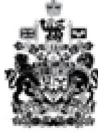

Citation: *GZ v Canada Employment Insurance Commission*, 2022 SST 1729

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	G. Z.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (481314) dated June 10, 2022 (issued by Service Canada)

Tribunal member:	Catherine Shaw
Type of hearing:	Teleconference
Hearing date:	November 18, 2022
Hearing participant:	Appellant
Decision date:	December 18, 2022
File number:	GE-22-2170

Decision

[1] The appeal is dismissed.

[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 was disentitled from receiving Employment Insurance (EI) regular benefits as of May 10, 2021, 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 was attending a full-time school program and said he wasn't willing to leave school to accept a job.

[6] The Claimant disagrees and says he was actively looking for work but there are limited job opportunities in his field. He returned to school to expand his job prospects. He would have left school if he had found a job in his field. Getting a job was his priority.

Matters I have to consider first

Documents submitted after the hearing

[7] The hearing was held on November 18, 2022. On November 21, 2022, the Commission submitted a response to a document the Claimant had filed before the hearing.[1] I will not accept this document as evidence in this appeal. This is because the

[1] See GD10. The Commission filed this document in response to the Claimant's GD8 submission.

Claimant's submission was sent to the Commission prior to the hearing. The Commission had the opportunity to respond to this document, and the Claimant's position in general, by attending the hearing. The Commission chose not to attend the hearing. So, it would be unfair if I gave the Commission more time to respond to the Claimant's submissions after the hearing, as it already had the opportunity to do so if it had chosen to attend the hearing.

[8] After the hearing, the Claimant submitted a document that he said showed additional job applications from January to May 2022.[2] As the Claimant's job search efforts are relevant to whether he was available for work, this document would be relevant to this appeal. The document contained screenshots which show the contents of a folder named "Job application" on the Claimant's computer drive. The screenshots contain a list of folders, some of which appear to be named after job postings (such as, "X_X_IT Analyst") and some folders have random or irrelevant names (such as "New folder (3)" and "DELL"). The folders are also dated between December 23, 2021, and May 12, 2022.

[9] I have decided not to accept this document as evidence because the document only shows that the Claimant had folders on his computer with some titles related to job postings. It doesn't show that the Claimant applied for these jobs, let alone when he applied and what the results of those application were. For this reason, the document has little probative value. In other words, it doesn't show that the Claimant made job search efforts, so it doesn't speak to the Claimant's availability.

[10] On November 25, 2022, the Commission made additional submissions in response to the Claimant's post-hearing document.[3] As I have not accepted the Claimant's post-hearing document as evidence, I will not accept the Commission's response.

[2] See GD9.
[3] See GD12.

[11] The Claimant made another submission on November 29, 2022.[4] I have accepted this submission as evidence in this appeal because this document shows that the Claimant attended several interviews for co-op work opportunities within the period in question. This is relevant to whether the Claimant was making efforts to find a job.

[12] I gave the Commission an opportunity to respond to this document. The Commission submitted a response on December 6, 2022, which I have also accepted.[5]

Job search efforts outside of the period in question

[13] The Claimant provided documentary and oral evidence about job search efforts he made before May 10, 2021, and after April 2, 2022.

[14] The Commission decided that the Claimant was disentitled from receiving EI benefits from May 10, 2021. They also submitted that the last benefits payable for his claim were for the week ending April 2, 2022.

[15] The Claimant has appealed the Commission's decision to disentitle him from benefits. To do this, I have to look at whether the Claimant was available for work during the period of the disentitlement. In other words, from May 10, 2021, to April 2, 2022.

[16] I understand that the Claimant's efforts to find work were not limited to this period, but any efforts that took place outside of this period are not relevant to my decision. So, I have not referred to those efforts as part of this decision.

Issue

[17] Was the Claimant available for work?

[4] See GD13.
[5] See GD15.

Analysis

[18] Two different sections of the law require claimants to show that they are available for work.

[19] 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.[6] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[7] I will look at those criteria below.

[20] 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.

[21] The Commission decided that the Claimant was disentitled from receiving benefits because he isn't available for work based on these two sections of the law.

Reasonable and Customary Efforts

[22] The first section of the law that I am going to consider says that claimants have to prove that their efforts to find a job are reasonable and customary.[10]

[23] The law sets out criteria for me to consider when deciding whether the Claimant's efforts are reasonable and customary.[11] I have to look at whether his efforts are sustained and whether they are directed toward finding a suitable job. In other words, the Claimant has to have kept trying to find a suitable job.

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[6] See section 50(8) of the *Employment Insurance Act* (Act).
[7] See section 9.001 of the *Employment Insurance Regulations* (Regulations).
[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 50(8) of the Act.
[11] See section 9.001 of the Regulations.

[24] 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 are the following:[12]

- assessing employment opportunities
- attending interviews
- applying for jobs

[25] The Commission says that the Claimant didn't do enough to try to find a job.

[26] The Claimant disagrees. He provided a detailed list of his job applications to the Tribunal. It shows that he applied for five jobs between May 10, 2021, and April 2, 2022. The Claimant said that he also applied for two other jobs during this time, but could not access the confirmation of those applications.

[27] The Claimant provided a list of interviews he attended for co-op work opportunities through his school. This list shows that he attended six interviews between January and March 2022.[13]

[28] The Claimant said that he registered for job search websites and set up notifications for jobs in the marine and naval engineering industry. He has over 20 years experience in this field, but has been unable to get a job in this industry since moving to Canada. He is qualified for these jobs but finds it difficult to get hired due to the limited number of job opportunities and the security clearance is sometimes an issue because he is not a Canadian citizen.

