



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. Y. v Canada Employment Insurance Commission*, 2019 SST 864

Tribunal File Number: GE-19-211

BETWEEN:

**K. Y.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Angela Ryan Bourgeois

HEARD ON: February 4, 2019

DATE OF DECISION: March 4, 2019

## **DECISION**

[1] The appeal is dismissed with modification. The Appellant (Claimant) is disentitled (not disqualified<sup>1</sup>) from receiving benefits because she has not proven that she had just cause to take a period of leave from her job. The Claimant has not proven her availability during her internship, but she has proven her availability during the break between her two different internships.

## **OVERVIEW**

[2] The Claimant in this appeal is K. Y.. She took a leave from her job with X in August 2018 to complete the internship portion of her education that will eventually allow her to work as a dietician in Canada.

[3] The Canada Employment Insurance Commission (Commission) determined that the Claimant did not have just cause to voluntarily leave her job and imposed an indefinite disqualification from receiving benefits as of August 26, 2018, under section 30 of the *Employment Insurance Act* (Act). In addition to the disqualification, the Commission determined that the Claimant was not entitled to receive benefits from September 10, 2018, to December 20, 2018, because she failed to prove that she was available for work as required under the Act.

[4] I must decide:

- a) if the Claimant voluntarily left her job without just cause; and
- b) if the Claimant has proven her availability for work.

## **ISSUES**

### **Issue 1: Voluntarily leaving and just cause**

[5] Did the Claimant voluntarily leave her job?

[6] If so, considering all the circumstances, did she have a reasonable alternative to leaving her job?

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<sup>1</sup> To understand the distinction see paragraphs 25 and 26.

[7] Is the Claimant disqualified from receiving benefits, or does she meet one of the exceptions to a disqualification?

## **Issue 2: Availability**

[8] Has she proven her availability?

## **ANALYSIS**

### **Issue 1: Voluntarily leaving and just cause**

[9] Claimants who *voluntarily* leave a job without *just cause* cannot receive benefits.<sup>2</sup> To have just cause, claimants must prove that they had no reasonable alternative to leaving.<sup>3</sup>

[10] Without more, it is generally a reasonable alternative for claimants to stay employed until they secure another job.<sup>4</sup>

[11] Claimants do not have just cause for leaving if they leave their job to pursue studies not authorized by the Commission or its designate.<sup>5</sup>

### **Did the Claimant voluntarily leave her job?**

[12] Yes. I find that the Claimant voluntarily left her job.

[13] The Commission must prove that it is more likely than not that the Claimant voluntarily left her job.<sup>6</sup> The legal test is whether the Claimant had the choice to stay employed but chose not to.<sup>7</sup>

[14] The Claimant argued that she did not voluntarily leave her job because she had to move to Nova Scotia to complete her internship.

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<sup>2</sup> This is a disqualification under section 30 of the Act.

<sup>3</sup> Paragraph 29(c) of the Act.

<sup>4</sup> *Canada (Attorney General) v. Graham*, 2011 FCA 311

<sup>5</sup> *Canada (Attorney General) v. Côté*, 2006 FCA 219

<sup>6</sup> *Green v. Canada (Attorney General)*, 2012 FCA 313

<sup>7</sup> *Canada (Attorney General) v. Peace*, 2004 FCA 56

[15] There is no evidence that the Claimant did not have the choice to continue working at her job. Because there was no requirement for the Claimant to complete her internship, I find that by choosing to complete her internship rather than choosing to continue to work, she voluntarily left her job.

**Considering all the circumstances, did the Claimant have a reasonable alternative to leaving?**

[16] Yes. I find that a reasonable alternative to leaving was for the Claimant to stay employed.

[17] Since the Claimant voluntarily left her job, to receive benefits the Claimant must prove on a balance of probabilities that she had just cause for leaving. Just cause does not simply mean that she had a good reason for leaving.<sup>8</sup> To prove that she had just cause, the Claimant must prove that it is more likely than not, having regard to all the circumstances, that she had *no reasonable alternative* to leaving when she did.<sup>9</sup>

[18] I find that the Claimant left her job to go to school. On her application for benefits, the Claimant indicated that she quit to go to school and at the hearing she explained why completing the internship was the best personal decision for her. She stated that she wanted to complete the bridging program that she had started at X because the bridging program allows dieticians who are educated abroad to write a test in Canada that allows them to work in Canada as dieticians. The final part of the bridging program is the internship. She was unable to complete this portion of the program on Prince Edward Island.

