



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v Canada Employment Insurance Commission*, 2019 SST 1572

Tribunal File Number: GE-19-3123

BETWEEN:

J. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Melanie Petrunia

HEARD ON: September 25, 2019

DATE OF DECISION: October 27, 2019

DECISION

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

OVERVIEW

[2] Claimants have to be available for work to be paid regular employment insurance (EI) 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 EI benefits as of April 29, 2019 because she was not available for work.

[3] I must decide whether the Claimant has proven¹ that she is available for work. The Commission says that the Claimant is not available because she was not able to return to the physical job she was working before she went on sickness benefits. She only spoke to two potential employers between January and June 2019. The Claimant had surgery in June for a knee replacement and needed time to recover before she could work any position. The Claimant disagrees and states that, after her 15 weeks of sickness benefits ended, she was available for work at a sit-down job but unable to find one. She states that she was treated unfairly and that 15 weeks is not a sufficient length of time for sickness benefits for someone in her circumstances. She says that there are no sit-down jobs in her area and she was not able to drive and therefore could not have commuted to a nearby community for work.

ISSUE

[4] Is the Claimant available for work?

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;² the Commission disentitled the Claimant from being paid benefits under both. I will first

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

² 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

consider whether the Claimant has proven that her efforts to find a job are reasonable and customary.³

[6] The law sets out criteria for me to consider when deciding whether the Claimant's efforts are reasonable and customary.⁴ I have to look at whether her efforts are sustained and whether they are 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.

[7] The Commission says that the Claimant is not doing enough to try to find a job. The Claimant disagrees. She says that the efforts she is making are enough to prove that she is available for work. I find that the Claimant has not made reasonable and customary efforts to find a job.

[8] The Claimant testified that she went in to a few local businesses to ask if they had any jobs available where she could be sitting all day. She stated that no one she spoke to was hiring for such a position. She testified that she did not have a resume prepared and that she did not look online at all for work. The Claimant stated that she lived in a small community with few businesses. She felt that there may have been opportunities in a nearby community but she and her husband only had one car, which he needed for work. They now have another car but she was unable to drive for some time after her surgery.

[9] The Claimant's sickness benefits ended in April and she requested to convert to regular benefits as of April 28, 2019. She had knee surgery on June 27, 2019 and required almost three months to recover. During the time between when her sickness benefits ended and the date of the surgery, the Claimant made the efforts discussed above. During the period that the Claimant was recovering she was not able to work. The Claimant testified at the hearing that she was now able

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.

³ Subsection 50(8) of the *Employment Insurance Act*.

⁴ Section 9.001 of the *Employment Insurance Regulations*.

to work any job and had contacted her former employer to say that she was ready to go back to work when the job starts up in October. She had not made further efforts to find suitable employment other than contacting her former employer. I find that the Claimant has not proven that her efforts to find a job are reasonable and customary.

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

[10] I must also consider whether the Claimant has proven that she is capable of and available for work and unable to find suitable employment.⁵ The Claimant has to prove three things to show she is 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 market⁶

[11] I have to consider each of these factors to decide the question of availability,⁷ looking at the attitude and conduct of the Claimant.⁸

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

[12] The Claimant has shown a desire to return to the labour market as soon as a suitable job is available. The Claimant testified that she needed to go off of work due to pain she was experiencing. She had hoped to stay at work until her knee surgery but was physically unable to continue working. She had her surgery in June and, after approximately three months, she testified that she was now able to do any job. She had hoped to be called back to her old employer soon as work was likely to be starting up but hadn't looked for other positions. She testified that she would look for other things if she did not get called back soon. The Claimant

⁵ Paragraph 18(1)(a) of the *Employment Insurance Act*.

⁶ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

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

⁸ *Canada (Attorney General v Whiffen)*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

testified that she was looking forward to returning to work and wanted to begin working as soon as a suitable job was available. On the basis of her testimony, I find that the Claimant has a desire to return to the labour market as soon as a suitable job is available.

Has the Claimant made efforts to find a suitable job?

[13] The Claimant is not making enough 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 dropping by local businesses to see if they were hiring and had positions available at which she could remain seated. She testified that she inquired at the Co-operators Insurance, a grocery store and Service Canada. These efforts are not enough to meet the requirements of this second factor because she testified that she did not have a resume prepared and did not look at any online job listings. She also did not apply to or inquire about any positions in near by communities.

[14] Other than contacting a few prospective employers, the Claimant did not make any other efforts, including those set out in the Regulations, toward finding suitable employment. I find that these efforts are not sufficient.

Did the Claimant set personal conditions that might unduly limit her chances of returning to the labour market?

[15] The Claimant has set personal conditions that might unduly limit her chances of returning to the labour market. The Claimant testified that there may have been work available in a nearby community but that she didn't consider working there a possibility due to the commute. She testified that initially she and her husband only had one vehicle and that he used it for work. They then acquired a second vehicle but she was unable to drive for a period of time after her surgery. Throughout the period the Claimant was either awaiting surgery or recovering from surgery which limited her chances of returning to the labour market.

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

[16] Considering my findings on each of the three factors together, I find that the Claimant did not show that she is capable of and available for work and unable to find suitable employment.⁹

CONCLUSION

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

Melanie Petrunia

Member, General Division - Employment Insurance Section

HEARD ON:	September 25, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. M., Appellant No one appeared for the Respondent

⁹ Paragraph 18(1)(a) of the *Employment Insurance Act*.