



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. W. v Canada Employment Insurance Commission*, 2019 SST 1485

Tribunal File Number: GE-19-2305

BETWEEN:

B. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christopher Pike

HEARD ON: July 9, 2019

DATE OF DECISION: July 16, 2019

DECISION

[1] The Appellant, B. W., is the Claimant in this appeal. Her appeal about her decision to voluntarily leave her employment is allowed. Her appeal about availability for work is dismissed. The result is that the Claimant is not entitled to receive employment insurance benefits because she has not proven that she was available for work. These reasons explain why.

OVERVIEW

[2] The Claimant worked at a call centre for six years. She decided to take a medical/dental office administration course starting in March 2019. The Claimant is the spouse of a veteran and received financial support from Veterans Affairs to take her course. She asked her employer if she could take a leave of absence or move to a part-time position before she started her course. Her employer was not able to offer either.

[3] The Claimant is a diabetic and has high blood pressure. Her employer docked her pay because she took frequent washroom breaks because of these conditions. She took three stress leaves during her employment. Her doctor told her that a career change might be good for her mental health.

[4] The Claimant attends classes Monday to Thursday from 8:30 AM to 4:30 PM. Since starting her course she has looked for employment in the evenings and Friday to Sunday.

[5] The Commission disqualified the Claimant from receiving benefits because she voluntarily left her employment to attend her course. It also disentitled her from receiving benefits because she has not proven that she is available for work.

[6] The Claimant has appealed both of these decisions.

ISSUES

[7] I have to decide if the Claimant had just cause under the *Employment Insurance Act* to leave her employment to start her training. I therefore have to consider:

- a) whether the Claimant voluntarily left her employment,

- b) and if so, whether the circumstances relating to the Claimant's decision to attend training show just cause to voluntarily leave her employment.

[8] I also have to decide if the Claimant's efforts to return to the labour market from March 18, 2019 while she was attending her training show that she was available for work.

ANALYSIS

[9] Employment insurance pays benefits to individuals involuntarily separated from employment and who are without work.¹ The Commission disqualifies a claimant from receiving benefits if they are unable to show they had just cause for choosing to leave their employment.²

[10] To receive benefits, claimants have to prove that for each working day, they are capable of and available for work and unable to obtain suitable employment.³ A working day is any day of the week except Saturday and Sunday.⁴ As well, because the Claimant is a full-time student, she also has to rebut the presumption that students are not available for work.⁵

[11] In this appeal the Claimant says she had just cause for deciding to leave her employment to attend training and that she was available for work while attending it.

The Claimant voluntarily left her employment

[12] The Commission has to prove that the Claimant could have stayed in her job but chose to leave. If I find that the Commission has met this obligation, the Claimant must then prove that she had just cause for leaving.⁶

¹ *Canadian Pacific Ltd. v. Attorney General of Canada*, [1986] 1 S.C.R. 678 explains this principle. The law requires me to apply the principles set by courts. I refer to other cases that explain the *Employment Insurance Act* in this decision.

² *Employment Insurance Act*, subsection 30(1) set out this principle. The *Employment Insurance Act* sets the legal requirements to make an employment insurance claim as established by Parliament. I refer to other provisions of this legislation in this decision.

³ Section 18(1)(a) of *Employment Insurance Act* explains this principle.

⁴ Section 32 of the *Employment Insurance Act* sets this requirement.

⁵ *Attorney General v. Mercier*, A-690-75 explains this principle.

⁶ *Canada (Attorney General) v. Peace*, 2004 FCA 56 explains that if a claimant chooses to leave their employment when they could have stayed, then claimant has voluntarily left their employment within the meaning of sections 29 and 30 of the *Employment Insurance Act*. *Green v Canada (Attorney General)*, 2012 FCA 313 explains that the Commission must prove that the claimant voluntarily left their employment.

[13] The Claimant did not dispute that she chose to leave her employment at the call centre to take her training. I find that the Claimant made a choice to voluntarily leave her employment as set out in the *Employment Insurance Act*.

The Claimant had just cause to voluntarily leave her employment

[14] A claimant has just cause for leaving their employment if, considering all of their circumstances, it is more probable than not that they had no reasonable alternative to leaving.⁷

[15] The *Employment Insurance Act* lists circumstances which decision makers like me have to consider when assessing if a claimant has proven just cause for leaving their employment; but they are not limited to considering only those listed circumstances. What the Claimant has to prove is that all of their circumstances, whether listed or not, show it is more probable than not that they had had no reasonable alternative to leaving their employment.⁸ One of the listed circumstances is working conditions that constitute a danger to health.⁹

[16] The existence of working conditions that constitute a danger to health alone is not enough to give the Claimant just cause for leaving her employment. She must show that, having regard to all of the circumstances, including those working conditions, she had no reasonable alternative to leaving her employment.¹⁰

[17] The Claimant testified that she chose to leave her employment and take a medical/dental office administration course to better her prospects. She also testified that her health would require her to take another period of stress leave if she stayed employed at the call centre. She also said that the Department of Veteran's Affairs agreed to fund her training because her husband has been unable to work since his medical released from the armed forces.

