



Citation: *DL v Canada Employment Insurance Commission*, 2023 SST 1189

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

## Decision

**Appellant:** D. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (550579) dated November 3, 2022 (issued by Service Canada)

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**Tribunal member:** Denis Bourgeois

**Type of hearing:** Teleconference

**Hearing date:** May 11, 2023

**Hearing participant:** Appellant

**Decision date:** June 28, 2023

**File number:** GE-22-4044

## Decision

[1] The appeal is allowed in part.

[2] The Appellant is disentitled to Employment Insurance (EI) benefits from January 24, 2019, to January 30, 2019, and from March 23, 2019, to March 30, 2019. This is because he was outside of Canada. He didn't meet any of the exceptions in the Employment Insurance Regulations (Regulations) for being outside of Canada. This means he **cannot** collect EI benefits.

[3] He has proven his availability for work, so he isn't disentitled because of this. But because of the disentitlement for being outside Canada, he cannot collect benefits.

## Overview

[4] The Appellant lost his job on June 30, 2018. He applied for regular EI benefits which began on August 5, 2018.

[5] He travelled outside of Canada in January 2019 and again in March 2019.

[6] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving EI regular benefits from January 25, 2019, to January 29, 2019, and from March 25, 2019, to March 29, 2019, because he was outside of Canada on those dates.

[7] It also concluded that 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.

[8] The decision resulted in an overpayment of \$1094.00.

[9] The Commission says that the Appellant wasn't available to work.

[10] The Appellant disagrees and states that he was ready and willing to work. He says that he was in communication with employers while away.

## Issues

[11] Was the Appellant entitled to receive benefits when he was outside of Canada from January 24, 2019, to January 30, 2019, and from March 23, 2019, to March 30, 2019?

[12] Was the Appellant available for work?

## Analysis

### **Was the Appellant entitled to receive benefits when he was outside of Canada?**

[13] The Appellant wasn't entitled to receive benefits when he was outside of Canada.

[14] EI benefits aren't payable to claimants while they are outside of Canada.<sup>1</sup> There are exceptions prescribed in the EI Regulations.<sup>2</sup>

[15] The onus is on the Appellant to prove he meets the requirements of one or more of the exceptions in the EI Regulations in order to overcome the general prohibition on payment to claimants outside of Canada.<sup>3</sup>

[16] Subsection 55(1) of the EI Regulations allows a claimant to receive EI benefits while outside of Canada **if** the travel is for one of the following specific purposes, namely

- to undergo medical treatment that isn't readily available in Canada
- to attend the funeral of an immediate family member (7 days)
- to accompany an immediate family member to a hospital for medical treatment that isn't available in Canada (7 days)
- to visit a family member who is seriously ill or injured (7 days)
- to conduct a bona fide job search (14 days) or attend a bona fide job interview (7 days)

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<sup>1</sup> See Section 37 of the *Employment Insurance Act* (Act).

<sup>2</sup> See Section 55 of the *Employment Insurance Regulations* (Regulations).

<sup>3</sup> See *Canada (Attorney General) v Peterson*, A-370-95.

[17] The Commission says it obtained information from the Canada Border Services Agency (CBSA). The information indicated that the Appellant had travelled outside of Canada from January 24, 2019, to January 30, 2019.

[18] At the hearing, the Appellant explained that he did indeed travel to the United States to visit a friend who was terminally ill. He didn't realize that that wasn't allowed. He said that it was just a part of life and that you don't suspend your life because you are collecting EI benefits. He felt he needed to visit on compassionate grounds. He said that he thinks that should be allowed.

[19] He explained that he was so used to checking the form that he didn't even think of his trip. He just automatically checked "no" to the question, "Were you outside of Canada...?"

[20] He said that when he filed his application for benefits, he did it in person at Service Canada with the assistance of an agent. He didn't read all of the documentation, including the part where it says you need to report any absences from Canada.

[21] He said he also travelled to the Dominican Republic for a vacation from March 23, 2019, to March 30, 2019.<sup>4</sup> He said it's something they do every year. Again, he answered "no" to the question that asked if he had been absent from Canada. He said that he just filled it out automatically without thinking.

[22] I am sympathetic to the Appellant, especially about his terminally ill friend. However, I find that his reasons for being outside Canada don't come within any of the exceptions listed in subsection 55(1) of the EI Regulations (see paragraph 15 above). His friend was a former business partner. He wasn't part of his immediate family.

