



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. M. v Canada Employment Insurance Commission*, 2019 SST 1059

Tribunal File Number: GE-19-2726

BETWEEN:

**C. M.**

Appellant (Claimant)

and

**Canada Employment Insurance Commission**

Respondent (Commission)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Linda Bell

HEARD ON: September 11, 2019

DATE OF DECISION: September 13, 2019

## **DECISION**

[1] The appeal is allowed. The Claimant has shown that he was available for work. This means that he is not disentitled from being paid Employment Insurance benefits.

## **OVERVIEW**

[2] Claimants have to be available for work to be paid benefits. Availability is an ongoing requirement; claimants have to be searching for a job. The Commission decided that the Claimant was disentitled from being paid benefits as of December 3, 2018, because he did not meet the availability requirements for work.

[3] I must decide whether the Claimant has proven<sup>1</sup> that he was available for work. The Commission says that the Claimant was not available because he has not shown that he was truly desirous of finding employment by making reasonable and customary efforts to find suitable employment. The Claimant disagrees, stating that he has always been looking for work.

## **ISSUE**

[4] I must determine whether the Claimant is disentitled from regular benefits because he does not meet the availability requirements. To do this I must decide the following:

- a) Has the Claimant proven he has made reasonable and customary efforts to find another job?
- b) Has the Claimant proven that he is capable of and available for work and unable to find suitable employment?

## **ANALYSIS**

### **Reasonable and customary efforts to find a job**

[5] Two different sections of the law require claimants to show that they are available for work.<sup>2</sup> The Commission disentitled the Claimant from being paid regular benefits under both. I

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<sup>1</sup> The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

<sup>2</sup> Subsection 50(8) provides 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 he or she is making reasonable and customary efforts to obtain suitable employment. Paragraph 18(1)(a) of the *Employment Insurance Act* provides

will first consider whether the Claimant has proven that his efforts to find a job are reasonable and customary.<sup>3</sup>

[6] The law sets out criteria for me to consider when deciding whether the Claimant's efforts are reasonable and customary.<sup>4</sup> I have to look at whether his efforts are sustained and whether they are directed toward finding a suitable job.

[7] 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.<sup>5</sup>

[8] I also have to consider the Claimant's efforts in the following job-search activities: assessing employment opportunities, preparing a resume or cover letter, registering for job search tools or with on-line job banks or employment agencies, attending job search workshops or job fairs, networking, contacting employers who may be hiring, submitting job applications, attending interviews and undergoing evaluations of competencies.

[9] The Commission says that the Claimant has not shown that he is doing enough to try to find a job because his job search listed only a few company names. The Claimant disagrees and states that he is constantly looking for work and he did not know that he was required to keep such a detailed list of everyone he spoke to about a job. I believe the Claimant and find that his language barrier may have contributed to him not understanding that he was required to keep an ongoing, detailed record of his job search.

[10] During the hearing, the Claimant presented new evidence through the assistance of an interpreter. He testified that when his employer first told him that he failed to pass their new screening test and he was losing his employment of eighteen years, he had been in negotiations with his union, trying to secure alternate employment with his former employer. He said that he also had a resume and was making cold calls to numerous employers in China Town, at the

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that a claimant is not entitled to be paid benefits for a working day in a benefit period for which he or she fails to prove that on that day he or she was capable of and available for work and unable to obtain suitable employment.

<sup>3</sup> Subsection 50(8) of the *Employment Insurance Act*.

<sup>4</sup> Section 9.001 of the *Employment Insurance Regulations*.

<sup>5</sup> Section 9.002 of the *Employment Insurance Regulations*

airport, at various security companies, and was networking through friends and anyone he knew that worked at the airport. The Claimant submitted new documentary evidence that supports that he also registered to receive job bank alerts, as of December 17, 2018, which was shortly after he lost his employment on December 5, 2018.

