



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. M. v Canada Employment Insurance Commission*, 2019 SST 905

Tribunal File Number: GE-19-1708

BETWEEN:

**C. M.**

Appellant/Claimant

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: Catherine Shaw

HEARD ON: June 5, 2019

DATE OF DECISION: June 21, 2019

## **DECISION**

[1] The appeal is dismissed on both issues. The result is the Claimant is disqualified from receiving regular employment insurance (EI) benefits because he failed to demonstrate he had no reasonable alternative to voluntarily leaving his employment.

[2] The Claimant is also disentitled from benefits from December 31, 2018 to March 3, 2018, because he has not proven he was available for work and unable to find suitable employment, and that he was making reasonable and customary efforts to obtain suitable employment.

## **OVERVIEW**

[3] The Claimant left his employment to attend school. He visited Service Canada before leaving and was told he would be eligible for EI benefits while he attended school. He also visited Skills PEI, a department in the provincial government, who arranged his financing. They did not inform him of any barriers he would have in receiving EI. He made an initial claim for benefits and the Canada Employment Insurance Commission (Commission) told him he could not receive EI benefits because he had voluntarily left his job without just cause and he was not available for work because he was in school.

[4] The Claimant requested a reconsideration of the Commission's decisions and was told that he did not get a referral to his training from Skills PEI. The Claimant followed up with the provincial government and was given a referral from a different department, Career Development Services. This referral was effective after his courses began. The Commission did not change their decision and the Claimant is now appealing to the Social Security Tribunal on the basis that he feels he was misinformed by Service Canada.

## **ISSUES**

[5] Did the Claimant voluntarily leave his employment and, if so, did he have just cause to leave when he did?

[6] Has the Claimant proven he was capable of and available for work from December 31, 2018 to March 3, 2019?

[7] Did the Claimant prove he was making reasonable and customary efforts to obtain suitable employment from December 31, 2018 to March 3, 2019?

## **ANALYSIS**

[8] Employment insurance is not an automatic benefit. To be qualified for EI benefits, a claimant has to meet certain conditions. A claimant is disqualified from receiving regular EI benefits if they voluntarily left any employment without just cause.<sup>1</sup>

[9] The Commission has the burden to prove the claimant's leaving was voluntary. If the claimant voluntarily left, they have the burden to demonstrate they had just cause for leaving.

### **Did the Claimant voluntarily leave his employment and, if so, did he have just cause to leave his employment when he did?**

[10] Yes, the Claimant voluntarily left his employment. This fact is not in dispute. The Claimant consistently told the Commission and the Tribunal that he left his job to attend a training program at X College. The record of employment issued by the employer also states the reason for issuing as "quit / return to school." As this issue is not in dispute, I accept that the Claimant voluntarily left his job.

[11] No, the Claimant did not have just cause to voluntarily leave his employment. To have just cause, a claimant must show, having regard to all the circumstances, on a balance of probabilities, he had no reasonable alternative to leaving his employment.<sup>2</sup> In this case, reasonable alternatives existed. I will discuss what led me to this conclusion below.

[12] The Claimant was employed from July 17, 2013 to December 28, 2018. He left his job to attend a training program. At the hearing, he said that he was accepted into the training program in early December 2018. He initially met with Skills PEI in late November 2018 and applied for student financing during a second meeting with them around December 18, 2018. During this

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<sup>1</sup> *Employment Insurance Act*, subsection 30(1)

<sup>2</sup> Paragraph 29(c) of the *Employment Insurance Act* has a non-exhaustive list of circumstances to be considered. *Canada (Attorney General) v. White*, 2011 FCA 190 interprets paragraph 29(c) to require the claimants to prove their just cause. A claimant does not have to prove they fall within one of the listed circumstances to have just cause. *Canada (Attorney General) v. Lessard*, 2002 FCA 469 discusses the requirement to consider all circumstances.

meeting, Skills PEI told him he had to fill out the EI application form a certain way to get EI benefits while attending school. He went to a Service Canada office on the same day and was told the same thing. The Service Canada agent told him that as long as he had a student loan through Skills PEI, then he could get EI while he was attending school.

