



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. G. v Canada Employment Insurance Commission*, 2019 SST 1563

Tribunal File Number: GE-19-4083

BETWEEN:

S. G.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Claimant

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Leanne Bourassa

HEARD ON: December 19, 2019

DATE OF DECISION: December 20, 2019

DECISION

[1] The Claimant has not shown that she was available for work. This means that she is disentitled from being paid employment insurance (EI) benefits.

OVERVIEW

[2] The Claimant left her job of 15 years with Canada Post and made a claim for regular EI benefits. The Commission refused her claim on the grounds that she would only accept part-time work of 4 hours per day and therefore she had not proven her availability for full-time work. The Claimant asked for reconsideration of the claim and the Commission again refused on the same grounds.

[3] Claimants have to be available for work to be paid regular 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 June 23, 2019, because she was not available for work.

[4] I must decide whether the Claimant has proven¹ that she was available for work. The Commission says that the Claimant was not available because she was limiting herself to only part-time work. The Claimant disagrees and states that full time work would be beyond her capacities and it was a safe and reasonable decision to seek part-time work. No one has shown her a regulation that prohibits part-time work.

ISSUE

[5] Was the Claimant available for work?

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

ANALYSIS

Reasonable and customary efforts to find a job

[6] 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 consider whether the Claimant has proven that her efforts to find a job were reasonable and customary.³

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

[8] I find that the Claimant did not do enough to prove her job search efforts were sustained and directed towards finding a suitable job. She has not proven that her efforts to find a job were reasonable and customary.

The Claimant's efforts to find a job

[9] The Claimant provided a document showing efforts she had made and help she had received in preparing her resume and cover letters and doing a mock interview. While I do

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 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*.

consider these activities to be useful for finding a job, I note that all of these efforts were made before the Claimant was unemployed. Because of this they do not help prove that she was making customary efforts to find a job while she was unemployed.

[10] The Claimant also submitted to the Commission a document setting out her job search activities. She lists organizations she had approached about jobs, the date she contacted the organization and the method she used to reach out to them. I note from this list that the Appellant's efforts began around June 25th and she appears to have approached one potential employer per week, occasionally two, either in person, by phone or by internet. In some cases, she left a resume or cover letter. Another document she submitted indicates that for the first 6 organizations on her list, her inquiries were limited to inquiring "Is there, or will there be work available?"

[11] From the job search information supplied by the Claimant, I am not satisfied that her job search activities were sustained enough to be considered reasonable or customary. One or two inquiries a week to inquire if a company was or was not hiring is not sufficient to prove the Claimant was making a serious effort at finding a new job.

Were her efforts directed at finding a suitable job?

[12] I am not convinced that the Claimant's job search was directed towards finding a suitable job. The *Employment Insurance Regulations* say that when evaluating what constitutes suitable employment, criteria that should be considered includes whether the claimant's health and physical capabilities would allow them to perform the work.⁵

[13] At the hearing I questioned the Claimant with respect to the fact that several of the jobs that she sought out were at greenhouses or horticultural processing. This seemed unusual because in support of her claim, the Claimant had provided a medical note indicating that she could not do jobs that involved heavy lifting. She had also testified that she was dealing with arthritis and back pain. A greenhouse job would likely require some physical activity, which the Claimant had indicated was a contributing factor of her leaving her previous job and her desire to only seek part-time work. The Claimant answered that there were a lot of jobs in a greenhouse that did not

⁵ Section 9.002 of the *Employment Insurance Regulations*

require lifting. In light of the other physical limitations that the Claimant suggested were contributors to her leaving her previous job, including arthritis and back pain, I am not convinced that greenhouse work is suitable for her.

[14] The other jobs the Claimant applied for were as a mental health or social services worker. She explained that she had focused on those types of jobs and horticultural work as she had experience in those settings. Prior to beginning to work for Canada Post 15 years ago she had worked in mental health services. When asked if her qualifications to work in that area were up to date, she explained that she had stopped doing that work because she lost the zeal for it after experiencing a dangerous situation, but that she could go back now. Again, as she had indicated that physical and mental health issues such as anxiety were factors that lead to her departure from her previous job, I have not been convinced that this type of job meets the criteria of a suitable job.

