



[TRANSLATION]

Citation: *FA v Canada Employment Insurance Commission*, 2022 SST 396

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

Decision

Appellant: F. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (438624) dated November 9, 2021 (issued by Service Canada)

Tribunal member: Normand Morin

Type of hearing: Videoconference

Hearing date: January 25, 2022

Hearing participant: Appellant

Decision date: February 11, 2022

File number: GE-21-2458

Decision

[1] The appeal is dismissed.

[2] I find that the Canada Employment Insurance Commission (Commission) was justified in disentitling the Appellant from receiving Employment Insurance (EI) benefits for being outside Canada.¹

[3] I also find that the Appellant has not shown that he was available for work from December 14, 2020, until the end of his benefit period on September 25, 2021.² Although he was unable to work for part of the period he was disentitled for being unavailable for work, the Appellant also has not shown that he would have been available for work if he had not been sick.³ His entitlement to EI benefits cannot be established from December 14, 2020.

Overview

[4] From October 17, 2016, to March 12, 2020, the Appellant taught French (second language) for X (X), a language school.⁴

[5] On April 19, 2020, he made an initial claim for EI benefits (regular benefits). He received the EI Emergency Response Benefit until the end of September 2020. The Commission then automatically established a benefit period for EI benefits effective September 27, 2020.⁵

[6] On August 26, 2021, the Commission told him that it was unable to pay him EI benefits from December 14, 2020, because he was outside Canada.⁶

¹ See section 37 of the *Employment Insurance Act* (Act) and section 55 of the *Employment Insurance Regulations* (Regulations).

² See section 18 of the Act and sections 9.001 and 9.002(1) of the Regulations.

³ See section 18(1)(b) of the Act.

⁴ See GD4-7.

⁵ See GD4-1.

⁶ See GD3-15.

[7] On November 9, 2021, after a request for reconsideration, the Commission informed the Appellant that it was upholding its August 26, 2021, decisions about his absence from Canada and his availability for work.⁷

[8] In response to a request from the Tribunal, the Commission says that the decision about the Appellant's availability for work was not considered when it made its initial decision about his absence from Canada. This explains why that decision does not mention availability.⁸ The Commission explains that it made a decision about availability for work when it reconsidered the decision about the Appellant's absence from Canada, since both issues are intrinsically linked.⁹

[9] In its arguments, the Commission also explains that it did not modify the disentitlement to benefits imposed on the Appellant despite his return to Canada on October 5, 2021, because his benefit period was over when he came back.¹⁰ It says that the Appellant's benefit period started on September 27, 2020, and ended on September 25, 2021.¹¹ The Commission says that it maintained the disentitlement because the Appellant was disentitled until the end of the benefit period.¹²

[10] According to the Appellant, he was outside Canada from December 12, 2020, and returned to Canada on October 5, 2021. He says that he went to the Dominican Republic to visit friends and relatives and to be treated for health reasons. The Appellant explains that he was supposed to return to Canada a few weeks after he left or by late January 2021 but was unable to do so until October 5, 2021, due to a number of circumstances. The Appellant says that he contracted COVID-19¹³ in January 2021 and had to self-isolate for a period of time. He explains that he tried to return to Canada starting in February 2021 but was unsuccessful despite his efforts. The Appellant attributes this situation to Canada's border and airport closures and to his flights getting

⁷ See GD2-8, GD3-110, and GD3-111.

⁸ See GD10-1.

⁹ See GD10-1.

¹⁰ See GD4-3.

¹¹ See GD4-3.

¹² See GD4-3.

