



Citation: *MN v Canada Employment Insurance Commission*, 2021 SST 465

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: M. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (417876) dated March 31, 2021 (issued by Service Canada)

Tribunal member: Solange Losier

Type of hearing: Videoconference
Hearing date: June 3, 2021
Hearing participant: Appellant
Decision date: June 8, 2021
File number: GE-21-734

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant has not shown that she was available for work. This means that she cannot receive Employment Insurance (EI) benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI regular benefits because she was not available for work. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[4] I must decide whether the Claimant has proven that she was available for work. The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she was available for work.

[5] The Commission says that the Claimant was not available for work because she was caring for her father. The Claimant received EI regular benefits from April 7, 2019 to January 11, 2020. She was disentitled from EI benefits from December 23, 2019.

[6] The Claimant disagrees with the Commission's decision because she had to care for her ill father. She was looking for work and made some efforts, but unable to find work.

Issue

[7] Was the Claimant available for work?

Analysis

[8] 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. So, she has to meet the criteria of both sections to get benefits.

[9] First, the *Employment Insurance Act* (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* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.² I will look at those criteria below.

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

[11] The Commission decided that the Claimant was disentitled from receiving benefits because she was not available for work based on these two sections of the law.

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

Reasonable and customary efforts to find a job

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

[14] I also have to consider the Claimant’s efforts to find a job. The Regulations list nine job-search activities I have to consider. Some examples of those activities are the following:⁶

- assessing employment opportunities
- preparing a résumé or cover letter

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.

- 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
- applying for jobs
- attending interviews
- doing competency tests

[15] The Commission says that the Claimant did not do enough to try to find a job because she only looked for work and applied for jobs on December 3, 2019 and December 10, 2019. They rely on the job list she submitted (GD3-33 to GD3-35).

[16] The Claimant agrees that she applied for the jobs she listed on December 3, 2019 and December 10, 2019. However, she says that she made other efforts because she was always looking for work. After the hearing, she submitted a list of jobs she applied for from mid-March 2021 (GD5-1 to GD5-20).

[17] The Commission replied to the Claimant's job search list and noted that her efforts to find work occurred in 2021, which was outside of the relevant period (GD6-1 to GD6-2)

[18] The Claimant also told the Commission that she went to the library often and applied for a job on Facebook.

[19] I find that the Claimant has not made reasonable and customary efforts because she her efforts were limited to applying for jobs online via indeed on December 3, 2019 and December 10, 2019. This was before she was disentitled to EI regular benefits. At the hearing, I asked if she could recall any job application she made on or after December 23, 2019, but she could not remember.

[20] I was not persuaded by the updated job list she submitted after the hearing because they were outside of the relevant period. She submitted job searches that she made in 2021, but not from the disentanglement period from December 23, 2019 (GD5-1 to GD5-20). I note that she was previously reminded about her obligation to apply for jobs and keep records by the Commission. She also attended a client information session at Service Canada about making efforts to look for work in November 2019.

[21] The Claimant admits that her resume was not updated. I was not persuaded by her explanation that she could not update it during the pandemic while employment centres were closed because the pandemic and subsequent lockdowns were not yet in effect in December 2019.

[22] Therefore, the Claimant has not proven that his efforts to find a job were reasonable and customary and she remains disentitled to EI regular benefits under this section.⁷

Capable of and available for work

[23] Case law sets out three factors for me to consider when deciding whether the Claimant was capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:⁸

- a) She wanted to go back to work as soon as a suitable job was available.
- b) She has made efforts to find a suitable job.
- c) She has not set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

⁷ See section 9.001 of the Regulations; section 50(8) of the Act.

⁸ 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.

[24] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.⁹

– **Wanting to go back to work**

[25] I find that the Claimant has not shown that she wanted to go back to work as soon as a suitable job was available.

[26] She expresses that she wants to work, but at the same time she is unable to do so because she is caring for her father who is ill. He requires her assistance to make foods, take medication and attend ongoing appointments.

[27] She agreed that she told the Commission that she was not able to work from September 2019 because she was looking after her father (GD3-61). She took a leave of absence from her part-time employment in order to care for her father (GD3-47). The medical note on file also shows that she is the father's primary and full-time caregiver (GD3-64 to GD3-65).

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

[28] I find that the Claimant has not made enough efforts to find a suitable job.

[29] 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.¹⁰

[30] The Claimant's efforts to find a new job included applying for jobs online on December 3, 2019 and December 10, 2019, but these were before she was disentitled to EI benefits. She did not apply for any jobs from December 23, 2019. The list of jobs she applied to in 2021 is outside of the relevant period (GD5-1 to GD5-20). I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

⁹ 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.

¹⁰ 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.

[31] Those efforts were not enough to meet the requirements of this second factor because she did not apply for any jobs, did not update her resume, or make any other efforts to find work.

– **Unduly limiting chances of going back to work**

[32] The Claimant has set personal conditions that might have unduly limited her chances of going back to work.

[33] I find that the Claimant has personal conditions that might have unduly limited her chances of going back to work. She admitted that it would be hard to find a job that would work around the care schedule for her father, especially if she had to attend an appointment. For example, she says that her father needs freshly cooked foods, which she must prepare for him.

[34] The Claimant admits that her father has needed her constant care since his diagnosis. It has been a stressful period. She does not want an outside caregiver coming into the home given the pandemic and risk of transmission.

– **So, was the Claimant capable of and available for work?**

[35] Based on my findings on the three factors, I find that the Claimant has not shown that she capable of and available for work but unable to find a suitable job.

Conclusion

[36] The Claimant has not shown that she was available for work within the meaning of the law. Because of this, I find that the Claimant cannot receive EI benefits.

[37] This means that the appeal is dismissed.

Solange Losier
Member, General Division – Employment Insurance Section