[29] I find that the Claimant hasn't proven that he made reasonable and customary efforts to find a suitable job. This is because his job search efforts were inadequate over the period of time in question. Considering his applications for jobs and co-op work opportunities, he applied at only thirteen jobs in total from May 10, 2021 to April 2, 2022.

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[12] See section 9.001 of the Regulations.
[13] See GD13.

[30] The Claimant acknowledged that his efforts were limited in scope, because he was only willing to leave his school program for a job in his field.

[31] The timing of the Claimant's applications also indicate that his job search efforts were not sustained. The Claimant didn't apply for any jobs from July 2021 and December 2021. The Claimant made some efforts to find a suitable job during this time, such as renewing his job application for the Department of Defense with the federal government. However, this is not enough to show that he was making a sustained effort to find suitable work.

[32] I recognize that the Claimant made some efforts to find work. But, his efforts to find work were limited and do not appear sustained throughout the period in question. So, he hasn't proven that his efforts to find a job are reasonable and customary.

Capable of and available for work

[33] 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:[14]

a) He wanted to go back to work as soon as a suitable job was available.

b) He has 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.

[34] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.[15]

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[14] 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.

[15] 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**

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

[36] The Claimant was attending a full-time school program. He testified that he took this program to expand his job prospects because he was having difficulty finding work in his field. Despite attending school, he said that finding a suitable job was his first priority. He kept looking for job postings in his field and if he had obtained a job, he would have left his school program.

[37] The Claimant’s testimony conflicts with the statements he made to the Commission and the answers he gave on several questionnaires about his training. When there is conflicting information, I have to decide which version is most likely. I have to consider all of the evidence and make a decision on the balance of probabilities.[16]

[38] The Claimant applied for benefits on April 4, 2021. On his application he stated that he is not able to do work after his program starts because he will be attending school full-time.[17] The application asked what he would do if he found full-time work that conflicted with his course, and the Claimant answered that he would accept the job as long as he could delay the start date to allow him to finish the course.[18]

[39] The Claimant submitted two questionnaires about his training while claiming EI benefits. These questionnaires asked what he would do if he found full-time work that conflicted with his course, and the Claimant answered that he would finish his course.[19]

[40] The Commission spoke to the Claimant on March 27, 2022. It provided notes of this conversation, which state that the Commission officer asked the Claimant if he

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[16] The Federal Court of Appeal says that the standard of proof is the balance of probabilities for employment insurance matters in its decision *Canada (Attorney General) v. Corner*, A-18-93.
[17] See GD3-8.
[18] See GD3-9.
[19] The Claimant submitted the first training questionnaire on September 10, 2021, see GD3-25. He submitted the second training questionnaire on January 14, 2022, see GD3-30.

found a job that conflicted with his training, if he would drop his training to accept the job. The Claimant said that he would finish his training before accepting the job.

[41] The Claimant addressed this conflicting information at the hearing. He said that he had difficulty understanding the Commission officer during their phone call. He feels that he may have answered inaccurately because of a misunderstanding.

[42] When asked about the answers he gave on his application for benefits and the two questionnaires, the Claimant said he felt that he should have answered differently because in truth he was willing to leave his course for the right job. He said he wouldn't have left his course for just any job, but if he had found a job in the marine and naval engineering field, he would have stopped his course and taken it. He was only taking the course to expand his job prospects, since he was having difficulty getting a job in his field.

[43] I accept that the Claimant would have left his course if he had found a job in the marine and naval engineering field. I think it's credible that the Claimant answered "no" to the questions on the application, questionnaires, and from the Commission officer, because he thought it was asking broadly if he would leave his course for a job. And he was honest in his responses that he would not, but his intention to finish his course was also less of a priority than finding a job in his field.

[44] It is also credible that he didn't ask the Commission officer for clarification on this question because he found the officer difficult to understand. English is not the Claimant's first language, and it is reasonable that there was also a language barrier that contributed to the communication issues.

[45] So, I find the Claimant has shown that he was willing to leave his course to accept a job in the marine and naval engineering field. However, I find this intention is not enough to show that the Claimant wanted to return to work as soon as a suitable job was available.

[46] This is because the Claimant made limited efforts to find work while he was in school. He applied for seven jobs in his field, and the rest of his efforts were directed at

finding co-op work opportunities. The limited amount of applications over nearly a year doesn't support that the Claimant wanted to return to work as soon as possible.

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

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

[48] 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.[20]

[49] The Claimant's efforts to find a new job included having a resume, registering for job search websites, applying for jobs, and attending interviews. I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

[50] Those efforts weren't enough to meet the requirements of this second factor because he made very few job applications while he was in school. Without making ongoing efforts to apply for jobs, the Claimant could not have obtained suitable employment.

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

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

[52] The Claimant's job search was restricted to jobs in the marine and naval engineering field, despite admitting that there were very few job opportunities as well as other barriers to his employment in that field. The Claimant had extensive experience in this industry, but had been unable to find employment in this field since moving to Canada. He said that some jobs in this field required security clearance that was more difficult to get since he wasn't a Canadian citizen.

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[20] 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.

[53] Given the limited opportunities and the other barriers that may have affected his chances of getting a job in this field, I find the Claimant only looking for jobs in this industry was a personal condition that might have unduly limited his chances of going back to work.

[54] I acknowledge that the Claimant attended interviews for co-op positions related to his school program. So, I accept that he dropped this personal condition by January 2022, as that is when he broadened his efforts to include jobs in the computer science field.

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

[55] 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.

Conclusion

[56] 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.

[57] This means that the appeal is dismissed.

Catherine Shaw

Member, General Division – Employment Insurance Section