¹³ Coronavirus disease 2019.

cancelled or delayed with the airlines he had booked with. The Appellant argues that he was available for work from December 14, 2020, except during his time recovering from COVID-19. He says that he did not stop looking for work. The Appellant explains that he was supposed to start working in January 2021, but the contract fell through. In addition, he indicates that he was supposed to carry out another teaching contract, but it also fell through. On December 6, 2021, the Appellant challenged the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

Issues

[11] I have to decide whether the disentitlement to EI benefits imposed on the Appellant for being outside Canada is justified.¹⁴

[12] I also have to decide whether the Appellant was available for work from December 14, 2020.¹⁵ To decide this, I have to answer the following questions:

- Did the Appellant show a desire to go back to work as soon as a suitable job was available?
- Did the Appellant express that desire through efforts to find a suitable job?
- Did the Appellant set personal conditions that might have unduly limited his chances of going back to work?

Analysis

Absence from Canada

[13] Except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during which they are not in Canada.¹⁶

¹⁴ See section 37 of the Act and section 55 of the Regulations.

¹⁵ See section 18 of the Act and sections 9.001 and 9.002(1) of the Regulations.

¹⁶ See section 37(b) of the Act.

[14] The *Employment Insurance Regulations* (Regulations) describe when a claimant who is not in Canada is not disentitled from receiving benefits.¹⁷

[15] For example, a claimant is not disentitled from receiving benefits when they are outside Canada for the purpose of undergoing, at a hospital, medical clinic, or similar facility outside Canada, medical treatment that is not readily or immediately available in the claimant's area of residence in Canada, if the hospital, clinic, or facility is accredited to provide the medical treatment by the appropriate governmental authority outside Canada.¹⁸

[16] In this case, I find that none of the reasons cited by the Appellant can entitle him to receive benefits for the period he was outside Canada from December 12, 2020.

[17] The Appellant's testimony and statements indicate the following:

- a) He wanted to see friends and relatives and address his health problems.
- b) He was supposed to return to Canada in late January 2021 but was unable to do so then, having contracted COVID-19 in January 2021.¹⁹ Contrary to what he indicated in his November 4, 2021, statement to the Commission,²⁰ he did not undergo testing for COVID-19 (for example, a PCR test)²¹ in January 2021 or mid-February 2021, but he was sick at the time. He points out that, if he had been tested for COVID-19, he would have tested positive, given his symptoms (for example, diarrhea and headaches).²² The Appellant was unable to work in January and February 2021. He was in bed for a month during that period. In August 2021, he tested negative on a PCR test.²³

¹⁷ See section 55(1) of the Regulations.

¹⁸ See section 55(1)(a) of the Regulations.

¹⁹ See GD2-1, GD2-7, GD3-23, and GD3-33 to GD3-35.

²⁰ See GD3-33 to GD3-35.

²¹ A PCR (polymerase chain reaction) test is a virological test that is used to determine whether the person being tested is carrying a virus, like SARS-CoV-2, which is responsible for COVID-19.

²² See GD3-88.

²³ See GD2-15, GD2-16, and GD3-100.

- c) Despite his health problems at the beginning of his time outside Canada, his condition later improved (for example, weight loss and resolution of comorbidity symptoms related to his health), as shown by photos provided to the Commission and the Tribunal.²⁴
- d) During his time in the Dominican Republic, he also had weekly blood work. He indicates that this blood work and other tests (for example, ultrasound and CT scan) showed, then confirmed, that he had kidney problems (for example, complex cyst diagnosed in left kidney, gallstones, and fatty liver).²⁵
- e) In his June 11, 2021, statement to the Commission, he indicated that he was outside Canada for medical treatment that was not readily available in his area of residence.²⁶
- f) His August 25, 2021, statement to the Commission reports him as saying that he went to the Dominican Republic to see a doctor, since his doctor in Canada had not made a diagnosis concerning his kidney problem. Once there, he saw a doctor and received medical treatment. After getting the results of the medical tests performed in the Dominican Republic, the Appellant tried to contact his doctor in Canada to find out whether he could be treated there, but was unsuccessful.²⁷
- g) The Appellant's November 4, 2021, statement to the Commission reports him as saying "no" when asked whether he had gone to the Dominican Republic to see a doctor and get medical treatment for a kidney problem, given that his doctor in Canada had been unable to find the source of his health problem. He then indicated that he had gone to the Dominican Republic for the Christmas holidays and to visit relatives and family members. He said that COVID-19 testing had revealed a problem with his left kidney, which led to

²⁴ See GD3-45, GD3-46, GD3-74, and GD3-75.

