



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. B. v Canada Employment Insurance Commission*, 2019 SST 1008

Tribunal File Number: GE-19-3011

BETWEEN:

S. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: September 9, 2019

DATE OF DECISION: September 10, 2019

DECISION

[1] The appeal is allowed in part. I find that the Appellant had just cause for voluntarily leaving his employment because he had assurance of another employment when he left the one he had. I also find that the Appellant was available for work as of January 26, 2019.

OVERVIEW

[2] The Appellant was working as a day labourer for X. He stated that he had stopped working in his employment on February 28, 2019, because he obtained assurance of another higher-paying job at X. On July 9, 2019, the Canada Employment Insurance Commission (Commission) refused the Appellant's claim because it found that he had voluntarily left his employment and that leaving was not the only alternative in this case. The Commission also found that the Appellant was not available for work as of August 27, 2019, while he was attending full-time training.

[3] I must determine whether the Appellant had just cause for leaving his employment at X. I must also determine whether the Appellant was available for work as of August 27, 2019, and whether he had made reasonable and customary efforts to find suitable employment as of that time.

ISSUES

[4] Did the Appellant have reasonable assurance of another employment in the immediate future when he left his employment on February 28, 2019?

[5] If not, was leaving his employment the only reasonable alternative in this case?

[6] Was the Appellant available for work as of August 27, 2019? To determine this, I must answer three questions:

- Did the Appellant have a desire to return to the labour market as soon as suitable employment was offered?

- If so, did the Appellant express this desire through efforts to find suitable employment?
- Were the Appellant's chances of finding suitable employment unduly limited by personal conditions?

[7] Has the Appellant proven that he made reasonable and customary efforts to find suitable employment as of August 27, 2019?

PRELIMINARY MATTER

[8] At the hearing, I combined the Appellant's two files—GE-19-3011 and GE-19-3012—because the appeals raise similar questions of fact or law and because combining them was not likely to cause prejudice to the parties.

ANALYSIS

Did the Appellant voluntarily leave his employment?

[9] The Appellant admitted to voluntarily leaving his employment at X on February 28, 2019, because he had obtained a higher-paying job at X.

[10] The Record of Employment the employer issued shows that the Appellant's last day of work was February 27, 2019. The Appellant explained that on Thursday, February 28, 2019, when he knew he would start his employment at X the following Monday, he resigned from his employment at X on the spot.

[11] I find that the Appellant voluntarily left his employment on February 28, 2019.¹ The Appellant must now show that he had just cause for voluntarily leaving his employment.

¹ *Green*, 2012 FCA 313; *White*, 2011 FCA 190; *Patel*, 2010 FCA 95.

Did the Appellant have reasonable assurance of another employment in the immediate future when he left his employment on February 27, 2019?

[12] The Appellant left his employment at X on February 28, 2019. He explained that, the same day, on February 28, 2019, he received a call from an employer he had applied to in February 2019, X. Given the compensation offered, as well as the opportunities for career advancement at that employer, he did not hesitate: he left the employment he had and accepted the one he was offered.

[13] The Appellant explained during the hearing that the employer X had contacted him by telephone and, due to staffing issues, it needed a new full-time employee as soon as possible. It asked the Appellant if he could report to the jobsite the following Monday, that is March 4, 2019. The Appellant accepted.

[14] The Appellant explained that, during the telephone interview, the employer told him that it needed someone to work full-time because the company was overwhelmed with work. The employment offered to the Appellant involved clearing snow off roofs, but the employer told him that once the snow removal season ended, he would continue to work full-time as a roofer assistant. This proposal interested the Appellant since it represented an advancement for him and he wished to begin working in the construction industry. The employer explained to him that the company would hire him as a roofer assistant and that he would be able to accumulate the hours required to obtain an apprentice competency certificate as a roofer, which would allow him to work in the construction industry.

