



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *N. C. v Canada Employment Insurance Commission*, 2019 SST 1481

Tribunal File Number: GE-19-3537

BETWEEN:

N. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Manon Sauvé

HEARD ON: November 21, 2019

DATE OF DECISION: November 29, 2019

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] N. C., the Appellant, works as a school bus driver for X. She also works for the City of X in maintenance. On June 21, 2019, she stopped working because of a shortage of work. The Appellant filed a claim for Employment Insurance benefits. The Commission refuses to pay her benefits because she is not available for work. The Appellant is restricting her job search to positions as a school bus driver. According to the Appellant, there are no jobs in her field.

ISSUES

1. Was the Appellant available for employment starting on July 22, 2019?
2. Did the Appellant make reasonable and customary efforts to find employment?

ANALYSIS

[3] The *Employment Insurance Act* (Act)¹ states that, to be entitled to Employment Insurance regular benefits, a person must show that they are capable of and available for work but unable to find suitable employment. The Appellant must prove that she was available for work starting on June 24, 2019.²

[4] Availability is assessed for each working day in a benefit period for which the claimant can prove that, on that day, they were capable of and available for work and unable to obtain suitable employment.³

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

² *Canada (Attorney General) v Renaud*, 2007 FCA 328.

³ *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

Issue 1: Was the Appellant available for employment starting on June 24, 2019?

[5] Availability is not defined in the Act. The Federal Court of Appeal has established that availability for work must be determined by analyzing three factors: 1) the desire to return to the labour market as soon as a suitable job is offered; 2) the expression of that desire through efforts to find a suitable job; and 3) not setting personal conditions that might unduly limit the chances of returning to the labour market, and that the three factors must be considered in reaching a conclusion.⁴

The desire to return to the labour market as soon as a suitable job is offered

[6] I note that the Appellant has worked as a school bus driver for a number of years. She is also employed by the City of X. She works 10 hours a week in maintenance. She is paid \$160 per week. When she was laid off, she continued to work for the City of X. She would like to have employment in the transportation industry that is not seasonal.

[7] I am of the view that the Appellant had the desire to return to the labour market as soon as a suitable job was offered. In fact, she already had employment with the City, and she wanted to supplement her hours.

The expression of that desire through efforts to find a suitable job

[8] I note from the Appellant's testimony and the information on file that she made efforts to find employment with the city's public transportation company. She made no other efforts because she has seasonal employment.

[9] According to the Commission, the Appellant has not proven her availability for work starting on June 24, 2019, because she has not shown an intention to look for employment other than as a school bus driver. The Appellant limits herself to her part-time self-employment in maintenance when she is not working as a school bus driver. Furthermore, she has not shown an intention to look for full-time salaried work in that field.

⁴ *Canada (Attorney General) v Boland*, 2004 FCA 251; *Faucher v Canada (Attorney General)*, A-56-96.

[10] According to the Appellant, she looked for employment in transportation. She also has employment with the City. She is 72 years old and has a vehicle that is not in excellent condition. It is difficult for her to look for employment outside the city. There are few jobs in her city. Still, she has her 10 hours of employment per week with the City.

[11] I am of the view that the Appellant has not proven that she made efforts to find suitable employment. She spoke to public transit employees informally, but she has not made other efforts. She would like to work only in the field of transportation.

[12] I find that the Appellant cannot limit her job search to a particular field.⁵ She cannot be content to wait to return to her employment in August,⁶ regardless of the chances of finding employment. To receive benefits, a person must actively look for employment.⁷

Not setting personal conditions that might unduly limit the chances of returning to the labour market

[13] I am of the view that the Appellant is limiting her chances of returning to the labour market by wanting to only drive buses.

[14] After considering the three factors, I am of the view that the Appellant was not available for employment starting on June 24, 2019.

Issue 2: Did the Appellant make reasonable and customary efforts to find employment?

[15] The Commission may require that the Appellant provide information showing her efforts to find suitable employment. Those efforts must be “reasonable and customary.”⁸ I note that the Appellant did not provide information showing her efforts to find suitable employment. In this context, I find that the Appellant did not make reasonable and customary efforts to find employment.

⁵ *Canada (Attorney General) v Boland*, 2004 FCA 251.

⁶ *Canada (Attorney General) v Cornelissen-O’Neill*, A-652-93.

⁷ *Canada (Attorney General) v Cornelissen-O’Neill*, A-652-93.

⁸ Section 50(8) of the *Employment Insurance Act* and section 9.001 of the *Employment Insurance Regulations* specify what constitutes reasonable and customary efforts.

CONCLUSION

[16] I find that the Appellant is not entitled to receive benefits, because she has not shown that she was available for work within the meaning of the Act.

[17] The appeal is dismissed.

Manon Sauvé
Member, General Division – Employment Insurance Section

HEARD ON:	November 21, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	N. C., Appellant