



[TRANSLATION]

Citation: *AV v Canada Employment Insurance Commission*, 2024 SST 57

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

Decision

Appellant: A. V.
Representative: G. J.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (620968) dated October 17, 2023 (issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: Teleconference
Hearing date: January 16, 2024
Hearing participants: Appellant
Appellant's representative
Creole interpreter
Decision date: January 17, 2024
File number: GE-23-3248

Decision

[1] The appeal is allowed.

[2] The Appellant has shown that he was available for work from July 9, 2023. He is entitled to receive Employment Insurance (EI) benefits as of that time.

Overview

[3] On July 28, 2023, the Appellant made an EI claim. He 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 July 7, 2023.

[4] On October 17, 2023, the Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving EI regular benefits from July 9, 2023, because he wasn't available for work. It said that he had a restricted work permit and hadn't shown he had made reasonable and customary efforts to find a job.

[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 is available for work and wants to find a job. He says he has made multiple efforts to find another job since being laid off from X.

[7] I have to decide whether the Appellant was available for work. He 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 from July 9, 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 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.

[10] I also have to consider the Appellant's efforts to find a job. The *Employment Insurance Regulations* list nine job search activities 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 restricts him to the only employer listed on the permit.

[12] The Commission also says that the Appellant hasn't provided evidence that he actually made the efforts he described to get an open work permit.

[13] In addition, the Commission says that the Appellant didn't make active and sustained job search efforts. It says that, even though he says he made efforts to find a

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.

job, he is unable to provide the name of a person he spoke to or the date he approached the employers mentioned.

[14] The Appellant explains that, contrary to what the Commission says, he made multiple efforts to find a job despite having a restricted work permit.

[15] In fact, he says that, first, he started the process to get an open work permit. His application was refused, but he challenged that decision. He is still waiting on the outcome. Meanwhile, he says that he approached many employers for jobs. He hopes an employer will agree to offer him a work permit. He also says that he left his home country to work in Canada.

[16] On September 9, 2023, the Appellant gave the Commission a list of employers he had approached, either over the phone or in person. For example, he mentioned McDonald's, Sobeys, and Altium.³

[17] When he submitted his notice of appeal, he included a copy of an email exchange proving that he had approached the employers mentioned.⁴

[18] At the hearing, he explained that he had continued his job search efforts since September 9, 2023. His representative, who accompanied him at the hearing, explained that he was a supervisor at X and that, since the employer had to lay the Appellant off because of reduced operational requirements, he wanted to support him and help him in his search for another job. He said that he assisted the Appellant in all his efforts to find a job and that he took the time to explain to employers that the Appellant needed a work permit. He explained that some employers were open to this procedure.

[19] The Appellant says that these processes are challenging, but he insists that he is willing to work, that he wants to work, and that he is capable of working. He says that he came from Haiti for a better life and that he also has to support his family.

³ See GD3-19, GD2-16, and GD2-17.

⁴ See GD2-14.

[20] As agreed at the hearing, given that the Commission's file shows his job search efforts between July 9, 2023, and September 9, 2023, the Appellant sent the Tribunal a list of employers he says he has approached since September 9, 2023.

[21] According to this document, the Appellant has approached 14 employers since September 9, 2023. For example, he apparently went to the following places in person: Walmart, Dollarama, and Value Village.⁵ The Appellant is looking for a job in another occupation than the one listed on his restricted work permit because, as he explained, he hopes an employer will agree to offer him a work permit based on the availability of a position he can work in. For instance, he says he is willing to work as a cashier, cleaner, salesperson, or apprentice mechanic.

[22] The facts show that, since July 9, 2023, the Appellant has both looked for work and taken steps to change his work permit.

[23] Of course, these processes are challenging for the Appellant, whose mother tongue is Creole, but he has someone supporting him in his efforts, and he is persevering.

[24] The explanations given at the hearing and the document sent to the Tribunal after the hearing satisfy me that the Appellant not only wants to work, but he is also taking whatever steps he can to that end.

[25] I find that the Appellant has shown that he was available for work from July 9, 2023.

⁵ See GD05.

Capable of and available for work

[26] 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:⁶

- He wanted to go back to work as soon as a suitable job was available.
- He 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.