[15] The Commission argued that the Appellant accepted a seasonal employment without guaranteed hours at X. In the Commission's view, accepting a job as a snow remover gave the Appellant no guarantee of an employment as a roofer assistant. The Commission's file shows that an agent contacted an employee who indicated that it was not possible that the Appellant was [translation] "hired" before February 27, 2019, because they had an urgent need for workers during that period and that if the Appellant had been hired before February 27, 2019, he would not have started on March 4, 2019, he would have started right away. She indicated that the Appellant must have been contacted on March 4, 2019, to start on March 4, 2019. The employee stated that she would have to confirm with her spouse, the owner, on which date the Appellant

was hired. She also indicated that the Appellant had shown interest in becoming a roofer and that the employer had told him that it would take him. She indicated that the competition for apprentice roofers was not [translation] “open” and that the employer had not hired the Appellant beyond the snow removal season.

[16] I cannot accept the employer’s statement that provides only one version of events. The Commission did not question the company owner, and the Appellant’s statements are consistent. The Appellant submits that the employer was short-staffed and that it had assured him that he could work full-time even after the snow removal season had ended. That version is more than likely. The Commission had the opportunity to verify the circumstances surrounding the Appellant’s hiring by the owner, as indicated in its submissions, but it did not do so.

[17] I am of the opinion that the Appellant left his employment at X because he had assurance of full-time employment as a snow remover at X. Although the snow remover job was seasonal, the employer told the Appellant during the telephone interview that it would [translation] “take him” as a roofer assistant. Even if the Appellant assumed there was no guarantee that he would become a roofer and that is what he stated to the Commission when he was questioned by an agent, the employer told him that it would hire him as a roofer assistant by soliciting his services as a snow remover. In this regard, the Appellant had not only assurance of a job, but also assurance of continued employment with that employer.

[18] The employer hired the Appellant as a snow remover. Whether the employer respected its promise to hire him as a roofer assistant or not when it had an urgent need for snow removers does not change the fact that the Appellant accepted a full-time job that also offered him hope of improved working conditions.

[19] I find that the Appellant had assurance of another employment when he left his employment on February 28, 2019.

[20] Since it is difficult, if not impossible, to contend or conclude that a person who voluntarily leaves employment to occupy different employment is doing so necessarily because

leaving is the only reasonable alternative in their case, I find that the Appellant had just cause for voluntarily leaving his employment on February 28, 2019.²

Was the Appellant available for work as of August 27, 2018?

[21] A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was capable of and available for work and unable to obtain suitable employment.³

[22] To establish whether a person is available for work, I consider the following three criteria:⁴

- the desire to return to the labour market as soon as suitable employment is offered;
- the expression of that desire through efforts to find suitable employment; and
- not setting personal conditions that might unduly limit the chances of returning to the labour market.

Did the Appellant have a desire to return to the labour market as soon as suitable employment was offered?

[23] The Appellant admits that he was taking a course that was not authorized by the Commission. This course in electromechanics began on August 16, 2018, but contrary to the duration stated to the Commission, the Appellant explained that, during the hearing, he had dropped out of this course on January 25, 2019, because it did not correspond to his interests and skills.⁵

[24] The Appellant explained that, as of January 26, 2019, he had the desire to find full-time employment.

² *Marier*, 2013 FCA 39; *Langlois*, 2008 FCA 18; *Campeau*, 2006 FCA 376; *Côté*, 2006 FCA 219.

³ *Employment Insurance Act* (Act), s 18(1)(a).

⁴ *Faucher*, A-56-96.

⁵ GD6-2.

[25] I am of the opinion that, as of January 26, 2019, the Appellant had the desire to return to the labour market as soon as a suitable employment was offered. The Appellant made efforts to find employment, and he began a new full-time employment at X on February 18, 2019.

[26] I must now assess whether the Appellant made concrete efforts to find employment.⁶

Did the Appellant express this desire through efforts to find suitable employment?

