



Citation: *JR v Canada Employment Insurance Commission*, 2023 SST 1703

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

# **Decision**

**Appellant:** J. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (470700) dated May 27, 2022 (issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Teleconference

**Hearing date:** September 7, 2023

**Hearing participant:** Appellant

**Decision date:** September 22, 2023

**File number:** GE-23-1494

## Decision

[1] The appeal is allowed in part.

[2] The Appellant has proven his availability for work from June 1, 2022. This means that he isn't disentitled from receiving Employment Insurance (EI) regular benefits from that date. He is not entitled to receive EI regular benefits from January 17, 2022, to May 31, 2022. The disentitlement for availability remains for that period.

## Overview

[3] 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] The Appellant stopped working in January 2022. He applied for EI regular benefits on January 21, 2022, and a benefit period was established as of January 17, 2022.

[5] In March 2022, the Canada Employment Insurance Commission (Commission) tried to contact the Appellant to talk about his availability for work. When they couldn't connect with each other, the Commission decided that the Appellant was disentitled from receiving Employment Insurance (EI) regular benefits as of January 17, 2022, because he hadn't proven his availability for work.

[6] The Appellant asked the Commission to reconsider its decision. After talking to the Appellant, the Commission decided that he still hadn't proven his availability for work. It says that the Appellant wasn't willing to accept suitable work.

[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.<sup>1</sup>

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<sup>1</sup> See also Appeal Division decision dated May 22, 2023.

## **Matter I have to consider first**

### **I accepted documents sent in after the hearing**

[8] The Appellant told me about some job search efforts he made. I gave him time to provide evidence to support what he told me. He provided some documents (RGD05) within the allotted time. I accepted the documents. They were shared with the Commission. More than a week has passed, and the Commission hasn't raised any concerns about the post-hearing documents.

### **Issue**

[9] Was the Appellant available for work?

### **Analysis**

[10] 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.

[11] 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>2</sup> The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.<sup>3</sup> I will look at those criteria below.

[12] 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>4</sup> Case law gives three things a claimant has to prove to show that they are "available" in this sense.<sup>5</sup> I will look at those factors below.

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<sup>2</sup> See section 50(8) of the *Employment Insurance Act* (Act).

<sup>3</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations).

<sup>4</sup> See section 18(1)(a) of the Act.

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

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

[13] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.<sup>6</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.

[14] I also have to consider the Appellant's efforts to find a job. The Regulations list some job-search activities I have to consider. They include:<sup>7</sup>

- assessing employment opportunities
- attending job-search workshops or job fairs
- contacting employers who may be hiring
- applying for jobs

[15] The Commission says that the Appellant's efforts weren't directed at finding a suitable job. It says he was looking for a better opportunity.<sup>8</sup>

[16] The Appellant says he was looking for suitable work in construction or in health and safety at construction sites.

[17] I find that the Appellant was making reasonable and customary efforts. His efforts were directed at finding a suitable job, and they were sustained.

[18] I find that he was looking for suitable work. He applied for jobs similar to his previous job when he applied for work at X and X.<sup>9</sup> After May 31, 2022, which was a reasonable interval, he broadened his search to include work outside his usual occupation, applying for work at Air Canada.<sup>10</sup>

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<sup>6</sup> See section 9.001 of the Regulations.

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

<sup>8</sup> See page GD4-2.

<sup>9</sup> I know he applied to X before his benefit period started, but this application still shows the type of work he was looking for.

<sup>10</sup> Section 6 of the Act says that after a reasonable interval a suitable job includes work outside a claimant's usual occupation, as long as the pay isn't lower, and the conditions aren't less favourable.

[19] The Appellant's job search efforts were sustained. He got help updating his resume. He registered with four online job banks.<sup>11</sup> He attended three job fairs and online events. He applied for jobs through the job fairs. This is how he got his current Air Canada job. He contacted potential employers.<sup>12</sup> I find that these are reasonable and customary efforts to find a job. And as I found above, his efforts were directed at finding suitable work.

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

[20] 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>13</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.

