



[TRANSLATION]

Citation: *JB v Canada Employment Insurance Commission*, 2022 SST 439

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

## Decision

**Appellant:** J. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (390781) dated January 15, 2021 (issued by Service Canada)

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**Tribunal member:** Manon Sauvé

**Type of hearing:** Videoconference

**Hearing date:** February 3, 2022

**Hearing participant:** Appellant

**Decision date:** February 14, 2022

**File number** GE-21-337

## Decision

[1] The appeal is dismissed. The Claimant hasn't shown just cause for leaving his job. He had reasonable alternatives to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits.

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

## Overview

[3] The Claimant worked in farming. He was laid off in October 2019 because of a shortage of work. He also occasionally worked at a transportation company. He asked this employer for a Record of Employment and applied for EI benefits.

[4] The Commission<sup>1</sup> disqualified the Claimant from receiving EI benefits because he left his job voluntarily without just cause.

[5] Also, the Commission decided that the Claimant is disentitled from receiving EI regular benefits as of November 3, 2019, because he wasn't available for work.

[6] 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.

[7] The Claimant disagrees with the Commission's decisions. He didn't voluntarily leave his job in transportation; it was a job he did occasionally for a friend. His main job was in farming; he has always worked in this field.

[8] Also, he looked for a suitable job. He looked for a job with similar conditions.

[9] In his opinion, the Commission made an error by assuming that his main job was truck driving.

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<sup>1</sup> Canada Employment Insurance Commission.

## Issues

1. Is the Claimant disqualified from receiving benefits because he voluntarily left his job without just cause?
2. Was the Claimant available for work?

## Analysis

### **1. Is the Claimant disqualified from receiving benefits because he voluntarily left his job without just cause?**

[10] To answer this, first I have to address the Claimant's voluntary leaving. I then have to decide whether he had just cause for leaving.

[11] At this first stage, the Commission has to prove that the Claimant left his job voluntarily.<sup>2</sup>

[12] To determine whether the Appellant left his job voluntarily, "The question to be asked is as follows: did the employee have a choice to stay or to leave?"<sup>3</sup>

[13] I understand that the Claimant has worked in potato farming for several years. He says it is his main job; he specializes in that field.

[14] He occasionally drove a truck for a transportation company. The owners of the company were friends of his. He could choose to drive a truck when he was available.

[15] The company was sold, and he didn't have the same relationship with the new owners. He disagreed with what the director said about the company's needs. He didn't have seniority at the company, and the COVID-19 pandemic slowed the economy down.

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<sup>2</sup> *Green v Canada (Attorney General)*, 2012 FCA 313.

<sup>3</sup> *Canada (Attorney General) v Peace*, 2004 FCA 56.

[16] He asked the transportation company for a Record of Employment because the Commission asked for one for every job he had. In fact, he stopped working for his main job at the farm.

[17] So, he didn't leave his trucking job because he only helped out sometimes and he didn't really get many offers contrary to what the director said.

[18] I find that the Claimant has two jobs. His main job is the one on the farm. He has always worked in potato farming. He sometimes transports goods for a friend.

[19] The law does not require claimants to have two jobs. In the case of the Claimant, he already has a job. He was laid off because of a shortage of work. The second job isn't a regular one, but he does sometimes transport goods.

[20] In a similar case, the Federal Court of Appeal (Court)<sup>4</sup> ruled that claimants with two jobs can't be penalized as long as they don't cause their own unemployment situation.

[21] The Claimant argues that he didn't leave his job for the one in transportation. He asked for a Record of Employment from his employer believing he needed one to file for benefits with the Commission. During that year, he worked 708 hours for this company.

[22] The Commission argues that the Claimant does not want to work as a truck driver for this company anymore. He didn't tell his employer that he was ending his employment. However, he didn't tell his employee his availability.

[23] I understand that farm work is seasonal for a few months per year. The transportation company offers work year-round. The employer stated that, given the shortage of truck drivers, his company offers work year-round.

