



Citation: *BT v Canada Employment Insurance Commission*, 2022 SST 1283

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

Decision

Appellant:	B. T.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (469016) dated May 9, 2022 (issued by Service Canada)
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Tribunal member:	Audrey Mitchell
Type of hearing:	Videoconference
Hearing date:	September 20, 2022
Hearing participant:	Appellant
Decision date:	September 26, 2022
File number:	GE-22-1819

Decision

[1] The appeal is dismissed with modification. The Tribunal disagrees with the Claimant.

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

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant is disentitled from receiving Employment Insurance (EI) regular benefits as of February 13, 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 isn't available because he hasn't made reasonable efforts to find a suitable job, and declined an offer of a suitable job.

[6] The Claimant disagrees and states that when he was laid off, he was guaranteed to be called back to work. He says he was honest with the Commission and feels he is being punished where others lie, say they're looking for jobs, but have no intention of doing so.

Issue

[7] Was the Claimant available for work?

Analysis

[8] 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.

[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.¹ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.²

[10] The Commission says they disentitled the Claimant under section 50 of the Act along with section 9.001 of the Regulations for failing to prove his availability for work. In its submissions, it says that showing availability may require the Claimant to prove that he is making reasonable and customary efforts to find suitable employment.

[11] I find a decision of the Appeal Division on disentitlements under section 50 of the Act persuasive. The decision says the Commission can ask a claimant to prove that they have made reasonable and customary efforts to find a job. It can disentitle a claimant for failing to comply with this request. But it has to ask the claimant to provide this proof and tell the claimant what kind of proof will satisfy its requirements.³

[12] The Commission’s notes don’t show that it asked the Claimant to prove his availability by sending a detailed job search record. So, I don’t find that he is disentitled under this part of the law.

[13] 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.⁴ Case law gives three things a

¹ See section 50(8) of the *Employment Insurance Act* (Act).

² See section 9.001 of the *Employment Insurance Regulations* (Regulations).

³ *L D v Canada Employment Insurance Commission*, 2020 SST 688

⁴ See section 18(1)(a) of the Act.

claimant has to prove to show that they are “available” in this sense.⁵ I will look at those factors below.

[14] The Commission decided that the Claimant was disentitled from receiving benefits because he isn’t available for work based on this section of the law.

[15] I will now consider this section myself to determine whether the Claimant was available for work.

Capable of and available for work

[16] 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:⁶

- a) He wanted to go back to work as soon as a suitable job is available.
- b) He has made efforts to find a suitable job.
- c) He didn’t set personal conditions that might unduly (in other words, overly) limit his chances of going back to work.

[17] When I consider each of these factors, I have to look at the Claimant’s attitude and conduct.⁷

– Wanting to go back to work

[18] The Claimant hasn’t shown that he wanted to go back to work as soon as a suitable job was available.

[19] The Claimant was laid off from his job. He explained at the hearing that he and others had been hired to replace employees who were expected to retire once a new

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

⁶ 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.

⁷ 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.

contract was in place. Due to a delay in contract negotiations, the Claimant and others he was hired with were laid off.

[20] The Claimant testified that his union steward told him that his job was safe, so it didn't make sense for him to apply for a job somewhere else. The union steward told him he would be re-called to work once the contract was settled. Ultimately, the union filed a grievance to have the Claimant and his co-workers re-called. He returned to work on June 6, 2022.

[21] I found the Claimant to be very credible. His testimony was consistent with his statements to the Commission in spite of how they affected his application for benefits. From his evidence, I find that the Claimant wanted to work. The letter from his employer saying that he was never absent from work in the fourth quarter of 2021 supports this.

[22] I accept as fact that the Claimant wanted to return to the job he was laid off from. Given what his union steward told him, and the ongoing contract negotiations, I understand why he would wait for this to happen. But, the law requires that he look for suitable jobs, not just wait to be re-called to his former job.

[23] The Claimant started to look for work after the Commission denied his application for benefits. He says he applied for two jobs around the end of March 2022. I'll discuss this in more detail below, but I don't think that this is consistent with the actions and attitude of someone who wants to return to work as soon as a suitable job is offered.

[24] I find that the Claimant may have found another job in the almost four months he was on lay-off from his job if he had wanted to. He told the Commission that he was offered a job, but he could not accept it due to the hours.

[25] For the purposes of the EI Act, I don't find the Claimant has proven he wanted to go back to work as soon as a suitable job was offered.

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

[26] The Claimant hasn't made enough effort to find a suitable job.

[27] As noted above, the Claimant said he didn't look for work until the Commission denied his application for benefits. He testified that he received emails from the Commission about courier jobs. The Claimant's efforts to find a new job included getting these emails and looking on an internet website. He added that he didn't know that he had to be looking constantly for a job.

[28] The application for benefits says that claimants asking for EI regular benefits have to actively search for and accept offers of suitable employment. I asked the Claimant if he had read this. He said he doesn't remember reading it.

[29] I have no reason to doubt the Claimant's testimony that he started looking for another job and applied for two jobs at the end of March 2022. But, I don't find this is enough in the almost four months he was not working. Again, I understand the Claimant was following the advice of his union steward. I don't find that his efforts are enough to meet the requirements of this second factor.

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

[30] The Claimant did set personal conditions that might have unduly limited his chances of going back to work.

[31] I find that by making late and minimal efforts to look for work and waiting to return to his job, the Claimant restricted his availability.

[32] As noted above, the Claimant followed the advice of his union steward and didn't look for work at first. He was guaranteed to return to his job once the contract was settled. He applied for only two jobs in almost four months, but only after the Commission denied his application for benefits.

[33] I find the reason that the Claimant wasn't making much effort to look for a job makes sense in his circumstances. But I find that by waiting for his former employer to re-call him to work, he had set a personal condition that might have unduly limited his chances of returning to work earlier than he did.

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

[34] 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.

[35] The Claimant testified about his co-workers who were laid off. He said they were in the same situation as he was, they were not looking for work, but they got EI benefits in less than two weeks. This may be so, but I have to decide the Claimant's appeal based on the evidence in his case.

[36] The Claimant said he has contributed to the EI fund for years. He feels it is unfair not to be able to collect benefits when he needs them. I understand his frustration. But EI is an insurance plan, and like other insurance plans, you have to meet certain requirements to receive benefits.

[37] The Claimant says he had to rely on his savings to pay his bills and mortgage. His savings are now depleted. While I sympathize with the Claimant's situation, I can't change the law.⁸

Conclusion

[38] 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.

[39] This means that the appeal is dismissed with modification. For clarity, I don't find that the Claimant is disentitled under section 50 of the Act. However, he is disentitled under section 18(1)(a) of the Act.

Audrey Mitchell

Member, General Division – Employment Insurance Section

⁸ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.