²⁵ See GD2-10 to GD2-17, GD3-25 to GD3-32, GD3-47 to GD3-50, and GD3-94 to GD3-105.

²⁶ See GD3-13.

²⁷ See GD3-14.

more tests (for example, ultrasound and CT scan). The health problem related to his left kidney was diagnosed [translation] “by chance.”²⁸

- h) Given the results of the medical tests performed in the Dominican Republic, he wanted to return to Canada as soon as possible to be able to look after his health and get medical treatment.²⁹
- i) The Appellant explains that he tried to return to Canada starting in February 2021,³⁰ after recovering from COVID-19, but was unable to do so despite his efforts. He attributes this situation to Canada’s border and airport closures beginning in March 2021 and to his flights getting cancelled or delayed with the airlines he had booked with. He explains that he contacted the Embassy of Canada in the Dominican Republic to be able to return to Canada sooner. He says that it is not his fault that he was unable to do so until October 5, 2021.³¹
- j) He argues that he has been paying EI premiums and his taxes and making pension contributions for 20 years.³²

[18] I find that the Appellant’s arguments do not show that he was outside Canada to undergo, in a hospital, medical treatment that was not immediately available in his area of residence in Canada.³³

[19] In my view, the Appellant self-diagnosed his health and, on his own initiative, decided to go to the Dominican Republic to see a doctor and undergo medical testing in a hospital while also visiting friends and relatives.

²⁸ See GD3-33 and GD3-34.

²⁹ See GD2-1, GD2-17, GD3-14, GD3-23, GD3-33, and GD3-34.

³⁰ See GD3-22.

³¹ See GD2-1 to GD2-3, GD2-7, GD2-23, GD3-14, GD3-21, GD3-33 to GD3-35, GD3-43, GD3-52 to GD3-57, GD3-59 to GD3-66, GD3-114, GD3-115, GD3-118, and GD3-123.

³² See GD3-36, GD3-38, GD3-67, and GD3-115.

³³ See section 55 of the Regulations.

[20] An exception in the Regulations could have applied to the Appellant's case to entitle him to receive benefits if, before leaving Canada, he had received a medical diagnosis and had shown that treatment specific to his medical condition was not available in Canada but was available outside Canada.

[21] I find that the Appellant's situation does not meet any of the exceptions in the Regulations that could help him receive benefits for when he was outside Canada.³⁴

[22] The fact that the Appellant was unable to return to Canada until October 5, 2021, changes nothing.

[23] Aside from the exceptions set out in the Regulations, there is no provision in the *Employment Insurance Act* (Act) or Regulations that says that you can receive EI benefits while absent from Canada.³⁵

[24] The Federal Court of Appeal (Court) tells us that EI benefits are not payable to persons who are outside Canada unless otherwise specified in the Regulations.³⁶

[25] The Court also tells us that a claimant has to prove that they meet the requirements set out in the Regulations to be entitled to receive EI benefits.³⁷

[26] Although the Appellant also argues that he has been paying into the EI fund for 20 years, this does not automatically entitle him to EI benefits. To receive benefits, he has to satisfy the conditions set out in the Act.

[27] In addition, the Court tells us that a person's right to receive benefits is a right that an insured person may exercise, like for any insurance policy, but their entitlement to those benefits depends on various conditions set out by legislation.³⁸

³⁴ See section 55 of the Regulations.

³⁵ See section 55 of the Regulations.

³⁶ The Federal Court of Appeal (Court) established or reiterated this principle in the following decisions: *Gibson*, 2012 FCA 166; and *Bendahan*, 2012 FCA 237.

