



Citation: *AG v Canada Employment Insurance Commission*, 2022 SST 698

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

Decision

Appellant: A. G.
Appellant’s Representative: C. G.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (439114) dated November 19,
2021 (issued by Service Canada)

Tribunal member: Raelene R. Thomas
Type of hearing: Teleconference
Hearing date: March 9, 2022
Hearing participants: Appellant
Appellant’s representative
Decision date: March 16, 2021
File number: GE-21-2516

Decision

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

[2] The Claimant has shown that he was available for work for five weeks.¹ 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 for the 16 weeks from June 14, 2021 to October 8, 2021 for different reasons.

[4] For 11 of the weeks the Commission said the Claimant was not unemployed because he was working full-time. At the hearing the Claimant said he was not appealing the weeks that the Commission did not pay him EI because he was working full-time. So, I will not be making any decision about those weeks.

[5] For five of the weeks the Commission said the Claimant was not available for work. At the hearing, the Claimant said he did want to appeal the Commission's decision about his availability. So, I must decide whether the Claimant has proven that he was available for work in these five weeks.

[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. 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 available for work.

[7] The Commission says that the Claimant wasn't available because he made no effort to look for work.

¹ The five weeks are the weeks beginning: June 28, 2021; July 19, 2021; August 23, 2021; August 30, 2021; and, September 20, 2021.

[8] The Claimant disagrees and states that he had committed to working on a renovation project that involved renovations. The project had a number of delays because the necessary materials were not delivered to the work site when needed. He did not work during those delays and could not look for work elsewhere because of his commitment to the project.

Matter I have to consider first

The Claimant withdrew part of his appeal

[9] The Commission made two decisions on the Claimant's claim for EI benefits. First, it decided that the Claimant was not entitled to benefits for 11 weeks that fell in the period from June 14, 2021 to October 3, 2021, because he was working full work weeks.² At the hearing, the Claimant said that he was not looking to be paid EI for these weeks. The Claimant said he was no longer appealing the Commission's decision regarding those 11 weeks. As a result, I will not be making a decision on those 11 weeks.

[10] The Claimant confirmed that he did want to appeal the remaining five weeks that he was disentitled from receiving benefits because the Commission said he was not available for work. As a result, my decision will address only those five weeks.³

Issue

[11] Was the Claimant available for work?

Analysis

[12] Two different sections of the law require claimants to show that they are available for work.⁴ The Commission decided that the Claimant was disentitled under both of these sections. So, it says he has to meet the criteria of both sections to get benefits.

² The Commission imposed a disentitlement during the weeks beginning: June 14, 2021; June 21, 2021; July 5, 2021; July 12, 2021; July 26, 2021; August 2, 2021; August 9, 2021; August 16, 2021; September 6, 2021; September 13, 2021; and, September 27, 2021.

³ The five weeks are listed in footnote 1.

⁴ These two sections are section 50(8) and section 18 of the *Employment Insurance Act* (EI Act).

[13] However, I find that I only need to decide if the Claimant was available for work under one section of the *Employment Insurance Act* (EI Act). That is section 18(1)(a). My reasons for this finding follow.

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

[15] The appeal file does not have 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.

[16] The Commission submitted that it had no reason to request the Claimant prove that he was making reasonable and customary efforts to look for work because the facts provided by the Claimant were evidence that he was engaged in the project and not looking for work outside of the project.

[17] The law says the Commission may ask a person to prove they are making reasonable and customary efforts to look for work.⁵ Where proof is not provided the Claimant may be disentitled from receiving benefits. In my opinion, the law requires that the Commission must first make the request for proof before determining if a claimant is disentitled for failing to provide that proof. The Commission did not make any request for proof. As a result, I find that the Commission cannot rely on section 50(8) of the EI Act to disentitle the Claimant. Accordingly, I need not consider if the Claimant was disentitled from receiving benefits under section 50(8) of the EI Act.

[18] The Commission also said that disentitled the Claimant under section 18 of the EI act. Section 18 of the EI 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.⁶ Case law gives three

⁵ See section 50(8) of the EI Act

⁶ See section 18(1)(a) of the EI Act.

things a claimant has to prove to show that they are “available” in this sense.⁷ I will look at those factors below.

