



[TRANSLATION]

Citation: *AA v Canada Employment Insurance Commission*, 2023 SST 1653

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

Decision

Appellant: A. A.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (592093) dated June 13, 2023
(issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: In person
Hearing date: September 28, 2023
Hearing participant: Appellant
Decision date: October 4, 2023
File number: GE-23-2230

Decision

[1] The appeal is allowed with changes.

[2] The Appellant has shown that he was available for work from February 20, 2023, to March 20, 2023. He is entitled to Employment Insurance (EI) benefits during this period.

Overview

[3] On March 10, 2023, the Appellant applied for EI. He then explained that he had a work permit that allowed him to work in Canada for the employer X, but that he had stopped working on February 17, 2023, because of a shortage of work.

[4] On July 10, 2023, the Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving EI regular benefits as of February 20, 2023, because he wasn't available for work. It says that the Appellant hasn't shown that he made reasonable and customary efforts to find a job and that he is responsible for asking for a change to the restrictions on his work permit.

[5] The Appellant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that the Appellant has to be searching for a job.

[6] The Appellant argues that he was available for work but that his work permit only allowed him to work for X.

[7] I must decide whether the Appellant has proven that he was available for work. The Appellant 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.

Issue

[8] Was the Appellant available for work as of February 20, 2023?

Analysis

Reasonable and customary efforts to find a job

[9] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.¹ I have to look at whether these 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.

[10] I also have to consider the Appellant's efforts to find a job. The *Employment Insurance Regulations* list nine job-search activities that I have to consider. Some examples of those activities are the following:²

- assessing employment opportunities
- preparing a résumé or cover letter
- registering for job-search tools or with online job banks or employment agencies
- contacting employers who may be hiring
- applying for jobs

[11] The Commission argues that the Appellant's work permit unduly limits his chances of finding a job, since it restricted him to work for the only employer indicated on the permit.

[12] The Commission also says that the Appellant didn't make efforts to find another job. It says that, even though the Appellant mentioned in his notice of appeal that he had made efforts to find a job, he told a Commission employee twice that he hadn't done so because he had a work permit that limited him to only one employer and because his leave from work was short-term.

¹ See section 9.001 of the *Employment Insurance Regulations* (Regulations) and section 50(8) of the *Employment Insurance Act*.

² See section 9.001 of the Regulations.

[13] At the hearing, the Appellant explained that he had worked for X for four years. Each year, he is laid off for a short period of about two weeks. But this year, after two weeks off work, the employer told him that he would not go back to work for another week or two because it was waiting for materials.

[14] The Appellant says that, given that the period was extended, he applied for EI because his wife doesn't work, and he had to support his family. He says that this was the first time he had applied for benefits and that he did so because of his difficult financial situation.

[15] The Appellant went back to work on March 20, 2023, and is claiming benefits for the four weeks during which he didn't receive any income.

[16] Given the circumstances the Appellant set out at the hearing, I find that the information the employer gave him led him to believe that he would go back to work after a very short period of two weeks.

[17] Generally, waiting to be called back by your employer doesn't amount to a valid effort to prove your availability under the Act. But, in this very particular case, the two-week period, which was extended to four weeks, was very short. And the fact that this period was extended beyond the two weeks had nothing to do with the Appellant. On the contrary, the Appellant thought he would be called back quickly, and he wasn't receiving any income during that period. In my view, he should not be penalized for this situation.

[18] So, given the particular circumstances of this case, I rely on CUB72440. This decision sets out the principle that, given the very short period during which the Appellant had to stop working, waiting to be called back by his employer was the best way to find a job. That period was extended beyond the two weeks, and no employer would hire him for such a short period.

[19] I find that the Appellant has shown that he was available for work from February 20, 2023, to March 20, 2023.

Capable of and available for work

[20] Case law sets out three factors for me to consider when deciding whether a claimant is capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:³

- He wanted to go back to work as soon as a suitable job was available.
- He has made efforts to find a suitable job.
- He didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[21] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.⁴

– Wanting to go back to work

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

[23] The Commission argues that the Appellant didn't want to go back to work because his work permit limited him to only one employer and he hasn't shown that he made efforts to find a job.

[24] In my view, the Appellant wanted to go back to work as soon as he stopped working. He was ready to go back to his job as soon as possible. He expected to return to his job two weeks after he stopped working. But the employer told him that this period would be extended by another week or two. When he was laid off on February 17, 2023, the Appellant didn't know that he would not go back to work two weeks later.

³ 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.

⁴ 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.

[25] So, I am of the view that the Appellant wanted to go back to work as soon as a job was available. The initial period off work was to be two weeks.