[13] After the Commission disqualified him from receiving benefits, the Claimant contacted Skills PEI again and was directed to another department, Career Development Services. This department gave him a referral to training as of March 3, 2019.

[14] The Claimant argues that he was given incorrect information by Service Canada and was not directed to the correct resources to obtain the referral to his training program prior to leaving his employment.

[15] The Commission submits the Claimant left his job on December 28, 2018, to attend a training program starting January 2, 2019. He was not referred to this training at the time he left.

[16] I acknowledge the Claimant's argument that the Commission and the provincial government should have directed him to resources to help his eligibility for EI. However, it is ultimately the Claimant's responsibility to prove he had just cause to voluntarily leave his employment. The evidence supports that the Claimant was not referred to his training program prior to leaving his employment, and therefore it is not a circumstance that I can consider when determining whether his leave was justified.<sup>3</sup>

[17] It is well established that leaving one's employment to pursue studies not authorized by the Commission does not constitute just cause within the meaning of the *Employment Insurance Act*.<sup>4</sup>

[18] Just cause is not the same as a good reason. The question is not whether it was reasonable for the Claimant to leave his employment, but rather whether leaving his employment was the only reasonable course of action open to him, having regard to all the circumstances.<sup>5</sup>

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<sup>3</sup> *Canada (Attorney General) v. Lamonde*, 2006 FCA 44

<sup>4</sup> *Canada (Attorney General) v. Côté*, 2006 FCA 219

<sup>5</sup> *Canada (Attorney General) v. Laughland*, 2003 FCA 12

[19] The Claimant chose to quit his employment to attend school. The Claimant offered personal reasons for his choice, including furthering his education and pursuing a career as a police officer. Regardless of these very good, personal reasons, the Claimant has not established that he had just cause for leaving.

[20] I sympathize with the Claimant's circumstances and understand he had a genuine belief that he would meet the necessary conditions to qualify for EI benefits based on the Commission's advice. However, I am unable to exempt the Claimant from the operation of the *Employment Insurance Act* and its requirements because the Commission gave him advice that is contrary to the legislation.<sup>6</sup>

[21] The Claimant is responsible for proving he had just cause for voluntarily leaving his employment and he must show that he had no reasonable alternative but to leave his employment when he did. Considering all the circumstances, the Claimant had the reasonable alternative to stay employed rather than making a personal choice to leave his job to attend school. As a result, the Claimant has not demonstrated just cause for voluntarily leaving his employment and he is therefore disqualified from receiving EI benefits.<sup>7</sup>

**Has the Claimant proven he was capable of and available for work from December 31, 2018 to March 3, 2019?**

[22] No, the Claimant has not proven he was available for work for the period in question for the reasons that follow.

[23] Claimants have the burden of demonstrating they meet the availability requirements for receiving EI benefits.<sup>8</sup> This means claimants must show they were capable of and available for work and unable to obtain suitable employment for every working day they are seeking benefits.<sup>9</sup>

[24] The Claimant established a benefit period on December 30, 2018. He was referred to his training program by the provincial government as of March 3, 2019. A claimant is considered

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<sup>6</sup> *Granger v. Employment and Immigration Commission*, A-684-85

<sup>7</sup> This disqualification is in accordance with subsection 30(1) of the *Employment Insurance Act*

<sup>8</sup> *Canada (Attorney General) v. Picard*, 2014 FCA 46; *Canada (Attorney General) v. Peterson*, A-370-95

<sup>9</sup> *Employment Insurance Act*, paragraph 18(1)(a)

capable of and available for work while they are attending a referred training program.<sup>10</sup> As such, the issue before me is whether the Claimant was capable of and available for work from December 31, 2018 to March 3, 2019.

[25] Capability of work relates to a claimant's ability to perform the functions of their regular or usual employment or some other suitable employment.<sup>11</sup> There is no dispute that the Claimant was capable of work during the period in question.

