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

Citation: *T. B. v Canada Employment Insurance Commission*, 2019 SST 1482

Tribunal File Number: GE-19-3149

BETWEEN:

T. B.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Leanne Bourassa

HEARD ON: October 1, 2019

DATE OF DECISION: October 11, 2019

DECISION

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

OVERVIEW

[2] The Claimant began a pre-apprentice training program and shortly after starting, quit his full time job. The Respondent, the Canada Employment Insurance Commission (the Commission) contacted the Claimant to get the reference code for his program and later told him they had approved his training. They then reviewed the case and determined that the Claimant was not in a training program that he had been referred to by the Commission or an authority they had delegated. Since he had not demonstrated that he had been available for work while studying, the Claimant was refused benefits. The Claimant contests this decision because he had been advised by the Commission that his training had been approved, only for that decision to be changed. He had also been looking for work while studying.

[3] To be paid regular employment insurance (EI) benefits, claimants have to be available for work. Availability is an ongoing requirement; claimants have to be searching for a job. The Commission decided that the Claimant was disentitled from being paid EI benefits as of March 25, 2019 because he was not available for work.

[4] I must decide whether the Claimant has proven[1] that he was available for work. The Commission says that the Claimant was not available because he was taking a full time training program on his own initiative and he was prioritizing his studies over searching for a job. The Claimant disagrees and states that his priority was to find full time work; his training program was to help put him in a better position to find a job.

[5] While I am aware that the Claimant had also been disqualified from receiving benefits because the Commission found he had left his employment voluntarily without just cause, that matter has been heard by another member of the Tribunal and will not be addressed in this decision. I will only be considering the Claimant's availability for work.

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[1] The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

ISSUE

[6] Was the Claimant available for work?

ANALYSIS

Enrollment in a referred course of study

[7] There is some debate between the parties as to whether or not the industrial millwright pre-apprentice program the Claimant was in was a program to which the Commission or its delegate had referred the Claimant. This is important because a claimant participating in a course or program of training to which the Commission or an authority that the Commission delegates has referred them to is considered capable of and available for work. [2]

[8] I find that the Claimant was not attending a training program that he had been referred to by the Commission or an authority delegated by the Commission.

[9] When applying for EI benefits on March 31, 2019, the Claimant said that he was attending a training program that he had been referred to. The Commission called him on April 3, 2019 to get the reference code for this training, but when the Claimant did not have one, they spoke to an advisor from the college who said there was no code. Nonetheless, the Claimant states that on April 30, 2019, the Commission confirmed to him that they accepted that his program was a referred program. The Commission's internal documents show this decision was made. However, the Commission reviewed this decision and on June 24, 2019 advised the Claimant that they had reviewed the decision and they were unable to pay him benefits because he had been taking a training course on his own initiative and had not proven his availability for work.

[10] The Claimant testified that he found the program at George Brown College when his partner brought the college's website it to his attention. He applied for the program and was accepted right away. Less than a week elapsed between the dates of his application and the beginning of classes. He admits that he did not receive authorization from the Ontario Ministry of Training, Colleges and Universities, or any other entity other than the college offering the

[2] Paragraph 25(1) of the Employment Insurance Act.

program, to take this training program. When the college was contacted by the Commission to provide a reference number, they were not able to provide one but stated that students had been collecting EI benefits while in this program.

[11] While the Commission initially decided that the Claimant was on a referred course of study, it is not clear on what basis they came to that decision. There is no evidence that the program the Claimant was following was authorized by any government entity or that the Claimant had been guided to the program by anyone in an official capacity.

[12] Since I find that the Claimant was not enrolled in a referred course of study, in order to get EI benefits, he had to show that he was available for work.

Reasonable and customary efforts to find a job

[13] Two different sections of the law require claimants to show that they are available for work;[3] the Commission disentitled the Claimant from being paid benefits under both. I will first consider whether the Claimant has proven that his efforts to find a job were reasonable and customary.[4]

[14] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.[5] I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. 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 online 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.

