



Citation: *NR v Canada Employment Insurance Commission*, 2021 SST 745

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

# **Decision**

**Appellant:**

N. R.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (432272) dated September 7,  
2021 (issued by Service Canada)

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**Tribunal member:**

Gary Conrad

**Type of hearing:**

Teleconference

**Hearing date:**

October 18, 2021

**Hearing participant:**

Appellant

**Decision date:**

October 19, 2021

**File number:**

GE-21-1754

## Decision

[1] The appeal is dismissed. The Claimant has not proven that he is available for work.

## Overview

[2] Claimants have to be available for work in order to get regular employment insurance (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 from June 7, 2021, because he was not applying for jobs and had restrictions in the kind of work he could do.<sup>1</sup>

[3] The Claimant testified he was away from his job since March 20, 2020, due to being sick. He says that he never quit his job, nor was he fired, he was always planning to go back to his job once he got better.

[4] He says he found out in August 2021, that his position no longer existed as his employer had lost that contract, and that they had no other work he could do with his limitations.

[5] I must decide whether the Claimant has proven<sup>2</sup> that he is available for work.

## Matter I have to consider first

[6] In their submissions the Commission states they disentitled the Claimant under subsection 50(8) of the *Employment Insurance Act* (Act). Subsection 50(8) of the Act relates to a person failing to prove to the Commission that they were making reasonable and customary efforts to find suitable employment.

[7] In looking through the evidence, I did not see any requests from the Commission to the Claimant to prove his reasonable and customary efforts, or any claims from the Commission that if they did, his proof was insufficient. I further find the Commission did

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<sup>1</sup> GD04-2

<sup>2</sup> The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

not make any detailed submissions on how the Claimant failed to prove to them that he was making reasonable and customary efforts; the Commission only summarized what the legislation says in regard to subsection 50(8) of the Act and what it says about reasonable and customary efforts.

[8] Based on the lack of evidence the Commission asked the Claimant to prove his reasonable and customary efforts to find suitable employment under subsection 50(8) of the Act, the Commission did not disentitle the Claimant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

## Issue

[9] Is the Claimant available for work?

## Analysis

[10] The law requires claimants to show that they are available for work.<sup>3</sup> In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.<sup>4</sup>

[11] The Claimant has to prove three things to show he is available

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 unduly limit his chances of returning to the labour market<sup>5</sup>

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<sup>3</sup> 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.

<sup>4</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

<sup>5</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[12] I have to consider each of these factors to decide the question of availability,<sup>6</sup> looking at the attitude and conduct of the Claimant.<sup>7</sup>

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

[13] I find the Claimant does have a desire to return to the labour market as soon as a suitable job is available.

[14] The Claimant testified that once he was well enough to return to work he always planned to go back to work with his employer. He says that once he found out his position no longer existed he contacted his employer to see if there was any other positions open, but they had nothing that worked with his limitations.

[15] The Claimant says he needs to work to make ends meet and as soon as he is better and has no more restrictions he will go back to work for his employer.

[16] I find the Claimant did have a desire to return to the labour market. I accept the Claimant thought he had a position to return to when he got better and that he was planning to go back to work with his employer when he was better.

[17] I find the emails he sent his employer<sup>8</sup> trying to see if he could work in another position, after he found out there was no longer a position waiting for him, shows that he did want to return to the labour market.

[18] I further accept the Claimant needs to work for financial reasons and I find this need supports a desire to return to the labour market.

Is the Claimant making efforts to find a suitable job?

[19] I find the Claimant is not making enough efforts to find a suitable job.

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<sup>6</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>7</sup> *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

<sup>8</sup> GD02-8

[20] The Commission submits the Claimant said multiple times that he was not looking for work until he was notified of his layoff from his employer. The Commission submits the fact the Claimant did not know he was laid-off until August 2021, does not mean they can waive the availability requirements.

[21] The Commission submits there is no evidence the Claimant has applied to any work other than through his regular employer.<sup>9</sup>

[22] I note there is some confusion in the statements of the Claimant in exactly what he has been doing since he found out in the August 11, 2021, letter<sup>10</sup> that he had no position to return to and his employer could not accommodate his restrictions.

