



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. G. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 23

Tribunal File Number: GE-16-2409

BETWEEN:

P. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

HEARD ON: December 12, 2016

DATE OF DECISION: February 22, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE: The Appellant did not attend the teleconference hearing on December 12, 2016. The Tribunal waited 15 minutes past the appointed time and then proceeded to conclude the hearing. The Tribunal notes that the Notice of Hearing was mailed to the Appellant on September 16, 2016. Evidence on file indicates that the Appellant received the Notice of Hearing on September 9, 2016. Section 12(1) of the *Social Security Tribunal Regulations* provides that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing. The Tribunal is satisfied that the Appellant received his notice of hearing.

INTRODUCTION

[1] The Appellant established a claim for employment insurance benefits on February 21, 2016.

[2] The Respondent imposed a disentitlement on the Appellant according to section 18 of the *Employment Insurance Act* (the Act) because he failed to prove his availability for work while attending a course of instruction and an indefinite disqualification according to sections 29 and 30 of the Act because he voluntarily left his employment without just cause.

[3] On May 25, 2016, the Appellant requested a reconsideration of the Respondent's decisions. The Respondent maintained their original decisions and on June 16, 2016 the Appellant appealed to the General Division of the Social Security Tribunal.

[4] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue(s) under appeal.
- b) The fact that the appellant or other parties are represented.
- c) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE(S)

[5] Whether a disentitlement should be imposed according to section 18(a) of the Act, because the Appellant failed to prove his availability for work while attending a course of instruction.

[6] Whether a disqualification should be imposed on the Appellant according to sections 29 and 30 of the Act, because he voluntarily left his employment without just cause.

EVIDENCE

[7] The Appellant established a claim for employment insurance benefits on February 21, 2016.

[8] The Appellant was employed until February 15, 2016 at which time he voluntarily left his employment (GD3-18). He provided that he left his job because he was going to take part in a non-approved training course (GD3-19).

[9] The Appellant stated that he was devoting 25 or more hours a week to his studies at Fleming College in the pre-apprenticeship carpentry course (GD3-9).

[10] The Respondent imposed a disentitlement on the Appellant according to section 18 of the Act because he failed to prove his availability for work while attending a course of instruction and an indefinite disqualification according to sections 29 and 30 of the Act because he voluntarily left his employment without just cause.

[11] In his request for reconsideration, the Appellant wrote that he should be considered available for work because he is in a registered apprenticeship program that guarantees a work placement as of August 2, 2016 (GD3-23). He stated that this showed he had reasonable assurance of another employment in the immediate future. He further argued that he had just cause for leaving his job because he was accepted to a college program 1.5 to 2 hours away from his place of work and he was required to relocate and could not work around his school schedule.

[12] When the Respondent contacted the Appellant, he indicated that he is enrolled in a full time pre-apprenticeship course at Fleming College. He stated that he attends classes Monday to Friday from 8:00 am to 4:00 pm, except on Tuesday's where he attends from 3:00 pm to 6:00 pm. The Appellant confirmed that he is concentrating on his courses instead of seeking employment. He enrolled in this course on his own initiative and did not have a valid ten digit apprenticeship code. The Appellant further stated that he was not advised to quit his job and was never provided with a Request for Authorization to Quit Employment-Second Career to Service Canada form.

SUBMISSIONS

[13] The Appellant submitted that:

- a) He has just cause for voluntary leaving his employment and he is available for work because he meets the requirements of the Act in section 29 in that he has reasonable assurance of employment in the immediate future (GD2-4).

[14] The Respondent submitted that:

- a) The Appellant did not have just cause for leaving his employment because he failed to exhaust all reasonable alternatives prior to leaving.
- b) A reasonable alternative to leaving would have been to not make the personal choice to enroll in the course.
- c) A person who attends a full-time course without being referred by an authority designated by the Commission must demonstrate that she is capable of and available for work and unable to obtain suitable employment, and must meet the availability requirements of all claimants who are requesting regular employment insurance benefits.
- d) The Appellant has failed to rebut the presumption of non-availability while attending a full-time course because he has stated that his intention is to concentrate on his classes and has not provided any evidence that he has been seeking employment (GD3-24).

ANALYSIS

[15] The relevant legislative provisions are reproduced in the Annex to this decision.

Availability

[16] For the purpose of proving availability under paragraph 18(1) (a) of the Act, subsection 50(8) of the Act states that the Commission may require the claimant to prove that she is making reasonable and customary efforts to obtain suitable employment.

