



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation : *G. B. v Canada Employment Insurance Commission*, 2019 SST 882

Tribunal File Number: GE-19-2304

BETWEEN:

G. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Suzanne Graves

HEARD ON: July 11, 2019

DATE OF DECISION: July 22, 2019

DECISION

[1] I am allowing the appeal. The Claimant has shown that he was available for work from December 9, 2018, to January 5, 2019, and that he made reasonable and customary efforts to find suitable work during that period.

OVERVIEW

[2] The Claimant worked for a manufacturing company as a mechanical assembler. In late November 2018, his employer told him that the season was slow and they had no work for him at that time. He claimed regular employment insurance benefits on November 30, 2018. The employer officially laid him off on January 7, 2019.

[3] The Commission decided that it could not pay the Claimant benefits from December 9, 2018, to January 5, 2019, because he did not look for work until early January 2019. The Claimant asked the Commission to reconsider its decision. The Commission did not change that decision. The Claimant now appeals to the Social Security Tribunal. He argues that he was available for work and actively looking for new employment from December 9, 2018, to January 5, 2019.

POST-HEARING DOCUMENTS

[4] After the hearing, the Claimant sent in additional documents about his job search.¹ I accepted the documents as evidence because they are relevant to the appeal. I sent the post-hearing documents to the Commission and gave it an opportunity to reply. The Commission notified the Tribunal that it had no further submissions.

ISSUES

[5] I must decide whether the Claimant proved he was available for work from December 9, 2018, to January 5, 2019.

¹ These documents are marked as GD7 in the Tribunal file.

[6] I must also decide whether the Claimant made reasonable and customary efforts to look for suitable employment from December 9, 2018, to January 5, 2019.

ANALYSIS

[7] Claimants must prove their availability for work. They must show they were capable of, and available for work and unable to find suitable employment for every working day they claim benefits.² They must prove their desire to return to the labour market as soon as suitable work is offered and that they made efforts to find a suitable job. They must also show they set no personal conditions that might unduly limit their chances of returning to work.³ Claimants must also be prepared to show they made reasonable and customary efforts to find suitable employment.⁴

Issue 1: Did the Claimant show that he was capable of and available for work?

[8] Yes. The Claimant proved that he was available for work from December 9, 2018, to January 5, 2019. There is no dispute that he was capable of working. I accept his evidence that he wanted to return to work, was actively searching for employment, and set no personal conditions to limit his chances of getting a job.

The Claimant wanted to return to work

[9] The Claimant argued that he wanted to return to work as soon as possible. He filed copies of text message exchanges with his employer between November 25, 2018, and December 6, 2018, to show that he asked about available shifts. He also sent in copies of emails showing his job search efforts made before and during the time period in question.⁵

[10] The Claimant's employer told the Commission they heard that he took time off over the holidays and left the country in December 2018, to care for a relative. The employer said that the

² This is set out in S 18(1)(a) of the *Employment Insurance Act* (EI Act).

³ The Federal Court of Appeal set out this test in a case called *Faucher v. Canada Employment and Immigration Commission*, A-56-96. The three parts of the test are known as the "Faucher factors."

⁴ The Commission can ask a claimant to provide this information under S 50(8) of the EI Act.

⁵ Copies of these emails are in the Tribunal documents marked as GD6 and GD7.

Claimant tried to come back in mid to late January 2019, but they had no work for him by then. There is no evidence that the Claimant left Canada during the time in question.

[11] I accept the Claimant's evidence that he wanted to return to work and contacted his employer to ask for available shifts in late November and early December 2018. I give little weight to the employer's statement that they heard the Claimant was out of the country and did not contact him until mid to late January 2019. The employer's statement is not consistent with the Claimant's text message evidence or his official lay-off date of January 7, 2019.

[12] The Claimant's job search evidence also demonstrates that he had a desire to return to work. I find on the balance of probabilities that the Claimant had a desire to return to the labour market as soon as he could find a suitable job.

The Claimant made efforts to find suitable work

[13] The Claimant submitted that he made efforts to find a suitable job between December 9, 2018, and January 5, 2019. He stated that he believed his benefits may have been denied because of miscommunication due to a language barrier. The Claimant argued that he was looking for work and contacted his supervisors to ask about his next shift. He filed copies of emails to show that he registered for online job notifications, conducted job searches, made job applications and attended interviews.

[14] The Commission argued that the Claimant made multiple conflicting statements about whether he was actively looking for work between December 9, 2018, and January 5, 2019. I agree. The Claimant stated in his reconsideration request that he was waiting for a call from the team to join work along with other colleagues. He also stated that he would have started looking for work earlier if he had known he would be laid off. However, I note that the Claimant told the Commission on February 8, 2019, that he did not leave the country. On March 8, 2019, he also stated that he did not take time off to be with his family.

[15] The Claimant filed copies of multiple emails as evidence that he was actively searching for work. He started his job search on November 27, 2018, and it continued until January 4, 2019. He demonstrated that he made consistent efforts to search for employment by registering on online job sites, applying for positions and attending interviews. His email evidence shows

that he received regular job alerts and applied for multiple positions during each week between December 9, 2018, and January 5, 2019. He applied for a variety of jobs, including security guard, airline mechanic, warehouse support, food courier, general labourer, administrative assistant, ground equipment mechanic and customer service.

[16] I accept the Claimant's email evidence that he was actively searching for work. Although he made inconsistent statements to the Commission, I find that the Claimant has demonstrated that he made efforts to find a suitable job between December 9, 2018, and January 5, 2019.

The Claimant set no personal conditions to limit his chances of returning to work

[17] The Claimant's email evidence shows that that he searched for a variety of positions, in a range of industries, including security services, financial services, airline maintenance, warehouse, food delivery, and technical records.

[18] I find that the Claimant set no conditions that might have unduly limited his chances of returning to the labour market.

Issue 2: Did the Claimant prove that he was making reasonable and customary efforts to look for suitable employment from December 9, 2018, to January 5, 2019?

[19] Yes, I find that the Claimant proved that he made reasonable and customary efforts to find suitable employment from December 9, 2018, to January 5, 2019.

[20] The Commission may ask a claimant to prove availability by demonstrating that they made reasonable and customary efforts to find employment. The types of job searching activities to consider when determining whether a claimant is making reasonable and customary efforts are set out in the regulations.⁶ A claimant must also make sustained efforts to find suitable work.

[21] The Claimant filed copies of text messages showing that he was in contact with his employer to enquire about available work. He also gave the Tribunal copies of emails showing

⁶ The criteria to be considered when determining whether a claimant made reasonable and customary efforts to find suitable employment are listed in the s 9.001 of the *Employment Insurance Regulations*.

that he conducted online job searches, registered with digital employment sites, made job applications and attended interviews.

[22] I accept the Claimant's evidence of his job search activities and that he made sustained job search efforts from December 9, 2018, to January 5, 2019. I find that he demonstrated that he made reasonable and customary efforts to find suitable work.

CONCLUSION

[23] The Claimant proved that he was available for work from December 9, 2018, to January 5, 2019, and that he made reasonable and customary efforts to find suitable employment. This means that the appeal is allowed.

Suzanne Graves

Member, General Division - Employment Insurance Section

HEARD ON:	July 11, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Sunshiaa Aiteeneyas, Representative for the Appellant