



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. Y. v Canada Employment Insurance Commission*, 2019 SST 871

Tribunal File Number: GE-19-1990

BETWEEN:

K. Y.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: June 6, 2019

DATE OF DECISION: June 6, 2019

DECISION

[1] The appeal is dismissed. The Appellant is not eligible to receive employment insurance benefits for the period March 11, 2019 to April 26, 2019.

OVERVIEW

[2] The Appellant established a claim for regular employment insurance benefits (EI benefits) effective December 23, 2018. The Respondent, the Canada Employment Insurance Commission (Commission) imposed an indefinite disentitlement on the Appellant's claim from March 11, 2019 because he did not prove his availability for work. The Appellant subsequently provided evidence of his job search efforts, and the Commission revised the disentitlement on his claim so that it only covered the specific period from March 11, 2019 to April 26, 2019. The Appellant appealed to the Social Security Tribunal of Canada (Tribunal), asserting that he was looking for work during that period but did not know he had to keep a record of his job search efforts.

ISSUE

[3] Has the Appellant met the availability requirements to receive EI benefits during the period in question, namely from March 11, 2019 to April 26, 2019?

ANALYSIS

[4] In order to receive EI benefits, the onus is on the Appellant to prove he was capable of and available for work and unable to obtain suitable employment: section 18 of the *Employment Insurance Act* (EI Act) and *Attorney General of Canada v. Bois* 2001 FCA 175; *Attorney General of Canada v. Cornelissen-O'Neil* A-652-93; *Attorney General of Canada v. Bertrand* A-631-81.

[5] Availability is determined by analyzing the three (3) factors set out by the Federal Court of Appeal in *Faucher*, A56-90:

- 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.

Issue 1: Has the Appellant satisfied the three factors in *Faucher, supra*?

[6] In order to prove he was available for work during the period in question, the Appellant must demonstrate three (3) things: (1) that he had a desire to return to the labour market, (2) that he expressed that desire through *bona fide* efforts to find a suitable job, and (3) that he didn't set any personal conditions that might unduly limit his chances of returning to the labour market.

[7] The Appellant has been disentitled to EI benefits from March 11, 2019 to April 26, 2019 because he was unable to demonstrate his availability for work during this period of time.

[8] In accordance with subsection 50(8) of the EI Act, the onus is on the Appellant to prove availability by demonstrating that he made reasonable and customary efforts to obtain suitable employment in accordance with the provisions of sections 9.001 to 9.004 of the *Employment Insurance Regulations* (EI Regulations).

[9] The Tribunal is not satisfied that there is sufficient evidence of the Appellant's desire to return to work or of his efforts to find a suitable job between March 11, 2019 to April 26, 2019. The Appellant, therefore, does not satisfy the first and second factors in *Faucher, supra* and has not proven his availability for work during this period.

[10] The Appellant applied for EI benefits on December 23, 2018. When he was first contacted by the Commission on February 26, 2019, he said he had not been looking for work since he left his employment in early October 2018 (see GD3-13 and GD3-14). The Commission's agent advised the Appellant of his responsibility to look for work by assessing employment opportunities, upgrading his resume, networking, registering for job search tools, and visiting employment centres (GD3-14). The Appellant was given 2 weeks to submit a job search record that clearly stated the date, name of the employer and the position he applied for, along with a phone number or email address of the employer for verification purposes (GD3-14 and GD3-16).

[11] Instead of submitting the job search, the Appellant provided the Commission with the medical certificate at GD3-15, which was dated February 27, 2019.

[12] The Commission's agent then gave the Appellant a warning (GD3-16) and reminded him he had until March 12, 2019 to apply for jobs and submit a record of his job search efforts (GD3-16).

[13] The Appellant failed to submit any information about his job search efforts.

[14] On March 12, 2019, the Commission imposed an indefinite disentitlement on his claim as of March 11, 2019 (GD3-17).

