



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. G. v. Canada Employment Insurance Commission*, 2018 SST 997

Tribunal File Number: GE-18-564

BETWEEN:

M. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christopher Pike

HEARD ON: August 2, 2018

DATE OF DECISION: August 24, 2018

DECISION

[1] The Tribunal finds that the Appellant has shown that he had just cause for leaving his employment to return to school. The appeal is allowed.

OVERVIEW

[2] The Appellant is a full-time student. He trained as an electrician but was unable to find employment as an apprentice. He took a job at an auto parts store while he considered his future. He informed his employer that he planned to return to school in September 2017.

[3] The Appellant applied for the Nova Scotia Fast Forward program during the last week of August 2017. He completed the Fast Forward program application process and left his employment on September 1, 2017. He started his course on September 5, 2017. He applied for employment insurance benefits on September 10, 2017. He stated in his application that his employer had laid him off because of a shortage of work and provided details of his course. He received a letter confirming that he had been referred to the Fast Forward program on September 14, 2017.

[4] The Commission disqualified the Appellant from receiving benefits because he had not established just cause for leaving his employment. It asserted that he had the reasonable alternative of remaining in his job until he had approval to quit from the Fast Forward program.

ISSUES

[5] The Tribunal must determine whether the Appellant had just cause under the *Employment Insurance Act* (Act) to leave his employment to return to school. The Tribunal must therefore consider:

- a) whether the Appellant voluntarily left his employment,
- b) and if so, whether the circumstances relating to the Appellant's decision to return to school demonstrate just cause to voluntarily leave his employment.

ANALYSIS

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

[7] The purpose of the Act is to provide benefits to individuals involuntarily separated from employment and who are without work.

[8] The Appellant applied for support under the Nova Scotia Fast Forward program, which offers eligible individuals an opportunity to receive regular employment insurance benefits while attending an approved course of instruction by referring him to his course under section 25 of the Act.

[9] The Commission did not contest the fact that the Fast Forward program, a designated authority, had referred him to his course. Hence, there is no dispute that a designated authority referred the Appellant to his course.

[10] If the Appellant voluntarily left his employment without just cause, he will be disqualified from receiving employment insurance benefits (Act, subsection 30(1)). The Commission must prove that the Appellant left his employment voluntarily. If it does so, the Appellant must then establish that he had just cause for leaving his employment to take his course by showing that it is more probable than not that he had no reasonable alternative to leaving having regard to all the circumstances (*Canada (Attorney General) v. White*, 2011 FCA 190).

Did the Appellant voluntarily leave his employment?

[11] The Appellant voluntarily left his employment if he had a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56). The question for the Tribunal is whether the Appellant chose to sever his employment relationship.

[12] The Appellant stated in his reconsideration request and Notice of Appeal that he voluntarily left his employment with the auto parts store. He testified that he decided to start a program of study in September 2017 which would help him gain admission to a medical technology program at a college in Ontario.

[13] This evidence show that the Appellant made a choice to sever his employment relationship. The Tribunal finds that the Appellant voluntarily left his employment as defined under the Act and elaborated upon in *Peace*.

Did the Appellant have just cause to voluntarily leave his employment?

[14] The Tribunal must consider the circumstances listed in the Act to determine whether the Appellant had just cause for leaving his employment (Act, paragraph 29(c)). The list is not closed, so the Appellant must prove that his circumstances establish just cause for leaving his employment and not that he fits one of the circumstances listed. To do so, he must satisfy the Tribunal that it is more probable than not, having regard to all of his circumstances, he had no reasonable alternative but to leave his employment when he did (*Astronomo v. The Attorney General of Canada*, A-141-97).

[15] The Commission argued that the Appellant did not have just cause to leave his employment because he had the reasonable alternative to remain in his employment while seeking approval of the designated authority to leave his job to attend his referred training rather than make a personal decision to quit. The Appellant argued that he did everything necessary to qualify for benefits.

[16] The Appellant has established that he had just cause for leaving his employment.

[17] The Appellant left his employment on September 1, 2017. At that time, he had applied for and had been accepted into his course, which was to start on September 5, 2017. He had also made his application for the Fast Forward program and been told that a letter showing that he had been referred to his course under the program would be issued soon. He testified that he had no reason to believe he would not receive referral from the Fast Forward program. He also testified that he was not told that he would require an authorization to quit to support his employment insurance claim. An official of the Fast Forward program issued a letter to the Appellant on September 14, 2017 confirming his acceptance into the program.

[18] This evidence shows that it is more probable than not that on September 1, 2017, that the Appellant believed he had met all requirements of the Fast Forward program and been referred to his course.

[19] Leaving one's employment to pursue studies without a referral from the Commission or an authority designated by it does not constitute just cause within the meaning of the Act (*Canada (Attorney General) v. Shaw*, 2002 FCA 325). The Tribunal has found that a designated authority, the Fast Forward program, told the Appellant no later than September 1, 2017 that he had been referred to his course. The fact that the Appellant was referred under the Fast Forward program distinguishes the Appellant's case from the principles set out in *Shaw*.

[20] The Tribunal notes that the Act and Regulations do not require the Appellant to secure authorization to quit as a precondition to establishing just cause for leave his employment; he need only establish just cause as set out in paragraph 29(c) of the Act. The Tribunal therefore finds that the lack of authorization to quit was not sufficient to disqualify him from receiving benefits when the evidence shows that he had been referred to his course before voluntarily leaving his employment.

[21] By receiving the support of the Fast Forward program, the Appellant took on the obligation to attend classes all day Monday to Thursday and on Friday mornings at the direction of an authority designated under the Act. The Tribunal finds that given this obligation to attend classes after being referred by a designated authority under section 25 of the Act, it is more probable than not that leaving his employment was the only reasonable course of action open to him (*Canada (Attorney General) v. Laughland*, 2003 FCA 12). The Tribunal finds that the Appellant had just cause for leaving his employment.

CONCLUSION

[22] The appeal is allowed.

Christopher Pike
Member, General Division - Employment Insurance Section

HEARD ON:	August 2, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. G., Appellant A. G., Observer

ANNEX

THE LAW

Employment Insurance Act

25 (1) For the purposes of this Part, a claimant is unemployed and capable of and available for work during a period when the claimant is

- (a) attending a course or program of instruction or training at the claimant's own expense, or under employment benefits or similar benefits that are the subject of an agreement under section 63, to which the Commission, or an authority that the Commission designates, has referred the claimant; or
- (b) participating in any other employment activity
 - (i) for which assistance has been provided for the claimant under prescribed employment benefits or benefits that are the subject of an agreement under section 63 and are similar to the prescribed employment benefits, and
 - (ii) to which the Commission, or an authority that the Commission designates, has referred the claimant.

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.