



[TRANSLATION]

Citation: *FD v Canada Employment Insurance Commission*, 2022 SST 1602

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

Decision

Appellant: F. D.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (458845) dated March 8, 2022 (issued by Service Canada)

Tribunal member: Manon Sauvé
Type of hearing: Videoconference
Hearing date: August 4, 2022
Hearing participant: Appellant
Decision date: August 9, 2022
File number: GE-22-1384

Decision

[1] The appeal is dismissed. The Claimant isn't entitled to receive Employment Insurance (EI) benefits for when she was outside Canada.

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

Overview

[3] The Claimant worked as a substitute teacher in an elementary school. She was laid off because of a shortage of work. She applied for EI benefits. A benefit period was established.

[4] She told the Commission that she was going to leave Canada for Guinea on July 2, 2021, and come back on August 7, 2021. It was going to be an opportunity for her and her lover to meet, as well as the families.

[5] The Commission decided that the Claimant wasn't entitled to receive benefits from July 2, 2021, to August 7, 2021, because she was outside Canada and didn't meet an exception set out in the law.

[6] The Claimant also hadn't shown that she was available for work while in Guinea.

Issues

1. Is the Claimant entitled to receive benefits for when she was in Guinea?
2. Was the Claimant available for work during her trip?

Analysis

1. Is the Claimant entitled to receive benefits for when she was in Guinea?

[7] A claimant who isn't in Canada can't get EI benefits.¹ But there are exceptions that allow a claimant to get benefits.²

[8] A claimant who is outside Canada can't get benefits unless their situation is set out in the *Employment Insurance Regulations* (Regulations).³ It is up to the Claimant to show that her situation falls within the exceptions set out in the Regulations.

[9] I note that the Claimant left Canada at 11 p.m. on July 2, 2021. She returned to Canada at 1:55 p.m. on August 7, 2021.

[10] The trip was related to wedding arrangements. Her suitor had to meet the members of her family, and she had to meet his. It wasn't to get married, but to set up meetings with the parents.

[11] The Commission refused to pay the Claimant benefits during this period because she was outside Canada and her situation didn't fall within the exceptions set out in the Regulations. The Regulations don't say that a claimant is entitled to receive benefits when outside Canada to plan their wedding.

[12] The Claimant says that she didn't submit any reports while outside Canada. After she got back, she declared her absence from Canada when making her claims and had to contact the Commission.

[13] She talked to Service Canada on August 9 and August 12, 2021.⁴ She reported her situation and was told that she was entitled to benefits for the period she was outside Canada.

¹ Section 37(b) of the *Employment Insurance Act* (Act) and *Canada v Picard*, 2014 FCA 46

² Section 55 of the *Employment Insurance Regulations* (Regulations)

³ *Canada v Bendahan*, 2012 FCA 237

⁴ GD3-29—proof she contacted Service Canada

[14] She doesn't understand why the Commission is asking her to pay back benefits it has already paid her.

[15] In January 2022, she contacted the Commission again because she was experiencing issues. The Commission told her that she had to pay back the money she received while outside Canada. She had been honest with the Commission. It made a mistake. She criticizes it for not admitting its mistake. The Commission admitted a mistake only in its submissions.

[16] After reviewing the file and hearing the Claimant, I find that she isn't entitled to receive benefits for when she was outside Canada. Her situation doesn't fall within the exceptions listed in the Regulations.

[17] The Claimant also argues that the Commission made a mistake. No one had previously told her that she wasn't entitled to benefits. She was honest.

[18] I understand that the Claimant is shocked by the situation. But the *Employment Insurance Act* (Act) is clear that claimants have to pay back amounts they weren't entitled to, even if the Commission made a mistake.⁵

2. Was the Claimant available for work while outside Canada?

[19] 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, she has to meet the criteria of both sections to get benefits.

[20] First, the Act says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.⁶ The Regulations give criteria that help explain what "reasonable and customary efforts" means.⁷ I will look at those criteria below.

⁵ Sections 43 *et seq.* of the Act

⁶ See section 50(8) of the Act.

⁷ See section 9.001 of the Regulations.

[21] 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.⁸ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁹ I will look at those factors below.

[22] The Commission decided that the Claimant was disentitled from receiving benefits because she wasn’t available for work based on these two sections of the law.

[23] 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

[24] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts were reasonable and customary.¹⁰ I have to look at whether her 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.

[25] 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:¹¹

- preparing a résumé 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
- applying for jobs
- attending interviews

⁸ See section 18(1)(a) of the Act.

⁹ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹⁰ See section 9.001 of the Regulations.

¹¹ See section 9.001 of the Regulations.

- doing competency tests

[26] The Claimant says the Commission didn't ask her about her job search efforts. She says that she got an open ticket to be able to come back as soon as possible if her employer called her back to work. She also received job postings through online job banks.

[27] The Commission says that she hasn't shown that she made efforts to find a job, since she was focused on wedding preparations with her and her suitor's families.

[28] I find that the Claimant's efforts weren't reasonable and customary. I understand that she had a job, but she could not just wait to go back to work.¹² You have to show that you actively looked for a job, which she didn't do.

Capable of and available for work

[29] 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:¹³

- a) She wanted to go back to work as soon as a suitable job was available.
- b) She made efforts to find a suitable job.
- c) She didn't set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[30] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.¹⁴

¹² *De Lamirande v Canada (Attorney General)*, 2004 FCA 311

¹³ 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.

¹⁴ 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**

[31] The Claimant hasn't shown that she wanted to go back to work as soon as a suitable job was available.

[32] I note that the Claimant decided to leave Canada on July 2, 2021, to plan a wedding. The goal was to meet her suitor's family and introduce him to hers.

[33] She hasn't persuaded me that she wanted to go back to work as soon as a suitable job was available. She left Canada for personal interests. She was focused on planning a wedding even though she had an open ticket for a quick return.

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

[34] The Claimant didn't make enough effort to find a suitable job.

[35] 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.¹⁵

[36] The Claimant's efforts weren't enough to meet the requirements of this second factor. She just used job banks. She didn't actively look for a job. She also waited for a call from her employer to go back to work.

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

[37] The Claimant set personal conditions that unduly limited her chances of going back to work. She was outside Canada, meeting her future in-laws, and introducing her parents to her suitor.

[38] Because of this, she can hardly claim that she actively looked for work.

¹⁵ 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.

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

[39] Based on my findings on the three factors, I find that the Claimant hasn't shown that she was capable of and available for work but unable to find a suitable job.

Conclusion

[40] I find that the Claimant isn't entitled to receive benefits for when she was outside Canada.

[41] I find that the Claimant hasn't shown that she was available for work within the meaning of the law. Because of this, I find that the Claimant can't receive EI benefits.

[42] This means that the appeal is dismissed.

Manon Sauvé

Member, General Division – Employment Insurance Section