



[TRANSLATION]

Citation: *LN v Canada Employment Insurance Commission*, 2021 SST 919

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

Decision

Appellant: L. N.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (417141) dated March 22, 2021 (issued by Service Canada)

Tribunal member: Nathalie Léger
Type of hearing: Teleconference
Hearing date: July 14, 2021
Hearing participant: Appellant
Decision date: July 14, 2021
File number: GE-21-996

Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't shown that he was available for work. This means that he can't receive Employment Insurance (EI) benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI regular benefits from November 2, 2020, to January 21, 2021, because he wasn't 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 have to decide whether the Claimant has proven that he was available for work. The Claimant 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.

[5] The Commission says that the Claimant wasn't available because he had functional limitations that prevented him from working. The Commission also found that the Claimant hadn't made reasonable and customary efforts to find a job in the circumstances.

[6] The Claimant disagrees and says that, even though he has some limitations related to his health, he wants to go back to work and would be able to do so if he were to find employment within his limitations.

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, he 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” means.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 he wasn’t 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.

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.

[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
- registering for job search tools or with online job banks or employment agencies
- applying for jobs

[15] The Commission says that the Claimant didn't do enough to try to find a job. On three different occasions, he told the Commission that he hadn't looked for a job,⁷ but he has contradicted this.⁸ He wasn't able to provide the Commission with a list of his job search efforts during the period in question, mainly because of memory problems due to his medication.⁹

[16] The Claimant disagrees. At the hearing, he said that he had talked to all his contacts in security to find out about job opportunities. This is how he knows how to find work. In his view, sending a large number of job applications isn't the right way to go about it. The Claimant says that his efforts were enough to prove that he was available for work.

[17] I find that the Claimant hasn't shown that he made reasonable and customary efforts to go back to work. Even though his age and poor health undeniably complicate his job search, and even though the Tribunal is sympathetic to his situation, the fact is that the Claimant made very little effort to find work. The obligation to look for work is central to the Act, and the Tribunal can't circumvent this requirement.¹⁰ Talking to your contacts isn't enough to meet the "sustained efforts" requirement.

⁶ See section 9.001 of the Regulations.

⁷ See GD3-13, GD3-18, and GD3-29.

⁸ See, for example, GD3-19, GD3-20, and GD3-24; and testimony at the hearing.

⁹ GD3-20.

¹⁰ *De Lamirande v Canada (Attorney General)*, 2004 FCA 311.

Capable of and available for work

[18] 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:¹¹

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

[19] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.¹²

– **Wanting to go back to work**

[20] The Claimant has shown that he wanted to go back to work as soon as a suitable job was available. He has consistently testified¹³ that he wants to go back to work in a job that is consistent with his functional limitations.

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

[21] The Claimant didn't make enough efforts to find a suitable job.

[22] 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.¹⁴

¹¹ 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.

¹² 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.

¹³ See GD3-20, GD3-23, and GD3-24.

¹⁴ 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.

[23] The Claimant's efforts to find a new job were limited to approaching his network of contacts in security. I explained these reasons above when looking at whether the Claimant made reasonable and customary efforts to find a job.

[24] As I mentioned earlier at paragraph 17 of this decision, those efforts weren't enough to meet the requirements of this second factor.

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

[25] Under the Act, unduly limiting your chances of going back to work can be the result of a personal choice, like just wanting to work for your previous employer. But it can also include involuntary obstacles. In a 2010 decision, the Federal Court of Appeal said: "By obstacle, we mean any constraint of a nature to deprive someone of his or her free choice, such as family obligations or a lessening of the individual's physical strength."¹⁵

[26] The Claimant has a medical condition that, under the Act, is probably a personal condition that unduly limits his chances of going back to work. In its written submissions,¹⁶ the Commission says that there isn't enough specific factual evidence to decide this issue.

[27] Yet, the Claimant has consistently testified that he can no longer do just any kind of work and that he is just looking for work within his physical and health limitations.¹⁷

[28] I find that the Claimant has a personal condition—his medical condition—that unduly limits his chances of going back to work.

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

[29] Based on my findings on the three factors, I find that the Claimant hasn't shown that he was capable of and available for work but unable to find a suitable job. I find this

¹⁵ *Canada (Attorney General) v Leblanc*, 2010 FCA 60.

¹⁶ See GD4-5.

¹⁷ See GD3-20 and GD3-21 and the Claimant's testimony at the hearing.

mainly because he made none, or very few, of the required reasonable and customary efforts to find a suitable job.

Conclusion

[30] The Claimant hasn't shown that he was available for work within the meaning of the law. Because of this, I find that the Claimant can't receive EI benefits.

[31] This means that the appeal is dismissed.

Nathalie Léger

Member, General Division – Employment Insurance Section