



Citation: *AS v Canada Employment Insurance Commission*, 2022 SST 1102

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

Decision

Claimant: A. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (507550) dated July 15, 2022 (issued by Service Canada)

Tribunal member: Bret Edwards
Type of hearing: Videoconference
Hearing date: November 28, 2022
Hearing participant: Claimant
Decision date: December 20, 2022
File number: GE-22-2678

Decision

[1] The appeal is dismissed. I disagree with the Claimant.

[2] The Claimant hasn't shown that he is 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 is disentitled from receiving Employment Insurance (EI) regular benefits as of April 25, 2022 because he isn'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 is 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 is available for work.

[5] The Commission says that the Claimant isn't available because he isn't looking for work much and has restricted where he looks for work.

[6] The Claimant disagrees and states that he has been looking for work but hasn't been able to find anything because he is older.

Matter I have to consider first

The Appeal was previously adjourned

[7] The hearing for this appeal was originally scheduled on November 24, 2022. However, the Claimant had technical problems (his audio wasn't working), so the hearing was adjourned that day.

[8] The hearing was rescheduled on November 28, 2022. The Claimant initially had the same technical problems, but was able to fix it with help from Tribunal support staff. So, the hearing proceeded that day.

The Claimant sent in documents after the hearing

[9] The Claimant sent in documents after the hearing.¹ I accept these documents as much of what they say ultimately proved to be relevant to the issue of availability.

Issue

[10] Is the Claimant available for work?

Analysis

[11] 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 benefits.

[12] 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.² The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.³ I will look at those criteria below.

[13] 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.⁴ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁵ I will look at those factors below.

[14] 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.

[15] I will now consider these two sections myself to determine whether the Claimant is available for work.

¹ GD17-1 to GD17-2, GD18-1 to GD18-2.

² See section 50(8) of the *Employment Insurance Act* (Act).

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

⁴ See section 18(1)(a) of the Act.

⁵ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

Reasonable and customary efforts to find a job

[16] The law sets out criteria for me to consider when deciding whether the Claimant's efforts are reasonable and customary.⁶ 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.

[17] 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:⁷

- preparing a résumé or cover letter
- contacting employers who may be hiring
- applying for jobs

[18] The Commission says that the Claimant isn't doing enough to try to find a job because he provided very little evidence of a job search during his disentitlement period.⁸

[19] The Claimant disagrees. He says that he has looked for work where he was able to and has done what he can to keep a record of his job search.

[20] The Claimant told the Commission and testified that he was unavailable for work from April 25, 2022 to May 11, 2022 because he was on vacation.⁹ So, I conclude that the Claimant wasn't looking for work from April 25, 2022 to May 11, 2022.

[21] The Claimant told the Commission that starting May 12, 2022 he looked for work by contacting employers, but didn't keep a log of his efforts. When he contacted employers, he felt they didn't want to hire him because of his age or because he was returning to work at the college in fall 2022. He also checked the Workopolis website for

⁶ See section 9.001 of the Regulations.

⁷ See section 9.001 of the Regulations.

⁸ GD4-3 to GD4-4.

⁹ GD3-40.

work and was being sent information about jobs, but there wasn't anything that was suitable for him.¹⁰

[22] I note that in response, the Commission told the Claimant that he needed to apply for any work and they weren't concerned whether an employer hired him or not. They also told him to start keeping a detailed record of his job search efforts.¹¹

[23] The Claimant then told the Commission in a follow-up conversation that he'd been looking for work but hadn't recorded anything because he was looking at IT jobs and employers want someone more junior than him. He applied for one job (a project manager) but couldn't provide specifics about it. He also saw a job posting through Workopolis for a senior IT manager and on July 9, 2022, he called the employer about it but they told him they were looking for someone more junior.¹²

[24] I note that according to the Commission, the Claimant was asked several times about his job search efforts during that conversation, but was unable to provide specifics and continuously spoke about not applying to these jobs because he didn't qualify.¹³

[25] The Claimant also submitted a job search list to the Tribunal from May 18, 2022 to August 8, 2022. I note that it is one typed page and has 21 entries listing an employer, date, and position.¹⁴

[26] The Claimant testified that when the Commission told him to make a job search list, he backtracked and reconstructed it as best he could. He didn't submit the list to the Commission because he didn't have it on hand when he spoke to them again, so he couldn't tell them about it.

