



Citation: *BM v Canada Employment Insurance Commission*, 2021 SST 776

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:	B. M.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (420140) dated April 14, 2021 (issued by Service Canada)
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Tribunal member:	Suzanne Graves
Type of hearing:	Videoconference
Hearing date:	September 28, 2021
Hearing participant:	Appellant
Decision date:	October 4, 2021
File number:	GE-21-1660

Decision

[1] The appeal is allowed in part.

[2] The Claimant has shown that he was available for work from April 30, 2021, to September 6, 2021. This means that he isn't disentitled from receiving Employment Insurance (EI) benefits. So, the Claimant may be entitled to benefits.

[3] The Claimant has not shown that he was available for work from January 4, 2021, to April 29, 2021. This means that he is disentitled from receiving EI benefits for that period.

Overview

[4] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI regular benefits from January 4, 2021, 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.

[5] I must decide whether the Claimant has proven that he was available for work. The Claimant 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.

[6] The Commission says that the Claimant wasn't available for work because his student visa restricted his availability to 20 hours per week.¹ Although he was legally able to work full time from April 30, 2021, it says he was not making enough efforts to search for work, or looking for suitable work.

[7] The Claimant says he was available for full-time employment after April 30, 2021, and actively looked for work. He applied to a number of jobs in the service industry and was hired at a winery starting on April 30, 2021. Since he did not receive full-time hours, he kept looking for work and found a second job starting on June 28, 2021.

¹ A copy of the Claimant's student visa showing his employment restrictions is at GD3-20.

Issue

[8] Was the Claimant available for work?

Analysis

[9] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Claimant was disentitled under both of these sections.

[10] First, the *Employment Insurance Act* (EI Act) says that a claimant has to prove that they are making “reasonable and customary efforts” to find a suitable job.² The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.³

[11] Second, the EI 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.⁴ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁵ I will look at those factors below.

[12] There is no evidence that the Commission asked the Claimant for more details about his efforts to find work or gave him the chance to expand his job search before disentitling him to benefits. So, I will not make a decision on disentitlement under section 50 of the EI Act for failing to carry out a reasonable and customary job search.⁶

[13] I will now consider the test for availability under section 18(1)(a) of the EI Act.

² See section 50(8) of the *Employment Insurance Act* (EI Act).

³ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁴ See section 18(1)(a) of the EI Act.

⁵ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁶ If claimants do not comply with a request to prove they made “reasonable and customary” efforts to find work (section 50(8) of the EI Act), they may be disentitled under section 50(1). The Commission did not ask for a job search so the Claimant cannot be disentitled under that section of the law.

Capable of and available for work

[14] The parties agree that the Claimant was not available for work from January 5, 2021, to April 29, 2021, because his visa restricted his availability to 20 hours per week while he was in full-time school. The Claimant argues that he was available for full-time work starting on April 30, 2021, when his course semester ended.

[15] Case law sets out three factors for me to consider when deciding whether the Claimant was capable of and available for work but unable to find a suitable job. The parties agree that the Claimant was capable of working.

[16] The Claimant 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 made efforts to find a suitable job.
- c) He didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

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

– Wanting to go back to work

[18] The Claimant showed that he wanted to go back to work. He testified in a straightforward and direct manner, and his testimony was consistent with statements he made to the Commission, and with the fact that he found two jobs.

– Making efforts to find a suitable job

[19] The Claimant made enough efforts to find a suitable job from April 30, 2021, until he returned to school after September 6, 2021.

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.

[20] I have considered the list of job-search activities set out the Regulations in deciding this second factor. The Regulations list nine job-search activities I have to consider. Some examples of those activities are the following:⁹

- registering for job-search tools or with online job banks or employment agencies
- applying for jobs
- attending interviews.¹⁰

[21] The Claimant testified that he applied to several jobs in the service industry and was hired by a winery starting on April 30, 2021. He declared all of the hours he worked. The job was expected to be full time, but he did not get full-time hours. So, he kept applying for jobs.¹¹ After searching for work and attending several interviews, he was also hired to work at a bank, starting on June 28, 2021.

[22] The Claimant demonstrated that he was actively searching for work by identifying opportunities, applying for jobs, and attending interviews from April 30, 2021, when he was legally allowed to work full-time hours. So, I find that his efforts were enough to meet the requirements of this second factor.

– Unduly limiting chances of going back to work

[23] The Claimant didn't set personal conditions that might have unduly limited his chances of going back to work.

[24] The Commission says the Claimant was not looking for suitable work, because he applied for jobs in the banking field, in which he had no prior history or experience.¹²

[25] The Claimant testified he had not previously worked in the banking sector, but he is studying business administration, which helped him to secure the bank position.

⁹ See section 9.001 of the Regulations.

¹⁰ The list of job-search activities is used for guidance only in deciding this second factor.

¹¹ The Claimant filed copies of job applications at GD6. His application to the Bank of Montreal dated May 21, 2021, was successful. (GD6-6) He testified that he secured the position after attending three interviews between May 28, and June 11, 2021, and completing a background check on June 14, 2021. His start date of June 28, 2021, for the Bank of Montreal position is shown at GD8-3.

¹² The Commission's representations on this issue are at GD7-1.

[26] I find that the Claimant was looking for suitable full-time work through a combination of two jobs. I accept the Claimant's testimony that employment with financial institutions was suitable work, since he is studying business administration. This is also consistent with the fact that the Claimant was hired by a bank, and continues to hold that position.

[27] I find that the Claimant did not set any personal conditions that unduly limited his chances of returning to the workforce.

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

[28] Based on my findings on the three factors, I find that the Claimant has shown that he was capable of and available for work but unable to find a suitable job from April 30, 2021, to September 6, 2021.

Conclusion

[29] The Claimant has shown that he was available for work within the meaning of the law from April 30, 2021, to September 6, 2021. Because of this, I find that the Claimant isn't disentitled from receiving EI benefits for that period. So, the Claimant may be entitled to benefits.

[30] I find that the Claimant was not available for work from January 5, 2021, to April 29, 2021.

[31] This means that the appeal is allowed in part.

Suzanne Graves
Member, General Division – Employment Insurance Section