[26] The Claimant can establish his availability by proving his desire to return to the labour market as soon as a suitable job is offered, through demonstrating efforts to obtain a suitable job, and without setting personal conditions that might limit his chances of returning to the labour market.<sup>12</sup>

[27] The Claimant's training program began on January 2, 2019. He told the Commission the program was full-time and that he is unable to work while attending the course due to the rigorous course obligations. His courses are held from 6:00 AM to 5:00 PM on Monday to Friday and he is required to work several evenings each month on "desk duty." He spent approximately \$18,500 on the program, which he financed through loans. He would not leave his training program to accept employment.

[28] No matter how little chance of success a claimant may believe a job search would have, the *Employment Insurance Act* is designed so that only those who are genuinely unemployed and actively seeking work will receive benefits.<sup>13</sup>

[29] The Claimant stated at the hearing that he was not seeking work while he was attending school. He was thought he did not have to look for work because of the information he was given by Service Canada and Skills PEI prior to starting his training program. He argued that he should be entitled to benefits because he acted on the advice of the Commission and it was not his fault that he did not receive the appropriate permissions from the beginning.

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<sup>10</sup> *Employment Insurance Act*, paragraph 25(1)(a)

<sup>11</sup> *Canada (Attorney General) v. Cauglin*, A-1168-84

<sup>12</sup> *Faucher v. Canada Employment and Immigration Commission*, A-56-96

<sup>13</sup> *Canada (Attorney General) v. Cornelissen-O'Neill*, A-652-93

[30] Based on the Claimant's submissions and testimony, I find he did not have a desire to return to the labour market as soon as a suitable job was offered from December 31, 2018 to March 3, 2019. I accept his statements that he was not willing to leave his training program to accept employment, and that he could not maintain a job while fulfilling his course obligations.

[31] The Claimant was not actively seeking work from December 31, 2018 to March 3, 2019. As such, I find he did not express a desire to return to the labour market through efforts to obtain a suitable job during this period.

[32] The Claimant's course schedule severely limited the hours that he could work. The Claimant made a personal choice to attend this course and was unwilling to leave the course to accept suitable employment. Therefore, I find he set a personal condition of attending school that did unduly limit his chances of returning to the labour market.

[33] For these reasons, I find the Claimant has not proven he was available for work from December 31, 2018 to March 3, 2019. He is therefore disentitled from receiving EI benefits for this period.<sup>14</sup>

**Has the Claimant proven that he was making reasonable and customary efforts to obtain suitable employment?**

[34] No, the Claimant has not proven that he made reasonable and customary efforts to obtain suitable employment from December 31, 2018 to March 3, 2019, for the reasons that follow.

[35] For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove availability by demonstrating that he has made reasonable and customary efforts to obtain suitable employment.<sup>15</sup> The criteria to consider when determining whether a claimant is making reasonable and customary efforts to obtain suitable employment include a number of specified

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<sup>14</sup> This disentitlement is in accordance with subsection 18(1) of the *Employment Insurance Act*

<sup>15</sup> This requirement is located at subsection 50(8) of the *Employment Insurance Act*

job searching activities and also that the claimant's efforts must be sustained and directed at obtaining suitable employment.<sup>16</sup>

[36] The Claimant told the Commission that he was assessing employment opportunities for policing jobs after he completes his training, but was not looking for work while he was in school.

[37] The Claimant confirmed to the Tribunal that he was not seeking work while he was attending school. He thought he did not have to look for work because Service Canada told him he was eligible for EI while in school.

[38] The Claimant was not actively seeking work from December 31, 2018 to March 3, 2019. Regardless of the reason he was not seeking work, I find he has not proven he was making reasonable and customary efforts to obtain suitable employment for this period. He did not perform any of the activities proscribed within the *Employment Insurance Regulations* for the period in question. As he did not make any efforts to find employment, there is no reason to analyse whether his efforts were sustained or directed at obtaining suitable employment. Therefore, the Claimant is disentitled from receiving benefits from December 31, 2018 to March 3, 2019.<sup>17</sup>

## CONCLUSION

[39] The appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	June 5, 2019
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<sup>16</sup> The full list of criteria to be considered when determining whether a claimant made reasonable and customary efforts to find suitable employment are listed in the *Employment Insurance Regulations*, section 9.001

<sup>17</sup> This disentitlement is in accordance with subsection 50(8) of the *Employment Insurance Act*



METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. M., Appellant/Claimant