



Citation: *CP v Canada Employment Insurance Commission*, 2022 SST 604

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

Decision

Appellant: C. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (457881) dated March 17, 2022 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: May 25, 2022

Hearing participant: Appellant

Decision date: May 30, 2022

File number: GE-22-1027

Decision

[1] The appeal is allowed in part. The Appellant (Claimant) has proven his availability as of February 4, 2022.

Overview

[2] The Claimant came to Canada in April 2021 from Jamaica. He works under a work permit for a fish packer in Cap Pelé, New Brunswick. The employer laid the Claimant off in January 2022. The Claimant was recalled to work in April 2022.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving employment insurance (EI) regular benefits as of January 3, 2022, 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 must 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 didn't provide a job search when asked.

[6] The Claimant says he didn't realize he had to be looking for a job until the Commission called him.

Issue

[7] Was the Claimant available for work as of January 3, 2022?¹

¹ See page GD3-19 of the appeal file and last paragraph of page GD4-1 of the appeal file.

Analysis

[8] Two sections of law require claimants to show that they are available for work. The Commission decided that the Claimant was disentitled under both 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.² The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.³ 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 can’t find a suitable job.⁴ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁵ I will look at those factors below.

Reasonable and customary efforts to find a job

[11] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts were reasonable and customary.⁶ 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.

[12] 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:⁷

- assessing employment opportunities
- registering for job-search tools or with online job banks or employment agencies

² See section 50(8) of the *Employment Insurance Act* (Act).

³ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁴ See section 18(1)(a) of the Act.

⁵ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁶ See section 9.001 of the Regulations.

⁷ See section 9.001 of the Regulations.

[13] The Commission says that the Claimant hasn't proven that he did enough to find a job because he didn't provide a job search.

[14] The Claimant says before the Commission called him, he didn't realize he could look for other work while he was laid off. After talking to the Commission, he spoke with his employer, who gave him more information.

[15] I find that the Claimant made reasonable and customary efforts to find another suitable job as of February 4, 2022, but not before then. I explain why in the next paragraphs.

[16] The Claimant didn't know he could have another job while waiting for the employer to recall him to work. This is understandable given that the Claimant is in Canada on a work permit for the first time. But, because he didn't know he could work, it's more likely than not that he wasn't looking for a job. If you aren't looking for a job, you cannot be making reasonable and customary efforts to find a job.

[17] I find the Claimant started looking for a job on February 4, 2022, after the Commission told him he needed to be looking for another job. The Claimant thought the Commission first called him in January 2022, but when I pointed out that the first record of the Commission contacting him was in February 2022, he wasn't sure about the date. The file shows the Commission first called the Claimant on February 3, 2022. The Claimant said he was looking for a job on his reconsideration request dated February 7, 2022.

[18] The Claimant looked for work by calling local employers, registering for job banks, and networking with friends and family. Specifically, he:

- Called the nursing home to see if there were any vacancies
- Called a local herring plant
- Registered online with Joooble
- Looked at online job banks and received emails about job vacancies

- Asked his friends and family about possible vacancies (For example, he asked his brother about a job with the construction company he works for, and he called his friend about a job at Tim Hortons)
- Asked about vacancies at Walmart in Moncton.

[19] I find that the Claimant's efforts show that he was looking for suitable work, and that his efforts were sustained after he started looking for work.

[20] For these reasons, I find the Claimant has proven that his efforts to find a job were reasonable and customary as of February 4, 2022.

Capable of and available for work

[21] 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 had a desire to return 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.

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

– A desire to get back to work

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

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.

[24] The Claimant has three children in Jamaica who count on his financial support.

[25] Financial need alone doesn't show a desire to return to work, but it lends credibility to his statements that he wanted to work to support his family.

[26] He also showed his desire to return to work by promptly renewing his work permit, and returning to work when he was recalled.

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

[27] The Claimant didn't make any effort to find a suitable job until February 4, 2022, the day after he learned he could work while waiting to be recalled by his employer.

[28] The Claimant's efforts to find a new job included looking for work around town, talking to friends and family, looking for work online, and registering with job banks.

[29] The Claimant needs a work permit to work in Canada. He has a closed work permit. This means he can only work for the employer listed on his work permit. To work for another employer, he'd have to apply for a different work permit.

[30] In the Claimant's circumstances, his job search efforts are enough to meet this second factor. The Claimant's best chance of returning to work as soon as possible was for him to maintain his relationship with the employer named on his work permit, to renew his work permit, and to look for other work in the meantime. This is what he did.

[31] I am satisfied that the Claimant couldn't have realistically started another job before being recalled by his employer. It took over three months for the Claimant to receive his renewal work permit. It is reasonable to assume that a new permit for a new employer would take even longer.

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

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

[33] What the Claimant can do with his work permit is a matter of law, not a personal condition. He can't apply for a work permit for a different employer until he finds another employer willing to hire him.

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

[34] 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 as of February 4, 2022. He wasn't available before then because he only started looking for a job after the Commission told him he could work while laid off.

Conclusion

[35] The Claimant has shown that he was available for work within the meaning of the law as of February 4, 2022. So the disentitlement ends on February 4, 2022. The disentitlement remains from January 3, 2022, until February 3, 2022.

[36] The appeal is allowed in part.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section