



[TRANSLATION]

Citation: *JS v Canada Employment Insurance Commission*, 2021 SST 635

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

**Decision**

**Appellant:** J. S.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (428774) dated August 13, 2021 (issued by Service Canada)

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**Tribunal member:** Josée Langlois  
**Type of hearing:** Videoconference  
**Hearing date:** October 14, 2021  
**Hearing participant:** J. S., Appellant  
**Decision date:** October 15, 2021  
**File number:** GE-21-1665

## Decision

[1] The appeal is allowed.

[2] The Appellant has shown that he was available for work from April 12, 2021, to June 21, 2021.

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant is disentitled to Employment Insurance (EI) regular benefits from April 12, 2021, to June 21, 2021, because he wasn't available for work.

[4] The Appellant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that the Appellant has to be searching for a job.

[5] When it presented its arguments to the Tribunal, the Commission indicated that it was fine with the disentitlement being imposed only from May 10, 2021, to June 21, 2021, because the Appellant hasn't proven his availability for work through reasonable and customary efforts to find a suitable job during that period.

[6] The Appellant explains that he applied for a job and that, on April 28, 2021, he got confirmation that he was hired. But, because of material delivery delays, he started his job on June 22, 2021, when he had expected to start it in early May. He is asking the Tribunal to recognize his job search efforts because he was available for work and searching for a job.

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

## Issue

[8] Was the Appellant available for work from April 12, 2021, to June 21, 2021?

## Analysis

### Reasonable and customary efforts to find a job

[9] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.<sup>1</sup> I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[10] I also have to consider the Appellant's efforts to find a job. The *Employment Insurance Regulations* (Regulations) list nine job search activities I have to consider. Some examples of those activities are the following:<sup>2</sup>

- assessing employment opportunities
- preparing a résumé or cover letter
- registering for job search tools or with online job banks or employment agencies
- contacting employers who may be hiring
- applying for jobs

[11] The Commission argues that the Appellant wasn't available for work because he didn't tell his employer at the hardware store that he had recovered and was available for work as of April 5, 2021.

[12] In its arguments to the Tribunal, the Commission agrees that the Appellant was available for work from April 5, 2021, to May 10, 2021. It is asking to consider the Appellant's disentitlement only for the period from May 10, 2021, to June 21, 2021.<sup>3</sup>

[13] It argues that the Appellant didn't see the point in finding a job because he had the assurance of a job that would not start until June 2021. It doesn't recognize his two

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<sup>1</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations) and section 50(8) of the *Employment Insurance Act*.

<sup>2</sup> See section 9.001 of the Regulations.

<sup>3</sup> GD4-1.

attempts to get a job with a former employer, or his assessing employment opportunities on the Internet, since the Appellant didn't mention doing these things until his file was being reconsidered.

[14] The Commission says that the Appellant made only one attempt to find a job. It argues that there are inconsistencies in the Appellant's versions of the facts because he said that he had contacted two former employers when he had already accepted a job.

[15] The Appellant says that he initially stopped working at the hardware store because of illness. Additionally, for a time, the government required people 65 and older to stay at home. Afterwards, he explains that the employer at the hardware store didn't have work for him that matched his profile.

[16] The Appellant explains that he made efforts to find a job during that period and that he found one at X as the supervisor of a work site in a school. He started that job on June 22, 2021.

[17] From April 12, 2021, to June 21, 2021, the Appellant assessed employment opportunities by checking the Internet daily. For example, he checked the LinkedIn and Emploi-Québec job sites and a job site for retirees.

[18] On April 18, 2021, he applied for a position as the supervisor of a construction site in a school.

[19] The Appellant was invited to a hiring interview that took place on April 28, 2021, and he was offered a job. At that time, the employer could not confirm the start date for his job, since it was waiting for materials needed for the project. The employer told him that it was just a matter of days and that he would be starting soon.

[20] On May 4, 2021, the Appellant attended a meeting with the employer. At that meeting, the employer told him that there would soon be a kickoff meeting with the project architect.<sup>4</sup>

[21] Between May 4, 2021, and May 25, 2021, the Appellant was in regular contact with the employer who would inform him of the status of the project so that he could start work.

[22] Around the same time, he also contacted two former employers—X and X—but they didn't have any jobs for him. He says he contacted these employers because there were delays with X in starting his job.

[23] On May 25, 2021, the Appellant got a text message from the employer informing him that it was still waiting for the materials but that the project could start on June 7, 2021.

[24] The employer then sent the Appellant an email saying that preparations would start on the work site on June 14, 2021.<sup>5</sup>

[25] The Appellant explains that, because of the delivery of the materials, the project actually kicked off on June 22, 2021.

[26] The Appellant argues that, on April 28, 2021, he didn't know that he would not start his job until June 22, 2021. He was waiting and, based on what the employer was telling him, he expected to start in early May. Week after week, the employer pushed back the date because of the delivery of the materials.

[27] The Appellant filed a letter from the employer X confirming when he started providing services. It also confirms communications showing the delays caused by the delivery of the materials.

