



Citation: *JP v Canada Employment Insurance Commission*, 2024 SST 560

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

Decision

Appellant: J. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (628752) dated November 28, 2023 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: February 13, 2024

Hearing participant: Appellant

Decision date: February 16, 2024

File number: GE-24-12

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant has shown that he was available for work. This means that he isn't disentitled from receiving Employment Insurance (EI) regular benefits because of his availability.

Overview

[3] In 2022, the Appellant had a seasonal job at a seafood plant. His job ended on October 8, 2022. He accepted an offer for a full-time position with a poultry company on October 28, 2022. Then he hired a consultant to help him get a work permit for the new employer. He didn't get his new work permit until July 4, 2023. He started his new job on July 27, 2023.

[4] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving EI regular benefits as of November 14, 2022, because he wasn't available for work.¹

[5] 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.

[6] 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.

[7] The Commission says that the Appellant wasn't available because he didn't have a valid work permit until July 4, 2023, and after that, he was solely focused on securing a start date with X.²

[8] The Appellant disagrees and states that he has always been looking for work.

¹ See pages GD3-31, GD3-37, and GD3-41.

² See page GD4-3.

Issue

[9] Was the Appellant available for work from November 14, 2022?³

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 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.⁴ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.⁵

[12] Second, the Act says that a claimant has to prove that they are “capable of and available for work” but can’t find a suitable job.⁶ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁷

[13] 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.

[14] I now consider these two sections myself to determine whether the Appellant was available for work.

³ The Commission’s reconsideration letter references only its most recent decision about the Appellant’s availability, which was from July 4, 2023. See original decision letter dated October 31, 2023 (GD3-37) and reconsideration decision letter (GD3-41). But the Commission provided another initial decision about the Appellant’s availability from November 14, 2022 (GD3-31). The Commission’s representations in GD04 and its Supplementary Record of Claims in GD03 show that the Commission reconsidered the Appellant’s availability from November 14, 2022, not just from July 4, 2023. The Appellant told me that his appeal was about the period from November 2022, until he started work, on July 27, 2023. So I am also looking at his availability from November 14, 2022.

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.

Reasonable and customary efforts to find a job

[15] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.⁸ 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.

[16] I must also 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

- assessing employment opportunities
- contacting employers who may be hiring
- applying for jobs

[17] The Commission says that the Appellant provided no evidence that he was making reasonable and customary efforts to obtain employment while awaiting a decision on his work permit.¹⁰

[18] The Appellant says he was trying to get his work permit, was looking for work online, networking with friends, and applying for jobs. The Appellant says that his efforts were enough to prove that he was available for work.

[19] I find that the Appellant was making reasonable and customary efforts for these reasons:

- He had a resume.
- He was looking for work online (Indeed and JobBank).
- He was registered with an online job bank (Indeed) and received notifications.

⁸ See section 9.001 of the Regulations.

⁹ See section 9.001 of the Regulations.

¹⁰ See page GD4-4.

- He networked with people in similar jobs throughout the Maritimes to find out about possible jobs.
- He contacted his former employer about returning to his previous job.¹¹
- He applied for a job at a fish plant in PEI.
- He hired a consultant to help him get his work permit for the poultry job.

[20] I find that these efforts are reasonable and customary efforts to find a job. His efforts were directed at finding work similar to what he had done in the past, which is “suitable work” for the Appellant. I find that his efforts were sustained because he continued to look for work and make efforts to get his work permit throughout this period.

[21] I find that from July 4, 2023, when the Appellant received the work permit for the poultry job, he was still making reasonable and customary efforts. At this point, he was in contact with his new employer who was making arrangements for his orientation. Given the time it would have taken him to get a work permit for another employer, his efforts to maintain his position and to start as soon as the employer could arrange his orientation amount to reasonable and customary efforts.

Capable of and available for work

[22] 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:¹²

- a) He wanted to go back to work as soon as a suitable job was available.
- b) He made efforts to find a suitable job.

¹¹ He couldn't return because the employer didn't have a Labour Market Impact Assessment (LMIA).

¹² 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.

- c) He didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[23] When I consider each of these factors, I must look at the Appellant's attitude and conduct.¹³

– **Wanting to go back to work**

[24] The Appellant has shown that he wanted to go back to work as soon as a suitable job was available. He did this by hiring a consultant to help him with his work permit and, when his work permit was delayed, by contacting his former employer to see if they had work for him. Also, his job search efforts below show that he had a desire to return to work as soon as a suitable job was available.

[25] A claimant's statement about financial need doesn't prove a desire to return to work, but a financial need can lend credibility to claims about looking for work. In the Appellant's case, he didn't have enough savings to support both himself and his family abroad and had to rely on credit to get through. This supports his claim that he had a real desire to get back to work.

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

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

[27] The Appellant's efforts to find a new job included:

- looking for work online and through friends
- signing up for job alerts
- applying for work
- asking his former employer about work

¹³ 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.

- staying in touch with his new employer
- working with his consultant to get his work permit, and asking a friend for help with his consultant.

[28] Those efforts are enough to meet the requirements of this second factor because they show that he truly wanted to get back to work.

[29] Even though the Appellant's best chances of returning to work as soon as possible lied with getting his work permit for the poultry position, he didn't just wait for the permit to come in. He followed up with his consultant, and when he wasn't seeing results, he got help from a friend. He also continued to look for another job that he could do. The fact that he had a job offer during this time shows that he was actively looking for work.

[30] The Commission says that once he received his work permit on July 4, 2023, his efforts were solely focused on securing a start date for the poultry position. He wasn't looking for any other work.

[31] Once the Appellant had his work permit in early July 2023, he couldn't have realistically started another job before his poultry job started on July 27, 2023. He couldn't have obtained a work permit for a different employer during those three weeks. So, I find that his efforts to maintain that relationship with the new employer was his best route to get back to work as soon as possible.

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

[32] The Commission says that the Appellant's availability for work was restricted because he didn't have a valid work permit.¹⁴ It says he didn't have maintained status because he hadn't submitted a work permit extension before his other work permit expired.

¹⁴ See page GD4-3 and page GD4-4.

[33] I find that the Appellant hasn't set personal conditions that might have unduly limited his chances of going back to work. What the Appellant can do with his work permit is a matter of law, not a personal condition. He couldn't apply for a work permit for a different employer until he found another employer willing to hire him.¹⁵

[34] I don't see what else he could have done to get the work permit for the poultry position. When the Appellant was hired for the poultry position, he promptly hired a consultant to help him with his work permit because of his limited English and inexperience in the process. He did this before his existing work permit expired. He reasonably relied on his consultant's expertise. When his work permit seemed to be taking too long, he asked a friend for help. Then, upon learning that there was an outstanding fee because of the consultant's delay, he promptly contacted the consultant and had it paid.

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

[35] 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 as of November 14, 2022.

Conclusion

[36] The Appellant has shown that he was available for work within the meaning of the law as of November 14, 2022. Because of this, I find that the Appellant isn't disentitled from receiving EI benefits.

[37] This means that the appeal is allowed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section

¹⁵ The employer would also have to have LMIA. As mentioned above, his former employer couldn't rehire him because it didn't have an LMIA for him.