Capable of and available for work

[19] As noted above, I only need to decide if the Claimant was available for work under paragraph 18(1)(a) of the EI Act.

[20] 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:⁸

- 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 limited his chances of going back to work.

[21] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.⁹

– Wanting to go back to work

[22] The Claimant has shown that he wanted to go back to work as soon as a suitable job was available.

[23] The Claimant testified that he applied for EI benefits because he was off work due to illness. His doctor cleared him to return to work, he was not recalled by his employer and then he was laid off. The Claimant said he has been working for 46 years. He works to pay his bills and to provide for his family. He was able to secure

⁷ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This is how I refer to court decisions that apply to the circumstances of this appeal.

⁸ 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.

⁹ 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.

work with a family member. This evidence tells me the Claimant has a desire to look for work.

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

[24] The Claimant made enough effort to find a suitable job.

[25] There is a list of job search activities to look at when deciding availability under a different section of the law.¹⁰ This other section does not apply in the Claimant's appeal. But, I am choosing look at that list for guidance to help me decide whether the Claimant made efforts to find a suitable job.¹¹

[26] There are nine job search activities in the list of job search activities: assessing employment opportunities, preparing a resume or cover letter, registering for job search tools or with online job banks or employment agencies, attending job search workshops or job fairs, networking, contacting employers who may be hiring, submitting job applications, attending interviews and undergoing evaluations of competencies.¹²

[27] Case law has said that when a claimant has good cause to believe that he will be recalled to work that he is entitled to a reasonable period to regard the promise of recall to work as the most probable means of obtaining employment.¹³

[28] The Claimant testified that he was looking for work when a family member approached him to work with him on a renovation project. The project involved the exterior and interior renovation of a cottage. It was expected that the project would last a few months. The Claimant was hired for the duration of the renovation project.

[29] The Claimant testified that he has worked in construction in the past. There are times when materials can be delayed. When that happens the work on the project is stalled and there is no work available. He and any other workers laid off due to non-

¹⁰ Section 9.001 of the EI Regulations, which is for the purposes of subsection 50(8) of the EI Act.

¹¹ 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.

¹² Section 9.001 of the EI Regulations.

¹³ See Canada Umpire Benefits (CUBs) 14685, 14554, and 21160. Although I am not bound by CUBs, I am guided by the principles contained in these CUBs in reaching my decision.

arrival of materials would be expected to return to work once the materials arrived. The Claimant said that was the case with his employment from June 14, 2021 to October 3, 2021.

[30] The Claimant testified that in the case of the cottage renovation COVID-19 caused more delays than he had normally experienced. Although the materials had been ordered and the suppliers would say the materials would be delivered on a certain date the materials would not arrive and he would have no work. This happened for five separate weeks over the course of the project.¹⁴

[31] The Claimant testified that he did not look for work during those five weeks. He said he had agreed to work with the family member for the length of the project. He knew that he was expected to return to the work once the necessary materials arrived. He did not think it was right to apply for jobs and to let a potential employer know he would not be available after a week or so because he had this other job.

[32] The Claimant testified that as the renovation project was coming to an end he spoke to former people he worked with and put in bids for work. He looked in newspapers for jobs and also went to the Service Canada office to look for work. The Claimant said he talked to friends and relatives to see if there was any work.

[33] I find that the Claimant's best chance for suitable employment, during these five weeks, was to continue to be available for the renovation project so that once the materials arrived he could return to work. In my opinion, the Claimant's job search efforts taken together with his anticipated return to the renovation project during those five weeks, demonstrates that he made efforts to find a suitable job.

– **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.

¹⁴ These weeks are listed in footnote 1.

[35] The Claimant has continued to live in the same city as when he was last employed. He has access to transportation to go to work and has a driver's license. He looked for work that was consistent with his qualifications in construction. He is willing to accept a job that might require on the job training. There were no jobs that he could not do due to moral convictions or religious beliefs. This evidence tells me the Claimant has not set any personal conditions that might limit his return to the labour market.

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

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

Conclusion

[37] 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 EI benefits. So, the Claimant may be entitled to benefits.

[38] This means that the appeal is allowed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section