



Citation: *JA v Canada Employment Insurance Commission*, 2022 SST 1766

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

Decision

Appellant: J. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (470700) dated May 28, 2022 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Teleconference

Hearing date: October 26, 2022

Hearing participant: Appellant

Decision date: November 1, 2022

File number: GE-22-2193

Decision

[1] I am allowing the appeal, in part.

[2] The Claimant has shown that he meets the availability requirements for Employment Insurance (EI) benefits from January 16, 2022, to February 26, 2022. This means he is not disentitled to EI benefits during this period.

[3] The Claimant refused to accept a suitable job with BGO. This means he is disqualified from EI benefits as of February 27, 2022.

[4] The Claimant says he is now sick and has kidney stones. So if he wishes to apply for EI sickness benefits, he may contact the Commission.

Overview

[5] The Claimant left his job at VL and applied for regular EI benefits. The Commission started his claim effective January 16, 2022.

[6] The Commission conducted a review. It decided the Claimant wasn't entitled (disentitled) to EI benefits as of January 17, 2022. This is because the Commission determined he didn't meet the availability requirements for regular EI benefits.

[7] The Claimant appeals to the Social Security Tribunal (Tribunal). He says he has been actively looking for work. Now he wants a job opportunity that is a challenge and something better than what he had.

Matters I must consider first

Interpreter Services

[8] On October 20, 2022, the Claimant contacted the Tribunal and requested an interpreter. The Tribunal arranged for an interpreter to attend the hearing via teleconference. She provided interpretation services for the Claimant.

[9] At the start of the hearing, the Claimant spoke in English. He was fully responsive to everything I said in English. He explained in detail how English is his second language and he has lived in Canada for more than sixteen years.

[10] The Claimant said he wanted to speak English during the hearing. He said he would ask the interpreter to translate if he had problems finding the words in English. So during the hearing, the Claimant presented his evidence primarily in English. There were a few times when he asked the interpreter to translate what he said in Spanish.

[11] Based on the foregoing, I find the Claimant was provided a full and fair opportunity to present his evidence during the hearing.

Issues

[12] Has the Claimant shown he meets the availability requirements for regular EI benefits?

[13] Did the Claimant refuse a job offer for suitable employment?

Analysis

[14] Two different sections of the law require claimants to show they are available for work. One section requires a claimant make reasonable and customary efforts to find suitable employment.¹ Another requires a claimant prove they are capable of and available for work each working day.²

[15] The Commission decided the Claimant had not met all of the availability requirements. It imposed two disentitlements, one under each section, effective January 17, 2022.

Reasonable and customary efforts to find suitable employment

[16] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.³ I have to look at whether his efforts are sustained and whether they are directed toward finding suitable employment (a suitable job).⁴ In other words, the Claimant has to have kept trying to find a suitable job.

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

² See section 18(1)(a) of the Act.

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

⁴ Section 6 of the Act defines what type of employment is not suitable. Section 9.002 of the Regulations lists the criteria for determining what suitable employment is.

– **Suitable employment**

[17] To assess the Claimant's availability, I must first determine what suitable employment is for him. The Act does not define suitable employment. Instead, the law provides criteria I must consider when determining whether employment is not suitable or suitable for the Claimant.⁵

[18] I find suitable employment for the Claimant includes jobs as a delivery driver, cube van driver, warehouse assistant, building maintenance worker, general repair worker for electrical and plumbing issues, and a general labourer, offering favourable pay or compensation usually agreed upon between good employers and their employees. Here is what I considered.

- The Claimant has experience delivering, installing, and monitoring safety stations.
- The Claimant told the Commission he does not have a special trade, course or specialty.
- The Claimant completed a few university courses in his home country.
- The Claimant says he can do electrical and plumbing repairs.
- The Claimant recently completed general labour jobs, such as installing carpets for the Toronto International Film Festival.
- The Claimant worked for VL where his annual wage was approximately \$55,000.

⁵ Section 6 of the Act states that employment is not suitable for a claimant if: (a) it arises out of a work stoppage from a labour dispute; (b) it is in the claimant's usual occupation and is at a lower rate of earnings or on conditions less favourable than agreed upon between good employers and their employees; or (c) it's not in the claimant's usual occupation and is either at a lower rate of pay or on less favourable conditions that the claimant might reasonably expect to obtain, having regard to the conditions the claimant had in their usual occupation or would have had if they continued to be so employed. Section 9.002 of the Regulations states the criteria for determining suitable employment are: (a) the claimant's health and physical capabilities allow them to commute to the place of work and perform the work; (b) the hours of work are not incompatible with the claimant's family obligations or religious beliefs; and (c) the nature of the work is not contrary to the claimant's moral convictions or religious beliefs.

- The Claimant gave VL two weeks' notice after receiving a job offer from FI on December 21, 2021.
- FI offered the Claimant an annual wage of \$55,600. Then FI stopped responding to the Claimant when he tried to negotiate a higher wage. But the Claimant still tried to work for this company.
- The Claimant continued to look for work elsewhere. He received a job offer from BGO to care for a new building. The building had commercial space on the lower two floors with residential apartments on the upper floors. He was offered a wage of \$45,000 a year. During negotiations, BGO offered him \$51,000 but he refused to accept the job during the last week of February 2022. He says he refused the job because he feels he is worth more and wants an opportunity to do more.
- The Claimant says he turned down another job offer. He says the townhouse complex where he lives offered him a labour job. He refused to accept this job because it was only \$16.00 to \$18.00 per hour.

