



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. D. v Canada Employment Insurance Commission*, 2019 SST 897

Tribunal File Number: GE-19-2132

BETWEEN:

B. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: July 8, 2019

DATE OF DECISION: July 29, 2019

DECISION

[1] I am dismissing this appeal. I find that the Appellant (who I refer to below as the Claimant) was not available for work between January 14, 2019, and February 22, 2019. As well, he did not show he made enough effort to find a job during this period.

OVERVIEW

[2] The Claimant applied for regular benefits on November 13, 2018, after his annual seasonal lay-off from his job as a concrete mixer. The Respondent (who I refer to as the Commission) asked him to send in a record of his job search for the period from January 14, 2019, to February 22, 2019. The Commission looked at this job search and decided it did not show that he had been available for work and making enough effort to find suitable employment. It disentitled him from receiving benefits starting on January 21, 2019.

[3] The Claimant is appealing this decision, arguing that he was available for work and did try to find a job.

ISSUES

[4] I have to decide whether the Claimant was available for work and making enough effort to find suitable employment between January 14, 2019, and February 22, 2019.

ANALYSIS

[5] You have to prove that you meet all the conditions to qualify for benefits.¹ This includes demonstrating that you were capable of working and available for work, but could not find a suitable job.² You cannot receive benefits unless you prove your availability.³

¹ *Attorney General of Canada v Renaud*, 2007 FCA 328. The standard of proof is on a balance of probabilities. This means it is more likely than not that you reported events accurately.

² You have to show you were available for work on each working day (*Attorney General of Canada v Cloutier*, 2005 FCA 73). A working day is every day of the week except Saturday and Sunday under s 32 of the *Employment Insurance Regulations* (EI Regulations).

³ A disentitlement applies under section 18(1)(a) of the *Employment Insurance Act* (EI Act).

[6] As well, you cannot get benefits unless you show you made a real effort to find work.⁴

Did the Claimant prove he was available for work?

[7] No. The Claimant did not prove he was available for work while on seasonal lay-off. You prove availability by showing you want to return to the labour market as soon as you can. It is up to you to show you made efforts to find a suitable job without personal conditions that would limit your chances of getting a job.⁵

i) Did the Claimant want to return to work?

[8] Yes. I accept the Claimant's testimony that he wished to return to work in theory. He showed he wanted to find a job by asking co-worshippers at temple services and friends at an "old people's centre" for suggestions on businesses that might be hiring.

ii) Does his job search show he wanted to return to work as soon as possible?

[9] No. I find that his job search does not show he was in any hurry to return to work. There is not enough evidence that he tried to find suitable work that was available in the winter months.

[10] The Commission argued that his daughter-in law (the Representative) had reported he was not looking for work because he was waiting for a recall to his usual job. The Commission also found significant differences between the first job search record she submitted and the one she sent in after the Claimant first lost his benefits. The Commission called some of the phone numbers on the second job search list, but these employers had no record of any job applications. Some of the listed numbers were not in service.

[11] The Claimant testified that he wanted to return to work and had actively searched for employment. He did stucco work in his regular job. The same employer had hired him for

⁴ Under section 50(8) of the EI Act, you have to show you made "reasonable and customary" efforts to find work, as interpreted in section 9.001 of the *Employment Insurance Regulations* (EI Regulations). If you fail to do so, a disqualification applies under section 50(1) of the EI Act.

⁵ 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."

seasonal work over the past seven years. He had never worked for anyone else in Canada. The work he wanted was in farming or construction.

[12] He followed up on friends' suggestions by visiting businesses in person to see if there was work available. Sometimes his daughter-in-law went with him and sometimes his son. He also visited nearby farms to ask for work, but they did not need him.

[13] His Representative gave sworn testimony as well as submissions as on his behalf. She testified that she had never told the Commission he was not looking for work. In the case of the companies on his job search whose phone numbers were not in service, she reported that she had given the most recent contact information she could find.

[14] She reported that she applied for jobs for the Claimant online and through job search tools. She uploaded his résumé. I gave her the chance to submit the résumé after the hearing. She told me she had it at home and would send it, but she submitted nothing further.

[15] I find it more likely than not that the employers the Commission contacted could not confirm that the Claimant had applied for work due to the casual nature of his job search. The evidence does not show he was responding to posted vacancies when he visited them. This explains why they had no record that he applied. The out-of-date contact information for some of the companies also suggests that his visits were generally not in response to posted vacancies.

[16] I find that the Representative did not adequately address the differences between the first job search record she submitted for the Claimant on February 28, 2019, and the record she sent in on April 17, 2019.

[17] The first record shows a single job application on each of January 14, 2019, January 21, 2019, and January 28, 2019. It documents an online search for labour and clean-up jobs on four separate dates between February 4, 2019, and February 22, 2019, and just one job application. The second record documents that the Claimant applied for 25 jobs between January 14, 2019 and January 31, 2019, and 30 more jobs between February 1, 2019 and February 22, 2019.

[18] I give more weight to the first job search. The difference between four job applications and 55 applications is too large to be resolved by the Representative's testimony that she did not

know she should give more detail and could use more pages to do this. The job search form clearly asks for “every job search effort.” I see plenty of blank space on the sheets she used. She could also have verified her concern about using extra pages. She had no language barrier.

[19] I find that the Claimant did not show he made enough effort to search for and apply for jobs where there were vacancies.

iii) Did the Claimant put personal conditions on his job search?

[20] Yes. I find that wanting to work close to home is a personal condition that would limit his chances of returning to work. He testified that he only looked for jobs in his neighbourhood that were no more than a 20-minute bus ride away. The Representative testified that it was too hard for him to travel further since he only recently learned how to use the bus and train on his own.

Did the Claimant show he was trying to find a job?

[21] No. You show you are trying to find a job when you make sustained efforts to find work, carry out the job search activities the Commission recommends and direct your efforts to finding suitable employment.⁶

[22] I find that the Claimant was directing his efforts to finding suitable employment. Suitable employment is work you can do without health or physical limitations. You have no religious or moral objections to performing it.⁷ However, the Claimant did not make sustained efforts to find this work since he only searched for jobs in a casual way. He mainly relied on friends he met at the weekend for ideas on who might be hiring. The evidence from his first job search record, which I find more reliable than his second, suggests his job search was sporadic and intermittent.

[23] The Claimant carried out some of the job search activities listed on the benefit application, but without enough focus on positions that were available in the winter. He assessed job opportunities by networking with friends. He followed up during the week by visiting the places they suggested. This is not the same as searching for and applying for posted vacancies.

⁶Section 9.001 of the EI Regulations.

⁷ Section 9.002 of the EI Regulations.

[24] Networking in your own social circle is a useful job search activity, but you cannot rely on this source to find vacancies in your area. Contacting prospective employers cannot be limited to visiting businesses in the hope that they might hire you. The Claimant did not register with any employment agencies to follow-up on work that was actually available.

[25] The Representative testified that she applied for jobs online for the Claimant. As noted above, the second job search record she submitted on his behalf was significantly different from the first record. I therefore found it unreliable. There is no evidence that the many additional job applications she listed on the second record were in response to advertised vacancies.

[26] She reported more than once that she posted or updated the Claimant's résumé on online job search sites. As noted above, she did not submit this document after the hearing as she said she would do, as proof of this job search activity.

[27] Based on the above criteria, I find that the Claimant did not prove he was available for work and making efforts to find suitable employment between January 14, 2019, and February 22, 2019.

CONCLUSION

[28] The appeal is dismissed.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	July 8, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	B. D., Appellant S. M., Representative for the Appellant