



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. S. v Canada Employment Insurance Commission*, 2019 SST 1598

Tribunal File Number: GE-19-3958

BETWEEN:

S. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Manon Sauvé

HEARD ON: December 9, 2019

DATE OF DECISION: December 12, 2019

DECISION

[1] The appeal is allowed. The Appellant has shown that she was available for suitable employment as of June 24, 2019.

OVERVIEW

[2] The Appellant, S. S., worked as a crossing guard for X. She was laid off on June 21, 2019, because of a shortage of work. She filed a claim for Employment Insurance benefits with the Commission. A benefit period was established on June 23, 2019. The Appellant was called for an information session on August 21, 2019. She attended the information session. She completed a form and stated that she was voluntarily looking after a friend's children during the week while looking for employment. According to the Commission, the Appellant was not available for work because she was spending her time volunteering for a friend. According to the Appellant, she made efforts to find employment, she was available, and she would have stopped looking after the children if she had had suitable employment.

ISSUES

1. Was the Appellant available for work as of June 24, 2019?
2. Did the Appellant make reasonable and customary efforts to find suitable employment?

ANALYSIS

[3] The Act¹ states that, to be entitled to be paid Employment Insurance regular benefits, a person must prove 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 as of June 24, 2019.²

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

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

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

Issue 1: Was the Appellant available for work as of June 24, 2019?

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

[6] I note that the Appellant has worked as a crossing guard for X for a dozen years. She works an average of 22 hours per week at a rate of \$25 per hour. It is seasonal work. She is laid off because of a shortage of work at the end of the school year, and she is called back to work before classes begin.

1) The desire to return to the labour market as soon as suitable employment is offered

[7] The Appellant testified that she had the desire to return to the labour market as soon as suitable employment was offered. I am of the view that the Appellant has the desire to return to the labour market as soon as suitable employment is available.

2) The expression of that desire through efforts to find suitable employment

[8] I note that the Appellant worked as a fitter-welder for many years. She stopped practising that profession at the age of 56 because of her health problems. The duties of a crossing guard allowed her to work within her limitations. Moreover, at the hearing, the Appellant filed a medical certificate stating that her employment as a crossing guard was within her physical limitations.

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

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

[9] In that context, the Appellant had made efforts to find suitable employment—that is, employment within her limitations. I note that the Appellant was called for an information session on August 21, 2019. She provided a form confirming her job searches. The Appellant testified that she started working again on August 27, 2019. I am of the view that the Appellant made efforts to find suitable employment.

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

[10] I note that the Appellant informed the Commission that she was taking care of a friend's three children voluntarily while waiting to find employment. She could have stopped caring for the children at any time; her daughter or the children's parents could have replaced her. Furthermore, she attended an interview with an employer without a problem.

[11] According to the Commission, the Appellant failed to prove her availability for work from June 24, 2019, to August 23, 2019, because she was looking after three children voluntarily. She failed to show that she made sustained efforts to find employment during that entire period. Moreover, she said that she would not leave her usual part-time employment for full-time employment.

[12] According to the Appellant, she has shown that she was available for work as soon as suitable employment was offered. She did not unduly limit her chances of returning to the labour market. The Appellant could have stopped caring for the children, if she obtained suitable employment. She made efforts to find employment, and she secured an interview.

[13] I am of the view that the Appellant did not unduly limit her chances of returning to work. In reaching this conclusion, I have relied on the Appellant's credible testimony and her efforts to find employment. The Appellant stated that she would stop looking after the children, if she had suitable employment. She conducted job searches, and she participated in a job interview.⁵ This being a question of fact,⁶ I find that the Appellant did not unduly limit her chances of returning to the labour market. She said repeatedly that she would stop looking after the children, if she

⁵ *Canada (Attorney General) v Wang*, 2008 FCA 112 (CanLII).

⁶ *Canada (Attorney General) v Lavita*, 2017 FCA 82 (CanLII).

had employment. And her efforts to find employment show that she was not limited by her search.

[14] Considering the three criteria, I find that the Appellant has shown that she was available for work as of June 24, 2019.

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

[15] Yes. The Commission may require that the Appellant provide information showing her efforts to find suitable employment. Those efforts must be “reasonable and customary.”⁷ The Regulations specify what constitutes reasonable and customary efforts.⁸

[16] According to the Commission, the Appellant failed to show that she made sustained efforts to find employment during the entire period. Moreover, she said that she would not leave her usual part-time employment for full-time employment. A person who is looking for employment and ready and available to work does not take on a full-time commitment voluntarily looking after three children. It is not enough to claim to be available for work. It is up to the claimant to prove that they contacted an employer through reasonable and customary efforts.

[17] According to the Appellant, she made reasonable and customary efforts to find suitable employment. She already has suitable employment as a crossing guard for X. During the summer, she made efforts to find employment with a few companies that could offer her suitable employment.

[18] I note from the Appellant’s credible testimony that she made reasonable and customary efforts to find suitable employment. She made efforts to find suitable employment with employers in her region. She was called for a job interview. She attended the information session, and she completed her form confirming her efforts. Therefore, I am of the view that the Appellant made reasonable and customary efforts to find suitable employment.

⁷ *Employment Insurance Act*, s 50(8).

⁸ *Employment Insurance Regulations*, s 9.001.

CONCLUSION

[19] I find that the Appellant is entitled to be paid benefits as of June 24, 2019, by showing that she was available for work within the meaning of section 18(1)(a) of the Act.

[20] The appeal is allowed.

Manon Sauvé
Member, General Division – Employment Insurance Section

HEARD ON:	December 9, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	S. S., Appellant Kim Bouchard (counsel), Representative for the Appellant