



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. M. v Canada Employment Insurance Commission*, 2019 SST 935

Tribunal File Number: GE-19-2082

BETWEEN:

B. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: June 26, 2019

DATE OF DECISION: July 2, 2019

DECISION

[1] The appeal is dismissed. My reasons for this decision follow, in which I refer to the Appellant, B. M., as the Claimant.

OVERVIEW

[2] When the Claimant lost his employment as a heavy equipment operator, due to a shortage of work, he applied for regular Employment Insurance benefits and established a benefit period effective December 23, 2018. Upon review of his claims, the Respondent, who is the Canada Employment Insurance Commission (Commission), determined the Claimant did not meet the availability requirements.

[3] The Commission informed the Claimant of his obligations to be available for and to seek full-time employment. The Commission also informed the Claimant that he is required to record his job searches and submit them when requested. When the Claimant failed to meet these availability requirements and failed to provide the Commission with an adequate job search, the Commission imposed an indefinite stop payment (disentitlement) as of March 5, 2019.

[4] Upon reconsideration, the Commission maintained their initial decision. The Claimant appeals to the Social Security Tribunal and argues that he needs the benefits to assist in keeping his farm operational.

ISSUES

[5] Has the Claimant proven he has a desire to return to the labour market as soon as suitable employment is offered?

[6] Has the Claimant expressed that desire through efforts to find suitable employment?

[7] Has the Claimant set personal conditions that might unduly limit his chances of returning to the labour market?

ANALYSIS

[8] The Claimant has the burden of demonstrating that he meets the requirements for receiving employment insurance benefits and that no circumstances exist that will disentitle or disqualify him from receiving benefits.¹

[9] I use the term “burden” to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof is on a balance of probabilities, which means that the facts or events are more likely than not to have occurred as described.

a) Capable of and Available for Work

[10] To be entitled to the payment of employment insurance benefits, one of the things that the Claimant must prove is that he is capable of and available for work and unable to obtain suitable employment for every working day he is seeking benefits.²

[11] The term *availability* is not defined in the *Act*. It is a question of fact and in order to be found available for work the following three factors must be considered. The Claimant shall: 1) have a desire to return to the labour market as soon as suitable employment is offered; 2) express that desire through efforts to find suitable employment; and 3) not set personal conditions that might unduly limit their chances of returning to the labour market.³

1) Desire to Return to the Labour Market

[12] The Claimant consistently testified that if he could find a job that would enable him to work between 10:00 a.m. and 5:00 p.m., he would take it. However, the Claimant provided contradictory evidence when he admitted that he would not accept employment for only \$20.00 per hour and he did not think it was right to a job with another employer knowing that he would quit when recalled to his former employer with whom he had worked for over 18 years. Therefore, it cannot be said that the Claimant had the desire to return to the labour market, prior to being recalled to his former employer.

¹ *Canada (Attorney General) v. Picard*, 2014 FCA 46; and *Canada (Attorney General) v Peterson*, A-370-95

² Paragraph 18(1)(a) of the *Employment Insurance Act (Act)*

³ *Faucher v Canada (Attorney General)*, FCA A-56-96

2) Efforts to Find Suitable Employment

[13] I find that the Claimant has not proven that he was actively seeking suitable employment, based on his restrictions of hours of availability and to his former employer. Although the Claimant initially told the Commission that he had called a few places for work, he admitted that he did not qualify for most jobs because he did not have his certification or training to work in the oilfield.

[14] Upon review of the Commission's evidence, they determined that there were 35 heavy equipment operator jobs listed in the area where the Claimant works. Although the Claimant states that he had called a few employers and then had his daughter create a resume for him in March 2019, which he later faxed; I am not satisfied that the Claimant had the desire to return to work, prior to being recalled to his previous employer. Rather, the Claimant provided consistent evidence that he could not accept these jobs based on their rate of pay and hours of work because he was only available to work from 10:00 a.m. until 5:00 p.m. so he could attend to his cows and keep his farm operating.

