



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. P. v Canada Employment Insurance Commission*, 2019 SST 473

Tribunal File Number: GE-19-1548

BETWEEN:

B. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: April 17, 2019

DATE OF DECISION: April 18, 2019

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant established a claim for Employment Insurance benefits (EI benefits) on June 18, 2017. The Appellant was working for X and had been paid 10-weeks of apprenticeship benefits from September 10, 2017, to November 18, 2017. The Appellant's claim was then converted back to EI regular benefits and he was paid 8-weeks of regular EI benefits from December 3, 2017, to January 27, 2018. On December 21, 2017, the employer issued a Record of Employment which stated the Appellant's first day of work was November 21, 2017, and his last day paid was December 2, 2017. The employer (D. R.) explained that the Appellant requested a vacation leave from December 5, 2017, to January 10, 2018. D. R. stated that the employer's policy allowed no more than three-weeks for vacation so a leave of absence was granted for this time-period. The Respondent determined that the Appellant did not demonstrate just cause for voluntarily taking a leave of absence from his employment and was not entitled to EI benefits from December 5, 2017, to January 10, 2018.

[3] The Appellant submitted that he was not disputing he was not entitled to EI benefits starting December 5, 2017. However, the Appellant submitted he should not be disentitled during the period of the employer's Christmas shutdown. The Appellant further submitted that he inquired about returning to work on January 3, 2018, and supported his statement with text messaging he sent to a supervisor. I find that a disentitlement should be imposed on the Appellant from December 5, 2017, until January 10, 2018, because he did not demonstrate just cause for taking a period of leave from his employment.

ISSUES

[4] The Tribunal must decide the following issues:

Did the Appellant voluntarily take a period of leave from his employment? If so, should a disentitlement be imposed on the Appellant for voluntarily taking a period of leave from his employment without just cause?

ANALYSIS

[5] Section 32(1) of the *Employment Insurance Act* (EI Act) states that: A claimant who voluntarily takes a period of leave from their employment without just cause is not entitled to receive benefits if, before or after the beginning of the period of leave,

- (a) the period of leave was authorized by the employer; and
- (b) the claimant and the employer agreed as to the day on which the claimant would resume employment

[6] Section 32(2) of the EI states that: The disentitlement lasts until the claimant

- (a) resumes the employment;
- (b) loses or voluntarily leaves the employment; or
- (c) after the beginning of the period of leave, accumulates with another employer the number of hours of insurable employment required by section 7 or 7.1 to qualify to receive benefits.

[7] The legal test for just cause is whether —on a balance of probabilities— the claimant had a reasonable alternative to taking a period of leave from his employment having regard to all the circumstances (*Patel v. Attorney General of Canada*, 2010 FCA 95; *White v. Attorney General of Canada*, 2011 FCA 190).

Did the Appellant voluntarily take a period of leave from his employment?

[8] I find the Appellant voluntarily took a period of leave from his employment, because he confirmed during the hearing that he requested a vacation leave from the employer from December 5, 2017, until January 10, 2018. I further find the Appellant's employer authorized this period of leave. I realize the Appellant submitted he was not aware the employer designated his vacation leave as a leave of absence. However, the Appellant voluntarily took a period of leave from his employment and the employer authorized this leave.

Should a disentitlement be imposed on the Appellant for voluntarily taking a period of

leave from his employment without just cause?

[9] I find that a disentitlement should be imposed on the Appellant for voluntarily taking a period of leave from his employment without just cause for the following reasons: First: The Appellant confirmed that he took a vacation leave from his job due to personal reasons. Specifically, the Appellant explained that he anticipated he had another week-and-a half to go in his job. However, the Appellant testified there were less expensive airline tickets to Toronto available on the earlier date so he decided to start his leave on December 5, 2017. Perhaps the Appellant had his own good personal reasons for taking a leave from his employment on December 5, 2017. However, good personal reasons would not translate in just cause for taking a leave. On this matter, I rely for guidance on the Federal Court of Appeal (*Imran v. Attorney General*, 2008 FCA 17) which affirmed the principle that good reasons or good cause was not the same as just cause.

[10] Second: The Appellant had the reasonable alternative of remaining in his employment and not taking a period of leave. I realize the Appellant explained that he wished to visit his family in Toronto over the Christmas holidays and airline travel was less expensive on the earlier day of December 5, 2017. Nevertheless, I must apply the EI legislation to the evidence. In other words: I cannot ignore, re-fashion, circumvent, or re-write the EI Act even in the interest of fairness and compassion (*Knee v. Attorney General of Canada*, 2011 FCA 301).

[11] During his oral testimony, the Appellant did not dispute he was not entitled to EI benefits starting December 5, 2017. However, the Appellant submitted he should not be disentitled during the period of the employer's Christmas shutdown. However, it was the Appellant's decision to commence a period of leave which triggered his work stoppage on December 5, 2017, and not the employer's Christmas shutdown.

[12] I do realize the Appellant submitted that he inquired about returning to work and supported his statement with text messaging he sent to his supervisor D. V. on January 3, 2018, (Exhibit GD5-1 to GD5-3). The Appellant testified that D. V. advised him that the job was not starting until January 21, 2018, and to come back mid-January 2018. The Appellant explained there was

no work until January 31, 2018, and he resumed his employment on January 31, 2018.

[13] I am not entirely clear whether the Appellant was arguing he could have resumed working on January 3, 2018, or his employment was not scheduled to resume on January 3, 2018. Nevertheless, I have reviewed the Appellant's testimony on this matter and the text messaging he sent to his supervisor. The Appellant's text messaging demonstrated he made contact with D. V. on January 3, 2018, and inquired about work. The text messaging was also clear that D. V. replied to the Appellant and explained that the first scheduled shift was January 21, 2018.

[14] In the last analysis, I am not persuaded the Appellant's employment could have resumed (or was to resume) on January 3, 2018, for several reasons: First: The Appellant only arrived back in X (British Columbia) on January 7, 2018. Second: The Appellant's leave was specifically from December 5, 2018, to January 10, 2018, and the employer had agreed to these dates and authorized the leave. In short, I accept the Respondent's submission that while the Appellant was not physically able to work for the employer as of January 11, 2018, there was sufficient evidence to conclude his employment resumed on this day.

[15] In summary: I find that a disentitlement should be imposed on the Appellant from December 5, 2017, until January 10, 2018, because he did not demonstrate just cause for taking a period of leave from his employment.

CONCLUSION

[16] The appeal is dismissed.

Gerry McCarthy

Member, General Division - Employment Insurance Section

HEARD ON:	April 17, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. P., Appellant