



[TRANSLATION]

Citation: *GM v Canada Employment Insurance Commission*, 2022 SST 1669

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

Decision

Appellant: G. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (456167) dated February 24, 2022 (issued by Service Canada)

Tribunal member: Normand Morin

Type of hearing: Teleconference

Hearing date: September 1, 2022

Hearing participant: Decision on the record

Decision date: September 27, 2022

File number: GE-22-1499

Decision

[1] The appeal is dismissed. I find that the Appellant hasn't shown that he was available for work from October 18, 2021, to December 20, 2021.¹ His entitlement to benefits can't be established for this period.

Overview

[2] From February 15, 2021, to June 19, 2021, inclusive, the Appellant worked as a day labourer for X (X or the employer) and stopped working for that employer because of a shortage of work.²

[3] On July 9, 2021, the Appellant applied for Employment Insurance (EI) (regular) benefits.³ A benefit period was established effective June 20, 2021.⁴

[4] On January 5, 2022, the Canada Employment Insurance Commission (Commission) told him that it could not pay him EI benefits from October 18, 2021, because he said that he wasn't looking for a job. So, it told him that it considered that he wasn't available for work.⁵

[5] On February 24, 2022, following a reconsideration request, the Commission told him that the decision sent on January 5, 2022, about his availability for work had been replaced by a new decision. It told him that, based on that new decision, it had established the period where he was unavailable from October 18, 2021, to December 20, 2021.⁶

¹ See section 18(1)(a) of the *Employment Insurance Act* (Act); and sections 9.001 and 9.002(1) of the *Employment Insurance Regulations* (Regulations).

² See GD3-6, and GD8-3 to GD8-6.

³ See GD3-3 to GD3-15.

⁴ See GD3-1 and GD4-1.

⁵ See GD3-21.

⁶ See GD3-28 and GD3-29.

[6] The Appellant says that he was available for work and that he looked for a job during that period. He says that he contacted the employer he worked for. The Appellant points out that this is what he first has to do to get a job in the region where he resides. On May 6, 2022, the Appellant challenged the Commission's reconsideration decision before the Tribunal. This decision is being appealed to the Tribunal.

Preliminary matters

[7] The Appellant was absent from the teleconference hearing on September 1, 2022. A hearing can go ahead without the Claimant if he received the notice of hearing.⁷

[8] A notice of hearing was emailed to the Appellant, dated August 23, 2022, to tell him about the hearing.⁸ In his notice of appeal dated May 6, 2022, the Appellant had given the Tribunal permission to contact him by email.⁹ On August 29, 2022, the Appellant contacted the Tribunal and confirmed he would attend that hearing.

[9] On September 1, 2022, at the start of the hearing, the Tribunal tried to contact the Appellant several times but was unsuccessful.¹⁰ I waited more than 45 minutes after the hearing started to make sure the Appellant would attend. Despite my waiting, he didn't show up. Before the hearing, the Tribunal didn't receive any notice from the Appellant that he wasn't going to attend.

[10] On September 2, 2022, after the hearing, the Appellant emailed the Tribunal to make additional submissions in response to those of the Commission. In that email, the Appellant didn't explain his absence on September 1, 2022.¹¹

⁷ Section 12 of the Regulations sets out this rule.

⁸ See GD1-1 to GD1-3.

⁹ See GD2-2.

¹⁰ See GD11-1.

¹¹ See GD9-1.

[11] I was satisfied that the Appellant had been notified of the September 1, 2022, hearing. So, I held the hearing without him, as permitted by section 12 of *the Social Security Tribunal Regulations*, in such a situation.

[12] In these circumstances, I am making a decision based on the evidence on the record.

Issues

[13] In this case, I have to decide whether the Appellant has shown that he was available for work from October 18, 2021, to December 20, 2021.¹² To do this, I have to answer whether the Appellant has:

- shown a desire to go back to work as soon as a suitable job is available
- expressed that desire through efforts to find a suitable job
- set personal conditions that might have unduly limited his chances of going back to work

Analysis

[14] Two different sections of the *Employment Insurance Act* (Act) require a claimant to show that they are available for work.¹³ Both sections deal with availability, but they involve two different disentitlements.¹⁴

[15] A claimant isn't entitled to benefits for any working day in a benefit period for which they fail to prove that, on that day, they were capable of and available for work and unable to find a suitable job.¹⁵

¹² See section 18(1)(a) of the Act and sections 9.001 and 9.002(1) of the Regulations.

¹³ See sections 18(1)(a) and 50(8) of the Act.

¹⁴ See sections 18(1)(a) and 50(8) of the Act.

¹⁵ See section 18(1)(a) of the Act.