³⁷ The Court established this principle in *Peterson*, A-370-95.

³⁸ The Court established this principle in *Côté* 1986, A-178-86.

[28] In summary, the Commission was justified in deciding to disentitle the Appellant from receiving benefits from December 14, 2020, for being outside Canada.³⁹

[29] The appeal has no merit on this issue.

Availability for work

[30] Two sections of the Act indicate that claimants have to show that they are available for work.⁴⁰ Both sections deal with availability, but they involve two different disentitlements.

[31] First, a claimant is not entitled to receive benefits for a working day in a benefit period for which the claimant fails to prove that, on that day, the claimant was capable of and available for work and unable to find a suitable job.⁴¹

[32] Second, to prove availability for work, the Commission may require the claimant to prove that they are making reasonable and customary efforts to find a suitable job.⁴²

[33] In response to a request from the Tribunal, the Commission says that, in this case, its decision mainly involves section 18(1)(a) of the Act.⁴³ It argues that the Appellant has not shown that he was available within the meaning of section 18 of the Act because of the restrictions he placed on his availability in relation to his absence from Canada.⁴⁴ The Commission indicates that the analysis of the Appellant's job search efforts under section 50(8) of the Act supports its finding that he was not available for work within the meaning of section 18 of the Act.⁴⁵

[34] Therefore, I will not be looking at whether the Commission required proof of reasonable and customary efforts to find a suitable job.⁴⁶

³⁹ See section 37 of the Act and section 55 of the Regulations.

⁴⁰ See sections 18(1)(a) and 50(8) of the Act.

⁴¹ See section 18(1)(a) of the Act.

⁴² See section 50(8) of the Act.

⁴³ See GD7-1.

⁴⁴ See GD7-1.

⁴⁵ See GD7-1.

⁴⁶ See section 50(8) of the Act.

[35] To decide whether a claimant is available for work, I have to consider the specific criteria set out in the Act for determining whether their efforts to find a suitable job are reasonable and customary.⁴⁷ According to these criteria, the efforts must be 1) sustained, 2) directed toward finding a suitable job, and 3) compatible with nine specific activities that can be used to help claimants get a suitable job.⁴⁸ These activities include assessing employment opportunities, registering for job search tools or with online job banks or employment agencies, contacting prospective employers, and submitting job applications.⁴⁹

[36] The criteria for determining what constitutes suitable employment are the following: 1) the claimant's health and physical capabilities allow them to commute to the place of work and to perform the work, 2) the hours of work are not incompatible with the claimant's family obligations or religious beliefs, and 3) the nature of the work is not contrary to the claimant's moral convictions or religious beliefs.⁵⁰

[37] The notion of "availability" is not defined in the Act. Court decisions have set out criteria for determining a person's availability for work and whether they are entitled to EI benefits.⁵¹ These three criteria are:

- a) wanting to go back to work as soon as a suitable job is available
- b) expressing that desire through efforts to find a suitable job
- c) not setting personal conditions that might unduly limit the chances of going back to work⁵²

⁴⁷ See section 9.001 of the Regulations.

⁴⁸ See section 9.001 of the Regulations.

⁴⁹ See section 9.001 of the Regulations.

⁵⁰ See section 9.002(1) of the Regulations.

⁵¹ The Court established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

⁵² The Court established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

[38] In assessing each of these factors, a claimant's attitude and conduct have to be considered.⁵³

[39] In addition, the Act says that a claimant is not entitled to receive benefits if they fail to prove that they were unable to work because of a prescribed illness, injury, or quarantine, and that they would otherwise be available for work.⁵⁴

[40] In this case, the Appellant did not meet the availability for work criteria mentioned above from December 14, 2020, until the end of his benefit period on September 25, 2021. The Appellant has not shown that his efforts to find a job during that period were reasonable and customary.

[41] He also has not shown that he would have been available for work if he had not been sick during the period he claimed to be unable to work for health reasons.⁵⁵

Issue 1: Did the Appellant show a desire to go back to work as soon as a suitable job was available?

