



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *L. L. v Canada Employment Insurance Commission*, 2019 SST 801

Tribunal File Number: GE-19-2199

BETWEEN:

**L. L.**

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: Josée Langlois

HEARD ON: June 27, 2019

DATE OF DECISION: June 28, 2019

## **DECISION**

[1] The appeal is allowed in part. I find that the Appellant was not available for work from January 21, 2019, to February 16, 2019, but that he was available for work as of February 17, 2019, because he demonstrated efforts to find suitable employment as of that date.

## **OVERVIEW**

[2] The Appellant applied for sickness benefits on October 15, 2018. He was paid 15 weeks of sickness benefits. On January 21, 2019, the Appellant was able to gradually return to work, but his employer did not have work for him. On May 10, 2019, the Canada Employment Insurance Commission (Commission) found that it could not pay benefits to the Appellant because he was not available for work as of January 21, 2019. I must determine whether the Appellant was available for work as of January 21, 2019, and whether he made reasonable and customary efforts to obtain suitable employment.

## **ISSUES**

[3] Was the Appellant available for work as of January 21, 2019? To make this determination, I have to answer three questions:

- Did the Appellant have a desire to return to the labour market as soon as suitable employment was offered?
- If so, did the Appellant express this desire through efforts to find suitable employment?
- Were the Appellant's chances of finding suitable employment unduly limited by personal conditions?

[4] Has the Appellant proven that he made reasonable and customary efforts to obtain suitable employment as of January 21, 2019?

## ANALYSIS

[5] A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was capable of and available for work and unable to obtain suitable employment.<sup>1</sup>

[6] To establish whether a person is available for work, I consider the following three criteria:<sup>2</sup>

- the desire to return to the labour market as soon as suitable employment is offered;
- the expression of that desire through efforts to find suitable employment; and
- not setting personal conditions that might unduly limit the chances of returning to the labour market.

### **Did the Appellant have a desire to return to the labour market as soon as suitable employment was offered?**

[7] The Commission argues that the Appellant was able to work on a gradual basis from January 21, 2019, to February 16, 2019. It submits that after February 17, 2019, the Appellant failed to prove that he made sufficient efforts to find employment.

[8] At the hearing, the Appellant argued that he was off work until January 21, 2019, and that at that time, he was thinking of returning to work for X. However, the employer did not have work for him, and he did not end up going back.

[9] The Appellant was able to return to work gradually over a month, that is, for a maximum of four hours per day and three consecutive days. This condition made the Appellant's job search difficult. However, he explained that he had hoped to return to work for X, but that it was not possible. As soon as he was able to resume full-time work, the Appellant began a serious job search.

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<sup>1</sup> *Employment Insurance Act* (Act), s 18(1)(a).

<sup>2</sup> *Faucher*, A-56-96.

[10] I find that the Appellant showed a desire to return to the labour market as soon as suitable employment was offered. I must now assess whether the Appellant made concrete efforts to find employment.<sup>3</sup>

**Did the Appellant express this desire through efforts to find suitable employment?**

[11] The Appellant is responsible for actively seeking suitable employment to be able to obtain Employment Insurance benefits.<sup>4</sup>

[12] The Commission submits that, from January 21, 2019, to February 16, 2019, the Appellant was able to return to work on a gradual basis, but that he was unable to perform the same tasks as before his work stoppage. The Commission states that the Appellant was not available to work every day of his benefit period during that time.

[13] The Commission submits that, from February 17, 2019, to April 10, 2019, the Appellant failed to prove that he was available for work because he was available for only part-time work. The Commission states that limiting his availability is a voluntary restriction that limits the Appellant's chances of finding employment. It notes that the Appellant conducted only one job search on April 15, 2019.

[14] Indeed, when the Commission contacted him on May 10, 2019, the Appellant stated that he had the contact details for only one job search because he had not kept the information.

[15] In his notice of appeal, the Appellant presented two efforts to find employment, one in March and the other in April 2019.

