



Citation: *AJ v Canada Employment Insurance Commission*, 2023 SST 1775

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

## Decision

**Appellant:** A. J.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (593632) dated June 22, 2023 (issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Teleconference

**Hearing date:** September 19, 2023

**Hearing participant:** Appellant

**Decision date:** September 21, 2023

**File number:** GE-23-1963

## Decision

[1] The appeal is dismissed with modification.

[2] The Appellant has proven his availability for work, but only from September 14, 2022, onward. This means that for the period of September 28, 2020, to September 13, 2022, the Appellant is disentitled from Employment Insurance (EI) benefits due to being unavailable for work.

[3] The Appellant is also disentitled for the period of time he was outside Canada, but I am modifying the period of the disentitlement to September 28, 2020, to September 13, 2022, because the Appellant was back in Canada by September 14, 2022.

## Overview

[4] The Appellant was in receipt of Employment Insurance Emergency Response Benefits. Once these benefits ended, he was automatically rolled over into a claim for regular EI benefits starting September 27, 2020.

[5] Unfortunately, the Appellant was outside of Canada from December 2019 to September 2022, so the Commission decided they could not pay him any benefits because he was out of the country. They also decided that he was not available for work while outside of Canada and when he returned to Canada.

[6] The Appellant says that he left Canada in December 2019 to fly back to India to help his mother because she was sick and in the hospital. He had originally planned to return to Canada in January 2020, but his mother took longer than expected to recover, and he was having trouble with getting his passport stamped at the immigration office.

[7] Finally, in March 2020, his mother's health had recovered, and he had gotten his passport stamped, so he was ready to return to Canada, but that was precisely when the COVID-19 pandemic struck in force and air travel ground to a halt.

[8] The Appellant says that he was stuck in India for years, as he did not return to Canada until September 2022.

[9] I have to decide if the Appellant was available for work while outside Canada and if he can be paid any benefits while he was outside Canada.

## Issues

[10] Is the Appellant available for work?

[11] Can the Appellant be paid benefits for the period he was outside of Canada?

## Analysis

### Is the Appellant available for work?

[12] Case law sets out three factors for me to consider when deciding whether the Appellant is capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:<sup>1</sup>

- a) He wants to go back to work as soon as a suitable job is available.
- b) He is making efforts to find a suitable job.
- c) He has not set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[13] When I consider each of these factors, I have to look at the Appellant's attitude and conduct<sup>2</sup> over the entire period of the disentitlement (September 28, 2020, onward).<sup>3</sup>

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<sup>1</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>2</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.

<sup>3</sup> GD03-50

## **Wanting to go back to work**

[14] The Appellant has shown that he wants to go back to work as soon as a suitable job is available.

[15] The Appellant says that he not only wanted to work, he had to work. He had never planned to be away from Canada for such a long time, so he still had rent and bills in Canada he needed to cover, despite being stuck in India. He also had to save the money for his upcoming university semester, and he needed money to take care of himself while in India.

[16] This need and desire to work did not disappear when he returned to Canada, as he still needed money for university and to pay for his living expenses.

[17] The Commission agrees with the Appellant. They say that he did have a desire to work as he told them he had been seeking remote work online.

[18] I accept that the Appellant wants to work as no party disputes this. I can also readily believe the Appellant needed to work due to the terrible circumstances that suddenly forced him to have to cover living expenses in two countries simultaneously.

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

[19] The Appellant is making enough effort to find a suitable job.

[20] The Commission says that although the Appellant told them he was applying to two or three jobs per month while in India, he was unable to provide a job search, so cannot prove his desire to return to the labour market.

[21] The Appellant says that he was looking for work during the time he was stuck in India and when he returned to Canada. He says he found a job when he returned to Canada and that job started in the first week of October 2022.

[22] The Appellant says that when he was in India he was searching for work in Canada, not in India. He did not look for work locally because he did not want to stay in India for the long-term, he wanted to return to Canada.

[23] He says that he was looking at online job portals for any type of work that he could do remotely. The Appellant says he was desperate for work, so he would have taken any sort of remote work.

[24] I asked the Appellant to clarify his statement to the Commission that he was not looking for work during the time he was in India.<sup>4</sup> The Appellant says that the Commission employee must have misunderstood him. He says that the Commission employee would not let him give a proper explanation to her questions, she just kept saying to answer with yes or no.