[19] The jurisprudence is clear that leaving employment to pursue studies not authorized by the Commission or its designate is not just cause under the Act<sup>10</sup>.

[20] There is no evidence before me that the Claimant's internship was authorized by the Commission or its designate, before she left her job. The Claimant testified that she learned of

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<sup>8</sup> *Canada (Attorney General) v. White*, 2011 FCA 190

<sup>9</sup> Paragraph 29(c) of the Act

<sup>10</sup> *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

the PEI Career Connect program after she left her job. As such, I find that the Claimant's studies (her internship) were not authorized by the Commission or its designate when she left her job.

[21] The Claimant argued that she had just cause to leave her job because:

- a) she had been working on completing the bridging program since 2012;
- b) she could not complete the program while living on Prince Edward Island;
- c) she only learned about the internship in August and had to start in September;
- d) she is not eligible for a student loan;
- e) she applied for the PEI Career Connect program when she heard of it (after she left her job);
- f) she is in financial distress; and
- g) before she left she told her employer that she would be returning to work.

[22] Having considered all of the Claimant's circumstances, I find that staying employed remained a reasonable alternative to leaving her job to complete the internship. No matter how advantageous completing the program was for the Claimant, leaving her job to complete the program was a personal choice, which is not just cause under the Act.

[23] Because the Claimant has not proven that staying employed was not a reasonable alternative, the Claimant did not have just cause to leave her job.

**Is the Claimant disqualified from receiving benefits, or does she meet one of the exceptions to a disqualification?**

[24] The Claimant is not disqualified from receiving benefits, but she cannot receive benefits during the period of leave from her job (between August 26, 2018, and December 21, 2018) because she voluntarily took a period of leave without just cause. This is a disentitlement under section 32 of the Act.

[25] When a claimant voluntarily leaves a job without just cause, they cannot receive benefits until they have enough hours of insurable employment since leaving the job to qualify for benefits. This is an indefinite *disqualification* under section 30 of the Act.

[26] An exception is if the claimant is *disentitled* from receiving benefits under section 32 of the Act for voluntarily taking a period of leave without just cause. When a claimant voluntarily takes a period of leave without just cause, they are not entitled to receive benefits during the period of leave. However, unlike the disqualification under section 30, they can use the hours of insurable employment from the job they left to qualify for benefits.

[27] I find that the Claimant was on a period of leave from her employment as set out in subsection 32(1) of the Act.

[28] To qualify as a period of leave under subsection 32(1) of the Act:

- a) the employer must authorize the period of leave, and
- b) the Claimant and the employer must have agreed to the day on which the Claimant would return to work.

[29] I find that the Claimant took a period of leave from her employment under subsection 32(1) of the Act, because the employer authorized the leave, and the employer and the Claimant agreed as to when the Claimant would return to work.

[30] I find that the employer authorized the Claimant's leave because:

- a) the Claimant testified that when she left her job she told the employer that she would be back and the employer kept her on their list;
- b) she told the Commission that her employer told her it was okay to leave and return to work;
- c) she testified that during her December break she returned to work for the employer; and
- d) her employer allowed her to return to work in December without any formality, such as an interview.

[31] The record of employment shows that the Claimant “quit.” I prefer the Claimant’s testimony and statements that her employer agreed that she could return to work because they have been consistent from the time she applied for benefits until the hearing. In her application for benefits she stated that she would be returning to her job, and there is no evidence that she did not return to work in December as she stated.

[32] I find that the Claimant and the employer agreed to the day when the Claimant would return to work because the Claimant actually returned to work. While they did not agree to the day she would return before she left, the Act only requires that at some point (either before or after the leave starts), that the Claimant and employer agree as to when employment would resume. The Claimant testified that she gave the employer a few weeks’ notice, and they added her to the work schedule. By working those shifts, the Claimant has proven that she and the employee agreed as to when her employment would resume.

[33] A disentitlement under section 32 of the Act lasts until the claimant resumes the job.<sup>11</sup>

[34] I find that the Claimant’s period of leave ended on December 21, 2018, because that was the day that the first portion of her internship ended, and she was available to be put on the work schedule as of December 22, 2018.