[27] To obtain Employment Insurance benefits, the Appellant is responsible for actively looking for suitable employment.⁷

[28] The Commission submits that the Appellant attended unauthorized training and that he was not available for work as of August 27, 2018. It also states that the Appellant made no sustained efforts to find employment and that his intention was to work part-time.

[29] The *Employment Insurance Regulations* (Regulations) specify various ways of conducting a job search, and the Appellant's search for employment must be sustained, that is reasonable and customary, on every working day of his benefit period.⁸

[30] During the hearing, the Appellant indicated that he was not available for work from August 16, 2018, to January 25, 2019, because he was attending training full-time. However, as of January 2, 2019, the Appellant made several attempts to find full-time employment, and his efforts resulted in him obtaining employment on February 18, 2019.

[31] The Appellant made daily efforts to find employment online and made regular visits to the Centre local d'emploi [local employment centre] from which he sent his applications online or by fax. Between January 26, 2019, and February 18, 2019, the Appellant applied for a job as a dishwasher at X. He submitted his application to X, had a job interview, and started the employment on February 18, 2019. He also applied for a job at X. The Appellant explained that this employer had contacted him on February 28, 2019, to offer him a job and, because the

⁶ *Primard*, A-683-01.

⁷ *Cornelissen-O'Neill*, A-652-93; and *De Lamirande*, 2004 FCA 311.

⁸ Act, s 18.

employer had given him hope of obtaining his competency certificate to work in the construction industry, he did not hesitate to leave his employment at X for that one.

[32] I am of the opinion that the Appellant's job search was sustained and concrete between January 26, 2019, and February 18, 2019, and that he demonstrated daily efforts to find employment during that period.⁹

Were the Appellant's chances of finding suitable employment unduly limited by personal conditions?

[33] The Appellant attended full-time training from August 16, 2019, to January 25, 2019. That training was offered from 8:00 a.m. to 4:30 p.m. Monday to Friday. The Appellant stated to the Commission that he would not drop out of the training to find employment. However, the situation changed, and the Appellant decided that the training did not correspond to his interests or skills. He therefore stopped attending the training on January 25, 2019.

[34] Although the Appellant attended training from August 16, 2019, to January 25, 2019, and this situation unduly limited his chances of finding suitable employment, his unavailability during that period is not disputed. The Appellant testified that he was available and actively looking for work as of January 26, 2019.

[35] The Appellant did not have personal conditions that unduly limited his chances of finding suitable employment as of January 26, 2019. He stated that he was available for full-time work and had demonstrated numerous efforts to find employment as of that time.

Reasonable and customary efforts to obtain suitable employment

[36] The criteria for determining whether the efforts a claimant made to obtain suitable employment constitute reasonable and customary efforts are the following:¹⁰

- assessing employment opportunities;
- preparing a resumé or cover letter;

⁹ *Op. Cit., Primard.*

¹⁰ Regulations, s 9.001.

- registering for job search tools or with electronic job banks or employment agencies;
- attending job search workshops or job fairs;
- networking;
- contacting prospective employers;
- submitting job applications;
- attending interviews; and
- undergoing evaluations of competencies.

[37] The Appellant testified that he had made sustained efforts to find employment through regular visits to his local employment centre. He stated that he was registered on the Emploi-Québec [Québec employment] website and had applied for jobs through it. The Appellant testified that he looked for work on a daily basis. For example, between January 26, 2019, and February 18, 2019, he applied to X, X, X, and X.

[38] The Appellant conducted daily job searches, he updated his resumé, he participated in a job interview at X, and he obtained that job.

[39] As mentioned, the Appellant also demonstrated that he made daily efforts to find employment at his local employment centre.

[40] I find that the Appellant was available for work as of January 26, 2019, because he demonstrated that he had made reasonable and customary efforts to find suitable employment within the meaning of section 50(8) of the Act and under sections 9.001 and 9.002 of the Regulations as of that time.

CONCLUSION

[41] The appeal is allowed in part.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	September 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	S. B., Appellant