



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. A. v Canada Employment Insurance Commission*, 2019 SST 1031

Tribunal File Number: GE-19-2340

BETWEEN:

J. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: July 8, 2019

DATE OF DECISION: July 11, 2019

DECISION

[1] The appeal is dismissed. I find that the Appellant was not available for work starting April 30, 2019, because he failed to prove that he made reasonable and customary efforts to find suitable employment as of that time.

OVERVIEW

[2] The Appellant stopped working for X (X) because of a lack of work. He initially stated that he had not made any efforts to find employment because he was satisfied with that employment even though it was seasonal. On June 7, 2019, the Canada Employment Insurance Commission (Commission) found that it could not pay the Appellant benefits starting April 30, 2019, because he failed to prove that he was actively making efforts to find employment. I must determine whether the Appellant was available for work as of April 30, 2019, and whether he made reasonable and customary efforts to find suitable employment.

ISSUES

[3] Was the Appellant available for work starting April 30, 2019? To determine this, I must address three issues:

- 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 proved that he made reasonable and customary efforts to find suitable employment starting April 30, 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.¹

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

- 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 or having 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 submits that the Appellant is not interested in working while he waits for his employer to call him back. It states that he knew he would be off work for at least two months. The Commission submits that the Appellant is responsible for actively seeking employment and that he was informed of his responsibilities.

[8] The Appellant testified that he always received benefits while he was off work from his seasonal employment. He stopped working on April 30, 2019, and he expects to return to his employment four months later in late August 2019. He explained that he was satisfied with that employment and that there is no point in conducting a job search because, for one thing, no employer will want to hire him for a short period and because he does not have a car to get around.

¹ *Employment Insurance Act* (Act), s 18(1)(a).

² *Faucher*, A-56-96.

[9] Nevertheless, the Appellant stated that he conducted a job search by visiting the Emploi-Québec [Québec employment services] website and that he identified a few potential employers.

[10] I am of the view that the Appellant has shown a certain desire to return to the labour market as soon as he was offered employment starting April 30, 2019. I must now assess whether the Appellant made concrete efforts to find employment.³

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 receive Employment Insurance benefits, and he has that responsibility for each working day of his benefit period.⁴

[12] The Commission submits that the Appellant stated on several occasions that he had not conducted job searches because he was satisfied with his seasonal employment. It states that the Appellant has not proved that he made sustained and concrete efforts to obtain employment or that he had the desire to return to the labour market during that time.

[13] Although he had stated on several occasions that he had not made efforts to find employment, the Appellant argued at the hearing that, after receiving the Commission's reconsideration decision, he visited the Emploi-Québec website and had identified a few potential employers. The Appellant states that he applied to an employer in X and X but that he did not have a car to drive to those places. He stated that he had an interview for employment in the X area.

[14] The Appellant explained that he understood that there was a labour shortage at the time, and he argues that he is qualified and that, if he wanted, he could find employment. However, he would like to return to the seasonal employment that he has had for several years; that work suits him. He explained that his employer does not have the budget to employ him during the summer because he works on the winter equipment. The Appellant does not see the need to find

³ *Ibid.*

⁴ *Cornelissen-O'Neill, A-652-93; De Lamirande, 2004 FCA 311.*

employment elsewhere because it is expected that he will return to his employment in late August or at the beginning of September 2019.

[15] A claimant's availability is essentially a question of facts, and the Appellant must prove that he was available for work during each working day of his benefit period to be entitled to benefits.⁵

[16] However, even though the Appellant now argues that he checked the jobs available on the Emploi-Québec website and that he applied to two or three employers, his testimony shows that he was unwilling to find suitable employment despite having made some initial efforts to find employment. The Appellant argues that those efforts were not effective because the employers were too far away or because the time he could commit to them—between two to four months—was not enough.

[17] Furthermore, to prove that he made sustained efforts to find employment, the Appellant must prove that he made efforts to find employment each working day of his benefit period.

[18] I find that the Appellant has not expressed his desire to return to the labour market through significant efforts to find suitable employment each working day of his benefit period starting April 30, 2019.⁶

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

[19] The Appellant stated that he was limited in his job search because he has not had a valid driver's licence for six years. He argues that several available jobs required him to drive the employer's vehicle to get to the job site, although he testified that he did not have submissions about this from the employers to whom he had applied. He explains that he is also limited in terms of getting a night-shift position because he lives in X and cannot get around.

⁵ *Landry*, A-719-91.

⁶ *Op. cit. Primard*.

[20] That condition may limit the Appellant in finding employment if he applies for employment that requires using the employer's vehicle.

Reasonable and customary efforts to find suitable employment

[21] The criteria for determining whether the efforts a claimant made to obtain suitable employment constitute reasonable and customary efforts are the following:⁷

- 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.

[22] The Appellant has not proved that he has made sustained efforts to find employment as of April 30, 2019. Although he testified that he applied to two or more employers in June 2019, the Appellant has remained unclear about the exact time he applied even though it was relatively recent. The Appellant did not remember when he had applied to these employers, even though the Commission gave the reconsideration decision on June 7, 2019, and even though he argues that he made efforts to find employment after he received that decision.

[23] The Appellant's statement is inconsistent with his earlier statements to the Commission and even with the statement given at the hearing saying that he wanted to keep his seasonal employment and that he did not see the use in seeking alternative employment because he already had employment with which he is satisfied.

⁷ *Employment Insurance Regulations* (Regulations), s 9.001.

[24] The Appellant's testimony shows that his mindset is actually to keep his seasonal employment, and, even though some jobs are available, the Appellant is focusing on his limitations; he argues that he already has a job and that he does not understand why he has to prove that he is making efforts to find employment. With that attitude, the Appellant fails to demonstrate his desire to return to the labour market at this time.

[25] I explain again that every claimant must make efforts to find employment to be able to receive Employment Insurance benefits and that those efforts to find employment must be made every working day in the benefit period.

[26] Even though he testified that he made some effort to find employment, I find that his efforts were insufficient and that his testimony shows that he actually wanted to keep his seasonal employment because he was satisfied with that employment. That is the Appellant's choice, but the Appellant must prove that he made efforts to find employment each working day of his benefit period to be able to receive benefits. I cannot find that the Appellant's efforts have been sustained or concrete each working day of his benefit period.

[27] Waiting for an employer to call you back for work is insufficient for proving that you were actively seeking employment within the meaning of section 50(8) of the Act.

[28] I state once again that the Appellant is responsible for making efforts to find employment each working day of his benefit period and that his searches must be directed toward obtaining employment. Stating that efforts were made is insufficient, and, even though he mentioned that he had an interview, the Appellant's testimony fails to prove that he was not [*sic*] interested in accepting suitable employment as soon as he was offered one.

[29] For these reasons, I find that imposing a disentitlement starting April 30, 2019, is warranted because the Appellant has failed to show his availability for work as of that time.

[30] I find that the Appellant was not available for work starting April 30, 2019, because he failed to prove he had made reasonable and customary efforts to find suitable employment, within the meaning of section 50(8) of the Act and under sections 9.001 and 9.002 of the Regulations, as of that time.

CONCLUSION

[31] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	July 8, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	J. A., Appellant