[19] At the hearing, the Claimant said he is applying for all types of jobs now. I accept the above mentioned jobs are suitable for the Claimant.

– **Reasonable and customary efforts**

[20] 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:⁶

- assessing employment opportunities
- preparing a resume or cover letter
- contacting prospective employers
- networking with friends and business contacts

⁶ See section 9.001 of the Regulations.

[21] I find the Claimant has shown he made reasonable and customary efforts to find a suitable job from January 16, 2022, to February 26, 2022. This was before he refused the job offered by BGO. The Claimant explained how he has applied for jobs he heard about on the internet and through friends.

[22] The Commission submits availability is the willingness to accept immediately, any employment opportunity, anywhere in one's work area, by using any available means of transportation, without demanding anything more than what is suitable under the legislation in terms of type of work, wages or salary, hours of work and other working conditions.

[23] The Commission states it determined the Claimant placed restrictions on his availability that are unduly limiting his ability to return to the workforce.

[24] I believe the Claimant when he says he didn't refuse the job offer with FI. He explained in detail how he was negotiating his wage with this employer when the employer simply stopped communicating with him. He tried to call back several times but he was told the employer was busy and could not speak with him. So he decided to start applying for jobs elsewhere.

– **Reasonable period to find suitable employment**

[25] In cases where a claimant is limiting the type of jobs they are seeking, it is well established that they ought to be provided a reasonable period to explore those opportunities. After a reasonable period has lapsed, then the claimant would be required to expand their job search criteria.⁷

[26] I acknowledge that there is no formula to determine a reasonable period to allow a claimant to explore job opportunities. This means that specific circumstances are to be considered on a case-by-case basis.⁸

⁷ See *Canada (Attorney General) v Le Duc*, A-134-95, and section 10.4 of the Digest of Benefit Entitlement Principles.

⁸ See section 10.4.1.4 of the Digest of Benefit Entitlement Principles.

[27] I recognize that the Claimant didn't submit an actual job search list to the Commission when it was discussed. However, I do not find that alone meets the requirements to impose a disentitlement.

[28] After careful consideration of the evidence, as set out above, I find that the Claimant has proven that his efforts to find a suitable job are reasonable and customary for the period from January 16, 2022, to February 26, 2022. That is the period up until he refused to accept a suitable job offer from BGO.

Capable of and available for work

[29] Case law sets out three factors for me to consider when deciding whether the Claimant is capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:⁹

- a) He wants 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 hasn't set personal conditions that might unduly (in other words, overly) limit 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.¹⁰

[31] I find the Claimant has met all three criteria showing he was available from January 16, 2022, to February 26, 2022.

[32] The Claimant says he wants to return to work. He has shown he has been making efforts to find a suitable job. He was not setting personal conditions that might unduly limit his chances of going back to work until he refused the job offer from BGO in the last week of February 2022.

⁹ 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.

¹⁰ 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.

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

[33] Based on my findings as set out above, I find the Claimant has shown that he was capable of and available for work but unable to find a suitable job from January 16, 2022, to February 26, 2022.

Refusing to accept suitable employment

[34] The law says a claimant is disqualified from receiving EI benefits if they have not accepted an opportunity for suitable employment.¹¹

[35] As stated above, a suitable job for the Claimant includes jobs as a building maintenance worker, general repair worker for electrical and plumbing issues, and a general labourer, offering favourable pay or compensation usually agreed upon between good employers and their employees.

[36] The Claimant readily admits that during the last week of February 2022, BGO offered him a job. The job was to care for a new building, paying \$45,000 per year. The building has commercial space on the first two floors with residential apartments on the upper floors. He says that during negotiations, BGO offered to increase his wage to \$51,000 per year. He refused to accept the job because he feels he is worth more and wants an opportunity to do more. He says that at this point he is not going to accept just any job. He wants “a good opportunity.”

[37] After considering the totality of the Claimant’s circumstances, I find he refused an opportunity for suitable employment with BGO, offering favourable pay or compensation during the last week of February 2022. This means he is disqualified from receiving regular EI benefits as of February 27, 2022.

Additional arguments

[38] I recognize the Claimant says he should receive EI benefits because he paid into the EI fund. But the employment insurance plan is an insurance scheme. It is not a pension fund, savings plan, or a needs-based program that he can withdraw at will.

¹¹ See section 27(1) of the Act.

Although the entitlement to benefits requires contributions to the EI fund, it also depends on qualifying conditions and compliance with the requirements set out in the Act.

[39] The Claimant also said he recently became sick with kidney stones. So if the Claimant is wanting to receive EI sickness benefits, he may contact the Commission to make that request.

Conclusion

[40] The Claimant has shown he meets the availability requirements for EI benefits from January 16, 2022, to February 26, 2022. This means he is entitled to regular EI benefits during this period.

[41] The Claimant refused a suitable job, so he is disqualified from EI benefits as of February 27, 2022.

[42] This means that I am allowing the appeal in part.

Linda Bell

Member, General Division – Employment Insurance Section