



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *G. G. v Canada Employment Insurance Commission*, 2020 SST 427

Tribunal File Number: GE-20-491

BETWEEN:

**G. G.**

Appellant  
(Claimant)

and

**Canada Employment Insurance Commission**

Respondent  
(Commission)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Gerry McCarthy

HEARD ON: March 4, 2020

DATE OF DECISION: March 4, 2020

## **DECISION**

[1] The Claimant has not shown that he was available for work. This means that he is disentitled from being paid regular 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 November 18, 2019, because he was not available for work.

[3] I must decide whether the Claimant has proven<sup>1</sup> that he was available for work. The Commission says the Claimant was not available because he was not looking or applying for work due to this health. The Claimant states he was not ready to return to the labour market owing to his mental health.

## **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;<sup>2</sup> 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 are reasonable and customary.<sup>3</sup>

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

<sup>2</sup> 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.

<sup>3</sup> Subsection 50(8) of the *Employment Insurance Act*.

[6] The law sets out criteria for me to consider when deciding whether the Claimant's efforts are reasonable and customary.<sup>4</sup> 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 Commission says the Claimant is not doing enough to try to find a job. The Claimant says he could not return to the labour market owing to his mental health. The Claimant further explained that he was waiting to hear what the situation was with his former employer. I find the Claimant is not making reasonable and customary efforts to find a job for the following reasons:

[8] First: The Claimant testified that he was not available for work owing to his mental health. I recognize the Claimant did apply for a job with the "Canadian Forces" at some point in December 2019. Nevertheless, the Claimant was forthright during the hearing that he was not able to return to the labour market at this point owing to his mental health.

[9] Second: The Claimant has made no efforts to contact other employers about job opportunities. Furthermore, the Claimant has not registered with any online job banks or employment agencies. I realize the Claimant was currently attempting to settle a situation with his former employer. However, the Claimant testified that his former employer ("X") did offer him another job at a lower pay rate in November 2019. The Claimant explained that he did not accept the job because he was not stable enough to return to work and was unhappy with the employer (specifically "X"). The Claimant's refusal to accept the job from his former employer would support his testimony that he was not available to return to the labour market.

[10] In summary: The Claimant has not proven that his efforts to find a job are reasonable and customary.

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<sup>4</sup> Section 9.001 of the *Employment Insurance Regulations*.

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

[11] I must also consider whether the Claimant has proven that he is capable of and available for work and unable to find suitable employment.<sup>5</sup> The Claimant has to prove three things to show he was 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 market<sup>6</sup>

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

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

[13] The Claimant has not shown a desire to return to the labour market as soon as a suitable job is available. In short, the Claimant testified that he was not ready to return to the labour market owing to his mental health. I commend the Claimant for being forthright on this matter. Nevertheless, the Claimant's testimony is that he does not wish to return to the labour market at this point.

Has the Claimant made efforts to find a suitable job?

[14] The Claimant is not making enough of an effort 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. The Claimant's efforts to find a new job did include an application to the "Canadian Forces" in early December 2019. However, this effort is not enough to meet the requirements of this second factor because the

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<sup>5</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

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

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

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

Claimant only made one effort to apply for a job. Furthermore, the Claimant testified that he was not able to return to the labour market at this point owing to his mental health.

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

[15] The Claimant has set personal conditions that unduly limit his chances of returning to the labour market. The Claimant says he was not able to return to the labour market owing to his mental health. The Commission says they were sympathetic to the Claimant's situation, but he has not demonstrated his availability for work. I find that the Claimant has unduly limited his chances of returning to the labour market, because he testified he could not return to the labour market at this point owing to his mental health.

*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 he was capable of and available for work and unable to find suitable employment.<sup>9</sup>

**Additional Submissions from the Claimant**

[17] I recognize the Claimant submitted that the system should be improved and that having to look for work while he was still sick was unfair. However, I wish to emphasize the Claimant did receive his full entitlement to EI sickness and asked to convert his claim to regular benefits on December 4, 2019. I did explain to the Claimant that when he converted his claim to regular benefits he had to prove his availability for work.

[18] I do recognize the Claimant has had a difficult time with his former employer and his circumstances were unfortunate. Nevertheless, the issue before me is whether the Claimant is available for work. On this matter, I must apply the EI legislation. In other words, I cannot ignore, circumvent, or re-write the law even when there were sympathetic circumstances<sup>10</sup>

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<sup>9</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

<sup>10</sup> *Knee v. Attorney General of Canada*, 2011 FCA 301

**CONCLUSION**

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

*Gerry McCarthy*

Member, General Division - Employment Insurance Section

HEARD ON:	March 4, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. G., Appellant