[27] I don't accept the Claimant's explanation. The Commission doesn't say that the Claimant even mentioned a job search list to them. Instead, they say that he only

¹⁰ GD3-37.

¹¹ GD3-38.

¹² GD3-39.

¹³ GD3-40.

¹⁴ GD2-14 to GD2-15.

brought up a small number of specific jobs without much detail when asked about it, as mentioned above.

[28] I find that it's reasonable to believe that if the Claimant had a job search list when he spoke to the Commission, he would have mentioned it to them and submitted it for their consideration. Since there's no evidence that this happened, I conclude that the Claimant didn't actually have a job search list when he spoke to the Commission and instead created it later in an effort to show he looked for work.

[29] I also find that the Claimant hasn't provided consistent evidence to show that he would have been able to reconstruct an accurate list of jobs he applied to.

[30] The Claimant testified that he has a short memory and has trouble remembering employers he applied to. He also testified that he usually deletes applications after finding out he didn't get the job because he's upset.

[31] Since the Claimant testified he has a short memory and usually deletes applications quickly, I find that it's reasonable to believe it would have been very difficult for him to recall what jobs he applied for several months earlier when he put together his job list as it goes back to May 2022. I therefore conclude that his job list from May 18, 2022 to August 8, 2022 doesn't accurately show his job search for this period.

[32] Additionally, I find that the Claimant has provided evidence to show that he didn't in fact apply for most of the jobs on his search list.

[33] In his post-hearing submissions, the Claimant said that he doesn't have any emails showing where he applied for work. He checked the job site but no record was kept of his past applications.¹⁵ He also submitted one cover letter, which he said he "would modify for any job postings."¹⁶

¹⁵ GD17-1.

¹⁶ GD17-1.

[34] I note that the Claimant's cover letter is dated May 18, 2022.¹⁷ I also note that the Claimant didn't say that he sent an older version of his letter. Instead, he said that he would modify the same cover letter for any job posting, as mentioned above. Since the Claimant said this, I therefore find that he hasn't modified the cover letter since May 18, 2022 as this is the date on the version he submitted.

[35] Since I have found that the Claimant hasn't modified his cover letter since May 18, 2022 and he didn't submit an older version of it, I also find that he didn't apply for any of the jobs on his list except for the first one (which is dated May 18, 2022). In order for the Claimant to have applied for any of the jobs on his list after May 18, 2022, he would have had to modify the date on his cover letter, but he has provided evidence to show that he didn't in fact do that.

[36] In his post-hearing submissions, the Claimant also said he networked by meeting people socially and letting them know he was looking for temporary work.¹⁸ However, I note that he didn't give any examples about who he met, where he met them, when they met, or what kind of work he told them he was looking for. I find that it's reasonable to believe he should have been able to recall some recent examples at the very least and provide them as examples.

[37] The Claimant also testified that he stopped looking for work after August 18, 2022 because he found out then that he got a new contract from his college. So, I conclude that he hasn't been looking for work since August 18, 2022.

[38] In order to be found to have made reasonable and customary efforts, the Claimant's job search efforts need to be sustained, which means ongoing during his disenfranchisement period.

[39] The Claimant's own inconsistent statements about his job search efforts and the fact that he has provided evidence (his cover letter) to show he didn't actually apply for

¹⁷ GD17-2.

¹⁸ GD18-1.

most of the jobs on his search list demonstrate to me that his efforts are not sustained for any part of his disentitlement period.

[40] I therefore find the Claimant hasn't proven that his efforts to find a job were reasonable and customary when looking at his entire disentitlement period.

[41] So, the Claimant should be disentitled under this section of the law during his entire disentitlement period.

Capable of and available for work

[42] 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:¹⁹

- 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 his chances of going back to work.

[43] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.²⁰

– Wanting to go back to work

[44] The Claimant has shown that he wants to go back to work as soon as a suitable job is available for only part of his disentitlement period.

[45] The Claimant told the Commission and testified that he was on vacation from April 25, 2022 to May 11, 2022, as mentioned above. Since he was on vacation during this period, I conclude that he didn't want to go back to work then.

