



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. H. v Canada Employment Insurance Commission*, 2020 SST 452

Tribunal File Number: GE-20-1222

BETWEEN:

**A. H.**

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: Leanne Bourassa

HEARD ON: May 12, 2020

DATE OF DECISION: May 20, 2020

## DECISION

[1] The Claimant has not shown that he was available for work. This means that he is disentitled from being paid benefits.

## OVERVIEW

[2] The Claimant left his job because issues with back pain from a previous injury made working painful. He applied for Employment Insurance (EI) sickness benefits and received the full amount of benefits he was entitled to. He then applied for regular EI benefits and asked for his sickness benefits to be converted to regular benefits.

[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 December 3, 2019, because he was not available for work.

[4] I must decide whether the Claimant has proven<sup>1</sup> that he was available for work. The Commission says that the Claimant was not available because even after being informed of his responsibilities, the Claimant failed to make reasonable efforts to obtain suitable employment. The Claimant disagrees and states that he did not know he had to write down the employers he was contacting for work and that the agent was being very confusing.

## ISSUES

[5] Was the Claimant available for work?

## 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;<sup>2</sup> the Commission disentitled the Claimant from being paid benefits under both. I will first

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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.

consider whether the Claimant has proven that his efforts to find a job were reasonable and customary.<sup>3</sup>

[7] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.<sup>4</sup> I have to look at whether his 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] The Commission says that the Claimant did not do enough to try to find a job. The Claimant says that until December 23, 2019 he did not know that he had to be actively looking for work. He says he was however looking for jobs and the efforts he was making were enough to prove that he was available for work. I find that the Claimant has not proved that he was making reasonable efforts to find work.

[9] The Commission's notes show that on December 3, 2019, the Claimant was asked if he was looking for work. He replied that he got Service Canada emails but did not see anything there. At that time he had not applied to any jobs, he was waiting on his EI. Since he had been able to return to work, he had not been looking for work because he was waiting on the EI and wondering what he could do with his back.

[10] On December 19, 2019, the Claimant again told the Commission that he hadn't been looking for suitable employment since he was cleared to return to work because he was waiting on EI. He said that since December 3, 2019 his job search efforts had been "Nothing, really". He had been looking at job sites, but not every day. During a second phone call that day, the Commission agent told the Claimant his benefits would only be allowed until December 3, 2019 because he had been told on that day about the requirements of availability and job search. He was again reminded that regardless of whether or not he was receiving EI benefits, he was still required to be searching for employment.

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

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

[11] When the Claimant asked for this decision to be reconsidered, the Commission spoke to him on February 24, 2010. He told them that since December 19, 2019 he had applied for two jobs. He had not physically passed out any resumes or talked to any employers.

[12] At the hearing, the Claimant confirmed that until December 3, 2019 he did not realize that he had to be actively looking for work. He had been looking for jobs but hadn't been writing them down. While there was not a particular type of job he was looking for he had ideas such as call centers, waiter, clerk, delivery driver, car lot attendant, receptionist, anything that was not too hard on his back. He was looking in the X area up to Saint John. He had updated his resume and occasionally his family members would send him job postings. He was not going to apply for something that had him lift over 50 pounds.

[13] The Claimant explained during the hearing that he was very confused about what was going on with his case. He referred to decisions being made to disqualify him from receiving benefits. Since there was no evidence of that in the evidence submitted by the Commission, I asked the Commission to clarify if the Claimant was subject to any other disqualifications.<sup>5</sup>

[14] The Commission explained that when the Claimant applied for sickness benefits there were possible grounds for him to be disqualified from receiving benefits because he had quit his job. The Claimant's situation allowed the Commission to defer making a decision on that matter and allow the claim for sickness benefits to process. However, once the Claimant applied for regular benefits the Commission had to make a decision on the question of whether he had just cause for quitting his job. The Commission asked the Claimant to submit medical information supporting his quitting his job and finally on December 23, 2019, decided that he did have just cause for leaving his job.

[15] I understand that the Claimant may have been confused because the Commission was asking him about both his reasons for leaving his job and for proof of his availability. Different conversations were about different issues. However, even if there was a possibility that he was going to be disqualified for leaving his job, this would not have prevented the Claimant from looking for a job. In fact, I would think that the possibility of being disqualified would make the

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<sup>5</sup> The Commission was sent a request for investigation and report further to s.32 of the *Social Security Tribunal Regulations* on May 12, 2020. They responded on May 13, 2020.

search for a job more urgent. Waiting for a decision about EI does not show that the Claimant was making reasonable and customary efforts to find a job.

[16] I find that the Claimant has not proven that his efforts to find a job were reasonable and customary.

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

[17] 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>6</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 have unduly limited their chances of returning to the labour market<sup>7</sup>

[18] I have to consider each of these factors to decide the question of availability,<sup>8</sup> looking at the attitude and conduct of the Claimant.<sup>9</sup>

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

[19] The Claimant has not shown a desire to return to the labour market as soon as a suitable job is available. As mentioned above, the evidence shows that he was not conducting much of a job search or applying for jobs. He also indicated that he was waiting for his EI instead of looking for new employment.

Has the Claimant made efforts to find a suitable job?

[20] 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 in deciding this second factor for guidance. For the reasons explained

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<sup>6</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

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

<sup>8</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>9</sup> *Canada (Attorney General) v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

above, the Claimant's efforts to find a new job included considering job offers his family sent him, updating his resume, looking a job sites once in a while and applying for a couple of jobs. These efforts were not enough to meet the requirements of this second factor because the Claimant has not provided any evidence of applying for more than one job over several months, while the Commission has shown there were many jobs available at the time.

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

[21] The Claimant did set personal conditions that might have unduly limited his chances of returning to the labour market. The Claimant says he did not do this, because he was trying to look for jobs that he could do without hurting his back. The Commission has not submitted any arguments on this point. I find that the Claimant was limiting his chances of returning to the job market because he decided to wait for his EI before looking for a job.

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

[22] 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.<sup>10</sup>

**CONCLUSION**

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

Leanne Bourassa  
Member, General Division - Employment Insurance Section

HEARD ON:	May 12, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. H., Appellant

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<sup>10</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.