[23] The Appellant thinks that visiting a close friend should be part of the exceptions listed. Unfortunately, I don't have the discretion to add this circumstance to the listed

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<sup>4</sup> See GD3-22.

exceptions and I cannot interpret the law in any way that is contrary to its plain meaning.<sup>5</sup>

[24] The Appellant emphasized that he didn't **knowingly** make false representations. He said they were honest mistakes that he made while he was filing his reports.

[25] I find that he wasn't entitled to receive benefits for his time outside Canada.

### **Was the Appellant available for work?**

[26] Even though I have already determined the Appellant was disentitled because he was outside of Canada, I will look at the Appellant's availability as it was also part of the appeal.

[27] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Appellant was disentitled under both of these sections. So, he has to meet the criteria of both sections to get benefits.

[28] 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>6</sup> The EI Regulations give criteria that help explain what "reasonable and customary efforts" mean.<sup>7</sup> I will look at those criteria below.

[29] 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>8</sup> Case law gives three things a claimant has to prove to show that they are "available" in this sense.<sup>9</sup> I will look at those factors below.

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

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<sup>5</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301.

<sup>6</sup> See section 50(8) of the Act.

<sup>7</sup> See section 9.001 of the Regulations.

<sup>8</sup> See section 18(1)(a) of the Act.

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

[31] I will now consider these two sections myself to determine whether the Appellant was available for work.

### **Reasonable and customary efforts to find a job**

[32] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.<sup>10</sup> I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[33] I also have to consider the Appellant'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>11</sup>

- Networking
- Registering for job-search tools or with online job banks or employment agencies
- contacting employers who may be hiring

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

[35] The Appellant disagrees. He said he was in contact with potential employers. He said that he had his phone and his computer. He said he was in contact with potential employers. He explained that he was ready to return to Canada if a job opportunity came up. He said that he has done this in the past. One time while on vacation in New York, he was asked to take an assignment. He said he immediately got on a plane and flew to Vancouver. He said would have done the same thing again had an opportunity come up.

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<sup>10</sup> See section 9.001 of the Regulations.

<sup>11</sup> See section 9.001 of the Regulations.

[36] At the hearing, he said that he was on job websites like Nova Scotia Jobs and that he was part of a group for retired people to get alerts for jobs.

[37] He said that he was in contact with prospective employers. He said that two employers in particular, X and X could have sent him work at any time. He explained that they didn't end up having any work for him while he was out of the country. He said that since the beginning of the pandemic, insolvency work had slowed down because of governments' financial aid. He has done work with these companies in the past.

[38] He said that he has been in the field and that he has many contacts. He put his name out there to let people know he was available for work.

[39] The Appellant says that his efforts were enough to prove that he was available for work.

[40] I agree with the Appellant. I find that his efforts were enough to prove that he was available for work.

[41] People in his field were aware that he was looking for work. He was checking websites and getting alerts for job openings.

[42] The Commission didn't submit any evidence to explain why they disentitled him under section 50 and section 9.001 and 9.002 of the Regulations. It didn't ask him for a job search or to explain how he went about searching for a job.

[43] The Appellant has proven that his efforts to find a job were reasonable and customary.

## Capable of and available for work

[44] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant 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 didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

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

### – Wanting to go back to work

[46] The Appellant has shown that he wanted to go back to work as soon as a suitable job was available.

[47] At the hearing, the Appellant repeated that he wanted to work. I find his testimony credible.

[48] He took steps like contacting employers and subscribing to websites. He took his cellphone and computer with him while he was away. It shows that he wanted to get a job.

### – Making efforts to find a suitable job

[49] The Appellant has made enough effort to find a suitable job.

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<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.



[50] 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>

[51] The Appellant's efforts to find a new job included registering for job search tools, contacting prospective employers and was networking. I explained these reasons above when looking at whether the Appellant has made reasonable and customary efforts to find a job.

[52] Those efforts were enough to meet the requirements of this second factor.

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

[53] The Appellant didn't set personal conditions that might have unduly limited his chances of going back to work.

[54] I find that he didn't set personal conditions that might have unduly limited his chances of going back to work. As I mentioned before, he was ready to return to Canada immediately if he were offered work. He has shown in the past that he would leave a vacation to go to work. There is no reason for me to think that he would not do that again.

[55] The Commission didn't provide any evidence that says otherwise.

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

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

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<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.

## Conclusion

[57] The Appellant has shown that he was available for work within the meaning of the law. Because of this, I find that the Appellant isn't disentitled from receiving EI benefits.

[58] However, he is disentitled because he didn't meet any of the exceptions in the Regulations for being outside of Canada. This means he **cannot** collect EI benefits.

[59] This means that the appeal is allowed in part.

Denis Bourgeois  
Member, General Division – Employment Insurance Section