[15] The Claimant provided no evidence that would suggest he was restricted from working due to: health and physical capabilities; family care obligations or religious beliefs.⁴

[16] Further, the Commission provided evidence that on February 11, 2019, they told the Claimant about the availability requirements and gave him until March 1, 2019, to complete a job search that met the availability expectations. The Commission also provided evidence that when they contacted the Claimant on March 5, 2019, he stated that he had not applied for any jobs but that he had contacted a few employers.

[17] During the hearing, the Claimant admitted that he was not actively searching for employment based on job listings and that he had contacted employers that had no current postings. He also conceded that he could not find any jobs available that would allow him to restrict his hours of work from 10:00 a.m. until 5:00 p.m. and would only provide work for the period until his former employer recalled him. Therefore, I find the Claimant has not proven that

⁴ Subsection 9.002(1) of the *Employment Insurance Regulations (Regulations)*

he has made efforts to find suitable employment; rather, he is restricting his availability to work his farming operation and being recalled to his former employer.

3) Not Set Personal Conditions

[18] I accept the Commission's submission that case law provides that the Claimant cannot restrict his re-employment to her former or existing employer for an indefinite period. The Claimant cannot simply wait to be called back to work after each winter shut down; he must actively seek employment in order to be entitled to benefits.⁵

[19] The Federal Court of Appeal has affirmed that a Claimant cannot rely upon recall as the best opportunity for employment. Employment Insurance benefits are not intended to support a Claimant awaiting recall to work or to supplement farming operations, even where the anticipated period of unemployment is short. Where a Claimant in these circumstances has conducted only a minimal job search, I must conclude that the job search fails to show that the Claimant was really on the job market.⁶

[20] During the hearing the Claimant readily admitted that he would not accept an offer of full-time employment and then leave once his former employer recalled him to work. The Claimant readily admits that he wishes to supplement his income with Employment Insurance benefits to assist with his farming operation throughout the winter months.

[21] Based on the evidence as set out above, I find that since March 5, 2019, the Claimant is restricting her availability to her current employment as a school bus driver.

[22] As set out above, the Claimant has not met the three criteria for proving his availability since March 5, 2019, as he is restricting his availability to his former employment. Further, the Claimant has provided insufficient evidence to prove there is employment available to him that would meet his restricted hours of employment from 10:00 a.m. until 5:00 p.m. Accordingly, the Claimant has not met the availability requirements and is therefore, not entitled to benefits.⁷

⁵ *De Lamirande v Canada (Attorney General)*, 2004 FCA 311; and *Canada (Attorney General) v Cornelissen-O'Neill*, FCA A-652-93

⁶ *Khalid v. Canada (Attorney General)*, A-337-89

⁷ Section 18 of the *Act*

b) Reasonable and Customary Efforts to find Suitable Employment

[23] In their submissions to the Tribunal, the Commission references a second disentitlement under subsection 50(8) of the *Act*. This provision requires that the Claimant prove he is making reasonable and customary efforts to obtain suitable employment by providing details of his job search.

[24] I agree with the Commission that the Claimant has failed to provide evidence of an adequate job search. Although the Claimant previously stated that he had called some employers, he failed to provide their names, contact information, address, or the date he contacted them. Further, the Claimant readily admits that the employers he had contacted had no vacancies and he did not contact any employers who had advertised opportunities for employment.

[25] Upon review of the Claimant's job search listing two employers that he states he faxed his resume on March 22nd, he also states that he is returning to his former employment on June 1st; which is indicative of his intention to restrict to his former employment. Accordingly, I find the Claimant has failed to provide details of a job search, or that he was making reasonable and customary efforts to obtain suitable employment.⁸

c) Entitlement to benefits based on contributions

[26] As explained during the hearing, the Employment Insurance scheme is not a pension fund or a needs-based program where the Claimant can collect benefits based solely on contributions to the fund. Rather, the Employment Insurance system is a contributory scheme that provides benefits to those who meet the entitlement requirements set out in the *Act*.⁹

CONCLUSION

[27] The appeal is dismissed.

Linda Bell
Member, General Division - Employment Insurance Section

⁸ Subsection 50(8) of the *Act*

⁹ *Canada (Attorney General) v Lesiuk*, 2003 FCA 3; and *Tanguay v Canada (Unemployment Insurance Commission)*, [1985] F.C.J. No. 910

HEARD ON:	June 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. M., Appellant (Claimant)