[16] At the hearing, the Appellant stated that the Commission's agent had misinterpreted his words, that he was available for full-time work as of February 17, 2019, and that he had made efforts to find employment after that date.

[17] The Appellant acknowledges that he did not look for work before February 17, 2019, because he was able to work only on a gradual basis and it was not easy to find work under this

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<sup>3</sup> *Primard*, A-683-01.

<sup>4</sup> *Cornelissen-O'Neill*, A-652-93; *De Lamirande v Canada (Attorney General)*, 2004 FCA 311.

condition. The Appellant explained that he had hoped to return to work for X, but that it had not been possible.

[18] That is why the Appellant began his job search after February 17, 2019. The Appellant visited his local employment centre, contacted the Commission several times, updated his resumé, and assessed available jobs on a daily basis.

[19] The Appellant sent his resumé to X, on March 8, 2019, and then applied for a job with X, in Victoriaville.

[20] As he had mentioned to the Commission, on April 15, 2019, he applied for a job with X. At the hearing, he stated that he had also applied to work at X, and at X, in Victoriaville.

[21] The Appellant looked for work on a daily basis.

[22] A claimant's availability is essentially a question of facts,<sup>5</sup> and I find that the Appellant has expressed his desire to return to the labour market through significant efforts to find suitable employment during each working day of his benefit period as of February 17, 2019.

**Were the Appellant's chances of finding suitable employment unduly limited by personal conditions?**

[23] The Commission states that, from January 21, 2019, to February 16, 2019, the Appellant was able to return to work on a gradual basis but was unable to perform the same work, under the same conditions, as before his work stoppage.

[24] A doctor's note indicates that, as of January 21, 2019, the Appellant was able to work four hours per day for three non-consecutive days over a month. As of February 17, 2019, the Appellant was able to return to full-time work.

[25] I share the Commission's view concerning the Appellant's situation from January 21, 2019, to February 16, 2019. I find that the Appellant presented personal conditions that unduly limited his chances of returning to the labour market during that period. However,

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<sup>5</sup> *Landry*, A-719-91.

that is not the case as of February 17, 2019, when the Appellant was able to return to full-time work.

### **Reasonable and customary efforts to obtain suitable employment**

[26] The criteria for determining whether the efforts that the claimant is making to obtain suitable employment constitute reasonable and customary efforts are the following:<sup>6</sup>

- assessing employment opportunities,
- preparing a resumé 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,
- submitting job applications,
- attending interviews, and
- undergoing evaluations of competencies.

[27] The Appellant failed to prove that he made any efforts to find employment between January 21, 2019, and February 16, 2019. However, as of February 17, 2019, the Appellant demonstrated that he had looked for work on a daily basis. The Appellant updated his resumé in order to apply to obtain suitable employment, he assessed employment opportunities, and he contacted prospective employers.

[28] The Appellant demonstrated that he had applied to work for the following employers: X, X, X, X, and X.

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<sup>6</sup> *Employment Insurance Regulations* (Regulations), s 9.001 and *Employment Insurance Act* (Act), s 50(8).

[29] I find that the Appellant has failed to prove that he made reasonable and customary efforts to obtain suitable employment from January 21, 2019, to February 16, 2019, but that he did make reasonable and customary efforts to obtain suitable employment as of February 17, 2019.

[30] For these reasons, I find that the disentitlement imposed on the Appellant's file from January 21, 2019, to February 16, 2019, was justified because he failed to prove his availability for work during this period.

[31] I also find that the disentitlement imposed as of February 17, 2019, is unjustified because the Appellant demonstrated that he had made reasonable and customary efforts to obtain suitable employment during this period and that he was available for work.<sup>7</sup>

## CONCLUSION

[32] The appeal is allowed in part.

Josée Langlois  
Member, General Division – Employment Insurance Section

HEARD ON:	June 27, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	L. L., Appellant

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<sup>7</sup> *Ibid.*