[42] Even though the Appellant argues that he was available for work, he did not show his desire to go back to work as soon as a suitable job was available from December 14, 2020.

[43] The Appellant says that he was available for work despite his absence from Canada from December 12, 2020.⁵⁶ He clarifies that he was unable to work in January and February 2021, however, after contracting COVID-19.

[44] The Appellant explains that he intended to return to Canada as soon as possible to work and look after his health. He points out that he needed to return to Canada to work.

⁵³ The Court established this principle in the following decisions: *Whiffen*, A-1472-92; and *Carpentier*, A-474-97.

⁵⁴ See section 18(1)(b) of the Act.

⁵⁵ See section 18(1)(b) of the Act.

⁵⁶ See GD3-34, GD3-35, and GD3-43.

[45] The Appellant says that working is not an issue for him because there are many options. He points out that he started working once back in Canada. The Appellant explains that he can work online or over the Internet, as shown by his proposed employment contracts,⁵⁷ and that this has been the case for two years.

[46] The Appellant indicates that he had a contract that was supposed to start in January 2021, with the X language school. He explains that he lost the contract because he was unable to return to Canada to carry it out.

[47] In this case, I find that the Appellant's decision to go on a trip to the Dominican Republic, scheduled to end in late January 2021, to visit friends and relatives and for health reasons does not show his desire to go back to work as soon as a suitable job was available.

[48] I also find that the Appellant's statement that he was unable to work in January and February 2021 for health reasons does not show his desire to work.

[49] In my view, the Appellant would not have shown his desire to work while outside Canada if he had not been sick during that period either. The fact is that the Appellant chose to go on a trip to the Dominican Republic that was supposed to last several weeks.

[50] Although he says that, because he was unable to return to Canada to carry out the employment contract that was due to start in January 2021 with the X language school [*sic*], the Appellant has not shown how he tried to find a solution to this problem with that employer.

[51] I point out that, in this case, after getting an email from that employer on November 26, 2020, asking him to return documents,⁵⁸ there is no indication that the Appellant bothered to contact it afterwards to explain his situation and try to come to an

⁵⁷ See GD3-114 and GD3-115.

⁵⁸ See GD3-112.

arrangement for the job he expected to start in January 2021, for example, to discuss how he could have delayed the start of that job.

[52] The Court tells us that wanting to work is not, in itself, synonymous with being available and that a person may not be regarded as available for work when that person is in a situation that prevents them from being available.⁵⁹

[53] I point out that a claimant who is outside Canada is not excused from showing their availability for work.

[54] I find that the Appellant did not show a desire to go back to work as soon as a suitable job was available from December 14, 2020. Instead, he has shown that he was waiting to return to Canada so that he could then show his desire to go back to work.

Issue 2: Did the Appellant express that desire through efforts to find a suitable job?

[55] The Appellant did not express his desire to go back to work through significant efforts to find a suitable job from December 14, 2020.

[56] According to the Appellant, the argument that he did not look for work while outside Canada is [translation] “completely false.” He says that, when he was in the Dominican Republic, he looked for work the whole time and never stopped looking, but that, in January 2021, his health was such that he had to look after it seriously.⁶⁰

[57] The Appellant explains that, before going on his trip, he applied on November 19, 2020, for a job teaching French as a second language in Ottawa, through the Indeed job site.⁶¹

[58] He indicates that, in November 2020, he was also in contact with the X language school for a half-day contract that was due to start in January 2021.⁶²

⁵⁹ The Court established this principle in *Leblanc*, 2010 FCA 60.

⁶⁰ See GD2-1, GD2-7, GD3-43, GD3-58, GD3-62, GD3-67, GD3-76, GD3-88, and GD3-106.

⁶¹ See GD3-89 to GD3-92.

