



Citation: *BI v Canada Employment Insurance Commission*, 2022 SST 1792

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

# **Decision**

**Appellant:** B. I.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (461529) dated April 14, 2022 (issued by Service Canada)

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**Tribunal member:** Solange Losier

**Type of hearing:** Teleconference

**Hearing date:** September 14, 2022

**Hearing participant:** Appellant

**Decision date:** September 25, 2022

**File number:** GE-22-1752

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant because he has shown that he was available for work.

## Overview

[2] The Canada Employment Insurance Commission (Commission) decided that the Claimant was not entitled to receive Employment Insurance (EI) regular benefits because he was not 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.

[3] 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 available for work.

[4] The Commission says that the Claimant imposed a personal condition that limited his chances of returning to the labour market.<sup>1</sup> Specifically, they say that he was restricting his job search to work as a videographer or video editor.

[5] The Claimant disagrees and states that he was actively seeking suitable employment.<sup>2</sup> As well, he agrees that he was searching for work as a videographer and video editor, but says it was not a personal restriction.

## Matter I have to consider first

### There are two files

[6] There is a related Tribunal file.<sup>3</sup> It was heard with this appeal because it involved the same Claimant. However, separate decisions were issued because the legal issues were different.

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<sup>1</sup> See Commission's submissions at GD4-1 to GD4-6.

<sup>2</sup> See notice of appeal forms at GD2-1 to GD2-15.

<sup>3</sup> See related Tribunal file GE-22-1754.

## Issue

[7] Was the Claimant available for work from December 1, 2021 to April 8, 2022?

## 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 EI 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.<sup>4</sup> The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.<sup>5</sup> I will look at those criteria below.

[10] 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.<sup>6</sup> Case law gives three things a Claimant has to prove to show that they are “available” in this sense.<sup>7</sup> I will look at those factors below.

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

[12] I will now consider these two sections whether the Claimant was available for work.

### Reasonable and customary efforts to find a job

[13] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts were reasonable and customary.<sup>8</sup> I have to look at whether his efforts were

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<sup>4</sup> See section 50(8) of the *Employment Insurance Act* (EI Act).

<sup>5</sup> See section 9.001 of the *Employment Insurance Regulations* (EI Regulations).

<sup>6</sup> See section 18(1)(a) of the EI Act.

<sup>7</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>8</sup> See section 9.001 of the EI Regulations.

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.

[14] 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:<sup>9</sup>

- assessing employment opportunities
- registering for job-search tools or with online job banks or employment agencies
- networking
- contacting employers who may be hiring
- applying for jobs
- attending interviews

[15] The Claimant's efforts to find a new job included looking for jobs online and reviewing job ads on various sites such as: *Rogers, Indeed and LinkedIn*. He also applied for over 20 jobs and had three interviews. He was also contacted by two recruiters and was networking within his field.

[16] The Claimant explained that he focused his efforts on finding jobs in film and media production as a videographer or video editor because has work experience and education in that field.

[17] I find that the Claimant has proven that his efforts to find a job were reasonable and customary. This means that the Claimant is not disentitled to EI benefits under this section in law.<sup>10</sup>

[18] Specifically, I was persuaded by the Claimant's efforts. He undertook a variety of job seeking efforts on a weekly basis, including searching and applying for online for jobs, interviewing, networking and speaking with recruiters. His efforts were sustained

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<sup>9</sup> See section 9.001 of the Regulations.

<sup>10</sup> See section 50(8) of the EI Act.

over the relevant period. As well, the Claimant submitted a record of some the jobs he applied for noting that it was not a comprehensive list and interview invitation.<sup>11</sup>

### **Capable of and available for work**

[19] 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:<sup>12</sup>

- 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 has not set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[20] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.<sup>13</sup>

#### **– Wanting to go back to work**

[21] I find that the Claimant has shown that he wanted to go back to work as soon as a suitable job was available. The Claimant testified that he needed to work because was expecting a child, which I accept as credible.

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

[22] 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.<sup>14</sup>

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<sup>11</sup> See job list and interview invitation at GD3-25 to GD3-30.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

[23] I find that the Claimant has made enough efforts to find a suitable job. Those efforts were enough to meet the requirements of this second factor because he made a variety of efforts to try to find a job during the relevant period.

[24] Specifically, the Claimant looked for jobs online and reviewed job ads on sites such as: *Rogers, Indeed and LinkedIn*. He also applied for over 20 jobs, he had three interviews and he was speaking with two recruiters and networking within his field. He has submitted supporting evidence in the form of job application list and an interview invitation.<sup>15</sup> The Claimant focused his efforts on finding suitable jobs in the film and media production industry as a videographer or video editor because has experience and education in that field.

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

[25] The Claimant agreed that he was primarily searching for work as a videographer or video editor but says it was not a personal condition that limited his chances of going back to work.

[26] The Claimant explained that there were various job opportunities within his field when he was online searching for jobs. He said that he has a car, was willing to commute for work and looked for jobs that did not require vaccination for covid19.

[27] I find that the Claimant did not set any personal conditions that might have unduly limited his chances of going back to work. I was persuaded by the Claimant's testimony on this issue because it seems there were several job opportunities available as a videographer or video editor based on the job applications he submitted. As well, he was contacted by two recruiters and had interviews. In my view, this supports that there was work available in his preferred field of work.

[28] Also, the Claimant was willing to apply for factory jobs, but wanted to try to find work within his field before seeking other types of work. I accept the Claimant's explanation as reasonable.

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<sup>15</sup> See job list and interview invitation at GD3-25 to GD3-30.

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

[29] Based on my findings on the three factors, I find that the Claimant has shown that he was capable of and available for work but unable to find a suitable job.

## **Conclusion**

[30] The Claimant has shown that he was available for work within the meaning of the law. This means that the appeal is allowed.

Solange Losier

Member, General Division – Employment Insurance Section