[26] I must now consider whether he made concrete efforts to find a job.⁵

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

[27] It is the Appellant's responsibility to actively look for a suitable job so that he can get EI benefits.⁶

[28] The Commission says that the Appellant didn't make efforts to find a job and that his work permit unduly limited his return to work.

[29] It is true that the Commission's file shows that the Appellant said that he hadn't made efforts to find a job. But I also note that, on April 11, 2023, when a Commission employee told him what steps to take, the Appellant agreed. At the hearing, he explained that he would have taken the steps the Commission suggested if he had known that he would be off work longer than expected.

[30] If the expected layoff period had been longer, the Appellant says that he would have started an active job search and that he would have applied for a work permit to work for another employer.

[31] EI benefits are meant to compensate for unemployment when a worker is looking for and intends to find a suitable job. The Appellant has to prove his availability by making efforts to find a job each working day of his benefit period.

[32] In this case, I find that CUB72440 applies. A claimant has to prove that they made efforts to find a job each working day of their benefit period. And they can't avoid their responsibilities by claiming that they were waiting to be called back by their employer. But, in this case, the employer told the Appellant that the layoff would be for a period of about two weeks, and, at the end of that period, the employer told him that the

⁵ *Primard*, A-683-01.

⁶ This principle is explained in the following decisions: *Cornelissen-O'Neil*, A-652-93; and *De Lamirande*, 2004 FCA 311.

layoff would be extended by one or two weeks. The principle set out in CUB72440 applies precisely to a particular case like the Appellant's.

[33] I find that the Appellant has shown that he wanted to go back to work by making significant efforts to find a suitable job each working day of his benefit period from February 20, 2023, to March 20, 2023. Waiting to be called back by his employer during that period was the surest way to get back to work as soon as possible.

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

[34] The Commission says that the Appellant has personal conditions that unduly limit his chances of going back to work because his work permit restricts him to work for only one employer and he can't work in another job.

[35] But the Commission agrees that it isn't so much the work permit that unduly limits the Appellant's chances of finding a job, but rather the lack of efforts to find a job or get a work permit that would allow him to work for another employer that limits his chances of going back to work.

[36] The facts show that the Appellant holds a passport from Tunisia. He was issued a work permit to work in Canada for the period from December 16, 2022, to November 15, 2023.⁷ The conditions of that permit include that the Appellant must leave Canada by November 15, 2023, that he can't work in any job other than welding, and that he can't work for an employer other than X.

[37] This personal condition unduly limits the Appellant to finding a suitable job only if he doesn't make any efforts to find a job and to get permission to work for another employer when he is laid off. If an employer were to terminate such a work contract, it could issue a letter of discharge and the worker could then take steps to get a work permit approved by another authorized employer.

⁷ GD3-17.

[38] That isn't the Appellant's case. The Appellant was laid off for a very short period—first two weeks and then two more—and, for that reason, he was waiting to be called back by his employer X.

[39] So, restricting his availability to a single employer, not the work permit itself, unduly limits the Appellant's chances of finding a suitable job.

[40] In this case, the Appellant was laid off on February 17, 2023, and, like the last three years, the employer told him that he would return to work about two weeks later. But that isn't what happened this year. Instead, the employer told him, at the end of the two weeks, that the layoff would be extended for another week or two, since it hadn't received the materials it was waiting for. So, the Appellant applied for benefits on March 10.

[41] If the Appellant had been told that he would be laid off for a long period, he says that he would have made efforts to find a job and could have had a work permit approved by another employer.

[42] But the Appellant knew that he was laid off for a period of two weeks and, like the last three years, he expected to go back to his job after that short period. He could not foresee that it would be extended.

[43] I give the most weight to the Appellant's statements at the hearing. Given the circumstances, I am of the view that the Appellant's chances of finding a suitable job weren't limited by a personal condition.

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

[44] I must apply the criteria for determining whether the Appellant was available for work within the meaning of the *Employment Insurance Act* and whether he can receive benefits as of February 20, 2023.

[45] In this case, I have assessed the Appellant's attitude, but I have also weighed the circumstances surrounding the layoff and the additional weeks off work that the employer announced at the end of that period.

[46] I find that, in some circumstances, a person laid off for a short period might consider the promise of a return to work as the most likely way of getting a new job.⁸

[47] For this reason, and based on my findings on the three factors, I find that the Appellant has shown that he was capable of and available for work.

Conclusion

[48] This means that the appeal is allowed for the period from February 20, 2023, to March 20, 2023.

Josée Langlois
Member, General Division – Employment Insurance Section

⁸ This principle is explained in the following decision: CUB72440.