



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *HR v Canada Employment Insurance Commission*, 2021 SST 222

Tribunal File Number: GE-20-2382

BETWEEN:

H. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: January 6, 2021

DATE OF DECISION: January 19, 2021

Decision

[1] I am dismissing the appeal. The Claimant is disentitled from receiving employment insurance (EI) benefits starting on October 5, 2020, because he was outside Canada. He is also disentitled because did not prove that he was available for work.

Overview

[2] On March 20, 2020, the Claimant was laid off temporarily from his job as an eLearning coordinator. The lay-off became permanent on July 10, 2020. The Claimant was also laid off from a second job in which he drove people to and from hospital appointments.

[3] He left Canada on July 16, 2020, to give moral support to family members in Pakistan. After 15 days of self-isolation on arrival, he started looking for work. His job search was mainly limited to going door-to-door to sign up clients for private lessons in English as a Second Language (ESL).

[4] The Claimant applied for regular EI benefits on October 14, 2020. As of the date of his hearing, he had not yet returned to Canada although he says he plans to return soon.

[5] The Commission decided that the Claimant could not receive benefits starting on October 5, 2020, because he was outside Canada. It also says that the Claimant did not prove he was available for work.

[6] The Claimant disagrees. He says he tried to find work in Pakistan, kept in touch with his former employers in Canada and could have returned within 48 hours if a job came up. He argues that he should get an exception to the out-of-Canada rule because of his circumstances.

[7] I must consider why the Claimant was outside Canada to decide whether he was entitled to an exception. I must also consider whether he was available for work.

Matters I must consider first

[8] After the hearing, the Claimant submitted additional documentation. I accepted this material as relevant to the appeal since it was relevant to his job search.

Issues

[9] **Was the Claimant disentitled from receiving benefits because was outside Canada?**

[10] **Was the Claimant available for work while outside Canada?**

Analysis

Was the Claimant disentitled from receiving benefits because was outside Canada?

[11] The law says you cannot receive EI benefits during any period you are outside Canada.¹

[12] There are limited exceptions to this rule.² They include travelling to visit a seriously ill or injured member of the claimant's immediate family (seven days), to attend a funeral of a close family member (seven days), to attend a job interview (seven days) or conduct a *bona fide* job search (14 days).³

[13] The parties agree that the Claimant travelled outside Canada, leaving on July 14, 2020. He was still outside Canada when he applied for benefits; his benefit period would start on October 5, 2020, if he met the conditions to get benefits. The period I am reviewing starts on that date.

[14] The Commission says the Claimant cannot receive EI benefits because claimants are disentitled from receiving benefits when they are outside Canada. The Commission argues that the Claimant does not meet any of the limited exceptions to this out-of-Canada rule.

[15] The Commission says it also disentitled the Claimant from receiving benefits because he did not show that he was available for work.⁴ The Commission argues that he did not conduct a reasonable and customary job search and that he put personal restrictions on his availability.

¹ S 37(b) of the *Employment Insurance Act* (EI Act). The "period" is calculated in full 24-hour periods. A fraction of a complete day is not counted as a "period" outside Canada (*Canada (Attorney General) v. Picard*, 2014 FCA 46).

² There are some exceptions to the out-of-Canada rule, as set out in the *Employment Insurance Regulations* (Regulations).

³ S 55(1)(f) of the Regulations states that claimants are not disentitled to benefits if they out of Canada for a period of not more than 14 consecutive days to conduct a bona fide job search.

⁴ The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

[16] The Claimant testified that the purpose of his trip was first to visit relatives in Pakistan to give them moral support but he was not travelling to manage a particular family crisis or attend the funeral of a close family member. He says he also planned to look for work since he has been unable to find another job in Canada after he was laid off. He says he heard that there were more job opportunities in Pakistan than in Canada. He argues that an exception should be added to the law to accommodate claimants who try to find work outside Canada. He says the fact that he found clients in Pakistan should prove that he was available for work.

[17] I give low weight to the long list of addresses that the Claimant submitted after the hearing to show that he knocked on many doors after arriving in Pakistan in July 2020.⁵ The list is undated. It does not identify any particular job search efforts after the Claimant lost his ESL clients. The list does not prove that he was in Pakistan in early October 2020, for the purpose of a *bona fide* job search.

[18] I find that the Claimant is disentitled from receiving benefits starting on October 5, 2020, since he was outside Canada during the period of his claim. His testimony does not show that he travelled for any reason that would qualify him for an exception to the out-of-Canada rule. He asked me to allow a new exception but I not have the authority to alter or add to the legislation to accommodate his situation.⁶

Was the Claimant available for work while outside Canada?

[19] Two different sections of the law require claimants to show that they are available for work. The Commission disentitled the Claimant under both of these sections so he must meet the criteria in both sections to get benefits.

[20] First, the *Employment Insurance Act* (Act) says that claimants have to prove they are making “reasonable and customary efforts” to find a suitable job.⁷ The *Employment Insurance*

⁵ GD5-2.

⁶ *Attorney General of Canada v Kneé*, 2011 FCA 301.

⁷ S 50(8) of the *Employment Insurance Act* (Act).

Regulations (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.⁸ I will look at those criteria below.

[21] Second, the Act says claimants have to prove that they are “capable of and available for work” but are not able to find a suitable job.⁹ Case law lists three things claimants must prove to show that they are “available” in this sense.¹⁰ I will look at those factors below.