[15] When interviewed on May 1, 2019 during the reconsideration process, the Appellant said he was seeking employment as a delivery driver (GD3-22), and sent in a Job Search Form showing he had applied for seven jobs over the prior 3 days – between April 29, 2019 and May 1, 2019 (GD3-23 to GD3-24). The Commission was satisfied the Appellant had started to look for work and modified the disentitlement so that it was terminated April 26, 2019 (GD3-25).

[16] In his Notice of Appeal, the Appellant stated he had search for work since he applied for EI but didn't know he had to provide the details of all the complies he applied to (GD2-3). The Appellant reiterated this at the hearing of his appeal, when he testified as follows:

- He was looking for jobs “on Monster website” and at the job bank and “on Craig’s list” and “talking to friends” right from the time he filed his first report for EI benefits back in December 2018.
- But he only started to record his job search efforts on May 1, 2019.
- This was his “fault” and his “mistake”.
- He does not have any record of the employers he contacted between March 11, 2019 and April 26, 2019.
- He acknowledges he was told by the Commission he would need to provide evidence of his job search efforts, but he does not have it.

[17] The Tribunal cannot ignore the Appellant's documented conflicting statements about his job search. The Tribunal gives greatest weight to the Appellant's initial statements to the Commission that he had not been looking for work since leaving his employment in October 2018 (GD3-13 and GD3-14), as these were made spontaneously and before he was disentitled to EI benefits. The Tribunal also notes that, despite being warned on February 28, 2019 about his responsibility to look for work and provide a verifiable record of his job search efforts (GD3-16), the Appellant failed to provide any information about his job search prior to April 29, 2019. The Tribunal therefore finds the Appellant has failed to satisfy the first factor in *Faucher, supra* because he has not proven he had a desire to return to the labour market between March 11, 2019 to April 26, 2019.

[18] The Federal Court of Appeal has held that the determinative factor in assessing availability is an active, serious, continual and intensive job search, demonstrated by a verifiable record of job applications (see *Cutts v. Canada (A.G.) A-239-90*). To be entitled to EI benefits between March 11, 2019 and April 26, 2019, it was essential for the Appellant to be actively seeking work for every day during this period of his benefit period.

[19] While the Appellant asserted he was looking for work on-line during the period of his disentanglement, the Tribunal cannot overlook his failure to provide any verifiable evidence of a *bona fide* job search as requested by the Commission and as contemplated by section 9.001 of the EI Regulations. Absent an indication of the dates of any applications, the method of the applications (online, in person, cold calls, etc.), or a description of the jobs posted/applied for, the Tribunal agrees with the Commission's assessment of the Appellant's job search efforts as inadequate. There is ample evidence that the Commission's agents advised of the Appellant about the type of information and the level of detail about his job search activities he would require to prove his availability (see GD3-14, GD3-16 and GD3-22). The Appellant failed to provide that information and those details and, as a result, there is no way to verify his job search efforts during the period in question. The Tribunal therefore finds the Appellant failed to satisfy the second factor in *Faucher, supra* because he has not proven that he made *bona fide* efforts to find a suitable job between March 11, 2019 to April 26, 2019.

[20] As the Appellant has failed to satisfy the first two (2) factors in *Faucher, supra*, it is not necessary for the Tribunal to consider the third factor.

[21] The Tribunal finds the Appellant has not satisfied all three (3) factors in *Faucher, supra* and, therefore, he has not met the availability requirements to receive EI benefits from March 11, 2019 to April 26, 2019.

CONCLUSION

[22] The Tribunal finds the Appellant has not met the requirements to support a claim for EI benefits from March 11, 2019 to April 26, 2019 because he has not proven that he was available for work during this period.

[23] The Appellant is, therefore, subject to a disentitlement to EI benefits from March 11, 2019 to April 26, 2019 pursuant to paragraph 18(1)(a) of the EI Act.

[24] The appeal is dismissed.

Teresa M. Day
Member, General Division - Employment Insurance Section

HEARD ON:	June 6, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. Y., Appellant