



Citation: *KM v Canada Employment Insurance Commission*, 2024 SST 540

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

Decision

Appellant: K. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (639612) dated January 27, 2024 (issued by Service Canada)

Tribunal member: Katherine Parker

Type of hearing: In writing

Decision date: March 12, 2024

File number: GE-24-557

Decision

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

[2] The Appellant hasn't shown that he is 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 is disentitled from receiving Employment Insurance (EI) regular benefits as of October 2, 2023, because he wasn't available for work. An Appellant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that an Appellant has to be searching for a job.

[4] I must decide whether the Appellant has proven that he is 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 is available for work.

[5] The Commission says that the Appellant isn't available because he never responded to its attempts to contact him to provide the necessary information. The Commission notified the Appellant that benefits could not be paid. The decision letter¹ said that any documents or information that had not previously been submitted that might affect the decision could be submitted. It provided information to the Appellant to call Service Canada or go to a Service Canada Centre for more information.²

[6] The Appellant didn't respond to the Commission with additional information. In his request for reconsideration, he said he was available. He said he was looking for work in the job bank and that he tried to contact EI.³

¹ See GD3-22 for the Notice of Decision dated November 29, 2023.

² See GD3-22.

³ See GD3-23 which is the Appellant's request for reconsideration.

Issue

[7] Is the Appellant available for work?

Analysis

[8] Two different sections of the law require Appellants 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.

[9] First, the *Employment Insurance Act* (Act) says that an Appellant has to prove that they are making “reasonable and customary efforts” to find a suitable job.⁴ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.⁵ I will look at those criteria below.

[10] Second, the Act says that an Appellant has to prove that they are “capable of and available for work” but aren’t able to find a suitable job.⁶ Case law gives three things an Appellant has to prove to show that they are “available” in this sense.⁷ I will look at those factors below.

[11] The Commission decided that the Appellant was disentitled from receiving benefits because he isn’t available for work based on these two sections of the law.

[12] I will now consider these two sections myself to determine whether the Appellant is available for work.

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 are reasonable and customary.⁸ I have to look at whether his efforts

⁴ See section 50(8) of the *Employment Insurance Act* (Act).

⁵ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁶ See section 18(1)(a) of the Act.

⁷ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁸ See section 9.001 of the Regulations.

are sustained and whether they are 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 nine job-search activities I have to consider. Some examples of those activities are the following:⁹

- preparing a résumé or cover letter
- attending interviews
- applying for jobs.

[15] The Commission says that the Appellant didn't do enough to try to find a job. It tried several times to reach the Appellant but got no response or reply. The Commission is open to receiving proof of availability.¹⁰

[16] I tried to reach the Appellant. He received notice of an in-writing hearing and was invited to provide information to support his appeal. The Tribunal left him a detailed voice message on March 5, 2024. I didn't hear from him, so I sent another letter on March 6, 2024, asking for specific information to support his appeal by March 11, 2024. He didn't respond.

[17] The Appellant wrote in his appeal that he is looking for work in the job bank. He wrote that he is available for work. But he didn't provide any evidence to support his claim despite several requests.

[18] I find that the Appellant hasn't proven that his efforts to find a job have been reasonable and customary.

⁹ See section 9.001 of the Regulations.

¹⁰ See GD4-3.

Capable of and available for work

[19] 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:¹¹

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

[20] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹²

– **Wanting to go back to work**

[21] The Appellant hasn't shown that he wants to go back to work as soon as a suitable job is available. Despite several attempts by the Commission and the Tribunal to reach the Appellant, the Appellant didn't respond.

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

[22] The Appellant didn't demonstrate an effort to find a suitable job.

[23] I considered the list of job-search activities given above in deciding this second factor. For this factor, that list is for guidance only.¹³

[24] The Appellant's efforts to find a new job included registering for a job bank.

[25] Those efforts aren't enough to meet the requirements of this second factor because a job bank is a search engine. The search criteria can be wide and irrelevant.

¹¹ 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.

¹² 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.

¹³ I am not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

The Appellant has to show that he did something more such as submitted job applications, went to interviews, or did some networking.

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

[26] The Appellant did set personal conditions that have unduly limited his chances of going back to work.

[27] The Appellant didn't respond to the Commission or the Tribunal.

[28] The Commission said it couldn't reach the Appellant, but it has been open to receiving information.

[29] I find that the Appellant has limited his chances of going back to work by depending on a job search engine that may or may not be relevant to finding a job. He hasn't shown that he applied to any of the jobs.

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

[30] Based on my findings on the three factors, I find that the Appellant hasn't shown that he is capable of and available for work.

Conclusion

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

[32] This means that the appeal is dismissed.

Katherine Parker
Member, General Division—Employment Insurance Section