[22] The Commission decided that the Claimant was disentitled from receiving benefits because he was not available for work based on these two sections of the law. I will now consider these two sections myself to determine whether he was available for work.

Reasonable and customary efforts to find a job

[23] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts were reasonable and customary.¹¹ I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. In other words, claimants have to keep trying to find employment.

[24] I also have to consider the Claimant’s efforts to find a job. The Regulations list nine job-search activities. Here are some examples:¹²

- registering for job-search tools or with online job banks or employment agencies
- contacting employers who may be hiring
- applying for jobs
- attending interviews

[25] The Commission says the Claimant did not do enough to try to find work. It says he did not meet his onus to prove that he was actively searching for a job and could have returned to Canada within 48 hours if offered a job here.

[26] The Claimant disagrees. He says he started to look for work in Pakistan as soon as he completed the mandatory 15-day quarantine. The Claimant says his efforts should prove that he

⁸ See s 9.001 of the *Employment Insurance Regulations* (Regulations).

⁹ See s 18(1)(a) of the Act.

¹⁰ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹¹ See s 9.001 of the Regulations.

¹² See section 9.001 of the Regulations.

was available for work. He went door-to-door to residences and businesses trying to sign on clients to take private lessons in English as a Second Language (ESL). Those jobs were short term but he says he has recently found other work.

[27] The Claimant submitted a 16–page list of the addresses he says he visited after arriving in Pakistan, to try to sign up clients for his ESL classes.

[28] The Claimant says he left his contact information with his two previous employers in Canada, hoping for a call back to work. He also asked a former colleague to look out for jobs for him. He argues that he could have returned to Canada within 48 hours if promised a job. He says he did not apply to any jobs in Canada while he was in Pakistan.

[29] I find that the Claimant has not shown his efforts to find work were reasonable and customary. He did not apply to jobs in Pakistan to prepare for his move; he did not have any interviews or meetings set up for when he arrived as in a *bona fide* job search

[30] Once in Pakistan, the evidence shows that the Claimant focused almost exclusively on only one method of finding a job: going door to door in the hope of signing up clients for private ESL lessons. He reports an interview for a university job, which shows that he applied for just one vacancy. He testified that he visited businesses as well as private homes but his job search list did not include the names of any businesses. This undermines the credibility of his evidence.

[31] The Claimant says he did not apply to any jobs in Canada while in Pakistan, even now to prepare for his return. He has been waiting for his former employers in Canada to call him back to work but claimants must continue searching for jobs rather than waiting for a callback.¹³

[32] The Claimant says there were no jobs for him in Canada but the courts say no matter how little chance of success claimants think they have, only those who are actively seeking work can get benefits.¹⁴ The Claimant did not provide evidence of an active job search for the period starting October 6, 2020, whether in Pakistan or in Canada.

¹³ *De Lamirande v. Canada (Attorney General)*, 2004 FCA 311.

¹⁴ *Attorney General v Cornelissen-O'Neill*, A-652-93.

[33] For these reasons, I find that the Claimant did not make reasonable and customary efforts to find employment.

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

[34] I must also consider whether the Claimant has proved that he was capable of and available for work and unable to find suitable employment.¹⁵ He 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. Expressing that desire through efforts to find a suitable job.
3. No personal conditions that might unduly limit his chances of returning to the labour market.¹⁶

[35] I have to consider each of these factors to decide the question of availability.¹⁷ I must also look at the Claimant's attitude and conduct.¹⁸

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

[36] The Claimant showed a desire to return to the labour market as soon as a suitable job was available. He hoped to be recalled to his jobs back in Canada. He also took on teaching work in Pakistan when it was available, even though it was less lucrative than his last employment.

Has the Claimant made efforts to find a suitable job?

[37] The Claimant did not make enough effort to find a suitable job. While they are not binding in deciding this second factor, I have looked for guidance at the list of job-search activities outlined above. The Claimant's efforts to find a new job were mainly limited to random cold home calls to try to get private teaching work. These efforts are not enough to meet the requirements of this second factor, especially since his background in IT gave him access to plenty of information about prospective employers and companies that had vacancies.

¹⁵ S 18(1)(a) of the *Employment Insurance Act*.

¹⁶ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹⁷ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹⁸ *Attorney General of Canada v Whiffen*, A-1472-92 and *Carpentier v Attorney General of Canada*, A-474-97.

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

[38] I find that the Claimant set such personal conditions. He says he did not do this because he was willing to travel any distance for work and take less salary than he had before. The Commission says his wish to remain in Pakistan rather than to return to Canada is a personal condition that eliminated his access to the Canadian labour market.

[39] I find that the Claimant set a personal condition by limiting his job search to Pakistan. He says he would have returned to Canada within 48 hours if offered a job but I give low weight to that declaration since he had stopped applying to jobs in Canada.

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

[40] Considering my findings on each of the three factors individually, as well as their cumulative impact, I find that the Claimant did not show he was capable of and available for work and unable to find suitable employment.

CONCLUSION

[41] I find that the Claimant is disentitled from receiving benefits starting on October 5, 2020, because he was outside Canada and did not meet any of the exceptions to the out-of-Canada rule. He is also disentitled because he failed to prove that he was available for work. This means that the appeal is dismissed.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	January 6, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	H. R., Appellant