[25] He says that they were talking about in-person work and he was asked about being able to return to Canada. He says that he told the Commission employee he was not looking for any in-person work as he could not return to Canada, so she must have misunderstood what he meant and assumed he meant he was not looking for any work at all.

[26] I find the Appellant's explanation credible for why the Commission notes state that he told them he was not looking for work credible.

[27] The notes from the Commission employee are very short, only three sentences, so I find the Appellant's explanation plausible that the Commission employee was not letting him answer questions in detail and she may have gotten confused.

[28] I further find his testimony credible that he was looking for work while he was in India.

[29] I accept the Appellant had no plans to be in India long-term and was expecting to return to Canada, so would still have living expenses in Canada such as rent and utilities. I also accept that since he was stuck in India, he suddenly had living expenses

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<sup>4</sup> GD03-49

in that country as well. I find this would create a powerful incentive to look for work and accept the Appellant's statement he was motivated to look for work for these reasons.

[30] Further, I note the Commission appears to accept the Appellant was looking for work in India, as they accept his statement that he was looking for remote work and they say that statement proves his desire to work.<sup>5</sup> It seems their entire issue is that he could not provide a record of a job search.

[31] It is true the Appellant has not provided a record of his job search efforts, but I find this is not fatal to his argument that he was making significant efforts to find work. I find that due to suddenly being stuck in India, his struggles to try and find a way to fly back to Canada, his struggles with getting his passport back and stamped, and his efforts to try and deal with immigration to renew his visa and study permit, it is not unreasonable he did not keep a detailed job search.

[32] So, I find the Appellant's efforts of looking online for work, evaluating the opportunities he found and sending out resumes were all sufficient efforts to find work. I also find that these efforts continued once he returned to Canada and remained sufficient efforts to find work once he returned to Canada, because they led to him securing a job shortly after he returned to the country.

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

[33] The Appellant is not available for work from September 28, 2020, to September 13, 2022, due to not having any valid permit that allows him to work or implied status. However, from September 14, 2022, onward, he has no personal condition that would overly limit his chances of returning to the labour market.

[34] The Commission says that the Appellant did not have an active study or work permit or implied status that would have allowed him to work in Canada for the period of September 28, 2020, to September 14, 2022.

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<sup>5</sup> GD04-3

[35] The Commission argues that, in the alternative, if the Appellant did have implied status, it would be with the same restrictions on his last study permit, which expired on July 31, 2020. This permit did not allow the Appellant to work off campus. Since he was stuck in India, he could not work on campus, so he would have been unable to accept any employment offered by a Canadian employer.

[36] Finally, the Commission argues that, disregarding all the above, the Appellant only looking for remote positions he could do in India overly limited his chances of returning to the labour market.

[37] The Appellant says he that his study permit did lapse on July 31, 2020, but there was nothing he could do about it due to the COVID-19 pandemic lockdowns.

[38] The Appellant says that in India, a third party works with Canada's immigration service to handle immigration requests and documents. For a long period of time during COVID the third party's offices were closed. There was no possibility to do in-person or online appointments.

[39] When their offices finally reopened, the Appellant immediately applied for an extension to his permit; however, due to backlogs, this took approximately 10 months to process. The Appellant says that he did not get his actual permit until he returned to Canada on September 14, 2022, as permits are never sent in the mail unless you reside in Canada.

[40] The Appellant says that as soon as he filed his application for an extension on July 3, 2021, he has implied status so there would zero issue with him accepting a job offered by a Canadian employer.

[41] The Appellant says the reason he was looking for remote work was because that was the only type of work he could do, since he could not return to Canada and everything was locked down for so long due to COVID restrictions.

[42] I find, that for the period of August 1, 2020, after the Appellant's study permit had lapsed,<sup>6</sup> to July 2, 2021,<sup>7</sup> before he applied to Immigration Canada, he had no valid work or study permit and no implied status. This means he could not have accepted a job if offered one by an employer in Canada.

[43] I further find that the Appellant has not convinced me that, on a balance of probabilities, he had implied status, meaning he could accept a job in Canada, as soon as he filed his application with Immigration Canada on July 3, 2021.<sup>8</sup> Nothing in the document he received from Immigration Canada suggests that he has implied status, or any status, or that he could work or study in Canada simply because he had made an application.

[44] I find that until the Appellant had a new study permit issued on September 14, 2022,<sup>9</sup> he was unable to accept a job from a Canadian employer.