[24] The Claimant disagrees with the employer's statement. He says that there are many drivers who don't work a lot of hours.

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<sup>4</sup> *Canada (Attorney General) v Marier*, 2013 FCA 39.

[25] The Commission relied on the employer's statements which repeated what the Claimant said. The Claimant denies making comments like those the Commission described.

[26] I am of the view that the Claimant voluntarily left his job for the one at the transportation company. I understand that, to the Claimant, this isn't his main job. He has worked in farming for several years.

[27] However, he chose to take a seasonal job even though he can work full-time for the transportation company. When he decided to stop working for the transportation company, he caused his unemployment situation.<sup>5</sup>

[28] Also, by reducing his availability at the transportation company, he ended his employment.<sup>6</sup> He can still claim that his main job is seasonal, but that is a personal choice and he can't make contributors responsible for that. He can work full-time for the transportation company.

[29] I find that the Claimant was the one who asked the transportation company for a Record of Employment.

[30] I place more weight on the Commission's information than the Claimant's testimony. He said he quits his job at the transportation company in the spring to work in farming. In the fall, he goes back to work for the transportation company. He says he offered to work but was never called back. He is convinced that there was no work. However, he didn't verify directly with the employer. He said he discussed it with employees.

[31] The employer says the Claimant didn't give his availability for work to the transportation company.

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<sup>5</sup> See *Canada (Canada Employment and Immigration Commission) v Gagnon*, 1988 2 SCR 29.

<sup>6</sup> See *Canada (Attorney General) v Côté*, 2006 FCA 219.

[32] With this in mind, I find that the Claimant voluntarily left his job at the transportation company. He had the choice to stay at this job.

[33] Now I have to determine whether it was the only reasonable alternative in his case. I find he had reasonable alternatives to leaving when he did.

[34] It is up to the Claimant to prove that he had just cause.<sup>7</sup> 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 his only reasonable option was to quit. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

[35] The Claimant told the Commission that he had an accident in 2018 and that he didn't want to drive in the winter anymore. The employer wasn't aware of this accident.

[36] Also, the Claimant says there was no work at the transportation company contrary to what the employee said.

[37] I find that the Claimant has given several reasons to justify why he could not work at the transportation company. However, none of them amount to just cause for leaving under the *Employment Insurance Act* (Act).

[38] There is no proof of an incident happening on Route 222 in 2018 like the Claimant says.

[39] Also, he argues he isn't a truck driver but a farmer. He has the right to choose what to work in. However, it is a seasonal job and he is unemployed as of October 2019. He could drive a truck for the transportation company like he has done before.

[40] He argues that the hourly rate isn't the same and that he refuses to work for less. He told the Commission he doesn't want to work for less than \$25. At the hearing, he

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<sup>7</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

said \$30, \$40 was his minimum. I note that he changes his statements. I find them lacking in credibility.

[41] I find that the hourly rate for a truck driver on the Record of Employment is \$18 per hour. He can choose to no longer want to work for about \$20, but he can't make program contributors responsible for his choice.

[42] So, the Claimant didn't have just cause for leaving his job at the transportation company. A reasonable alternative would have been to keep that job. He would have driven occasionally like he said. If the employer had little work, he would not have been called. No longer wanting to work for this company is his choice.

## **2. Was the Claimant available for work?**

[43] 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.

[44] First, the Act says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.<sup>8</sup> The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" means.<sup>9</sup> I will look at those criteria below.

[45] 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.<sup>10</sup> Case law gives three things a claimant has to prove to show that they are "available" in this sense.<sup>11</sup> I will look at those factors below.

[46] 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.

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

<sup>9</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations).

<sup>10</sup> See section 18(1)(a) of the Act.

<sup>11</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[47] 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**

[48] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.<sup>12</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 Claimant has to have kept trying to find a suitable job.

[49] 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:<sup>13</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
- attending interviews
- doing competency tests

[50] I understand that the Claimant met with a trainer on December 19, 2019, to help him use job search tools.