[18] The Claimant testified that her employer docked her pay because she took frequent washroom breaks because of her diabetes and has high blood pressure. She found it stressful

⁷ *Canada (Attorney General) v White*, 2011 FCA 190 and *Canada (Attorney General) v Imran*, 2008 FCA 17 explain this principle.

⁸ Paragraph 29(c) of the *Employment Insurance Act* lists the circumstances. *Canada (Attorney General) v White*, 2011 FCA 190 interprets section 29(c) of the *Employment Insurance Act* to require claimants to prove their just cause. *Canada (Attorney General) v Lessard*, 2002 FCA 469 discusses the requirement to consider all circumstances.

⁹ This circumstance is listed in section 29(c)(iv) of the *Employment Insurance Act*.

¹⁰ *Tanguay v Canada (Unemployment Insurance Commission)*, A-1458-84 explains this principle.

when her employer monitored her washroom breaks. She took three stress leaves during her employment: one for two months in 2016; one for four and a half months ending in January 2017; and one for four and a half months ending in January 2018. She also testified that her doctor told her a career change might have a positive influence on her health, but did not make a firm recommendation for her to leave her employment.

[19] The Claimant asked her employer to address these issues that caused her stress. She testified that a year later nothing had changed. She testified that she believes that if she had remained employed at the call centre, she would have applied for another period of stress leave.

[20] This evidence shows that the Claimant's working conditions endangered her health and that her efforts to have her employer address those conditions were unsuccessful. Considering her circumstances, I therefore find that it is more probable than not that she had no reasonable alternative but to leave her employment.

The Claimant has not rebutted the presumption that as a student, she is unavailable for work

[21] The *Employment Insurance Act* presumes that a person enrolled in a course of full-time study is not available for work. A claimant must prove their circumstances are exceptional to rebut this presumption.¹¹

[22] The Claimant testified that she has not previously worked while attending post-secondary education. She also testified that she would not leave her training to accept full-time employment.

[23] The Claimant's evidence does not establish that she had a long-term history of working while studying full-time.¹² Nor does her evidence demonstrate her willingness to abandon his course of study if suitable employment was offered to him.¹³ I find that her evidence does not

¹¹ *Canada (Attorney General) v Cyrenne*, 2010 FCA 349 explains this presumption.

¹² *Canada (Attorney General) v Rideout*, 2004 FCA 304 explains this requirement.

¹³ *Canada Attorney General v Wang*, 2008 FCA 112 explains that a claimant in this circumstance must have a history of employment while studying over a period of years.

show the exceptional circumstances required to rebut the presumption that she was unavailable for work.

The Claimant was not available for work from March 18, 2019

[24] The *Employment Insurance Act* does not define availability for work. A claimant has to prove their availability by proving their desire to return to the labour market as soon as a suitable job is offered, through demonstrating their efforts to find a suitable job, and by not setting personal conditions that might limit their chances of returning to the labour market.¹⁴

[25] The Claimant's desire to return to work must be sincere, demonstrated by her attitude and conduct.¹⁵

[26] The Claimant testified that since she started her training, she has spent her lunch hours passing out resumes. She also said she monitored the Indeed and Kijiji websites for employment opportunities. This evidence shows the Claimant's desire to return to the labour market. I also find that this evidence shows that the Claimant's conduct expresses her desire to find a suitable job.

[27] The Claimant also testified that she was looking for work that would accommodate her school schedule. She also testified that if full-time work became available and conflicted with her training, she would complete her training. She submitted that she was in school from 8:30 AM to 4:30 PM from Monday to Thursday but was otherwise available for work. She stated that she was willing to accept a job with evening shifts, so long as it did not interfere with her schooling.

[28] When a claimant is only available at certain times on certain days as a result of their studies, their availability is restricted and they have limited their chances of finding employment.¹⁶ Availability requires a willingness to re-enter the labour force without unduly limiting one's chances of obtaining employment.¹⁷

¹⁴ *Faucher v. Canada (Attorney General)*, A-56-96 interprets the *Employment Insurance Act* to require this proof of availability.

¹⁵ *Canada (Attorney General) v. Whiffen*, A-1472-92 explains this requirement.

¹⁶ *Duquet v. Canada (Employment and Immigration Commission)*, 2008 FCA 313 explains this principle.

¹⁷ *Canada (Attorney General) v. Primard*, 2003 FCA 349 explains this principle.

[29] Considering that the Claimant said she would not accept a job that interfered with her training schedule and was in school from 8:30 AM to 4:30 PM from Monday to Thursday, she was not available for work during those times. I find that this limitation on her availability was a personal condition that unduly limited her chances of returning to the labour market.

[30] For these reasons, I find that the Claimant has not proven she was available for work from March 18, 2019.

CONCLUSION

[31] The appeal about the Claimant's decision to voluntarily leave her employment is allowed. The appeal about the Claimant's availability for work is dismissed.

Christopher Pike
Member, General Division - Employment Insurance Section

HEARD ON:	July 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. W., Appellant