[45] I note that the Appeal Division of the Social Security Tribunal has said that it is important to consider if restrictions on a person's availability are self-imposed or something beyond their control.<sup>10</sup>

[46] However, in the Appellant's case, this is not simply a restriction on his availability, such that it is somewhat reduced, but instead, a total inability to work, as he had no permit or implied status. As the Court has said, if a person is totally unavailable for work, the reasons why are not relevant.<sup>11</sup>

[47] Since the Appellant was totally unavailable for work during the period of September 28, 2020, to September 13, 2022, the fact that the reasons why he was totally unavailable were outside his control are not relevant and cannot save him from being found unavailable for that period.

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<sup>6</sup> See GD03-29, his study permit expired on July 31, 2020.

<sup>7</sup> See GD03-40, he completed his application to Immigration Canada on July 3, 2021.

<sup>8</sup> GD03-40

<sup>9</sup> GD03-28

<sup>10</sup> See *Canada Employment Insurance Commission v KJ*, 2022 SST 339

<sup>11</sup> *Canada (Attorney General) v Leblanc*, 2010 FCA 60



[48] However, from September 14, 2022, onward, I find the Appellant had no personal restrictions that would have overly limited his chances of returning to the labour market. He had a valid study permit at that point which allowed him to work, and he has proof that he kept renewing this permit promptly.<sup>12</sup>

[49] Further, he found a job starting the beginning of October 2022. The fact he found work so quickly after returning to Canada supports that he did not have any personal condition which would overly limit his chances of returning to the labour market from September 14, 2022, onward.

[50] So, is the Appellant available for work?

[51] The Appellant has proven that he is available for work, but only from September 14, 2022, onward. Prior to that he does not meet the three factors set out above.

### **Benefits outside of Canada**

[52] The Appellant cannot be paid benefits while he was outside of Canada. There are some reasons that allow for benefits to be paid outside of Canada, but none of them are present in the Appellant's situation.

[53] Generally, a person is not entitled to receive benefits for the period of time they are outside of Canada,<sup>13</sup> although there are some exceptions to this rule, such as if they are outside Canada to visit a seriously ill family member, to attend the funeral of an immediate family member, to search for work or attend a job interview.<sup>14</sup>

[54] The Commission says that the Appellant cannot be paid benefits for the period of September 28, 2020, to September 14, 2022, as he was outside of Canada and the reason he was outside Canada is not one of the exceptions listed in the law.

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<sup>12</sup> See GD03-41, his application on September 21, 2022, GD03-39, his application on February 13, 2023, and GD03-37, his application on March 14, 2023.

<sup>13</sup> Subsection 37(b) of the *Employment Insurance Act*

<sup>14</sup> I have not mentioned all possible reasons, only the ones that could theoretically be relevant to the Appellant. For a comprehensive list see Section 55 of the *Employment Insurance Regulations*

[55] The Commission says that while the Appellant's original reason for leaving Canada in December 2019, was to visit his mother who was ill, she had fully recovered long before the period of the disentitlement. According to the Commission, this means the Appellant cannot be paid any benefits while he was outside of Canada, as the reason he was outside of Canada during the period of the disentitlement was not to take care of his mother.

[56] I find the Appellant cannot be paid benefits for the period when he was outside of Canada as he does not meet any of the exceptions in the law.

[57] While the Appellant did originally leave in December 2019 to care for his mother, he says that she fully recovered in a couple months before COVID ever hit India. He was set to return, and if it had not been for COVID, would have been back in Canada in March 2020.

[58] I find this shows that for the period of the disentitlement September 28, 2020, to September 14, 2022, the Appellant was outside of Canada only because of COVID lockdowns which is not a reason that allows for the payment of benefits to the Appellant while outside of Canada.

[59] However, I am changing the period of the disentitlement to end on September 13, 2022. because the stamp on the Appellant's visa of September 14, 2022, shows he was back in Canada by that date.<sup>15</sup>

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<sup>15</sup> GD03-34

## **Conclusion**

[60] The appeal is dismissed with modification.

[61] The Appellant has proven his availability for work, but only from September 14, 2022, onward. Prior to that date he is disentitled from benefits because he as not available.

[62] The Appellant is also disentitled for the period of time he was outside Canada, but I am modifying the period of the disentitlement to end on September 13, 2022, because the Appellant was back in Canada by September 14, 2022.

Gary Conrad

Member, General Division – Employment Insurance Section