



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AS v Canada Employment Insurance Commission*, 2021 SST 259

Tribunal File Number: GE-21-70

BETWEEN:

A. S.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: February 2, 2021

DATE OF DECISION: February 9, 2021

Decision

[1] The appeal is allowed.

[2] The Claimant has shown that he is available for work. This means that he is not disentitled from receiving benefits

Overview

[3] The Claimant is a temporary foreign worker employed in a processing plant. His hours of work change each week and depend upon the amount of product that is available for processing. His hours of work went down and he applied for EI benefits. The Commission looked at what the Claimant was doing to look for work and decided that he was disentitled from receiving benefits because he was not available for work. The Claimant disagrees with this decision. He says he is looking for work and is available for work.

Preliminary Matters

[4] The Claimant's first language is not English or French, so he communicated at the hearing through an interpreter. The Claimant's sister participated in the hearing. Her language is not English or French, so she communicated at the hearing through the same interpreter. The interpreter affirmed that he would accurately, and to the best of his ability, translate the Claimant's and the Claimant's sister's statements.

Issue

[5] Is the Claimant available for work?

Analysis

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

[7] First, the *Employment Insurance Act* says that a claimant has to prove that they are making “reasonable and customary efforts” to find a suitable job.¹ The *Employment Insurance Regulations* has a list of actions and activities that help explain what “reasonable and customary efforts” mean.² I will look at those below.

[8] Second, the *Employment Insurance Act* says that a claimant has to prove that they are “capable of and available for work” but are not able to find a suitable job.³ Case law lists three things a claimant has to prove to show that they are “available” in this sense.⁴ I will look at those factors below.

[9] 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.

[10] I will now consider these two sections myself to determine whether the Claimant is available for work.

Reasonable and customary efforts to find a job

[11] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts are reasonable and customary.⁵ I have to look at whether his efforts are sustained and whether they are directed toward finding a suitable job. In other words, the Claimant has to keep trying to find a suitable job.

[12] I also have to consider the Claimant’s efforts to find a job. The *Employment Insurance Regulations* list nine job-search activities I have to consider. Some examples of those activities are:⁶ assessing employment opportunities; preparing a résumé or cover letter; registering for job-search tools or with online job banks or employment agencies; networking; contacting employers who may be hiring applying for jobs.

¹ See section 50(8) of the *Employment Insurance Act* (Act).

² See section 9.001 of the *Employment Insurance Regulations* (Regulations).

³ See section 18(1)(a) of the Act.

⁴ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁵ See section 9.001 of the Regulations.

⁶ See section 9.001 of the Regulations.

[13] The Commission says that the Claimant is not doing enough to try to find a job. It says that the Claimant's work permit allows him to work for one employer in one location for a set period of time. It says that although he is working part-time with the employer on his work permit and said he was available and looking for work with other employers he contradicted these statements. The Commission said the contradictions were the Claimant saying he was too busy to look for work, he would not go outside to look for work due to COVID-19, he had not made any applications for work or spoken to other employers, and when he asked friends about work he did not ask those friends the names of their employers.

[14] The Commission said the Claimant has limited his search to the town where he is living because he does not own a car and travels with his sister, he has used the internet on his phone to look for work but does not use job search engines or subscribe to job search alerts. The Commission noted that except for one application made on December 17, 2020, the rest of the applications the Claimant submitted with his appeal were made after he was told on reconsideration he would not be getting EI benefits. Therefore, it says the Claimant's true purpose is to continue working with his current employer rather than trying to secure full time employment with another employer.

[15] The Claimant disagrees. He says that he has been looking for work. He has applied to retail stores and to a fast food restaurant. The Claimant says that he has posted his resume online. The Claimant attached to his appeal to the Tribunal copies of applications he made to several employers. Included are two emails to a restaurant and a storage facility and applications to four stores. The Claimant testified that he also applied at a fast food restaurant and a seafood processor in October 2020. He knocked on doors looking for work. He also googled four other employers which process fish to see if they were hiring in October 2020 and November 2020. The Claimant has also searched for work using the Job Bank and a website called "inworks." The Claimant has a resume, but has not posted it on a job site. The Claimant's sister said she was helping him to look for work by asking her friends who work in home care with her if any work is available.

