



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v J. N.*, 2019 SST 659

Tribunal File Number: AD-19-116

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

J. N.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: July 10, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed and the decision that the General Division should have given is made. J. N. (Claimant) is disentitled from receiving Employment Insurance benefits because she voluntarily took a leave from employment without just cause.

OVERVIEW

[2] The Claimant worked as a Diagnostic Imaging Technician. She took a leave of absence from this job to attend an educational program that would improve her employability. If she did not take this program at that time, she would have had to wait for approximately seven years before she could do so again. The Claimant applied for regular Employment Insurance benefits.

[3] The Canada Employment Insurance Commission decided it could not pay the Claimant Employment Insurance benefits because she had voluntarily left her employment without just cause.

[4] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division allowed the appeal, and decided that the Claimant had just cause to voluntarily leave her employment, and qualified for Employment Insurance benefits.

[5] The Commission appealed the General Division decision to the Appeal Division. The appeal is allowed because the General Division made an error in law when it decided that the Claimant had just cause for leaving her employment. The Claimant is disentitled from receiving Employment Insurance benefits.

PRELIMINARY MATTER

[6] The Notice of Hearing was sent to the Claimant at the address she provided to the Tribunal. Its receipt was acknowledged. I am satisfied that she received notice of the hearing. I waited twenty minutes for her to connect to the teleconference before I began the hearing. The Claimant did not connect to the call. The *Social Security Tribunal Regulations* state that the

hearing may proceed in a party's absence if they received notice of it.¹ The hearing was held in the Claimant's absence.

ISSUE

[7] Did the General Division make an error in law when it decided that the Claimant had just cause to take a leave from her employment?

[8] If so, what remedy should the Appeal Division give?

ANALYSIS

[9] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. They are that the General Division failed to observe a principle of natural justice, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.² The Commission argues that the General Division made an error in law when it decided that the Claimant leaving employment to attend the educational program was just cause in all of the circumstances.

[10] 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 the period of leave was authorized by the employer; and the claimant and the employer agreed as to the day on which the claimant would resume employment.³ In this case, the Claimant voluntarily took such a leave from work. She took an unpaid leave of absence from September 2, 2018, to October 4, 2019, to attend a diagnostic ultrasound program. Although it was a part-time program, the location was too far from her employer for her to continue to work while attending it.⁴

[11] Therefore, the General Division should have considered whether the Claimant is disentitled from receiving Employment Insurance benefits under this provision of the EI Act. A disentitlement for taking a leave of absence without just cause is different from a

¹ *Social Security Tribunal Regulations* s. 12

² DESD Act s. 58(1)

³ *Employment Insurance Act* s. 32(1)

⁴ GD3-26

disqualification for leaving an employment. The General Division failed to recognize this distinction. This is an error in law. Therefore the appeal must be allowed.

[12] The EI Act states that a claimant is disqualified from receiving benefits if they have voluntarily left employment without just cause.⁵ The same legal test for just cause is used to decide whether a claimant is disentitled under the leave of absence provision. In both cases just cause for leaving employment exists if the claimant had no reasonable alternative to leaving, having regard to all of the circumstances (the legislation also provides a list of some circumstances that are to be considered in cases of voluntary leaving employment).⁶

[13] The facts are not in dispute. The Claimant left her employment to attend a specialized educational program. If she did not do so at that time, her name would have returned to a waiting list and she likely would not have had another opportunity to attend for about seven years. In addition, she was returning to casual/on-call status with the Employer after working full-time hours over the summer.

[14] The General Division decided that under the circumstances the Claimant had no reasonable alternative to taking a leave of absence when she did,⁷ and referred to the *Laughland* decision. In *Laughland*⁸ the claimant's employer was going to close the business. The claimant left his job, and attended a training course that offered a reasonable assurance of full-time work at the end. The Federal Court of Appeal wrote:

leaving voluntarily employment to take a training course not authorized by the Commission is not "just cause" within the meaning of section 29 The Employment Insurance scheme is intended to protect those persons with no other reasonable choice but to leave their employment. Its purpose is not to provide employees in unstable employment, who leave their employment without just cause, with benefits while they seek better and more remunerative work.⁹

⁵ *Employment Insurance Act* s. 30(1)

⁶ *Ibid* s. 29(c)

⁷ General Division decision at para. 18

⁸ *Canada (Attorney General) v. Laughland*, 2003 FCA 129

⁹ *Laughland* decision at para. 12

Other court decisions are also clear that leaving a job to pursue education is not just cause under the *Employment Insurance Act*.¹⁰

[15] The General Division made an error in law because it failed to apply this legal principle from *Laughland* (that leaving employment to attend an educational course is not just cause for leaving work) to the facts before it. Therefore, the appeal must be allowed on this basis as well.

REMEDY

[16] The DESD Act sets out what remedies the Appeal Division can give when an appeal is allowed, including giving the decision that the General Division should have given or returning the matter to the General Division for reconsideration.¹¹ It also provides that the Tribunal can decide questions of law or fact necessary to dispose of an appeal.¹² The *Social Security Tribunal Regulations* require that proceedings be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.¹³ The record before me is complete. The facts are not in dispute. The Claimant applied for Employment Insurance benefits in September 2018, which was some time ago. Additional delay would be incurred if the matter were returned to the General Division for reconsideration. Therefore it is appropriate for me to give the decision that the General Division should have given.

[17] The facts are summarized above. It is undisputed that the Claimant left work as a Diagnostic Imaging Technician to attend a specialized educational program. Her employer authorized her leave and they agreed on a date when she would return to work. The Claimant had not been referred to this program.

[18] The issue therefore is whether the Claimant had just cause to take the leave of absence from work. The General Division made an error in law when it decided that the Claimant leaving

¹⁰ See for example *Caron* 2007 FCA 204; *Connell* 2003 FCA 144

¹¹ DESD Act s. 59(1)

¹² DESD Act s. 64

¹³ *Social Security Tribunal Regulations* s. 3

work to attend an educational program was just cause under the EI Act¹⁴. The law is clear that although it may be good cause to do so, it is not just cause.

[19] In addition, the Federal Court of Appeal instructs that a claimant's desire to improve their financial circumstances may constitute good cause to leave employment, but it is not just cause to do so.¹⁵ I agree with the Commission that the Claimant had a good reason to take a leave of absence from employment. However, it was not just cause to do so under the EI Act; just cause exists when there is no reasonable alternative to leaving employment. The Claimant could have remained employed on a casual basis until she received a transfer to a more convenient work location, or made efforts to obtain alternate work while attending the program.

[20] Therefore, the Claimant did not have just cause for taking a leave from employment, and she is disentitled from receiving Employment Insurance benefits under the leave of absence provision.

CONCLUSION

[21] The appeal is allowed.

[22] The Claimant is disentitled from receiving Employment Insurance benefits.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	June 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Louise Laviolette, Representative for the Appellant

¹⁴ See *Employment Insurance Act* s. 32(1)

¹⁵ *Canada (Attorney General) v. Graham*, 2011 FCA 311