



[TRANSLATION]

Citation: *EE v Canada Employment Insurance Commission*, 2024 SST 496

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (632137) dated December 21,
2023 (issued by Service Canada)

Tribunal member: Jacques Bouchard
Type of hearing: Teleconference
Hearing date: March 12, 2024
Hearing participants: E. E.
Decision date: March 12, 2024
File number: GE-24-372

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown that he was 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 Appellant was disentitled from receiving EI regular benefits from August 7, 2023, to December 1, 2023, because he wasn'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 have to 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.

[5] The Commission says that the Appellant wasn't available because he didn't look for a job [or] make sustained efforts to find a suitable job.

[6] The Appellant disagrees and says that his closed permit prevents him from working for another employer. He learned from friends in August 2023 that he could draw EI benefits, and he initiated a request for assistance.

[7] The Appellant says that he doesn't know how to renew his permit and that he didn't think it was possible to change his work permit. At the hearing, he explained that his efforts to contact Immigration, Refugees [and Citizenship] Canada (IRCC) were unsuccessful.

[8] The Appellant says that he always indicated on his claims that he was available for work and doesn't understand why he was denied EI benefits.

[9] The fundamental question for the Tribunal is whether the Appellant was available for work under the *Employment Insurance Act* (Act) and *Employment Insurance Regulations* (Regulations).

Issue

[10] Was the Appellant 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 Appellant was disentitled under both of these sections. So, he has to meet the criteria of both sections to get benefits.

[12] First, the Act says that a claimant has to prove that they are making “reasonable and customary efforts” to find a suitable job.¹ The Regulations give criteria that help explain what “reasonable and customary efforts” mean.² 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.³ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁴ I will look at those factors below.

[14] The Commission decided that the Appellant was disentitled from receiving benefits because he wasn’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 Appellant was available for work.

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

² See section 9.001 of the *Employment Insurance Regulations* (Regulations).

³ See section 18(1)(a) of the Act.

⁴ 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 Appellant's efforts were reasonable and customary.⁵ 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.

[17] I also have to consider the Appellant'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:⁶

- assessing employment opportunities
- preparing a résumé or cover letter
- registering for job-search tools or with online job banks or employment agencies
- attending job-search workshops or job fairs
- networking
- contacting employers who may be hiring
- applying for jobs
- attending interviews
- doing competency tests

[18] The Commission says that the Appellant wasn't doing enough to try to find a job.

[19] The Appellant disagrees. He says that he prepared a résumé, asked to change his temporary closed work permit to an open one, and applied for a few jobs. The Appellant says that his efforts were enough to show that he was available for work. He also says that he always indicated that he was available on his EI claims.

[20] The hearing revealed that the Appellant asked IRCC to change his work permit on October 16, 2023, and that his request was denied on October 26, 2023. The

⁵ See section 9.001 of the Regulations.

⁶ See section 9.001 of the Regulations.

Appellant asked to change his closed work permit to an open one, since he said that he had been a victim of violence, which wasn't accepted.

[21] When asked at the hearing about his next steps, he said that his closed permit prevented him from finding another job. It wasn't until December 1, 2023, that the Appellant made sustained efforts to find a job.

[22] He attended job fairs, reached out to immigrant-serving organizations, applied for various jobs in his field of expertise, and finally understood that he could get a new permit with a job offer letter from a potential employer with a Labour Market Impact Assessment (LMIA) or other employers accepted by IRCC.

[23] Considering the facts of the case and the answers the Appellant gave at the hearing, the Tribunal finds that the Appellant didn't make the usual efforts to find a job. He didn't ask about his rights and what steps to take when a temporary foreign worker finds themselves in his situation, despite the impressive amount of information about this on government websites.

[24] Although the Appellant expressed a desire to work on his claims, no actual action or effort was made until December 1, 2023.

[25] The Appellant has always argued that his permit was a barrier to hiring, even though there are several ways for foreign workers, whose employment relationship with the initial employer has been broken, to get a permit. Today, he is aware of this, and he candidly admitted it at the hearing.

[26] As a result, the Appellant hasn't proven that his efforts to find a job were reasonable and customary.

Capable of and available for work

[27] 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:⁷

- 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 (overly) limited his chances of going back to work.

[28] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.⁸

– **Wanting to go back to work**

[29] The Appellant hasn't shown that he wanted to go back to work as soon as a suitable job was available. For almost eight months, the Appellant didn't make efforts to contact the relevant departments to get his permit changed or, at the very least, find out the rules for changing his work permit.

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

[30] The Appellant hasn't made enough effort to find a suitable job.

[31] 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.⁹

⁷ 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.

⁸ 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.

⁹ I am not bound by the list of job-search activities in deciding this second factor.

[32] As I mentioned earlier, the Appellant's efforts to find a job included preparing a résumé, looking for a suitable job, and offering services to some employers from time to time.

[33] Those efforts weren't enough to meet the requirements of this second factor because the Appellant should have asked about his rights and obligations as a temporary foreign worker with a closed permit to meet the requirements of potential employers.

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

[34] The Appellant did set personal conditions that might have unduly limited his chances of going back to work. By keeping his permit limited to one employer and not making efforts to open his permit to other potential employers, he unduly limited his chances of getting a new job.

[35] He says that he didn't set personal conditions because his initial permit was closed.

[36] The Commission says that, despite the conditions listed on his permit, the Appellant could have made efforts to contact the relevant departments and organizations to get the help he needed to find a new job.

[37] I find that the Appellant failed to meet the three *Faucher* factors.

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

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

Conclusion

[39] The Appellant hasn't shown that he was available for work within the meaning of the law. Because of this, I find that he can't receive EI benefits.

[40] This means that the appeal is dismissed.

Jacques Bouchard
Member, General Division – Employment Insurance Section