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

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

- A desire to return to the labour market as soon as a suitable job is available
- That desire expressed through efforts to find a suitable job
- No personal conditions that might have unduly limited their chances of returning to the labour market⁷

[16] 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

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.

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

[17] The Claimant did not show a desire to return to the labour market as soon as a suitable job was available.

[18] While the Claimant did indicate that she was willing to work and did look for a job, I find, for the reasons mentioned above, that her efforts to find a job were not sustained. Her conduct in doing a limited job search and only contacting 1 or 2 employers a week does not demonstrate a desire to return to work as soon as a suitable job was available.

Has the Claimant made efforts to find a suitable job?

[19] The Claimant did make efforts to find a 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. As explained above, the Claimant's efforts to find a new job included visiting local organizations to see if they were hiring, cold calling organizations working in her areas of interest and experience and applying for jobs on the internet.

[20] However, I find these efforts were not enough to meet the requirements of this second factor because I am not convinced that the jobs she was seeking out were suitable for her given her health and physical capabilities. Having argued that her physical and mental capabilities would not allow her to work full-time, I am not convinced that jobs that would have obvious significant physical and mental exertions would be suitable for the Claimant.

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

[21] The Claimant did set personal conditions that might have unduly limited her chances of returning to the labour market. The Claimant says she did not do this, because with her age and physical limitations, it was the responsible and safe choice to limit herself to part-time jobs. The

Commission says that since the Claimant was only looking for part-time work she was setting a personal condition that limited her chance of finding employment.

[22] The Claimant questions why looking for part-time employment is not good enough to prove availability. The answer is not that part-time employment is not allowed, but that limiting your job search to part-time employment, to the exclusion of full-time jobs, reduces the number of jobs available to you. This, in turn, reduces your chances of returning to the job market.

[23] The Claimant argues that she feels she can only manage part-time work because of certain physical and mental health issues. I found her testimony at the hearing to be sincere and I do believe that she does have physical and mental health challenges that could affect the type of job she could do. However, if she was to limit her job search because of these issues, she needed to provide support for her claim that only part-time employment was suitable for her. She did provide a medical note from her doctor dated August 26, 2019, but this note only says that she is unable to work at a job involving repetitive lifting. It does not say that she should limit the hours she works.

[24] Also, the Commission's notes show that the Claimant was questioned about what type of jobs she was willing to seek and accept. She replied that she would not accept work as a retail sales clerk, customer service representative, telemarketer, administrative assistant or office clerk, receptionist or secretary or a food and beverage server. At the hearing, she confirmed honestly that she had said she was unwilling to seek and accept those type of jobs and explained that she did not want to be inside under fluorescent lights all day and that she would feel claustrophobic and trapped. She needed the good oxygen, not the bad air.

[25] Again, since the Claimant has not provided any medical support for the limits she is placing on her job search, I must conclude that only working part-time and in certain fields is the Claimant's personal choice and not a medical necessity. Restricting a job search to exclude full-time employment and jobs outside of the horticulture or support work fields does limit the Claimant's chances of returning to the labour market. Since the Claimant set these personal conditions on her job search, I must find that she does not meet this third criteria for demonstrating availability under the *Employment Insurance Act*.

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

[26] Considering my findings on each of the three factors together, I find that the Claimant did not show that was capable of and available for work and unable to find suitable employment.¹⁰ Her job search was limited by personal conditions and was not directed at finding suitable employment.

CONCLUSION

[27] I find that the Claimant has not proven that she was available for work. She is therefore disentitled from receiving regular EI benefits. This means that the appeal is dismissed.

Leanne Bourassa

Member, General Division - Employment Insurance Section

HEARD ON:	December 19, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. G., Appellant

¹⁰ Paragraph 18(1)(a) of the *Employment Insurance Act*.