[51] He contacted farmers in the region to see whether they had work for him. Since this is seasonal work, it isn't common for there to be work in the winter.

[52] The Commission says that the Claimant didn't do enough to try to find a job. He looked for a farm job, but there wasn't any since the season was already over.

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<sup>12</sup> See section 9.001 of the Regulations.

<sup>13</sup> See section 9.001 of the Regulations.



[53] Also, he can't limit his job search to two employers in farming.

[54] The Claimant says he has the right to work in farming. It is his profession; he has always worked in this field. He isn't a truck driver.

[55] I am of the view that the Claimant's job search efforts were insufficient. I understand that he considers himself a farmer. However, he has to show that he is available any day of the week. To do this, his job search efforts have to be sufficient. In this case, he took steps with some farmers, which is insufficient to prove his availability.

[56] He didn't make reasonable and customary efforts to find a job. He could not limit himself to farming and several employers.

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

[57] 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:<sup>14</sup>

- 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.

[58] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.<sup>15</sup>

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<sup>14</sup> These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A5796. This decision paraphrases those three factors for plain language.

<sup>15</sup> 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.

– **Wanting to go back to work**

[59] I understand that on January 2, 2020, the Commission told the Claimant that he had to look for a job. On January 9 and January 10, 2020, it tried to reach the Claimant but was unsuccessful. On January 24, 2020, the Claimant said he had done two job searches. He also told the Commission that he wasn't looking for another job, since he was going to be called soon to work on the farm.

[60] I find that the Claimant hasn't shown that he wanted to go back to work as soon as a suitable job was available. He could not just look for a farm job knowing there wasn't any in that field. He made a personal choice. However, he can't cause his unemployment situation.

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

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

[62] 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.<sup>16</sup>

[63] As I mentioned above, the Claimant's efforts to find a new job included meeting with a trainer and two job searches.

[64] Those efforts weren't enough to meet the requirements of this second factor. The Claimant could not just do a few job searches in farming in the winter. It isn't the only suitable job the Claimant could have. He was a truck driver during farming's off-season.

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

[65] The Claimant has set personal conditions that unduly limit his chances of returning to work.

[66] He says that he didn't set personal conditions that limit his chances of returning to work. He has worked in farming for over 40 years. He sold his potato farm to a family

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<sup>16</sup> 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.

member years ago. Now, he only works in this field; it is his area of expertise. He isn't a truck driver, he is a farmer.

[67] Also, he doesn't want to work for less than \$25 per hour. He is paid less as a truck driver. Since the company was sold, there is now a union and he can't be paid the same hourly rate.

[68] The Commission argues that the Claimant can't just wait to be called by his employer. He can't limit himself to farming. He is less likely to find a job.

[69] In my view, the Claimant has unduly limited his chances of returning to the labour market. He has limited his job search to farming, but it was a seasonal job. He can choose to work a few months per year. However, while unemployed, he has to make an effort to find a job without limiting his job search.

[70] In his case, he wants to work in farming. He doesn't want to work for a transportation company in the fall and winter anymore. He says he is paid less and that he can't drive a truck in the winter. He hasn't proven this to the Tribunal. I find his testimony on the reasons why he doesn't want to work in trucking inconsistent and lacking in credibility.

[71] He hasn't shown that he was actively looking for a suitable job. He can have more than one job, but prefers to stay in farming, which is seasonal.<sup>17</sup> He can't limit himself to one field.<sup>18</sup> It is a personal choice, and he can't make program contributors responsible for that.

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

[72] 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.

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<sup>17</sup> *De Lamirande v Canada (Attorney General)*, 2004 FCA 311.

<sup>18</sup> *Canada (Attorney General) v Boland*, 2004 FCA 251.

## **Conclusion**

[73] The Claimant hasn't shown just cause for voluntarily leaving his job. This means he is disqualified from receiving EI benefits.

[74] 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.

[75] This means that the appeal is dismissed.

Manon Sauvé

Member, General Division – Employment Insurance Section