Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *A. A. v Canada Employment Insurance Commission*, 2019 SST 283

Tribunal File Number: GE-19-849

BETWEEN:

A. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: February 25, 2019

DATE OF DECISION: March 14, 2019

Canada

DECISION

[1] The appeal is dismissed. The Appellant voluntarily left his employment without just cause, and has not proven his availability for work.

OVERVIEW

[2] The Appellant left his employment as a welder after his employer asked him to move from the working the afternoon shift to the day shift. The Appellant had enrolled in a training program that conflicted with the hours of work on the day shift. He felt that his employer forced him to make a choice between his training and his job. The Respondent denied the Appellant's application for employment insurance benefits because it determined that he voluntarily left his employment without just cause.

ISSUES

[3] Did the Appellant voluntarily leave his employment?

[4] If so, did the Appellant have just cause to leave his employment voluntarily because his employer asked him to work the day shift, which conflicted with the hours of the training program in which he had enrolled?

[5] Has the Appellant proven that he was capable of and available for work, and unable to find suitable employment?

a) Did the Appellant rebut the presumption that a person who is enrolled in a course of full-time study is not available for work?

b) Did the Appellant have a desire to return to the labour market as soon as suitable employment is offered?

c) Did the Appellant make efforts to find suitable employment?

d) Did the Appellant set personal conditions that might unduly limit his chances of returning to the labour market?

ANALYSIS

[6] Claimants are disqualified from receiving employment insurance benefits where they voluntarily leave any employment without just cause (subsection 30(1), *Employment Insurance Act*). The Respondent must prove that the Appellant voluntarily left his employment. Then, the Appellant must establish just cause for voluntarily leaving by showing, in the circumstances, that he had no reasonable alternative to leaving his employment (*Green v. Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v. White*, 2011 FCA 190).

Issue 1: Did the Appellant voluntarily leave his employment?

[7] I find that the Appellant voluntarily left his employment.

[8] To determine whether the Appellant voluntarily left his employment, I must ask whether he had a choice to stay or leave (*Canada (AG) v. Peace*, 2004 FCA 56).

[9] The Appellant said that his employer forced him to leave his employment. He stated that he was working the night shift, and the employer asked him to work the day shift. He said that he was going to school in the days from 8:00 a.m. to 3:00 p.m., so could not work the day shift. The Appellant testified that he told the employer that he could not work the day shift and the employer made him choose between working the day shift and continuing with his training.

[10] Although the Appellant did not agree that he had quit his job, I find that he had a choice to continue in his employment, but chose instead to continue with his training. In his application for employment insurance benefits, the Appellant indicated that he had quit his job. The Respondent's evidence in the form of a record of employment and statement from the employer support the information in the Appellant's application for benefits that he quit his job.

[11] I find that the Appellant had a choice to return to his employment and that by choosing to continue to pursue his training, he initiated his separation from and voluntarily left his employment.

Issue 2: Did the Appellant have just cause to leave his employment voluntarily because his employer asked him to work the day shift, which conflicted with the hours of the training program in which he had enrolled?

[12] I do not find that the Appellant has demonstrated that he had just cause to leave his employment when he did.

[13] Just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances (paragraph 29(c), *Employment Insurance Act*).

[14] Voluntarily leaving a job to attend a course of instruction that the Commission did not authorize does not constitute just cause (*Canada (AG) v. Martel*, A-1691-92, *Canada (AG) v. Caron*, 2007 FCA 204).

[15] The Appellant initially told the Respondent that while he was working the afternoon shift, he had made plans during the day before his shift started at 3:00 p.m. After the Respondent denied the Appellant's application for benefits, the Appellant disclosed that he had enrolled in a training course and could not work the day shift as a result. He stated that if the employer had given a week's notice of the shift change, he could have tried to rearrange his school schedule.

[16] The employer told the Respondent that it moved its employees to different shifts all the time based on the company's needs. The Appellant agreed that this was the case. The employer also told the Respondent that it had given the Appellant a week to get things in order before starting the day shift. When asked if this was correct, the Appellant testified that after the employer asked him on a Sunday to work the day shift, he reported to work on the afternoon shift on the following day at which time he told his employer he could not work the day shift. He said that the employer told him that he had to choose between his job and his training.

[17] Even though the Appellant stated that many other employees were available to work the day shift, I do not find that it was unreasonable for the employer to assign the Appellant to work the day shift based on its operational need.

[18] The Appellant disputes that the employer allowed him a week to prepare to return to the day shift. However, I give more weight to the Respondent's evidence from the employer in this regard, mainly because the Appellant reported to work on the afternoon shift on the day after the employer asked him to work the day shift. In addition, the Appellant said that on that afternoon shift, the employer told him that he had to make a choice, but did not state that if he chose to remain at work, that he had to report for the day shift on the following day.

[19] I find that as an alternative to leaving his employment when he did, the Appellant could have chosen to continue in his employment instead of continuing with his training. He could also have taken the remainder of the week after the employer asked him to work the day shift to try to rearrange his training schedule. As a result, I do not find that the Appellant has demonstrated that he had just cause to leave his employment when he did.

Issue 3: Availability

[20] A claimant is not entitled to be paid benefits for a working day for which the claimant does not prove that he or she was capable of and available for work (paragraph 18(1)(a), *Employment Insurance Act*).