[17] In *Faucher v. Canada* (A-56-96), the Court stated that that availability must be determined by analyzing three factors:

- a) the desire to return to the labour market as soon as a suitable job is offered,
- b) the expression of that desire through efforts to find a suitable job, and
- c) not setting personal conditions that might unduly limit the chances of returning to the labour market.

[18] There is a presumption that a person enrolled in a course of full-time study is not available for work. This presumption of fact is rebuttable by proof of exceptional circumstances (*Cyrenne* 2010 FCA 349; *Wang* 2008 FCA 112; *Gagnon* 2005 FCA 321; *Rideout* 2004 FCA 304; *Boland* 2004 FCA 251; *Primard* 2003 FCA 349; *Landry* A-719-91).

[19] The presumption may be rebutted by a history of full-time employment while studying. This history must be established over the years (*Rideout* 2004 FCA 304; *Boland* 2004 FCA 251; *Loder* 2004 FCA 18; *Primard* 2003 FCA 349; *Landry* A-719-91).

[20] In the case at bar, the Respondent submitted that the Appellant did not prove his availability for work because he was not available for full-time work. His course of instruction was a full-time course and he has stated that his intention is to concentrate on his classes and has not provided any evidence that he has been seeking employment (GD3-24).

[21] The Appellant submitted that he is available for work because he meets the requirements of Act section 29 as he has reasonable assurance of employment in the immediate future.

[22] The Tribunal considered that the restrictions placed on the Appellant's hours of availability because of his course and finds that they restrict his ability to accept full-time employment during normal business hours. The facts in this case indicate that the Appellant did enroll in a course of instruction that was not approved by the Respondent and was not looking for any work because he expected to have a placement after the end of his course.

[23] The Tribunal also considered that there is no evidence provided to indicate that the Appellant had a history of full-time employment while studying.

[24] In *Canada (AG) v. Gauthier*, 2006 FCA 40 the Court established the principle that a person who unduly restricts his availability is not entitled to benefits under section 18 of the Act, and section 32 of the Regulations excludes Saturdays and Sundays from the definition of "working day" for the purposes of section 18.

[25] In *Faucher v. Canada (A-56-96)*, the Court clearly stated that one is available by not setting personal conditions that might unduly limit the chances of returning to the labour market.

[26] Section 9.001 of the Regulations lists specific criteria for determining whether the efforts that the Appellant is making to obtain suitable employment constitute reasonable and customary efforts. Those criteria include whether the Appellant's efforts are: 1) sustained, 2) directed toward obtaining suitable employment and 3) consistent with nine specified activities that can be used to assist claimants to obtain suitable employment. In the case at bar, the Tribunal did not make any efforts to look for employment because he was concentrating in his studies.

[27] The Tribunal finds that the Appellant was not available for work for the period starting February 21, 2016.

[28] It is possible that the Appellant had good reason for taking a course to better his chances of obtaining employment in a field that he liked but he still had to prove his availability for work.

The Umpire in *CUB 80859* addresses the role of the intent of the Employment Insurance Act in relation to training courses.

“The claimant undoubtedly made an excellent personal decision to take a course that will improve his chances of finding good employment, but he still had to prove his full availability for employment pursuant to the Act. The Employment Insurance Act is not intended as a means for subsidizing claimants’ studies, except in the cases where the Commission refers them to specific training courses.”

[29] For all the above reasons, the Tribunal finds that the Appellant failed to prove his availability for work while attending a course of instruction therefore a disentitlement should be imposed on his claim effective February 21, 2016.

Voluntary leaving

[30] Paragraph 29(c) of the Act sets out the just cause test for cases of voluntarily leaving one’s employment: "No reasonable alternative to leaving the employment, having regard to all circumstances".

[31] The Respondent must show that the Appellant left employment voluntarily and the Appellant must show “just cause” for leaving his/her employment, that is, considering all circumstances, the Appellant had no reasonable alternative to leaving (*Patel A-274-09*, *Bell A-450-95*, *Landry A-1210-92*).

[32] In the case at bar, the evidence from the Respondent and the Appellant indicates that the Appellant voluntarily left his employment on February 15, 2016.

[33] The Tribunal finds that the Appellant voluntarily left his employment.

[34] The onus of proof now shifts to the Appellant show that she left his employment for just cause (*White A-381-10*, *Patel A-274-09*).

[35] Did the Appellant have no reasonable alternative to leaving? The evidence before the Tribunal indicates that he did.

[36] The Court has established that the question is not whether it was reasonable for the claimant to leave their employment, but rather whether leaving the employment was the only

reasonable course of action open to them, having regard to all the circumstances (*Laughland* 2003 FCA 129).

[37] As the Respondent submitted, a reasonable alternative would have been to not make the personal choice to enroll in the course.

