



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v Canada Employment Insurance Commission*, 2019 SST 736

Tribunal File Number: GE-19-2467

BETWEEN:

J. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: July 15, 2019

DATE OF DECISION: July 22, 2019

DECISION

[1] I am allowing the appeal in part. The Claimant has proven that she was available for work beginning April 7.

OVERVIEW

[2] In December, the Claimant stopped working for the season and started collecting employment insurance benefits. The Canada Employment Insurance Commission (Commission) asked the Claimant for a job search record in February. The Claimant gave the Commission a job search record showing that she applied for six jobs in three months. The Commission decided that the Claimant had not proven that she was available for work and stopped paying her benefits. The Claimant asked the Commission to review its decision. She gave the Commission another job search record showing that she applied for more jobs in April and May. The Commission decided that the Claimant still had not proven that she was available for work. The Claimant appealed to the Tribunal.

[3] I am allowing the Claimant's appeal in part. The Claimant has proven that she was available for work as of April 7. Before April 7, the Claimant limited her job search and did not make reasonable efforts to find a job. As of April 7, the Claimant started looking for different kinds of jobs and applied for jobs more often. I accept that the Claimant has proven that she was available for work and making reasonable and customary job search efforts as of April 7.

ISSUES

[4] Issue 1 – Is the Claimant available for work?

[5] Issue 2 – Is the Claimant making reasonable and customary efforts to find a suitable job?

ANALYSIS

[6] You have to prove that you are available for work if you want employment insurance benefits. You have to show that you are capable of working, but that you have not been able to find a suitable job.¹

[7] This is how you prove that you are available for work:

1. You must show that you want to get back to work as soon as someone offers you a suitable job. Your attitude and actions should show that you want to get back to work as soon as you can;
2. You must make reasonable efforts to find a suitable job;
3. You should not set limits that might prevent you from finding a job. If you do set any limits on your job search, the limits should be reasonable.²

[8] A job is suitable if it is the kind of work that matches your health and physical ability. A suitable job should have hours of work that match your family needs or your religious beliefs. A suitable job should not make you do things that go against your religious or moral beliefs.³

[9] The Commission can ask you to prove that you are making reasonable and customary efforts to find a suitable job.⁴

¹ Section 18(1)(a) of the *Employment Insurance Act*.

² In *Faucher v. Canada Employment and Immigration Commission*, A-56-96, the Federal Court of Appeal says that you prove availability by showing a desire to return to work as soon as a suitable employment is offered; expressing your desire to return to work by making efforts to find a suitable employment; and not setting any personal conditions that could unduly limit your chances of returning to the labour market. In *Canada (Attorney General) v. Whiffen*, a-1472-92, the Federal Court of Appeal says that claimants show a desire to return to work through their attitude and conduct. They must make reasonable efforts to find a job, and any restrictions on their job search should be reasonable, considering their circumstances.

³ Section 9.002 of the *Employment Insurance Regulations*.

⁴ Section 50(8) of the *Employment Insurance Act*.

[10] Reasonable and customary efforts are the types of things that most people do when they are looking for a job. You should regularly make job search efforts while you are looking for work. These kinds of things are reasonable and customary efforts:

- Assessing job opportunities;
- Working on a resume and cover letter;
- Registering your job search on online job banks or at job search centres;
- Going to workshops to help with your job search;
- Going to job fairs;
- Talking to friends and family about your job search;
- Talking to prospective employers;
- Applying for jobs;
- Going to job interviews.⁵

Issue 1: Is the Claimant available for work?

[11] The Claimant has proven that she was available for work as of April 7, 2019. Before April 7, she limited her job search mostly to jobs at plant nurseries. This limited her chances of finding a job because this kind of work was not available at that time of year.

[12] The Claimant argues that she wanted to work. She argues that she is older and does not speak English. She only has experience working in plant nurseries. She expanded her job search to include other kinds of businesses in the Punjabi-speaking community after the Commission told her to increase her job search activities. She argues that this shows that she has been available for work since February.

[13] The Commission argues that the Claimant is not actively looking for work because she has not applied for enough jobs. The Commission argues that the Claimant's age and language ability are limiting her chances of finding a job.

[14] The Commission asked the Claimant for several job search records. The Claimant's first job search record says that she only applied for one job in January. Her second job search record

⁵ Section 9.001 of the *Employment Insurance Regulations*.

says that she applied for two jobs in February and three jobs in March. She applied to three plant nurseries, a meat processing plant, and a furniture manufacturing plant.

