



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. K. v Canada Employment Insurance Commission*, 2019 SST 259

Tribunal File Number: GE-18-3026

BETWEEN:

**K. K.**

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: Eleni Palantzas

HEARD ON: February 26, 2019

DATE OF DECISION: February 27, 2019

## **DECISION**

[1] The appeal is dismissed. The Claimant did not prove that he was available for employment beyond September 20, 2017.

## **OVERVIEW**

[2] The Claimant established a claim for employment insurance regular benefits effective August 6, 2017. He was paid benefits up until September 20, 2017. The Canada Employment Insurance Commission (Commission) then denied the Claimant benefits because he did not prove his availability for work. The Commission advised the Claimant that benefits could not be paid to him in order to top up his earnings as a substitute teacher. Plus, he did not prove that he was seeking full-time work. The Claimant requested that the Commission reconsider its decision arguing that he is willing and available to work throughout the year for the X School District (X). The Commission maintained its initial decision because the Claimant was restricting himself to one employer and not actively seeking full-time employment. The Claimant disagreed and appealed to the Social Security Tribunal of Canada (Tribunal).

## **ISSUE**

[3] Was the Claimant available for work from September 20, 2017 onward?

## **ANALYSIS**

[4] 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).

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

[6] 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).

[7] 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 of the Regulations.

[8] In this case, the Claimant submitted that he was available for work and should be entitled to benefits for the days he was not called in to work.

**Issue: Was the Claimant available for work from September 20, 2017 onward?**

[9] No. The Claimant did not meet the onus of proving that he was available for work and unable to obtain suitable employment. The Member determined that Claimant was not available for work from September 20, 2017 onward by analyzing the three factor noted above.

[10] First, although the Claimant expressed a willingness to work, 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 was a retired teacher who for the past 11 years has been receiving his Canada Pension Plan benefits and working as an on-call substitute teacher. Although the Claimant was willing, and worked, as many hours as were offered (about 150 of the 180 school days in a year), he does not intend on returning to full-time teaching. He therefore has not shown that he is eager to return to the labour market as soon as a full-time suitable job is offered.

[11] Second, the Claimant did not demonstrate that he made reasonable and customary efforts to find suitable employment after entering into a contract with the X.

[12] 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.

[13] The Claimant testified that he was not actively engaged in a job search other than advising the X of his availability for substitute teaching. He was not engaged in any of the activities provided in section 9.001 of the Regulations. The Claimant testified that he is available to work but he did not look or apply to any opportunities beyond his occupation or district i.e. beyond his contract. The Claimant therefore has not demonstrated a desire to return to the labour market through a sustained job search effort. He did not show that he made reasonable and customary efforts directed to finding full-time suitable employment.

[14] Third, the Member finds that the Claimant set personal conditions that unduly limited his chances of returning to the labour market. The Claimant testified that he entered into a contract with the X agreeing to work as a substitute teacher and take at least 10 jobs (to remain on their roster). He is obligated to work only for that school board as it is frowned upon to also work elsewhere i.e. to have more than one employer (GD3-38). The Claimant argued however, that the school board has 150 schools and he has been provided the opportunity to work continuously, almost full-time, throughout the school year. He is therefore, available and not limited in any way. The Member disagrees. By making himself available to work only for the X, only on an on-call substitute basis, and not applying anywhere else, the Claimant unduly limited his chances of returning to the labour market. He is limiting himself to only part-time casual employment.

[15] The Member understands that the Claimant is being provided with several opportunities to work throughout the school year and thus feels that he is available for work. However, employment insurance benefits are not intended to supplement part-time employment unless the claimant proves that they are actively seeking full-time employment. This was not the case here.

[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 the labour market. The Claimant therefore, did not show that he was available for work from September 20, 2019 onward.

## **CONCLUSION**

[17] The appeal is dismissed. The Claimant is disentitled to regular benefits from September 20, 2017 onward.

[18] The Member recommends that the Claimant, as a person employed in the occupation of teaching, be considered for benefits during the non-teaching periods after September 20, 2017. The Claimant should contact the Commission and provide the required information so that the Commission can render a decision may on that matter.

Eleni Palantzas

Member, General Division - Employment Insurance Section

HEARD ON:	February 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. K., Claimant