[16] The Claimant testified that his work permit was extended and that he has a valid social insurance number. The Claimant explained that his work permit continues to be with the same

employer and for the same job where he is currently working. He said that he can get a work permit for a different employer if that employer can issue him a Labour Market Information Assessment (LMIA). It is up to the employer to apply for an LMIA. The LMIA has to be issued to the Claimant before he can have his work permit changed.

[17] I find the Claimant has been making reasonable and customary efforts to find work. He started looking for work in October when he applied to a fast food restaurant and a seafood processor. In December 2020, he made applications to retail stores. He has a resume. He looked on the Job Bank and another website for work, and has googled other employers in his area who process fish to see if they had jobs. The Claimant's sister is also helping him to look for work by asking her friends if there is work available. This evidence tells me the Claimant has made sustained efforts to find work. As a result, I find that the Claimant has proven that he made reasonable and customary efforts to find work.

Capable of and available for work

[18] Case law sets out three factors for me to consider when deciding whether the Claimant is capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:⁷

- a) He wants to work as soon as a suitable job is available.
- b) He has made efforts to find a suitable job.
- c) He has not set personal conditions that might unduly limit his chances of getting work.

[18] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.⁸

⁷ These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision paraphrases those three factors for plain language.

⁸ Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

– **Wanting to work**

[19] The Claimant has shown that he wants to work. The Claimant testified that he needed to work to help feed and take care of his family. He is willing to accept any kind of work. He has continued to work at his current employer. He has also looked for work while he is employed. This evidence tells me the Claimant has a desire to work. As a result, I find that the Claimant's attitude and conduct in looking for work shows a desire to work. Accordingly, I find that the Claimant has met this factor.

– **Making efforts to find a suitable job**

[20] The Claimant has made enough effort to find a suitable job.

[21] I have considered the list of job-search activities given above in deciding this second factor. For this factor, that list is for guidance only.⁹

[22] The Claimant's efforts to find a new job included looking on line for work by googling employers and looking at the Job Bank. He has also applied for jobs at a fast food restaurant, another restaurant, several retail stores and a storage facility. I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

[23] I find those efforts are enough to meet the requirements of this second factor because the Claimant has made reasonable and ongoing efforts to find suitable employment as quickly as possible.

– **Unduly limiting chances of working**

[24] The Claimant has not set personal conditions that might unduly limit his chances of working.

[25] The Commission says that the Claimant could be granted a new work permit for another employer. However, it says that in this case the Claimant himself has failed to prove that he is actively seeking full time employment outside of his part-time employment with his current employer. The Commission says that other employment would be difficult to secure without an

⁹ I am not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

active job search. It says in the Claimant's case, the conditional requirement of obtaining a new work permit is a restriction, although it notes that the work permit is beyond the Claimant's control.

[26] The Claimant testified that his work permit has been extended and that he has a social insurance number. He is willing to work at any type of work and has been applying for work since October 2020. He said he has access to transportation to get to work, he has not placed any limits on the distance that he would travel daily to get to work, there are no times of the day or days of the week that he is unable to work, and he has no health issues that would prevent him from working. The Claimant testified that he is a high school graduate, he has worked in a bakery, as a housekeeper, as a server, and also in a fish processing plant. He is willing to accept work at his current wage rate or lower and is also willing to take a job that would require him to go through on-the-job training. The Claimant testified that he wanted to work full-time.

[27] The Claimant's work permit is not a personal condition that he has set because he has no control over whether an employer will obtain a LMIA so that he, in turn, can be employed under a new work permit. The Claimant has renewed his work permit so that he may continue employment. He has looked for work at those employers, such as fish processors, who might be able to get an LMIA.

[28] I find that the Claimant has not set any personal conditions that might unduly limit his chances of going to work. The Claimant's testimony about his job search efforts support that he did not restrict his job search in any way.

So, is the Claimant capable of and available for work?

[29] Based on my findings on the three factors, I find that the Claimant has shown that he is capable of and available for work but unable to find a suitable job.

Conclusion

[30] The Claimant has shown that he is available for work within the meaning of the law. Because of this, I find that the Claimant is not disentitled from receiving benefits.

[31] This means that the appeal is allowed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	February 2, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. S., Appellant