[23] The Claimant told the Commission on August 4, 2021, that he could only apply to one type of job and since there were none of those jobs he did not apply for any work.<sup>11</sup>

[24] In the letter accompanying his request for reconsideration the Claimant said that as soon as he found out he did not have a job to return to he spoke to his employer to try and find other jobs. He also says he registered with three different employment companies.<sup>12</sup>

[25] The Claimant told the Commission on September 7, 2021, that he had put himself in with an employment service agency and they sent his emails every day.<sup>13</sup>

[26] In his notice of appeal he says he has signed up with job agencies which are supplying him with a list of jobs.<sup>14</sup>

[27] On an email with his employer dated August 13, 2021, the Claimant wrote in pen that after he got that email saying there was no position for him he stopped looking for

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<sup>9</sup> GD04-4

<sup>10</sup> GD03-34

<sup>11</sup> GD03-25

<sup>12</sup> GD03-33

<sup>13</sup> GE03-37

<sup>14</sup> GD02-6

jobs until he was medically fit to work any job. But, right after that, he says he signed up with several job agencies.<sup>15</sup>

[28] The Claimant testified that he was still employed by his employer, he had never quit and was never laid-off. The Claimant says that he is waiting until he is 100% better with no restrictions, and then he will return to work with them.

[29] The Claimant says he is getting emails from his employer about all the different positions they have open every week and as soon as he is better with no restrictions, he will go back to work for them in one of those positions.

[30] The Claimant says he has his last few medical appointments in November 2021, and then he can hopefully tell his employer he is all clear for work and can start working again.

[31] The Claimant testified he does not understand why the Commission keeps asking him to look for a job when he has a job. He has not quit and has not been fired. He cannot understand why he would need to look for a job when he already has one.

[32] In considering the Claimant's statements to the Commission and his testimony, I choose to place greater weight on the Claimant's testimony for the following reasons.

[33] I clarified with the Claimant several times that he was waiting to return to his employer once he had no more medical restrictions. I find this explains his statements that in his mind he still has a job to return to so he did not need to look for another one.

[34] I clarified with him, more than once, that the job alerts he is getting are alerts from his employer, the one he is waiting to return to.

[35] I find his testimony solves some of the contradictions in his statements. It explains what he handwrote on the email when he wrote that there was no position for him so he stopped looking for jobs until he was medically fit to work any job, but then

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<sup>15</sup> GD02-9

signed up with job agencies.<sup>16</sup> It makes sense if he was signed up for job alerts from his employer that he was waiting to go back to and was waiting until he could medically take any position with his employer.

[36] I also find his testimony more logically consistent as it explains his conduct more clearly. I can understand the Claimant's thinking that he had a job to return to thus there was no need to look for work outside of his employer and he would simply wait to be medically cleared to return to his employer while scanning job alerts from them.

[37] I can understand the Claimant wanting to return to his long-term employer, but only looking for positions with one employer is not sufficient efforts to find employment.

[38] I know the Claimant might have felt he did not have a chance to find employment somewhere else with his restrictions, but no matter how little chance he may have felt he had he still had to look for work.<sup>17</sup>

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

[39] I find the Claimant has set a personal condition that might unduly limit his chances of returning to the labour market, the condition of only wanting to work for one employer.

[40] The Commission submits the Claimant does have medical restrictions that limit his capabilities for work. The Commission contends that these restrictions severely limit job opportunities in the Claimant's regular trade of security work as shown by his employer's statement they could not recall him to work due to his limitations.

[41] I accept the Claimant has medial restrictions, he has consistently said so to the Commission, he testified as such, and his medical information supports as such,<sup>18</sup> but I find those are not personal conditions.

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<sup>16</sup> GD02-9

<sup>17</sup> *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93

<sup>18</sup> GD03-26

[42] The Claimant has no say, or control, over his medical conditions. He did not choose to place any limitations on himself. Further, the concept of suitable employment set out in the law,<sup>19</sup> supports that medical limitations are something a claimant can work around, thus allowing them to still be found available.

[43] However, I find the Claimant only wanting to work for the same employer he was working for prior to getting sick in March 2020, is a personal condition that would unduly limit his chances of returning to the labour market. His testimony he is waiting to return to them and will go back to work with them once he is 100% better, along with his testimony he already has a job so has no need to look for one, supports he is only wanting to work with the one employer.

[44] I find this is a personal choice as it is the Claimant's choice to only want to return to work with the one employer.

[45] I find it also unduly limits his chances of returning to the labour market as it limits his job searches to a single employer. This means there may be other jobs he could work at that he will never apply to. I find severely restricting the amount of jobs he can apply for does unduly limit his chances of return to the labour market

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

[46] Considering my findings on each of the three factors together, I find that the Claimant did not show that he is capable of and available for work and unable to find suitable employment.<sup>20</sup>

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<sup>19</sup> See section 9.002 of the *Employment Insurance Regulations*

<sup>20</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.



**CONCLUSION**

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

Gary Conrad  
Member, General Division – Employment Insurance Section