



Citation: *ZW v Canada Employment Insurance Commission*, 2022 SST 165

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant (Claimant): Z. W.
Representative: Sandra Guevara-Holguin

Respondent (Minister): Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (446243) dated January 4, 2022
(issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference

Hearing date: February 18, 2022

Hearing participants: Appellant
Appellant's representative
Witness

Decision date: February 18, 2022

File number: GE-22-306

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown that he was available for work while in school. This means that he isn't disentitled from receiving Employment Insurance (EI) benefits. So, the Claimant may be entitled to benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI regular benefits as of November 14, 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 the Claimant wasn't available, because he was in school on his own initiative and his job-search information didn't include all the requested details.

[6] The Claimant disagrees and says he was available for work and his job-search documents shows that he applied to over 12 employers.

Matter I have to consider first

[7] The Claimant's representative filed documents on the day of the hearing. The documents contained information on the Claimant's courses that he took at the University of Winnipeg from September 2021 to December 2021. The documents were relevant to the appeal and I accepted them as evidence (GD6). The Claimant's representative explained that these documents were included with the Claimant's job search list when they were filed with the Commission in mid-January 2022. However, the Claimant's representative explained that for some reason the Commission didn't include these documents in the Appeal file.

Issue

[8] Was the Claimant available for work while in school?

Analysis

[9] 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.

[10] 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.

[11] 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.

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.

[12] 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.

[13] In addition, the Federal Court of Appeal has said that claimants who are in school full-time are presumed to be unavailable for work.⁵ This is called "presumption of non-availability." It means we can suppose that students aren't available for work when the evidence shows that they are in school full-time.

[14] I will start by looking at whether I can presume that the Claimant wasn't available for work. Then, I will look at whether he was available based on the two sections of the law on availability.

Presuming full-time students aren't available for work

The Claimant isn't a full-time student

[15] The Claimant isn't a full-time student. So, the presumption doesn't apply to the Claimant.

[16] This means only that the Claimant isn't presumed to be unavailable for work. I still have to look at the two sections of the law that apply in this case and decide whether the Claimant is actually available.

Reasonable and customary efforts to find a job

[17] The first section of the law that I am going to consider says that claimants have to prove that their efforts to find a job were reasonable and customary.⁶

[18] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.⁷ 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.

⁵ See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

⁶ See section 50(8) of the Act.

⁷ See section 9.001 of the Regulations.

[19] 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 are the following:⁸

- 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

[20] The Commission says the Claimant didn't do enough to try to find a job. The Commission says the job search details provided by the Claimant did not clearly show a date when his job search intentions changed following his initial statements made in GD3-9. As a result, the Commission says a termination of the disentitlement (as of a given date) was not recommended.

[21] The Claimant disagrees. He says he applied to over 12 jobs starting in October 2021 and completed a job search workshop on October 18, 2021. The Claimant further says that he dropped a third course he was taking in mid-November 2021 and only had two courses he was managing at that point.

[22] The Claimant says his efforts were enough to prove that he was available for work.

[23] I find the Claimant was making reasonable and customary efforts to find work for the following reasons:

[24] First: The Claimant provided a detailed job-search list that demonstrated he applied for over 12 jobs either directly or through employment agency websites starting in mid-October 2021 (GD3-23 to GD3-28). I realize the Commission submitted that the requested details on the job-search document were not provided and phone numbers were not listed for several of the entries. Nevertheless, the Claimant's testimony

⁸ See section 9.001 of the Regulations.

persuaded me that his job-search efforts listed on the job-search document were legitimate because his statements were forthright, plausible and corroborated by a Witness.

[25] Second: The Claimant's oral testimony further confirmed he was networking with former employers and colleagues about job prospects. For example, the Claimant confirmed he called back "X" about job prospects on November 3, 2021, and was advised to follow-up later (GD3-25).

[26] The Claimant has proven that his efforts to find a job were reasonable and customary.

Capable of and available for work

[27] I also have to consider whether the Claimant was capable of and available for work but unable to find a suitable job.⁹ Case law sets out three factors for me to consider when deciding this. The Claimant has to prove the following three things:¹⁰

- a) He wanted to go back to work as soon as a suitable job was available.
- b) He has 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.

[28] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.¹¹

Wanting to go back to work

[29] The Claimant has shown that he wanted to go back to work as soon as a suitable job was available, because he supplied a job-search list with detailed information on his

⁹ See section 18(1)(a) of the Act.

¹⁰ 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.

¹¹ 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.

efforts he made to go back to work. Furthermore, the Claimant dropped one of his three online courses in mid-November 2021 so that he wouldn't have the extra responsibility of a third course while looking for work. I realize the Claimant initially indicated in his application for EI benefits that he hadn't made efforts to find work, because he was focusing on his courses until they were completed. However, I place greater weight on the Claimant's oral testimony during the hearing that he wanted to go back to work after his layoff on October 15, 2021, because his statements were forthright, plausible and corroborated by a Witness.

Making efforts to find a suitable job

[30] The Claimant has made enough efforts to find a suitable job.

[31] 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.¹²

[32] The Claimant's efforts to find a new job included applying for jobs directly and through employment agencies, following up with prospective employers, networking with former employers, and completing a job search workshop. I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

[33] Those efforts were enough to meet the requirements of this second factor, because the Claimant specified which employers he contacted in his job-search document and provided details on his follow-up attempts and cold-call efforts.

Unduly limiting chances of going back to work

[34] The Claimant didn't set personal conditions that might have unduly limited his chances of going back to work.

[35] The Claimant says he hasn't done this because he was working and attending school until he was laid off from his roofing job on October 15, 2021. The Claimant

¹² 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.

further says that he was only a part-time student taking two online courses when he applied for EI benefits after being laid off. The Claimant testified that he spent only six-hours per week on the online courses and dropped a third course he was taking in November 2021.

[36] The Commission says the Claimant was not available for work at all hours during a working day because of his course obligations.

[37] I find the Claimant didn't unduly limit his chances of going back to work for the following reasons:

[38] First: The Claimant was only spending six-hours per week on his two courses and could attend the recorded lectures at any time he wished.

[39] Second: The Claimant dropped a third online course he was taking in November 2021.

[40] Third: The Claimant's course work was completely online and didn't involve any in-person classes.

[41] Fourth: The Claimant had previously worked full-time and managed online courses before he was laid off on October 15, 2021.

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

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

Conclusion

[43] The Claimant has shown that he was available for work within the meaning of the law. Because of this, I find that the Claimant isn't disentitled from receiving benefits starting November 14, 2021. So, the Claimant may be entitled to benefits.

[44] This means that the appeal is allowed.

Gerry McCarthy

Member, General Division – Employment Insurance Section