[38] The Act is clear that a claimant has to utilize all reasonable alternatives before leaving his employment with just cause.

[39] The Appellant provided that he had just cause for voluntary leaving his employment because he had reasonable assurance of employment in the immediate future (GD2-4).

[40] In this case, the Tribunal finds that all the reason the Appellant provided does not amount to just cause for leaving one's employment because the Appellant did not explore the reasonable alternatives available to him.

[41] Therefore, the Tribunal finds that the Appellant had a reasonable alternative to leaving his employment. He could have stayed employed and opt not to take the course of instruction.

[42] The Tribunal also considered the Appellant's submission that he had secured employment after the end of his course, therefore he meets the criteria of the Act in 29 (c) (vi). The Tribunal cannot consider the potential work placement to be in the "immediate future" because the start date is twenty-three weeks after the claimant left his employment on February 15, 2016. The Tribunal is guided by the Court in *Canada (Attorney General) v. Lessard*, 2002 FCA 469. In that case the Court found that employment which only comes into being on the expiry of a course which has not yet been started and lasts thirteen weeks is not employment "in the immediate future".

[43] Furthermore, the Tribunal is of the opinion that although an employee is free to leave any employment he chooses for any reasons he sees fit, it does not follow that he is entitled to expect employment insurance to underwrite the risks associated with this. The Tribunal finds that the payment of employment insurance benefits is not based on the personal needs or financial obligations of an individual.

[44] It is possible that the Appellant had good cause for leaving his employment because he wanted to take a course that will improve his chances of finding employment in a field he preferred. But good cause does not equal just cause as stated in the Act and defined by jurisprudence.

[45] The words "just cause" in section 29 of the Act are not synonymous with "reason" or "motive". It is not sufficient for a claimant to prove that they were quite reasonable in leaving their employment. Reasonableness may be "good cause", but it is not necessarily "just cause" (*Tanguay* 1458-84).

[46] Also, while a claimant left her/his job for what may be considered a good reason, that was not sufficient to establish "just cause", within the meaning of paragraph 29(c) of the Act (*Imran* 2008 FCA 17).

[47] For all the above reasons the Tribunal finds that the Appellant did not demonstrate just cause for voluntarily leaving his employment because he did not show that he had no reasonable alternatives to leaving his employment when he did, therefore a disqualification should be imposed on his claim effective February 21, 2016, according to sections 29 and 30 of the Act.

CONCLUSION

[48] The appeal is dismissed.

Takis Pappas

Member, General Division - Employment Insurance Section

ANNEX

THE LAW

18 (1) A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was

(a) capable of and available for work and unable to obtain suitable employment;

(b) unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work; or

(c) engaged in jury service.

(2) A claimant to whom benefits are payable under any of sections 23 to 23.2 is not disentitled under paragraph (1)(b) for failing to prove that he or she would have been available for work were it not for the illness, injury or quarantine.

50 (1) A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

(2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

(3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.

(4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

(5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.

(6) The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.

(7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.

(8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.

(8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.

(9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.

(10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.

29 For the purposes of sections 30 to 33,

(a) *employment* refers to any employment of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

(i) sexual or other harassment,

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,

- (iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,
- (iv) working conditions that constitute a danger to health or safety,
- (v) obligation to care for a child or a member of the immediate family,
- (vi) reasonable assurance of another employment in the immediate future,
- (vii) significant modification of terms and conditions respecting wages or salary,
- (viii) excessive overtime work or refusal to pay for overtime work,
- (ix) significant changes in work duties,
- (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
- (xi) practices of an employer that are contrary to law,
- (xii) discrimination with regard to employment because of membership in an association, organization or union of workers,
- (xiii) undue pressure by an employer on the claimant to leave their employment, and
- (xiv) any other reasonable circumstances that are prescribed.

30 (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:

(a) hours of insurable employment from that or any other employment before the employment was lost or left; and

(b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.

9.1 For the purposes of subsection 50(8) of the Act, the criteria for determining whether the efforts that the claimant is making to obtain suitable employment constitute reasonable and customary efforts are the following:

(a) the claimant's efforts are sustained;

(b) the claimant's efforts consist of

(i) assessing employment opportunities,

(ii) preparing a resumé or cover letter,

(iii) registering for job search tools or with electronic job banks or employment agencies,

(iv) attending job search workshops or job fairs,

(v) networking,

(vi) contacting prospective employers,

(vii) submitting job applications,

(viii) attending interviews, and

(ix) undergoing evaluations of competencies; and

(c) the claimant's efforts are directed toward obtaining suitable employment.