issued by Citizenship and Immigration Canada had expired. The Commission disentitled the Claimant from receiving benefits as of that date under subsection 18(1)(a) and subsection 50(1) of the Act.

## ISSUES

[3] Did the Claimant have a desire to return to the labour market as soon as suitable employment was offered?

[4] Did the Claimant indicate a desire to return to the labour market through efforts to find suitable employment?

[5] Did the Claimant impose personal conditions that unduly limited her chances of returning to the labour market?

[6] Taking into account all the circumstances, has the Claimant proven her availability?

## ANALYSIS

[7] To receive benefits for a working day in a benefit period, a claimant must prove, not simply allege, that they were capable of and available for work and unable to obtain suitable work on that day.<sup>1</sup> A working day is any day of the week, except for Saturday and Sunday.<sup>2</sup>

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<sup>1</sup> Paragraph 18(1)(a) of the Act.

<sup>2</sup> Section 32 of the *Employment Insurance Regulations*

[8] There is no dispute that the Claimant was capable of working. The issue arises with her availability.

[9] To prove she was available for work, the Claimant must prove that it is more likely than not that she meets the following three criteria:

- a) a desire to return to the labour market as soon as suitable work is offered;
- b) an indication of that desire through job search efforts; and
- c) an absence of personal conditions that unduly limit her chances of finding work.<sup>3</sup>

[10] Claimants must demonstrate a sincere desire to return to work. I must assess the Claimant's availability based on her attitude and conduct, taking into account all circumstances.<sup>4</sup>

**Did the Claimant have a desire to return to the labour market as soon as suitable employment was offered? Did she indicate that desire through her job search efforts?**

[11] I find that the Claimant had a desire to return to the labour market because she took steps towards having her work permit renewed in July 2016. Her work permit expired on August 19, 2016.

[12] I find that the Claimant made efforts to have her work permit renewed in July because she testified that she contacted the only person who could help her renew her work permit in July. Further, the Claimant provided a letter from her Settlement Counsellor which shows that the Claimant tried to get an appointment with her Settlement Counsellor before August 23, 2016, but the earliest her Settlement Counsellor could see her was on August 23, 2016. Her Settlement Counsellor stated in the letter that the Claimant had been seeing her for assistance with applications and other settlement concerns and that she was the only counsellor at that centre who could assist refugee claimants. The Claimant testified that she was a refugee claimant.

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<sup>3</sup> *Faucher v. Canada Employment and Immigration Commission* A-56-96

<sup>4</sup> *Canada (Attorney General) v. Whiffen* A-1472-92

[13] I find that the Claimant demonstrated her desire to return to the labour market by her job search efforts.

[14] The Claimant testified that she continued to look for work even though her work permit had expired because she could still go to interviews, which would help her. She explained that she still needed work because employment insurance would only last for a limited time. She reported that had she been successful in obtaining a job she could have started it as soon as her work permit was approved.

[15] The Claimant testified that she performed the same type of job search activities that she did when she had a valid work permit, including looking for work online, applying for jobs, contacting prospective and past employers, and speaking to an agency to let them know she was still looking for work. She reported that she attended a free course in finance to help her improve her work skills. I accept the Claimant's testimony that she completed these activities, as her testimony was direct, clear and is uncontradicted.

[16] I find these job search efforts prove that she was making reasonable and customary efforts to find suitable employment.<sup>5</sup> I find that she was looking for suitable employment by looking for work in an office, warehouse and production work, as she had experience in these areas.

**Did the Claimant impose personal conditions which unduly limited her chances of returning to the labour market?**

[17] I find that the Claimant did not impose personal conditions that unduly limited her chances of returning to the labour market.

[18] The Claimant did not make an application for a new work permit until four days after her permit expired. I find that this is not a personal condition that she imposed upon herself because she had no control over when her Settlement Counsellor could meet with her. Her Settlement Counsellor confirmed that her first available appointment was on August 23, 2016. Because the

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<sup>5</sup> Subsection 50(8) of the Act requires claimants to prove that they are making reasonable and customary efforts to obtain suitable employment. I considered the criteria for determining whether a claimant's efforts constitute reasonable and customary efforts which are set out in section 9.001 of the Regulations.

Claimant tried to get an appointment with her Settlement Counsellor in July, she accepted the first available appointment offered by her Settlement Counsellor, and she applied for her renewal work permit the same day, I find that the Claimant was prompt in her actions, and did all that could reasonably be expected of her in relation to obtaining a work permit. I find that her prompt efforts in applying for a work permit prove that she had an intention to secure work in Canada.

[19] Following professional advice, the Claimant withdrew her work permit application in October 2016 and applied for permanent resident status. Permanent resident status would allow her to work in Canada. I find that withdrawing her work permit application and applying for another status that would also allow her to work in Canada did not impose a personal condition that would unduly limit her chances of finding work. I find that applying for another status that would also allow her to work shows that she maintained the same basic intention to secure work in Canada.

[20] I find that the Claimant's free finance classes were not a condition which unduly limited her chances of finding work because she testified that had she found work she would have stopped the weekday classes. I accept her testimony as true because she reported that she would have chosen work over the classes because she needs to take care of her son. The fact that the Claimant has financial responsibilities does not prove that she was available for work. However, her statement as to her financial needs lends credibility to her statement that she would put work before her classes, and shows that she had a sincere desire to return to work.

**Taking into account all the circumstances, has the Claimant proven her availability?**

[21] I find that the Claimant has proven her availability under paragraph 18(1)(a) and subsection 50(8) of the Act, because she has proven that she had a desire to return to the labour market, she expressed that desire through her job search efforts, she made reasonable and customary efforts to find suitable employment, and she did not impose personal conditions that unduly limited her chances of returning to the labour market.

[22] The Commission argued that the Claimant did not prove that she was available for work because she did not apply for her new work permit before her earlier permit expired. The Commission argued that if the Claimant had applied to have her work permit renewed before her

other permit expired, availability would be considered as for any other claimant. The Commission has not provided any legal authority for their position, nor have they made any submissions on the availability criteria.

[23] I find the fact that the Claimant was unable to apply for a new work permit before her previous one expired does not preclude a finding that the Claimant was available for work. The Commission's distinction as to when a claimant applies for a new work permit is not helpful when circumstances beyond a claimant's control prevent them from applying for a work permit before the previous one expires. Because the Claimant has proven that she meets the availability criteria, and because she took prompt and reasonable steps to obtain a status in Canada that would allow her to work, I find that the Claimant has proven her availability.

## **CONCLUSION**

[24] The appeal is allowed.

Angela Ryan Bourgeois

Member, General Division - Employment Insurance Section

HEARD ON:	January 25, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	O. O., Appellant