⁶² See GD2-1, GD2-7, GD3-38, GD3-51, GD3-82, GD3-86 to GD3-89, GD3-112, GD3-114, and GD3-115.

[59] The Appellant explains that, in July 2021,⁶³ he started communicating with a Department of National Defence (DND) employee—and a student of his since 2015—about a teaching contract with her to upgrade her language skills.⁶⁴ The Appellant wanted to enter into a private contract with this student, but she wanted the contract to be carried out through a language school. As a result, the Appellant contacted a contracts manager at the language school he had worked for, X (X), in August 2021. The school agreed to have him teach this student. In September 2021, the Appellant thought that he would start working with X (X), but that did not happen. As a result, he was unable to teach this student. The Appellant indicates that, in December 2021, she wrote to him saying that DND had chosen another school for her.

[60] In an email to the Commission dated November 9, 2021, the Appellant said that he already had a [translation] “guaranteed job” at the X language school that he was to work for on returning to Canada, and that he had also had a [translation] “guaranteed job” since early August 2021 with the student working at DND.⁶⁵

[61] In emails to the Commission dated November 7, 2021, the Appellant explained that he had been unable to fulfill both contracts given the circumstances that prevented him from returning to Canada when he was supposed to.⁶⁶

[62] The Appellant argues that he wanted to return to Canada as soon as possible because he wanted to fulfill his contract with the X language school and look after his health (for example, treatment of his kidney problem).

[63] The Appellant explains that he also received information from X (X) on August 17, 2021, about an in-person literacy trainer job that required travelling.⁶⁷

⁶³ See GD3-122.

⁶⁴ See GD2-19, GD2-20, GD3-38 to GD3-42, GD3-76 to GD3-79, GD3-106 to GD3-109, and GD3-118 to GD3-123.

⁶⁵ See GD3-114 and GD3-115.

⁶⁶ See GD3-43 and GD3-51.

⁶⁷ See GD3-58.

[64] The Appellant says that he saw other job postings around September 2021, but the work had to be done in person (for example, tutoring in different towns and cities, including Chelsea, Aylmer, and Gatineau). He points out that, if he had been able to return to Canada sooner, he could have started working in September 2021, at the start of the school year.⁶⁸

[65] The Appellant explains that he started working once back in Canada. In December 2021, he landed a contract with X. He started working there on January 4, 2022.

[66] In this case, I am of the view that the Appellant did not make “reasonable and customary efforts” in the “search for suitable employment”—that is, sustained efforts directed toward finding a suitable job and compatible with nine specific activities that can be used to help claimants get a suitable job.⁶⁹

[67] Despite his repeated statements that he never stopped looking for work while outside Canada, I find that his testimony and statements show that his job search efforts were limited to a few prospective employers.

[68] In addition, based on the emails he started exchanging in August 2021 with the student from DND he was planning to teach,⁷⁰ and based on an email he received from a prospective employer, also in August 2021,⁷¹ I am of the view that he did not make efforts until that month, that is, several months after he left for the Dominican Republic in December 2020.

[69] I find that, despite saying that working is not an issue for him because he has many options and that he can work online or over the Internet, he has not shown that he made sustained efforts to find a job during his trip.

⁶⁸ See GD2-3 and GD2-10, referring to a document from X about proposed language training for the period from September 13, 2021, to November 26, 2021.

⁶⁹ See section 9.001 of the Regulations.

⁷⁰ See GD2-19, GD2-20, GD3-38 to GD3-42, GD3-76 to GD3-79, GD3-106 to GD3-109, and GD3-118 to GD3-123.

⁷¹ See GD3-58.

[70] Although the Appellant referred to the contract he was supposed to start at the X language school in January 2021, this is not an effort he made after he left Canada in December 2020. Also, the Appellant has not shown that he had any particular dealings with that employer after exchanging emails with it in November 2020⁷² to discuss whether he would be able to delay the start of his job, scheduled for January 2021, or under what conditions he would be able to do it (for example, working online). In addition, despite his argument that it was a [translation] “guaranteed contract,” the Appellant has not shown that this was the case, since the job fell through.

