



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *O. H. v Canada Employment Insurance Commission*, 2019 SST 1520

Tribunal File Number: GE-19-3659

BETWEEN:

**O. H.**

Appellant/Claimant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

---

DECISION BY: Catherine Shaw

HEARD ON: November 12, 2019

DATE OF DECISION: November 13, 2019

## **DECISION**

[1] I am allowing the appeal. The Claimant did not take a voluntary leave of absence from work within the meaning of the *Employment Insurance Act*. This means he is not disentitled from receiving benefits from September 2 to December 29, 2018, and from February 4 to August 10, 2019.

## **OVERVIEW**

[2] The Claimant was working a full-time and part-time job concurrently. He stopped working his full-time job and applied for EI benefits. He continued his part-time work until he left to attend school in another city. He was approved to attend his training and received benefits until his claim ended a few months later. He applied for EI benefits again and the Commission looked at his reasons for leaving his part-time job and decided that he had voluntarily taken a leave of absence without just cause, so it was unable to pay him benefits. The Commission later reviewed its decision and also decided that the Claimant was not entitled to the benefits he had previously been paid. It asked him to repay all of the benefits he had received since he left his part-time job.

## **ISSUE**

[3] I must decide whether the Claimant voluntarily took a leave of absence from his employment without having just cause. To do this, I must first see if the Claimant took a voluntary leave of absence. If he did, I then have to see if he had just cause for taking that leave.

## **ANALYSIS**

### **The parties dispute that the Claimant took a voluntary leave of absence**

[4] The parties do not agree that the Claimant took a voluntary leave of absence from his job. I find that the Commission has failed to prove that the Claimant took a voluntary leave of absence within the meaning of the *Employment Insurance Act*. My reasons for this decision are discussed below.

[5] The law says that you cannot be paid regular EI benefits if you voluntarily took a period of leave from any job without just cause.<sup>1</sup> Your period of leave must have been authorized by the employer for a mutually agreed-upon period of time for this to apply.<sup>2</sup> The Commission has to prove this.<sup>3</sup>

[6] The Claimant was employed part-time at a grocery store until September 1, 2018. He had worked at the store on-and-off throughout high school. During the summer break, he obtained a full-time job with another employer and worked reduced shifts at the grocery store for eight weeks. After that, he returned to working part-time at the store until the end of the summer, at which time he moved to attend school in another city.

[7] The Claimant says that he did not take a voluntary leave of absence from his employment at the grocery store. He said the employer knew that he had to stop working at the end of the summer because he was moving to attend school in September 2018. The Claimant says that he did not have a contract of employment with an end date, but the employer agreed that he would be leaving his job at that time.

[8] The Commission says the Claimant took a voluntary leave of absence from his job to attend school. The Commission's evidence consists of the following:

- a) The ROE issued by the employer on December 20, 2018. The ROE states the reason for issuing as "leave of absence" and states the Claimant is expected to return to his employment on April 30, 2019.
- b) the Claimant's application for benefits submitted on February 6, 2019. On this form, the Claimant answered the question "why are you no longer working" by checking the box marked "leave of absence."

[9] The Claimant testified that he did not request a leave of absence from the employer before leaving in September 2018. He told the Commission and the Tribunal that the ROE was issued by the employer's head office and he believes they issued the ROE with incorrect

---

<sup>1</sup> This is set out in section 32(1) of the *Employment Insurance Act*

<sup>2</sup> These requirements are listed in section 32(1)(a) and (b) of the *Employment Insurance Act*

<sup>3</sup> The burden of proof is a balance of probabilities which means it is more likely than not that the events occurred as described.

information, as he did not tell the employer that he was returning to work there. He says the local store management understood that he was not returning to this job and that they did not agree to a date of his return to work. He intended to return to work at his full-time job the next summer because he was offered a position for the following year. He returned to that job in May 2019.

[10] The Claimant also testified that he answered that he was no longer working due to a leave of absence on his application for benefits because the reason matched what was stated on the ROE.

[11] The Commission's evidence supports that the Claimant had the authorization of his employer to take a period of leave from his employment, and indicates that there was an expected time that he would return to work. However, this ROE was issued by the employer in December 2018, four months after the Claimant had stopped working at the store. The Claimant argued that his employment was handled by the local store management and that they knew he was not returning to work. The Commission attempted to contact the management for the local store, but the manager and assistant manager had changed since the time of the Claimant's employment. The Commission is relying on the ROE issued by the employer's head office but I do not think this is convincing evidence that the Claimant agreed to the period of leave.

[12] The Commission also says that the Claimant's response on the application for benefits supports that he was on a leave of absence. However, given the Claimant's explanation and his unfamiliarity with the EI system, it was reasonable for him to provide this answer because it matched what his ROE had said. Therefore, I do not find this compelling evidence that he was on an authorized period of leave with an agreed-upon end date.

[13] For these above reasons, I have put more weight on the Claimant's testimony than on the ROE and the information provided on the application for benefits. The Claimant gave open and credible testimony at the hearing that he did not request a leave of absence and did not agree to return to his job at a future time. The Commission has not provided evidence to support that the period of leave was mutually agreed-upon between the Claimant and the employer. As such, I

find the Claimant did not take a voluntary leave of absence from his employment within the meaning of the *Employment Insurance Act*.<sup>4</sup>

**CONCLUSION**

[14] The appeal is allowed. This means the Claimant is not disentitled from receiving regular EI benefits.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	November 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	O. H., Appellant J. H., Representative for the Appellant

---

<sup>4</sup> Section 32 of the *Employment Insurance Act* requires that the leave of absence be authorized by the employer and for a mutually agreed-upon period of time. Both of these requirements must be met for this disentitlement to apply.