[16] On the other hand, to prove availability for work, the Commission may require a claimant to prove that they are making reasonable and customary efforts to find a suitable job.¹⁶

[17] In this case, the Commission doesn't say that it required the Appellant to prove that he made reasonable and customary efforts to find a suitable job.

[18] It explains that section 18(1)(a) of the Act says that to be entitled to EI regular benefits, a person has to show that they are capable of and available for work but unable to find a suitable job.¹⁷

[19] I find that the Commission disentitled the Appellant to benefits mainly because it applied section 18(1)(a) of the Act.

[20] To determine whether a claimant is available for work, I have to consider the specific criteria set out in the Act for deciding whether their efforts to find a suitable job are reasonable and customary.¹⁸ According to these criteria, the efforts must be: 1) sustained, 2) directed toward finding a suitable job, and 3) in line with nine specific activities that can be used to help claimants find a suitable job.¹⁹ These activities include assessing employment opportunities, registering for job search tools, with online job banks or employment agencies, contacting employers who may be hiring, and applying for jobs.²⁰

[21] The criteria for determining what constitutes a suitable job are that (1) the claimant's health and physical capabilities allow them to commute to the workplace and perform the work, (2) the hours of work aren't incompatible with the claimant's family obligations or religious beliefs, and (3) the nature of the work isn't contrary to the claimant's moral convictions or religious beliefs.²¹

¹⁶ See section 50(8) of the Act.

¹⁷ See GD4-4.

¹⁸ See section 9.001 of the Regulations.

¹⁹ See section 9.001 of the Regulations.

²⁰ See section 9.001 of the Regulations.

²¹ See section 9.002(1) of the Regulations.

[22] The notion of “availability” isn’t defined in the Act. Federal Court of Appeal (Court) decisions have set out criteria for determining a person’s availability for work and whether they are entitled to EI benefits.²² These three criteria are:

- wanting to go back to work as soon as a suitable job is available
- expressing that desire through efforts to find a suitable job
- not setting personal conditions that might unduly limit the chances of going back to work²³

[23] Whether or not a person who is taking a full-time course is available for work is a question of fact that has to be determined in light of the specific circumstances of each case but based on the criteria set out by the Court. The claimant’s attitude and conduct has to be considered.²⁴

[24] In this case, the Appellant doesn’t meet the above criteria to prove his availability for work from October 18, 2021, to December 20, 2021. He hasn’t shown that his efforts to find a job during that period were reasonable and customary.

Question 1: Did the Appellant show a desire to go back to work as soon as a suitable job was available?

[25] I find that the Appellant hasn’t shown his desire to go back to work as soon as a suitable job was available from October 18, 2021, to December 20, 2021.

[26] In his October 27, 2021, statement to the Commission, the Appellant said that he wasn’t looking for work.²⁵

²² The Court established or reiterated this principle in *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

²³ The Court established or reiterated this principle in *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

²⁴ See the Court’s decisions in *Carpentier*, A-474-97; *Whiffen*, A-1472-92; and *Rondeau*, A-133-76.

²⁵ See GD3-17.

[27] On January 4, 2022, he said that he worked in a seasonal job, that he wasn't looking for work during the months he wasn't working, and that he wasn't available for a full-time job. In the same statement, he then said that he was looking for a job.²⁶

[28] In his January 19, 2022, statement to the Commission, in his January 27, 2022, reconsideration request, and in his notice of appeal, the Appellant says that he has been available for work at any time since September 2021.²⁷ He says that he made a mistake in his previous statements.²⁸

[29] On September 2, 2022, in submissions sent to the Tribunal after the hearing, the Appellant repeated that he was still willing to work.²⁹

[30] I find contradictory the Appellant's statements about his availability for work and his desire to go back to work as soon as a suitable job would be offered.

[31] I give more weight to his first statements to the Commission that he wasn't available for work than to his explanations after the Commission told him on January 5, 2022, that he wasn't entitled to benefits from October 18, 2021.³⁰ It wasn't until he learned of the Commission's January 5, 2022, decision that the Appellant was more certain about his availability for work.

[32] The Court tells us that initial and spontaneous statements should be given much more credibility than later statements after an unfavourable decision by the Commission.³¹

²⁶ See GD3-19 and GD3-20.

²⁷ See GD2-4, GD3-22, and GD3-23.

²⁸ See GD3-23.

²⁹ See GD9-1.

³⁰ See the Commission's initial decision, dated January 5, 2022 – GD3-21.

³¹ This principle was established or reiterated by the Court in the following decisions: *Clinique Dentale O. Bellefleur*, 2008 FCA 13; *El Maki*, A-737-97; *Lévesque*, A-557-96; *Rancourt*, A-355-96; *Boucher*, A-272-96; and *Lépine*, A-78-89.