[21] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.<sup>14</sup>

#### **– Wanting to go back to work**

[22] Initially, the Appellant didn't show that he wanted to get back to work as soon as a suitable job was available. This is because he was offered a suitable job and refused it.

[23] The Appellant believes that the job offer at X wasn't a suitable job because the salary was less than what he had been making. At his previous job he was making

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<sup>11</sup> See page GD3-26.

<sup>12</sup> See RGD5-3.

<sup>13</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>14</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.

\$55,000 annually, plus a discretionary bonus, which took his income to about \$60,000 annually. He told me he wanted to make *more* than \$60,000 in his new job.

[24] I find that the X job was a suitable job. I considered the type of work, the rate of earnings, and the conditions of work.<sup>15</sup>

[25] The X job wasn't exactly the same as his usual job. But as a superintendent type position, it called on many of the skills he outlined in his cover letter when he applied for the job, including construction and landscaping knowledge.<sup>16</sup>

[26] The X job paid \$55,000 a year, the same as his former job. The evidence about what he was offered at X isn't clear. He told me that the initial offer was \$45,000 a year, but was increased when he asked for more. He told me that the revised offer was close to, but not actually \$50,000 a year. But he also told me that the offer was \$55,000. I find the job paid \$55,000 a year because this is one of the amounts he mentioned to me, and he mentioned the same amount to the Commission in May 2022, when the amount would have been fresher in his mind.

[27] I haven't considered the bonus in determining the Appellant's usual rate of earnings. This is because the bonus was discretionary, and he told me the employer had taken away his bonus.

[28] As the offered position included a good insurance plan, the conditions were not less favourable than what he had at his previous job.

[29] The Appellant told me that had the X offer been made a month later, he would have taken it. But when the offer was made, he wasn't prepared to accept the job. He explained why he didn't want to take the job then, including how he felt after having to leave his previous work. But his reasons don't change my finding that he refused a suitable job.

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<sup>15</sup> See section 6 of the Act.

<sup>16</sup> See page GD3-25.

[30] His refusal to accept this suitable work means that he didn't have a desire to get back to work as soon as a suitable job was offered.

[31] I accept that the Appellant's desire to accept a suitable job changed over the course of his unemployment. I find that he proved he had a desire to accept a suitable job from June 1, 2022, onward. He did this through his efforts to find a job and broadening his job search.

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

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

[33] As mentioned above, the Appellant's efforts to find a new job included looking for work online, talking to friends and acquaintances, applying for suitable work, attending job fairs, registering with online job banks, and applying for work.

[34] Those efforts are enough to meet the requirements of this second factor because they show that he was actively looking for a suitable job.

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

[35] I agree with the Commission that the Appellant had a personal condition that unduly limited his chances of getting back to work. I find that the Appellant's wish to find a job making more than \$60,000 when his previous rate of pay was \$55,000 (without the discretionary bonus), was a personal condition. This condition limited his chances of getting back to work because it led him to refuse a suitable job offer.

[36] I find that after the Appellant was denied EI benefits, his focus changed. From June 1, 2022, he removed this personal condition. I believe him when he said that he would have accepted the X offer if it had been made later. Further, he applied for jobs outside his usual occupation with Air Canada and the Toronto Transit Commission, which he wasn't willing to do before then.<sup>17</sup> These actions show that he removed this

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<sup>17</sup> For example, see his statement to the Commission on page GD3-38.

personal condition. From that point onward, he had no personal conditions that might have unduly limited his chances of going back to work.

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

[37] 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 from June 1, 2022, onward.

[38] Before then, he didn't have a desire to accept a suitable job as soon as one was offered, and he limited his chances of getting back to work by wanting to find a job that paid more than his usual occupation.

## **Conclusion**

[39] The Appellant was making reasonable and customary efforts to find a suitable job as of January 17, 2022, but he has only proven that he was capable of, available for, and unable to find suitable work since June 1, 2022.

[40] This means that the disentitlement for availability from January 17, 2022, to May 31, 2022 remains. There is no availability disentitlement from June 1, 2022.

[41] The appeal is allowed in part.

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section