[15] The Claimant's third job search record says that she applied for ten jobs in April, beginning on April 7, and six jobs in May. She applied for work at restaurants, jewellery shops, and clothing and fabric stores.

[16] The Claimant said that she found a job at a plant nursery and started working on July 3.

[17] The Claimant argues that she wanted to work. The fact that she found a job demonstrates that she really did want to work. I find that the Claimant had a desire to return to work.

[18] The Claimant's job search records show that she only applied for one job in January, two jobs in February, and three jobs in March. These are not reasonable efforts to find a job. The Claimant should have done more things to find a job. She could have gone to a Work BC Centre. She could have gone to a job fair. She could have applied for more than six jobs in three months. I understand that the Claimant does not speak English and that she needs help to do these kinds of things. However, that does not excuse the Claimant from trying to find a job. If she wants to receive employment insurance benefits, the Claimant has to make reasonable efforts to find a job. If she needs help to find a job, then she has to get help from someone. The Claimant did not make reasonable efforts to find a job before April 7.

[19] The Claimant's job search record shows that she mostly tried applying at plant nurseries before April 7. At the hearing, she agreed that she mostly looked for work at plant nurseries and then started looking for different kinds of work in April. I find that the Claimant set a limit on her job search because she only looked for work at plant nurseries before April.

[20] The Claimant knew that she usually stopped working in December because plant nurseries close in December. It was not reasonable for the Claimant to look for work at a plant nursery in the winter if she knew that these places closed for the season. The Claimant should not have limited her job search to plant nurseries if she knew that it was not likely that she would find a job. The Claimant's decision to mostly look for work at plant nurseries before April seriously limited her chances of finding a job.

[21] The Claimant got help from her daughter in April. According to her job search record, she started applying for more jobs after April 7. She applied for work at different kinds of places. It was reasonable for the Claimant to start looking for jobs at restaurants and shops. Her efforts to find a job were reasonable, beginning on April 7. She removed the limits on her job search, and this increased her chances of finding a job.

[22] The Commission argues that the Claimant's job search record is not credible. The Commission tried calling six of the employers and had trouble speaking to anyone or leaving a message. However, one employer said that they remembered the Claimant. I do not think the Commission has proven that the entire job search record is false because it had trouble verifying six of the entries. The Claimant has not given me any other reason to doubt her credibility. I believe that the job search record is reliable.

[23] The Claimant did not make reasonable efforts to find a job before April 7 because she only applied for six jobs in three months. She did not go to the library, a Work BC centre, to job fairs, or to workshops to get help finding a job. She also limited her job search to jobs at plant nurseries, even though they were not open for the season. The Claimant has not proven that she was available for work before April 7.

[24] Beginning in April, the Claimant started applying for more jobs. She got help from her daughter and started applying for different kinds of jobs. She made reasonable efforts to find a job and did not set unreasonable limits on her job search. The Claimant has proven that she was available for work as of April 7.

Issue 2: Is the Claimant making reasonable and customary efforts to find a suitable job?

[25] The Claimant made reasonable and customary efforts to find a suitable job as of April 7.

[26] The Commission has not made any arguments about whether the Claimant was looking for a suitable job. The Claimant said that she usually worked in plant nurseries. She said that she looked for work in a plant nursery. She also looked for work in restaurants, clothing and fabric stores, and jewellery stores. I accept that these kinds of jobs are suitable for the Claimant. The Claimant looked for suitable work.

[27] The Claimant only applied for six jobs in January, February, and March. She did not give me evidence showing that she did other kinds of things to look for work. She did not go to job fairs. She did not go to a Work BC Centre. She did not go to workshops to learn more about looking for a job. I understand that these kinds of things are hard because the Claimant does not speak English. However, the Claimant has to prove that she is making reasonable and customary efforts to find a job, even if she does not speak English. The Claimant did not make many efforts to find a job before April 7. She has not proven that she was making reasonable and customary efforts.

[28] Starting on April 7, the Claimant got help from her daughter. She went in person to several shops to look for work. She applied for many more jobs in April and May. She eventually found a job beginning in July.

[29] The Claimant increased her job search efforts beginning April 7. I accept that her job search efforts were reasonable and customary because she applied for many more jobs. She went in person to potential workplaces.

[30] The Claimant has proven that she made reasonable and customary job search efforts beginning April 7.

CONCLUSION

[31] I am allowing the appeal in part. The Claimant has proven that she was available for work beginning April 7.

Amanda Pezzutto
Member, General Division - Employment Insurance Section

HEARD ON:	July 15, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	J. M., Appellant G. M., Representative for the Appellant