¹⁹ 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.

²⁰ 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.

[46] The Claimant testified that he wanted to go back to work once he returned from vacation. However, I have already found that the Claimant hasn't provided any evidence to show he actually applied for any jobs after May 18, 2022 or even contacted employers, as mentioned above. I therefore conclude that the Claimant didn't have the desire to work after May 18, 2022 for the same reasons.

[47] The Claimant also testified that he signed a new contract with his college on August 18, 2022. I therefore conclude that he has had the desire to work from this date onwards as he has shown his willingness to return to work at his college.

[48] I therefore find that the Claimant has shown that he has a desire to work for part of his disentitlement period, specifically from May 12, 2022 to May 18, 2022, during which he applied for a job, and from August 18, 2022 onwards after he signed a new contract with his college.

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

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

[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.²¹

[51] The Claimant's efforts to find a new job included preparing a résumé or cover letter, contacting employers who may be hiring, and applying for jobs.

[52] I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job. In particular, I found that the Claimant gave inconsistent statements about his job search and provided evidence that he didn't actually apply for most of the jobs on his search list.

[53] I also found that the Claimant said he wasn't looking for work from late April 2022 to early May 2022 and again from late August 2022 onwards.

²¹ 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.

[54] I therefore find that the Claimant hasn't provided enough evidence to show that his efforts to find work have been ongoing or extensive during his entire disentitlement period.

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

[55] The Claimant has set personal conditions that might unduly limit his chances of going back to work.

[56] The Claimant told the Commission and testified that he had trouble finding IT work because employers didn't like the fact that he is older and more qualified than some other applicants.²²

[57] The Claimant testified that he applied for one junior IT position and got an interview. The employer liked his skills and the Claimant thought he had a chance to get the job, but when he told them he was retired, they said they'd call him back but never did.

[58] The Claimant testified that he didn't apply for any more junior IT positions afterwards and only focused on intermediate IT positions where he felt he had a better chance.

[59] I understand that the Claimant felt discouraged after his interview for the junior IT position and decided not to apply for other similar positions because he didn't think they would work out. But he hasn't provided any evidence to show that employers generally prefer to hire younger people for junior IT positions.

[60] In other words, I find that the Claimant decided to not apply for other junior IT positions because of one negative experience that may have simply been an isolated case. He couldn't have known he would experience the same result again unless he had tried to apply for other junior IT positions, but he didn't ultimately do that.

²² GD3-37, GD3-39 to GD3-40.

[61] I therefore find that the Claimant has limited his chances of finding work during his disentitlement period by restricting his focus to intermediate IT jobs before he knew with more certainty that he wouldn't be hired for junior IT jobs.

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

[62] Based on my findings on the three factors, I find that the Claimant hasn't shown that he is capable of and available for work but unable to find a suitable job.

[63] The Claimant testified and sent in other documents saying that he is upset with the Commission for telling him he wasn't entitled to EI benefits because he didn't pay EI benefits.²³ I note that the Commission responded to the Claimant twice, saying that this issue isn't relevant to his appeal.²⁴ I also explained this to the Claimant during the hearing. If the Claimant wishes to pursue this issue more, he needs to contact the Commission separately.

[64] The Claimant also testified that the Commission told him they were going to approve his benefits but then changed their mind and asked him for more evidence of his job search. I see no evidence that the Commission actually said this to the Claimant.²⁵ Even if they did, my decision is based only on the relevant evidence before me addressing the Claimant's availability. So, while I acknowledge the Claimant's testimony, I can't give it any weight here.

Conclusion

[65] The Claimant hasn't shown that he is available for work within the meaning of the law. While he has shown that he has had the desire to work for most of his disentitlement period, he hasn't shown that he is available for work under the other relevant sections of the law. Because of this, I find that the Claimant is disentitled from receiving benefits as of April 25, 2022.

²³ GD7-1 to GD7-2, GD9-1, GD12-1, GD15-1 to GD15-2, GD16-1 to GD16-2.

²⁴ GD10-1, GD14-1.

²⁵ GD3-37 to GD3-41, GD4-1 to GD4-8.

[66] This means that the appeal is dismissed.

Bret Edwards

Member, General Division – Employment Insurance Section