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<sup>4</sup> GD5.

<sup>5</sup> GD5.

[28] To be able to get regular benefits, the Appellant has to show, on a balance of probabilities, that he made significant efforts to find a job each working day of his benefit period. And I am of the view that this is the case.

[29] The Appellant assessed employment opportunities on the Internet and applied for a job. On April 28, 2021, he got confirmation that he was hired and that, based on project progress and the delivery of certain materials, he could start work in early May 2021. Emails and text messages between the Appellant and the employer show that the employer invited the Appellant to a meeting on May 4 and that, on June 2, 2021, it informed the Appellant that he would start work on June 14, 2021. The facts show that, in the end, the Appellant started work on June 22, 2021.

[30] While he was waiting to start his job, the Appellant still contacted two former employers to find out about employment opportunities despite having confirmation of a job with X, since he was waiting to start it. He also regularly checked job sites for job postings.

[31] The Appellant kept trying to find a job. I find that he has shown that he was available for work from April 12, 2021, to June 21, 2021, within the meaning of section 50(8) of the *Employment Insurance Act* (Act) and under sections 9.001 and 9.002 of the Regulations.

### **Capable of and available for work**

[32] Case law sets out three factors for me to consider when deciding whether a claimant is capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:<sup>6</sup>

- He wanted to go back to work as soon as a suitable job was available.
- He made efforts to find a suitable job.

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<sup>6</sup> 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.

- He didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[33] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.<sup>7</sup>

– **Wanting to go back to work**

[34] The Appellant has shown that he wanted to go back to work as soon as a suitable job was available.

[35] He explains that he looked for a job throughout the disenfranchisement imposed and that he found one.

[36] The Appellant showed a desire to go back to work. I have to determine whether he made suitable job search efforts or whether he had personal conditions that unduly limited his chances of going back to work during that period.

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

[37] To be able to get EI benefits, the Appellant is responsible for actively looking for a suitable job.<sup>8</sup>

[38] The Appellant looked at job postings on websites, and he contacted two former employers to find out about employment opportunities.

[39] On April 18, 2021, he applied for a job with X. He was invited to a hiring interview, and he was hired on April 28, 2021. The employer then told him that it was just a matter of days before he would start, but, as explained earlier, because of project progress and material delivery delays, the job actually started on June 21 [sic], 2021. But, the Appellant didn't know on April 28, 2021, that he would not start until then.

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<sup>7</sup> Two decisions set out this requirement. Those decisions are *Attorney General of Canada v Whiffen*, A-1472-92; and *Carpentier v The Attorney General of Canada*, A-474-97.

<sup>8</sup> This principle is explained in the following decisions: *Cornelissen-O'Neil*, A-652-93; and *De Lamirande*, 2004 FCA 311.

[40] A claimant's availability is essentially a question of fact, and the Appellant must prove that he was available for work each working day of his benefit period to be entitled to receive benefits.<sup>9</sup>

[41] The facts in the record and the Appellant's testimony show that he was available for work each working day of his benefit period. The Appellant applied for a position, and he was offered a job. While waiting to start his job, he continued his efforts by assessing employment opportunities. He explains that he has always worked in construction and that he operates through networking by checking with former employers whether there are jobs available.

[42] The Appellant has shown that he intended to re-enter the labour market as soon as a suitable job was offered.

[43] I find that the Appellant expressed his desire to return to the labour market through significant efforts to find a suitable job each working day of his benefit period from April 12, 2021, to June 21, 2021.

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

[44] Although he had initially applied for sickness benefits on November 3, 2020, when he renewed his claim for benefits, the Appellant claimed regular benefits. He was able to work as of April 5, 2021. He explains that he stopped working in a hardware store because of a shortage of work. In the end, he resigned from his position on May 4, 2021, because he had found a job with X.

[45] The Commission finds that, from April 5, 2021, to May 10, 2021, the Appellant had no conditions that might have limited his chances of finding a suitable job. It is asking that the disentitlement initially imposed as of April 12, 2021, not start until May 10, 2021.

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<sup>9</sup> This principle is explained in the following decision: *Landry*, A-719-91.



[46] The employer X hired the Appellant on April 28, 2021. It then told the Appellant that he would start his job soon, once the materials were delivered. The Appellant was in contact with the employer every week and, in the end, he started his job on June 22, 2021.

[47] The Appellant had no personal conditions that unduly limited his chances of going back to work.

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

[48] I have to apply the criteria for determining whether the Appellant was available for work within the meaning of the Act and whether he can receive benefits from April 12, 2021, to June 21, 2021.

[49] Based on my findings on the three factors, I find that the Appellant has shown that he was capable of and available for work. He also got confirmation of a job on April 28, 2021.

## **Conclusion**

[50] The Appellant has shown that he was available for work within the meaning of the Act. Because of this, I find that he is entitled to receive benefits.

[51] This means that the appeal is allowed.

Josée Langlois  
Member, General Division – Employment Insurance Section