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[3] 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 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.
[4] Subsection 50(8) of the *Employment Insurance Act*.
[5] Section 9.001 of the *Employment Insurance Regulations*.

[15] The Commission says that the Claimant did not do enough to try to find a job. The Claimant disagrees. He says that the efforts he was making were enough to prove that he was available for work. I find that the Claimant did not make reasonable and customary efforts to find a new job.

[16] The Claimant argues that although he was in full time studies and thought he was on a referred course of study, he was also actively looking for work.

[17] I note that Claimant provided evidence that he had a few exchanges with a counsellor at his college beginning on April 26, 2019, with respect to seeking feedback about his resume and cover letter, as well as identifying jobs that were of interest to him. The Claimant also testified that a portion of his program of studies included resume preparation workshops, mock interviews and information about searching for jobs.

[18] The Commission argues that the services offered by the Claimant's college with respect to job searching were designed for and limited to jobs that were related to the Claimant's course of study and cannot be considered in the context of a wider job search.

[19] I find that although they were part of his program of instruction, the Claimant was engaged in activities that could help his overall job search.

[20] The Commission also argues that the Claimant's job search only began after he was advised that he was not in a referred training program.

[21] The Claimant submitted examples of job notices he had been receiving and job applications he had submitted. I note that the job application emails and cover letters relate primarily to jobs that are related to his course of studies or that would 'get him in the door' with companies that could later recognize his training. There are only 3 or 4 application confirmations provided and they date from after June 24, 2019. Only one application for a position in sales from before this period is in evidence, dating from May 16, 2019. This is consistent with the Commission's arguments. I find that this does not demonstrate a sustained effort to find a suitable job.

[22] The Claimant testified that in addition to the job applications that he submitted to the Tribunal, he had also called his previous acting union to signal his availability and an event staffing service who he had worked for in the past. He also states that he went out to several factories that he knew were hiring to inquire about general labour jobs. However, he has only provided evidence of one of these visits.

[23] I find the Claimant has not proven that his efforts to find a job were reasonable and customary. While he did engage in some activities to improve his job prospects, the evidence does not show that he was searching and applying for a variety of jobs in a sustained manner once he started his studies.

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

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

a) A desire to return to the labour market as soon as a suitable job is available

b) That desire expressed through efforts to find a suitable job

c) No personal conditions that might have unduly limited their chances of returning to the labour market[7]

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

[25] Also, I must bare in mind that claimants enrolled in a course of full-time study of their own initiative are presumed to be not available for work. This presumption can be rebutted only in exceptional circumstances.[10]

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[6] Paragraph 18(1)(a) of the *Employment Insurance Act*.
[7] *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[8] *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[9] *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.
[10] *Canada (Attorney General) v. Cyrenne*, 2010 FCA 349, *Canada (Attorney General) v. Gagnon*, 2005 FCA 321, *Canada (Attorney General) v. Rideout*, 2004 FCA 304

[26] The Claimant advised the Commission that for his program he was in class from Monday to Friday from 9:00 am to 3:00 pm, or 8:00 am to 4:00 pm and that he would spend about 3 hours a week doing homework. This would be considered full-time studies.

[27] The Claimant submits that an exceptional circumstance was that since he believed that he was in a referred program, he was under the impression that he did not have to prove he was looking for work.

[28] On April 30, 2019, the Commission told the Claimant they had decided that the course was a referred program. However, on June 24, 2019 they then told him that they had changed their decision. I find that for the period between those two dates, the Claimant has proven exceptional circumstances and the presumption of non-availability should not apply. The Claimant does, nonetheless still have a positive obligation to prove he was available for work.

[29] However, before April 30, 2019 and once the Claimant was advised on June 24, 2019 that his course of study was not referred, I find the presumption that he was not available for work because he was in full time studies of his own initiative, does apply.

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

[30] The Commission argues that the Claimant did not have a desire to return to the labour market and he was prioritizing his full-time studies.

