



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. Z. v Canada Employment Insurance Commission*, 2019 SST 1442

Tribunal File Number: GE-19-3554

BETWEEN:

G. Z.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: November 7, 2019

DATE OF DECISION: November 7, 2019

DECISION

[1] I am dismissing the appeal. The Claimant has not proven that he was available for work from April 28, 2019.

OVERVIEW

[2] The Claimant is a temporary foreign worker. His work permit states that he is authorized to work only for the employer named in it. He works at a seafood processing plant but his hours of work are variable. His employer laid him off due to a shortage of work and he applied for EI benefits.

[3] The Commission says the Claimant cannot be paid benefits because he was not available for work. It says the Claimant is restricted to work for one employer due to his work permit and he has not proven that he was actively looking for a new job. The Claimant disagrees and says that could get a new work permit if he was offered another job.

ISSUES

[4] I must decide whether the Claimant has proven that he is available for work from April 28, 2019. This takes two steps. First, I have to see if he was making reasonable and customary efforts to find a suitable job, then I have to see if he was capable and available for work.

ANALYSIS

Reasonable and customary efforts to find a job

[5] Two different sections of the law require claimants show that they are available for work;¹ 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.

¹ Section 50(8) of the *Employment Insurance Act* provides that a claimant may be required to prove that he is making reasonable and customary efforts to obtain suitable employment. Section 18(1)(a) provides that a claimant is not entitled to be paid benefits for a working day in a benefit period for which he fails to prove that on that day he was capable of and available for work and unable to obtain suitable employment.

[6] The law sets out criteria for me to consider when deciding whether the Claimant's efforts are reasonable and customary.² I have to look at whether his 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 Claimant is employed at a seafood processing plant. This work is seasonal and offers variable hours each week. He was laid off from his employment in February 2019 and recalled to his job on May 6, 2019. He was laid off again in July and recalled again in August 2019. He applied for EI benefits during one of his lay-offs.

[8] The Claimant testified at the hearing with the help of an interpreter. He said that he started looking for work on June 23, 2019. He visited three employers and asked about potential jobs. He filled out applications at X and X. He stated that he was willing to accept any job that was offered to him.

[9] The Claimant also said that he asked friends about prospective jobs but there were no jobs available in their places of employment. He did not look for ads in the newspaper or in online job databases because he was not familiar with using those methods to find a job. He also said that he did not have a curriculum vitae made and instead relied on submitting job applications with each employer.

[10] The Claimant networked with friends for job opportunities. He visited three prospective employers and applied for two jobs on June 23, 2019. The Claimant made some efforts to find a job but he did not make enough efforts to show that he was sincerely looking to find work. His efforts were also not sustained, or carried out over a longer period of time. He applied for two jobs on one day but did not continue his search after that. He also did not search for work before June 23, 2019, despite being laid off before that date. For those reasons, I believe the Claimant

² These are found at section 9.001 of the *Employment Insurance Regulations*.

has not made the broad search effort described in section 9.001 of the *Employment Insurance Regulations*. Therefore, he has not shown that he made reasonable and customary efforts to find a suitable job.

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

[11] Capability of work relates to your ability to perform the functions of your regular or usual employment or some other suitable employment.³ In this case, there is no dispute that the Claimant was capable of work during the period in question.

[12] To prove he was available for work, the Claimant has to show three things:

1. A desire to return to the labour market as soon as a suitable job is available
2. That he expressed that desire through efforts to find a suitable job
3. That he did not set personal conditions that might unduly limit his chances of returning to the labour market⁴

[13] I have to consider each of these factors to decide if he was available for work by looking at his attitude and conduct.⁵

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 work as soon as a suitable job is available. He testified that was looking for stable work, because his job at the seafood processing plant did not give him continuous hours. He said that he may work 20 hours one week and 50 hours in another week, depending on the work that was available. He said that he would accept any employment even if it interfered with his current job. I believe the Claimant had a desire to return to work as soon as he could.

³ *Canada (Attorney General) v. Cauglin*, A-1168-84

⁴ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁵ *Canada (Attorney General) v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

Has the Claimant made efforts to find a suitable job?

[15] The Claimant did not make 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 as guidance in deciding this second factor. For the reasons explained above, the Claimant's efforts to find a new job included networking with friends, contacting prospective employers, and submitting job applications at X and X. These efforts are not enough to meet the requirements of the second factor because the Claimant did not start his job search until June 23, 2019 and limited his applications to only two employers. The Claimant did not look for public job postings and did not have a curriculum vitae prepared for job applications. The Claimant did not do enough to express his desire to return to work.

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

[16] The Claimant did not set personal conditions that might unduly limit his chances of returning to the labour market. The Commission says the Claimant's work permit restricts him to work for one employer in one occupation and that he would be unable to accept new employment without obtaining a new work permit. The Claimant says that if he was offered a new job, he could get a new work permit. He also provided a letter from his current employer explaining the process for an employee to get a new work permit. The letter states that there are many opportunities for someone on a work permit to find new work in their area.

[17] The Claimant's work permit does restrict his ability to find work, but it is not a personal condition that he has set. As such, I am satisfied that he is not unduly limiting his chances of returning to the labour market and that he has not set any personal conditions.

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

[18] 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.⁶

CONCLUSION

[19] The Claimant is not entitled to receive EI benefits because he has not proven that he was available for work. This means the appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	November 7, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. Z., Appellant

⁶ Section 18(1)(a) of the *Employment Insurance Act*.