Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *V. P. v Canada Employment Insurance Commission*, 2019 SST 812

Tribunal File Number: GE-19-1349

BETWEEN:

V. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: May 14, 2019

DATE OF DECISION: July 30, 2019

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant is 64 years old and has worked mainly in factories. Her last employment was in a chicken factory. She lost her employment in the spring of 2018, so she filed a claim for Employment Insurance benefits. Following its investigation, the Canada Employment Insurance Commission (Commission) determined that the Appellant had not proved her availability because she had not shown her desire to return to work since she had not put enough effort into looking for employment.

ISSUE

[3] The Tribunal must determine whether the Appellant has proved her availability for work as of March 11, 2018.

ANALYSIS

[4] Section 18(1)(a) of the *Employment Insurance Act* (Act) states that, to be entitled to regular Employment Insurance benefits, a person must prove that they are capable of and available for work but unable to find suitable employment.

[5] The burden of proof is on the claimant (*Canada (Attorney General) v Renaud*, 2007 FCA 328).

[6] **Issue: Has the Appellant proved her availability for work as of March 11, 2018?**

[7] Availability is not defined in the Act. The Federal Court of Appeal has established that availability for work must be determined by analyzing three criteria: 1) the desire to return to the labour market as soon as suitable employment is offered; 2) the expression of that desire through efforts to find suitable employment; and 3) not setting personal conditions that might unduly limit the chances of returning to the labour market. It has established that the three criteria must

be considered in reaching a conclusion (*Faucher v Canada (Attorney General),* A-56-96) (*Faucher*).

[8] After analyzing these three criteria, the Tribunal finds that the Appellant was available within the meaning of the Act.

1) The desire to return to the labour market as soon as suitable employment is offered

[9] The Commission submits that the Appellant has not shown any willingness to seriously look for work despite having been informed on several occasions of the importance to look for employment. However, the Appellant argues that, after losing her employment, her primary intention was to find work as soon as possible. Having received the Appellant's testimony, I accept that her desire has always been to work as soon as suitable employment is offered. She must meet her needs and has financial commitments to fulfill; this drives her to want to work.

[10] In those circumstances, I find that the Appellant had the desire to return to the labour market as soon as suitable employment was offered because none of the evidence indicates otherwise.

2) The expression of that desire through efforts to find suitable employment

[11] Regarding an appellant's expression of the desire to return to the labour market, the Tribunal notes that, like all Employment Insurance claimants, an appellant has the responsibility to actively look for suitable employment to be able to receive Employment Insurance benefits (*Cornelissen-O'Neill,* A-652-93; *De Lamirande,* 2004 FCA 311). That is, it is not enough to intend to work. A claimant must show that they made efforts to find employment.

[12] Section 50(8) of the Act states that, for the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that they are making reasonable and customary efforts to obtain suitable employment.

[13] Section 9.001 of the Regulations sets out the criteria for determining whether the efforts that a claimant is making to obtain suitable employment constitute reasonable and customary

efforts. The Tribunal finds that those criteria can be used to establish whether the Appellant made efforts to obtain suitable employment.

[14] The Commission submits that the Appellant made only very little effort to find employment and, therefore, has failed to show the efforts required to find suitable employment. It submits that, at the time of her administrative claim on May 25, 2018, the Appellant had made a single job search since the beginning of her claim. During her one-year benefit period, the Appellant allegedly made less than 15 applications.

[15] The Appellant states that she made the 15 applications and that she applied to several other places, even though the names do not appear in the file. She states that she was constantly searching in the newspapers and that her daughter searched tirelessly online for her. She indicates that her daughter completed several applications for her because of the language barrier. I note that the language barrier was a major obstacle to her job search. That does not necessarily mean that she did not make the necessary efforts. The law does not require a specific number of applications to prove reasonable and customary [*sic*]. The Appellant has a low level of education and a huge language barrier; in her situation, the job searches were more limited, and I must consider this. The Appellant is quite familiar with agency hiring. Therefore, she contacted agencies. There is a limit to the number of agencies to which she could apply. The Appellant also testified that some employers she approached did not give her the chance to apply when they realized her limited language skills, her age, and her lack of experience. However, she still approached them. I would note that the Appellant would benefit in the future from keeping a more organized record of her efforts and of the exact places that she contacted because, without such information, she may send the wrong signal about what she intends to do and the efforts she has actually made. She should also complete the forms requested by the Commission to show that she is fulfilling her obligations as a claimant. That said, I believe that we must look at the context of each case. I find that, in [*sic*] based on the Appellant's personal circumstances, her efforts were reasonable because she explored the avenues that she knew and that she could explore.

[16] Therefore, I give significant weight to the Appellant's testimony, and I find, on a balance of probabilities, that she has shown that she had expressed her desire to work through efforts to find suitable employment.

3) Not setting personal conditions that might unduly limit the chances of returning to the labour market

[17] A claimant's availability cannot depend on particular personal conditions or unduly restrictive constraints that would limit their chances of finding employment (*Canada (Attorney General) v Gagnon*, 2005 FCA 321).

[18] In this case, the Commission made no argument about this criterion. I understand that she did not set any personal conditions that might unduly limit her chances of returning to work.

[19] I agree because I see no evidence on file that the Appellant set personal restrictions that could unduly limit her chances of returning to work.

CONCLUSION

[20] The appeal is allowed.

Lucie Leduc
Member, General Division – Employment Insurance Section

HEARD ON:	May 14, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. P., Appellant X, Representative for the Appellant