[31] The Claimant states that his priority was to get back to work as soon as possible and in fact, his intention was originally to continue working while he studied. Unfortunately, his work situation became untenable and he had to leave his job and look for a new one while studying.

[32] I accept that the Claimant's intention was to work while he was studying and that he would have preferred to be employed. However, I do not think this desire was demonstrated through efforts to find a suitable job.

Did the Claimant make efforts to find a suitable job?

[33] The Claimant did not make sufficient efforts to find a suitable job. 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 consulting with the career counselling services and participating in job search training offered through his college, updating his resume and cover letter, consulting job postings and personally presenting himself at factories holding hiring events. He also advised the union for his previous career and a placement agency of his availability.

[34] The Commission argues that these efforts are not sufficient because the services offered by his college were specifically targeted toward millwright jobs. Also, the only jobs he applied for were positions related to the work placement required for his program.

[35] I find that the Claimant did take measures to improve his job prospects by taking advantages of the services offered by his college. However, as he has not demonstrated that he applied for more than a few jobs related to his course of studies and primarily after he had been refused benefits, I find that he did not make sufficient efforts to find a suitable job.

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

[36] The Claimant did set personal conditions that might have unduly limited his chances of returning to the labour market. The Claimant says he did not do this, because he was willing to leave his program at any time for a full time job. The Commission says that the Claimant limited the hours he was available to work and that his job search was limited to jobs directly related to his studies and suitable for his work placement. I find that the Claimant did not limit the hours that he was available for work, but that he did restrict the scope of his job search in a way that limited his chances of finding a job.

[37] I do not agree with the Commission's argument that since the Claimant told his previous employer that he was only able to work 20 hours a week and was not available while he was in class, he was imposing a personal condition that limited his chances in the labour market. The

Claimant explained that he intended to continue working while studying and this 20 hours limit was specific to that employer because the 20 hours on the schedule amounted to many more in reality. I find this testimony from the Claimant to be credible, particularly in light of the evidence he provided that he ultimately left this job, with just cause, because of the working conditions.

[38] I do not see any other evidence that the Claimant was intending to impose a limit on the number of hours he was willing to work for an employer or that he was looking for jobs that allowed for work only outside of class hours. I find that he was not limiting his job search by restricting the hours he was available to work.

[39] The Commission has also argued that the Claimant had limited his chances by restricting his job search to jobs that would fit with his program's work placement requirements. For example, the Commission criticised the Claimant for not accepting a job as a painter when he had experience with a paint company in the past.

[40] The Claimant testified that when he left his previous job shortly after starting his program, he nonetheless advised his previous actors union and production staffing agency that he was available if opportunities arose. He also applied for a sales job with a flooring company but did not get the job.

[41] While I find that the Commission did not recognize that the Claimant's previous jobs with painting companies were in sales or organization and not painting itself, the evidence does show that the Claimant did apply for very few jobs over the period of his studies. As the Commission pointed out, the job applications the Claimant has submitted in evidence date after the time he was advised he would be disentitled for failing to show his availability. These jobs also reflect the Claimant's decision to reorient his career towards millwrighting and seem limited in scope to jobs that would set him on that path.

[42] I recognize that the Claimant was put in a complicated position by the decisions made by the Commission, making it seem like he did not have to prove availability and making it impossible to report his availability if he could. However, the evidence provided by the Claimant does not demonstrate that despite this confusion his priority was finding a job as soon as

possible. Rather, he was prioritizing activities that would benefit his job prospects over the long term. While this is laudable, it unfortunately does not allow me to find that he had demonstrated he was available and capable of work but unable to find a job.

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

[43] Considering my findings on each of the three factors together, I find that the Claimant did not show that he was capable of and available for work and unable to find suitable employment.[11]

CONCLUSION

[44] I find that the Claimant is disentitled from receiving benefits. This means that the appeal is dismissed.

Leanne Bourassa
Member, General Division - Employment Insurance Section

HEARD ON:	October 1, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	T. B., Appellant Suzanne Hansen, Representative for the Appellant

[11] Paragraph 18(1)(a) of the *Employment Insurance Act*.