[27] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.⁷

– Wanting to go back to work

[28] The Commission says that the Appellant didn't have an immediate desire to go back to work. It says that a claimant must show an immediate desire to put an end to their period of unemployment as soon as possible and that the Appellant had to show that he was looking for a job. According to the Commission, that isn't the case.

[29] The Appellant argues that he has wanted to find another job since he stopped working for X. He says he has taken steps to change his restricted work permit and that he wants the chance to find an employer who will hire him.

[30] I am of the view that the Appellant wanted—and still wants—to go back to work as soon as possible.

⁶ 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.

⁷ Two decisions set out this requirement. Those decisions are *Attorney General of Canada v Whiffen*, A-1472-92; and *Carpentier v The Attorney General of Canada*, A-474-97.

[31] The Appellant has shown that he wanted to go back to work as soon as a suitable job was available. I must now consider whether he made concrete efforts to find a job.⁸

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

[32] To be able to get EI benefits, the Appellant is responsible for actively looking for a suitable job.⁹

[33] The Commission argues that the Appellant hasn't shown that he made active efforts to find work, since he wasn't able to provide details.

[34] It is true that the Commission's file shows that, on August 22, 2023, the Appellant said that he hadn't [translation] "made that many job search efforts" because he was in a difficult situation. However, I note that during that same conversation, he explained that he had taken steps to change his work permit. He also said that he wanted to work and to find an employer who would hire him.

[35] 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.

[36] At the hearing, the Appellant's representative said that he was a supervisor at X and that he had taken on the task of helping the Appellant get back to work. He indicated that he had helped and continued to help the Appellant look for another job.

[37] As mentioned, the Appellant submitted a document showing his job search efforts since September 9, 2023, and his notice of appeal describes his efforts between July 9, 2023, and September 9, 2023. It is true that he didn't provide the names of the people he met, but his representative said that he was supporting him and that he explained the work permit process to employers.

⁸ See *Primard*, A-683-01.

⁹ This principle is explained in the following decisions: *Cornelissen-O'Neill*, A-652-93; and *De Lamirande*, 2004 FCA 311.

[38] I find that the Appellant has shown his desire to go back to work by making significant efforts to find a suitable job each working day of his benefit period from July 9, 2023.

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

[39] The Appellant argues that he wants to find a job and that he is capable of working even though he has a restricted work permit. He explains that, despite the permit restrictions, he continues to make efforts to change his work permit, and he is trying to find an employer who would hire him.

[40] The facts show that the Appellant has a work permit that allows him to work in Canada for the period from November 30, 2022, to November 29, 2024.¹⁰ The conditions of that permit include that the Appellant has to leave Canada by November 29, 2024, that he can't work other than as a printing machine operator, and that he can't work for any employer other than X.

[41] The conditions of the permit unduly limit the Appellant from 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. In fact, if an employer were to terminate such an employment contract, it could issue a letter of discharge to the worker. At the hearing, the Appellant explained that the employer had issued him a letter of discharge. This means that he can take steps to get a work permit approved by another employer.

[42] In addition, a decision from the Tribunal's Appeal Division says that a work permit restriction doesn't automatically make a claimant unavailable for work as long as the restriction can be lifted or the permit can be assigned to a different employer.¹¹

[43] In my view, that is the case for the Appellant. Restricting their availability to a single employer, not the work permit itself, is what unduly limits a claimant's chances of finding a suitable job.

¹⁰ See GD3-12.

¹¹ See *ED v Canada Employment Insurance Commission*, 2015 SSTAD 953.

[44] In this case, the Appellant stopped working on July 7, 2023, and I accept his explanation that he has both taken steps to change his work permit and looked for an employer who would hire him.

[45] I find that, by taking all the appropriate steps, the Appellant has shown a desire to go back to work as soon as possible and that the conditions listed on his restricted work permit limit him only if he doesn't try to change them.

[46] 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?**

[47] I have to apply the criteria for determining whether the Appellant was available for work within the meaning of the *Employment Insurance Act* and whether he can get benefits from July 9, 2023.

[48] In this case, I have assessed the Appellant's attitude. His attitude shows that he wants to find a job and that he made every effort he could. These efforts are significant, customary, and reasonable.

[49] 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

[50] This means that the appeal is allowed.

Josée Langlois
Member, General Division – Employment Insurance Section