[71] Moreover, the Appellant did not have assurance of a job teaching a student from DND, despite his efforts over several months in the hopes of getting it.

[72] Although the Appellant also says that he was able to work online or using the Internet, as in previous years, he has not shown that he proactively looked for a job that would enable him to do so while outside Canada.

[73] In my view, the Appellant’s inability to return to Canada in January 2021 like he was supposed to cannot be used to justify the few efforts he made during his time in the Dominican Republic.

[74] Aside from the period of January and February 2021, for which the Appellant says he was unable to work for health reasons, I also find that he has not shown that he had restrictions related to his health and physical abilities in getting a suitable job.⁷³

[75] I am also of the view that the Appellant would not have been available for work if he had not been sick during that specific period.⁷⁴

⁷² See GD3-86, GD3-112, and GD3-113.

⁷³ See section 9.002(1) of the Regulations.

⁷⁴ See section 18(1)(b) of the Act.

[76] The Court tells us that a person's availability is assessed for each working day in a benefit period for which they can prove that, on that day, they were capable of and available for work and unable to find a suitable job.⁷⁵

[77] I find that the Appellant's availability for work did not lead to concrete and sustained efforts to find suitable employment with prospective employers.

[78] The Court tells us that it is up to the claimant to prove their availability for work. To get EI benefits, a claimant must be actively seeking suitable employment, even if it appears reasonable for the claimant not to do so.⁷⁶

[79] The Appellant was responsible for actively looking for a suitable job to be able to get EI benefits.

[80] I find that the Appellant failed to fulfill this responsibility from December 14, 2020, until the end of his benefit period.

Issue 3: Did the Appellant set personal conditions that might have unduly limited his chances of going back to work?

[81] I find that the Appellant set personal conditions that unduly limited his chances of going back to work. The Appellant set his own conditions under which he would have agreed to work.

[82] In my view, the personal conditions set by the Appellant are related to the fact that he chose to make only few job search efforts and that he did not make them until several months after he left Canada.

[83] I find that the Appellant was very selective in his job search and in choosing the employers he would have agreed to work for. In my view, after connecting with a student working at DND in August 2021, he waited for several months to see whether

⁷⁵ The Court established this principle in the following decisions: *Cloutier*, 2005 FCA 73; and *Boland*, 2004 FCA 251.

⁷⁶ The Court established this principle in the following decisions: *De Lamirande*, 2004 FCA 311; and *Cornelissen-O'Neill*, A-652-93.

the teaching contract with her would come to fruition. Aside from that, a single employer sent him an email, in August 2021, about an in-person job in Quebec.⁷⁷

[84] Even though the Appellant says that he could work online or using the Internet and that this is, in fact, what he had done in two previous years, there is no indication that he directed his job search efforts to be able to work that way. I point out that, according to the Appellant's own statements, working is not an issue for him, and he has many options. I understand that this could include remote or online work.

[85] In my view, the personal conditions he set are also related to the fact that he was waiting first to be able to return to Canada before looking for, and being able to, work. His testimony also shows that he needed to return to Canada to work.

[86] I point out that, despite the Appellant's statements that he can easily find work and that it is not an issue for him, the fact is that, according to his own statements, he did not start working until about three months after he returned to Canada on October 5, 2021.

[87] I find that the Appellant set personal conditions that unduly limited his chances of going back to work.

⁷⁷ See GD3-58.

Conclusion

[88] I find that the disentitlement to benefits imposed on the Appellant from December 14, 2021, while he was outside Canada, is justified.

[89] I also find that the Appellant has not shown that he was available for work from December 14, 2020, until the end of his benefit period on September 25, 2021. He also has not shown that he would have been available for work if he had not been sick for part of that period. The disentitlement to benefits imposed on the Appellant for the period in question is justified.

[90] This means that the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section