[33] I find that, even though the Appellant said he was available for work, he didn't show his desire or willingness to go back to work as soon as a suitable job was available from October 18, 2021, to December 20, 2021.

Question 2: Did the Appellant express this desire through efforts to find a suitable job?

[34] I find that the Appellant didn't show his desire to go back to work through efforts to find a suitable job from October 18, 2021, to December 20, 2021.

[35] The Appellant's statements indicate the following:

- a) On October 27, 2021, he told the Commission that he wasn't looking for work.³²
- b) On January 4, 2022, he told the Commission that he had a seasonal job and that he had worked as a crab fisher in July 2021, until the end of the fishing season in late July 2021. He said that he doesn't look for a job during other months of the year when he isn't working as a fisher, and that he isn't looking for a full-time job. He asked why he should look for another job when he already has one. In the same statement, he then said that he was looking for a job but that he could not give any more details about the job search he had done.³³
- c) On January 19, 2022, he told the Commission that he had been looking for a job since September, October, or November 2021.³⁴

³² See GD3-17.

³³ See GD3-19 and GD3-20.

³⁴ See GD3-22.

- d) On February 22, 2022, the Appellant said that he hadn't looked for a job until December 21, 2021. He said that, since he hadn't received benefits for two months, he contacted the Band Council (X) for help finding a job. He said that he asked that employer again in January 2022 and February 2022, but that he was told that there were no jobs in his field—fishing. He said that this work should resume in April, like every year. In this statement, the Appellant points out that people in his region has to contact the Band Council to find a job.³⁵
- e) In his notice of appeal, the Appellant says that he has been looking for a job since September 1, 2021.³⁶

[36] In this case, I find that, during the relevant period, the Appellant didn't make "reasonable and customary efforts" to "search for suitable employment"—sustained efforts toward finding a suitable job that were in line with nine specific activities that could be used to help claimants find a suitable job.³⁷

[37] I don't find credible the Appellant's statements that he started looking for a job in September, October, or November 2021. This is because of their contradictions and inaccuracies about when he started looking for a job. The Appellant also doesn't give concrete examples of job search activities he says he made during that period.

[38] I find that, because of the many contradictions in his statements, the Appellant hasn't shown that he was looking for a job from October 18, 2021, to December 20, 2021.

[39] I give more weight to his February 22, 2022, statement to the Commission where he indicated that his job search hadn't started before December 21, 2021. In that statement, he went into detail, using concrete examples about his efforts to find a job from that moment.

³⁵ See GD3-25 and GD3-26.

³⁶ See GD2-4.

³⁷ See section 9.001 of the Regulations.

[40] I find that the Appellant hasn't shown that he was available for work for each working day of his benefit period for any potential employer during the period in question.

[41] The Court tells us that a person's availability is assessed for each working day in a benefit period for which they can prove that, on that day, they were capable of and available for work and unable to find a suitable job.³⁸

[42] I find that, during the relevant period, the Appellant's availability for work didn't result in sustained job search efforts, either with the employer he worked for (his community's Band Council or X) or with other potential employers, to find a suitable job.

[43] The Court tells us that it is up to the Claimant to prove his availability for work. In order to get EI benefits, a claimant has to actively seek suitable employment, even if it seems reasonable to them not to do so.³⁹

[44] The Appellant was responsible for actively looking for a suitable job so that he could get EI benefits.

[45] I find that he didn't fulfill this responsibility during the relevant period.

Question 3: Did the Appellant set personal conditions that might have unduly limited his chances of going back to work?

[46] I find that the Appellant set "personal conditions" that unduly limited his chances of going back to work to find a suitable job from October 18, 2021, to December 20, 2021.

[47] I find that the personal conditions the Appellant imposed during that period are mostly related to the fact that he waited to go back to work for the employer he worked for in 2021 without making any efforts to find a suitable job.

³⁸ This principle was established by the Court in *Cloutier*, 2005 FCA 73; and *Boland*, 2004 FCA 251.

³⁹ This principle was established by the Court in *De Lamirande*, 2004 FCA 311; and *Cornelissen-O'Neil*, A-652-93.

[48] I find that, despite his statements that he was available for work, he hasn't shown that this was the case during the relevant period.

[49] I find that, during the period from October 18, 2021, to December 20, 2021, the Appellant set personal conditions that unduly limited his chances of going back to work for a suitable job.

Conclusion

[50] I find that the Appellant hasn't shown that he was available for work within the meaning of the Act from October 18, 2021, to December 20, 2021. This means that he isn't entitled to receive EI benefits for this period.

[51] This means that the appeal is dismissed.

Normand Morin

Member, General Division - Employment Insurance Section