



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. W. v Canada Employment Insurance Commission*, 2019 SST 261

Tribunal File Number: GE-19-343

BETWEEN:

J. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: February 4, 2019

DATE OF DECISION: February 27, 2019

DECISION

[1] The appeal is allowed. The Appellant (Claimant) has proven that he had no reasonable alternative to leaving his nursing home job to return to his authorized studies. As such, he had just cause to leave, and is not disqualified from receiving benefits.

OVERVIEW

[2] In May 2018, following the second year of his nursing degree, J. W., the Claimant in this appeal, accepted employment with a nursing home in New Brunswick. At the end of August 2018, he left his job, as planned, and returned to university in Nova Scotia.

[3] The Canada Employment Insurance Commission (Commission) determined that the Claimant did not have just cause to voluntarily leave his job, and disqualified him from receiving benefits under section 30 of the *Employment Insurance Act* (Act).

ISSUES

[4] Did the Claimant voluntarily leave his job?

[5] If so, considering the circumstances, did he have a reasonable alternative to leaving?

ANALYSIS

[6] Claimants who *voluntarily* leave a job without *just cause* cannot receive benefits.¹ To have just cause, claimants must prove that they had no reasonable alternative to leaving.²

[7] Without more, staying employed until another job is secured is generally a reasonable alternative to quitting.³

[8] Claimants do not have just cause for leaving if they leave their job to pursue studies not authorized by the Commission or its designate.⁴

¹ This is a disqualification under section 30 of the Act.

² Paragraph 29(c) of the Act.

³ *Canada (Attorney General) v. Graham, 2011 FCA 311*

⁴ *Canada (Attorney General) v. Côté, 2006 FCA 219*

Did the Claimant voluntarily leave his job?

[9] Yes. I find that the Claimant voluntarily left his job because he stated in his notice of appeal that he quit. Because he had the choice to stay but chose to leave, the leaving was voluntary.⁵

Considering the circumstances, did he have a reasonable alternative to leaving?

[10] No. I find that the Claimant did not have a reasonable alternative to leaving his job because he had been authorized to take the studies by Skills PEI, a designate of the Commission, before he left, and he had to move to another province to continue in his authorized studies.

[11] To receive benefits the Claimant must prove on a balance of probabilities that he had just cause for leaving his job. Just cause does not simply mean that he had a good reason for leaving.⁶ To prove that he had just cause, the Claimant must prove that it is more likely than not, having regard to all the circumstances, that he had *no reasonable alternative* to leaving when he did.⁷

[12] I find that the Claimant left his job in New Brunswick because he wanted to return to university in Nova Scotia to complete his nursing degree. Because the Claimant was working in New Brunswick and his course was in Nova Scotia, it was not possible for him to work and to pursue his course.

[13] The jurisprudence is clear that leaving employment to pursue studies not authorized by the Commission or its designate is not just cause under the Act⁸.

[14] I find that Skills PEI authorized the Claimant's studies. The Commission does not dispute that the Claimant's studies were authorized studies.

[15] I find that his studies were authorized before he left his employment because on his application for benefits and in his statements to the Commission he indicated that his course was

⁵ In *Canada (Attorney General) v. Peace*, 2004 FCA 56, the Federal Court of Appeal stated that to determine if the employee voluntarily left employment the question to be asked is whether the employee had a choice to stay or leave.

⁶ *Canada (Attorney General) v. White*, 2011 FCA 190

⁷ Paragraph 29(c) of the Act

⁸ *Côté, supra*, *Canada (Attorney General) v. Lessard*, 2002 FCA 469; *Canada (Attorney General) v. Bédard*, 2004 FCA 21; *Canada (Attorney General) v. Bois*, 2001 FCA 175

authorized before he quit. The Claimant also provided a client agreement with Skills PEI that was prepared by Skills PEI and signed by the Claimant on July 17, 2018. The Claimant did not leave his employment until the end of August 2018.

[16] The Commission argued that Skills PEI did not authorize the Claimant to quit his job. However, the legal test is not whether Skills PEI gave the Claimant authorization to quit, but is whether the Claimant had no reasonable alternatives to leaving.

[17] The Commission cited the case of *Canada (Attorney General) v. Beaulieu*, A-465-07, in support of their argument that “leaving one’s employment to take a training course **which he was not authorized to leave**” contradicts the basic principles of the employment insurance program.⁹ The Commission has misstated the position of the court in that case. The court in *Beaulieu* was citing another case, *Canada (Attorney General) v. Martel*, where it was written:

An employee who voluntarily leaves his employment to take a training course which is not authorized by the Commission certainly has an excellent reason for doing so in personal terms; but we feel it is contrary to the very principles underlying the unemployment insurance system for that employee to be able to impose the economic burden of his decision on contributors to the fund.

[18] When the court refers to authorization, I find that they are referring to authorization to take the course, not authorization to leave employment, as suggested by the Commission. In the Claimant’s case, as I stated above, his studies were authorized, and as such, this line of cases does not apply.

[19] The Commission argued that a reasonable alternative was for the Claimant to continue working until he had found another job. I find that in the Claimant’s particular set of circumstances, including that his authorized studies were full-time and in another province, that he has proven that he had just cause to leave his job.

[20] In particular, I find that staying employed in New Brunswick was not a reasonable alternative because:

⁹ See page GD4-5, last paragraph.

- a) Skills PEI had authorized his studies in Nova Scotia from September 2, 2018, to April 6, 2019;
- b) he received the authorization from Skills PEI *before* he left his job in New Brunswick; and
- c) the distance between his employment in New Brunswick and his studies in Nova Scotia was too far to commute.

[21] The Claimant had just cause to leave his job because he has proven that it is more likely than not that he had no reasonable alternative to leaving. As such, he is not disqualified from receiving benefits under section 30 of the Act.

CONCLUSION

[22] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

HEARD ON:	February 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	James Kinnee, Representative for the Appellant