[35] Because subsection 32(1) of the Act applies, the Claimant is not disqualified from receiving benefits under section 30(1) of the Act. However, since the Claimant did not have just cause to take a period of leave from her job, under section 32 of the Act, she is not entitled to receive benefits during the period of leave, from August 26, 2018, to December 21, 2018.

## **Issue 2: Availability**

### **Has the Claimant proven her availability?**

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<sup>11</sup> See subsection 32(1) of the Act. The disentitlement will also end when the Claimant loses or voluntarily leaves the employment, or since the beginning of the period of leave, accumulates with another employer enough hours of insurable employment to qualify for benefits under sections 7 or 7.1 of the Act.

[36] The Claimant has not proven that she was available for work immediately after leaving her job and during her internship, but she has proven her availability during the break between her internships.

[37] To be entitled to receive benefits, the Claimant must prove that she is capable of, available for work, and unable to obtain suitable employment for every working day for which she claims benefits.<sup>12</sup>

[38] There is no dispute that the Claimant was capable of working. The issue arises with her availability.

[39] To be available for work, the Claimant must prove:

- a) she had a desire to return to the labour market as soon as suitable work was offered;
- b) she must have shown that desire by efforts to find suitable work; and
- c) she cannot have had personal conditions that unduly limited her chances of finding work.<sup>13</sup>

[40] When a claimant is attending full-time studies, it is presumed, or considered, that she is not available for work, unless she proves exceptional circumstances.<sup>14</sup>

[41] The Claimant testified that she had made no efforts to find other work since she left her job on August 26, 2018, because she had no time to work. However, she stated that she was available for work between December 22, 2018, and January 7, 2019, when she was home on Prince Edward Island, and did, in fact, return to her job.

[42] By stating that she was not looking for work while attending her internship program, she has not rebutted the presumption of non-availability during her internship.

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<sup>12</sup> Paragraph 18(1)(a) of the Act.

<sup>13</sup> *Faucher v. Canada Employment and Immigration Commission* A-56-96

<sup>14</sup> *Landry v. Canada (Attorney General)*, A-719-91



[43] I find that the Claimant has not proven that she had a desire to return to the labour market because she stated that she did not have time to work.

[44] I accept the Claimant's testimony that she did not look for other work during her internship as it is consistent with her statements to the Commission.

[45] I find that, during the period of her internship, the time she spent working on her internship was a personal condition that unduly limited her chances of returning to the labour market.

[46] Therefore, because the Claimant did not have a desire to return to the labour market, made no efforts to find work, and the time she spent on her internship unduly limited her chances of returning to work, I find that she has not proven her availability from August 26, 2018, to December 21, 2018.<sup>15</sup> Because she was not making any efforts to find work during this period, it cannot be said that her efforts were "reasonable and customary," as required by the Act.<sup>16</sup>

[47] I find that the Claimant has proven her availability for the period between December 22, 2018, and January 7, 2019, because:

- a) she proved she had a desire to return to work by contacting her employer a few weeks before she returned home so that they would have time to add her to the work schedule;
- b) her job search efforts of contacting her former employer resulted in her returning to work during her break;
- c) this was the period between two different internships so neither her studies nor her attendance at these programs unduly limited her chances of returning to work; and
- d) she notified her employer that she was available for work during this period.

[48] Between December 22, 2018, and January 7, 2019, I find that the Claimant made reasonable and customary efforts to find suitable employment<sup>17</sup> because she did what was

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<sup>15</sup> The Commission's disentitlement for non-availability was from September 10, 2018, to December 20, 2018. See their decision letter at page GD3-32.

<sup>16</sup> Subsection 50(8) of the Act.

<sup>17</sup> Subsection 50(8) of the Act, and section 9.0001 of the *Employment Insurance Regulations*.

necessary to resume her employment by contacting her employer and making herself available for the shifts that her employer offered her.

**CONCLUSION**

[49] The Claimant is disentitled from receiving benefits under section 32 of the Act for voluntarily taking a period of leave without just cause between August 26, 2018, and December 21, 2018.

[50] The Claimant is disentitled from receiving benefits under paragraph 18(1)(a) of the Act for failing to prove her availability between August 26, 2018, and December 21, 2018. She has proven her availability from December 22, 2018, to January 7, 2019.

[51] The appeal is dismissed with modification.

Angela Ryan Bourgeois

Member, General Division - Employment Insurance Section

HEARD ON:	February 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. Y., Appellant