[11] I find that the Claimant made sufficient efforts to prove that he is available for work. He stated that his efforts resulted in a job interview with X on May 2, 2019. He then accepted a job offer from X and started working part-time as a security guard as of May 28, 2019. He said he is continuing to look for other work. I find this supports that the Claimant was making reasonable and customary efforts to find employment.

### **Capable of and available for work and unable to find suitable employment**

[12] I must also consider whether the Claimant has proven that he is capable of and available for work and unable to find suitable employment.<sup>6</sup> The Claimant has to prove three things to show he was available under this section:

1. A desire to return to the labour market as soon as a suitable job is available
2. That desire expressed through efforts to find a suitable job
3. No personal conditions that might unduly limit their chances of returning to the labour market<sup>7</sup>

[13] I have to consider each of these factors to decide the question of availability,<sup>8</sup> looking at the attitude and conduct of the Claimant.<sup>9</sup>

Did the Claimant have a desire to return to the labour market as soon as a suitable job is available?

[14] The Claimant has shown a desire to return to the labour market as soon as a suitable job is available. As set out above, he commenced discussions with his union, to try to secure

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<sup>6</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

<sup>7</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>8</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>9</sup> *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

alternate employment with the same employer, he began networking and cold calling, and registered on-line to review job alerts from the job bank, shortly after he lost his employment.

[15] The Commission provided evidence that the Claimant said he was looking for work with the same employer and at the airport.

[16] The Claimant testified that he has a desire to return to the labour market as soon as employment is offered, which I accept he did. The Claimant provided evidence that he has since secured part-time employment with X as of May 28, 2019, and is still seeking other employment.

Has the Claimant made efforts to find a suitable job?

[17] The Commission submits that the Claimant was not seeking suitable employment because he was looking for a job as a screener, after he was no longer certified to do this type of work.

[18] During the hearing, the Claimant provided clarification of the types of work he has been seeking. As previously stated, he was seeking any type of employment at the airport, or security companies, or companies in China Town, where the employer would offer training to new employees. He confirmed that some of the companies that he had applied with required that he already possess certification; however, he argued that there were several other types of security jobs where he did not have to possess a license prior to them hiring him. I believe the Claimant, because that is the exact scenario for his new part-time employment with X.

[19] While they are not binding when deciding this particular requirement, I have considered the list of job-search activities outlined above in deciding this second factor for guidance. For the reasons explained above, the Claimant's efforts to find a new job included seeking the assistance of his union, networking with friends and colleagues, making cold calls, handing out his resume, and registering on-line to receive job bank alerts. These efforts were enough to meet the requirements of this second factor because they were sustained, and resulted in him securing part-time employment. I believe him the Claimant when he states that he is continuing his efforts to find full-time work.

Did the Claimant set personal conditions that might have unduly limited his chances of returning to the labour market?

[20] The Commission says that it appears the Claimant limited his job search to positions he had little or no chance of attaining given that he was no longer certified to work as a screening officer.

[21] The Claimant says he did not limit his chances because he was not seeking a job as a screener; rather, he said he was trying to obtain any other type of employment with his former employer. When those attempts failed, he said he started seeking other types of work, where an employer would offer to train him once hired.

[22] Based on the new evidence that the Claimant was able to secure employment with X, without possessing certification as a screener or a security officer, I find that he did not set personal conditions that unduly limited his chances of returning to the labour market.

**Was the Claimant capable of and available for work and unable to find suitable employment?**

[23] Considering my findings on each of the three factors together, I find that the Claimant has shown that he was capable of and available for work and unable to find suitable employment, as of December 3, 2018.<sup>10</sup>

**CONCLUSION**

[24] I find that the Claimant is not disentitled from receiving benefits. This means the appeal is allowed.

Linda Bell  
Member, General Division - Employment Insurance Section

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<sup>10</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

HEARD ON:	September 11, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. C., Appellant (Claimant) J. Li, Interpreter