[21] In order to prove availability, a claimant must have a desire to return to the labour market as soon as suitable employment is offered, must express that desire through efforts to find suitable employment, and must not set personal conditions that might unduly limit their chances of returning to the labour market (*Faucher v. Canada (Commission)*, A-56-96).

[22] The burden of proof rests on the claimant. The claimant must not only allege availability, they must prove it with all documents necessary (*Canada (AG) v. Renaud*, 2007 FCA 328, *Canada (AG) v. Floyd*, A-168-93).

[23] Except where exceptional circumstances exist, a person who is enrolled in a course of full-time study is presumed not to be available for work (*Landry v. Canada (AG)*, A-719-91; *Canada (AG) v. Gagnon*, 2005 FCA 321; Canada (AG) v. *Cyrene*, 2010 FCA 349). This presumption can be rebutted by a history of full-time employment while studying (*Canada (AG) v. Rideout*, 2004 FCA 304), or by a demonstrated willingness to abandon the course of study if suitable employment is offered (*Canada (AG) v. Wang*, 2008 FCA 112).

a) Did the Appellant rebut the presumption that a person who is enrolled in a course of full-time study is not available for work?

[24] I do not find that exceptional circumstances exist, to conclude that the Appellant has rebutted the presumption that he is not available for work.

[25] The Appellant told the Respondent that he had enrolled in a training program and attended classes Mondays through Fridays from 8:00 a.m. to 3:00 p.m. He said that this program was one that would improve his career and potentially give him an opportunity for employment through a local union. Given the hours of the training program, I find that the Appellant was enrolled in full-time study.

[26] When asked if he had ever studied full-time at the same time as working full-time, the Appellant said that he had not. The Appellant had to quit his full-time job to continue with his training, and he told the Respondent that he was looking for part-time work while in training. Based on the foregoing, I do not find that the Appellant has rebutted the presumption that a person who is enrolled in a course of full-time is not available for work.

b) Did the Appellant have a desire to return to the labour market as soon as suitable employment is offered?

[27] I do not find that the Appellant has demonstrated a desire to return to the labour market as soon as suitable employment is offered.

[28] The desire to return to work must be sincere, demonstrated by the attitude and conduct of the claimant (*Canada (AG) v. Whiffen*, A-1472-92).

[29] I have already found that the Appellant chose to quit his job to continue with his training. Additionally, he told the Respondent that he was not looking for full-time work, but was looking for part-time work. I am not satisfied, for example, that if he had been offered a job that conflicted with his training, he would have accepted it. As a result, I do not find that the Appellant has demonstrated by his conduct that he had a desire to return to the labour market as soon as suitable employment is offered

c) Did the Appellant make efforts to find suitable employment?

[30] I am not satisfied that the Appellant has proven that he was making reasonable and customary efforts to obtain suitable employment.

[31] The criteria for determining whether the efforts that a claimant is making to obtain suitable employment constitute reasonable and customary efforts are the following: the claimant's efforts are sustained, and consist of assessing employment opportunities, preparing a résumé or cover letter, registering for job search tools or with electronic job banks or employment agencies, attending job search workshops or job fairs, networking, contacting prospective employers, submitting job applications, attending interviews, and undergoing evaluations of competencies, and the claimant's efforts are directed toward obtaining suitable employment (section 9.001, *Employment Insurance Regulations*).

[32] Beyond telling the Respondent that he was looking for part-time work, the Appellant did not submit any documentary evidence to the Respondent to support his statement that he had looked for work. When asked at the hearing when he started to look for work, the Appellant responded that he had made five applications between the first week of January 2019 and the date of the hearing.

[33] After the hearing concluded, the Appellant sent the Tribunal copies of images from his iPhone to show that he had applied for seven jobs between February 6, 2019 and February 9, 2019. In one of the images, it appears as though the Appellant's application from February 9, 2019, was incomplete, and in another, a prospective employer responded on January 10, 2019, to the Appellant's application by saying that it was proceeding with other candidates. The Appellant also included a text message exchange that he had with someone from an unidentified company on January 7, 2019 and January 10, 2019, in which he said that he was looking for work for a couple of weeks, but was told that there was no work available.

[34] In spite of the Appellant's expression of interest in a job in January 2019, and his applications for jobs in early February 2019, I am not satisfied that he made sustained efforts to find work. Other than his statement that he was looking for part-time work after he quit his job on November 12, 2018, there is no supporting evidence that he did so until early January 2019,

even though one of his responsibilities listed in his application for benefits is that he keep a detailed record as proof of his job search efforts.

d) Did the Appellant set personal conditions that might unduly limit his chances of returning to the labour market?

[35] I find that the Appellant set personal conditions that might unduly limit his chances of returning to the labour market.

[36] I have already found that the Appellant has not rebutted the presumption that a person who is enrolled in a course of full-time study is not available for work. I find, especially because the Appellant quit his job that required him to work the day shift, that the Appellant attending training during the day meant that his option was find a job to work other than during the day. I find that this would have unduly limited his chances of returning to the labour market.

[37] Based on the foregoing, I find that because the Appellant has not demonstrated that he had just cause to leave his employment when he did, he is disqualified from receiving employment insurance benefits. I also find that a disentitlement should be imposed, because the Appellant has not proven his availability for work.

CONCLUSION

[38] The appeal is dismissed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	February 25, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. A., Appellant