Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *D. Z. v Canada Employment Insurance Commission*, 2019 SST 1434

Tribunal File Number: GE-19-3483

BETWEEN:

D. Z.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

HEARD ON: November 7, 2019

DATE OF DECISION: November 15, 2019

Canada

DECISION

[1] The appeal is dismissed. The Claimant has not shown just cause because he had other reasonable alternatives to leaving his job when he did.

[2] The Claimant has not shown that he was available for work. This means that he is disentitled from being paid benefits.

OVERVIEW

[3] The Claimant left his job and took a training course. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving and decided that he voluntarily left his employment without just cause, so it was unable to pay him employment insurance (EI) benefits.

[4] Claimants have to be available for work to be paid regular EI benefits. Availability is an ongoing requirement; claimants have to be searching for a job. The Commission also decided that the Claimant was disentitled from being paid EI benefits because he was not available for work.

[5] The Claimant disagrees with the Commission's decisions. He appealed to the Social Security Tribunal stating that he thought he was on an approved training course. He was misinformed on the proper process to apply for EI benefits by the course trainer.

ISSUES

[6] I must decide whether the Claimant is disqualified from being paid benefits because he voluntarily left his job without just cause. To do this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

[7] I must also decide if the Claimant was available for work.

ANALYSIS

[8] The law says the Commission has the burden to prove the Claimant voluntarily left his employment. If proven, then the burden of proof shifts to the Claimant to demonstrate he had just cause for leaving[1].

The Claimant disputes that he quit his job

[9] When determining whether the Claimant voluntarily left his employment, the question to be answered is whether the Claimant had a choice to stay or leave[2].

[10] The Claimant applied for regular EI benefits on June 7, 2019, indicating he quit his job to go to school. He also indicated that he was referred to the training course under a provincial, territorial or aboriginal government employment program. He did not receive authorization to quit.

[11] The Claimant testified that he was working for his brother's restaurant in the kitchen. He had broken his foot and the job was getting harder and harder. He was still able to do the job and he was not on modified duties. Business was also slow, so he was only getting part-time hours. He saw an advertisement for people who were underemployed. There was training available sponsored by the federal government, the provincial government, and the training company. He applied, went to an interview and was told he was accepted as a candidate in the training. He thought that because the training was sponsored, this meant he was authorized to attend. He thought he would qualify for EI benefits and would not have to look for work while he was taking this training.

Was the Claimant approved training?

[12] No, the Claimant was not approved training. He was unable to provide any documentation to support that he was authorized training.

---

[1] This is explained in the Federal Court of Appeal decision *Green v. Canada (Attorney General)*, 2012 FCA 313
[2] *Canada (Attorney General) v. Peace*, 2004 FCA 56

[13] The Claimant testified that he did not know the process. He does not think that he called Service Canada to find out the process of leaving a job to attend training. He started his course on May 16, 2019. He received an email from the trainer dated May 28, 2019, regarding the EI process. The email told him to state the reason for leaving as "Counsel to leave employment". The email further said that this would allow his EI claim to be processed as he was not able to work due to the program and his medical issue.

[14] The Claimant testified that he thought the trainer would provide him with the information he needed because all the participants in the program were encouraged to apply for EI benefits.

[15] The Commission contacted the trainer. She said the Claimant did not receive the authorization to leave his job because the Claimant told her initially he was leaving his job for medical reasons on May 4, 2019. This was before the course start date of May 16, 2019. The trainer found out on May 31, 2019, that the Claimant was still working.

[16] The Commission asked the Claimant to submit documents to support he was authorized training and counselled to quit. He testified that he did not submit this information because he did not have it.

[17] I find the Claimant was not authorized training. He was approved to attend the training, and the training was sponsored by different levels of government, but this is not the same as being authorized training by a designated authority. If the Claimant had been authorized training, he would have been given documentation to prove it.

Did the Claimant voluntarily leave his employment?

[18] Yes, the Claimant voluntarily left his employment.

[19] As mentioned above, the Claimant applied for EI benefits indicating he quit to go to school.

[20] The record of employment (ROE) dated June 7, 2019, indicates that the Claimant worked from September 9, 2018, to May 31, 2019. The reason for issuing the ROE was documented as "other" with the comment, "Left for job training". The ROE further shows that in the Claimant's

last three semi-monthly pay periods, he worked around 15 hours per week. Before that, he worked full-time hours.

[21] However, the Claimant was contacted by the Commission and asked if he quit his job to go back to school. He said, “No. My employer did not think I was suitable. I was dismissed for unsuitability.”

[22] The Commission contacted the Claimant’s brother, the employer. He said the Claimant could not keep up to the pace of the work. When asked why the ROE indicated quit to go to school, the employer said this was a misunderstanding because he was dismissed for unsuitability.

[23] The Commission contacted the Claimant’s manager, who was expecting the call because the employer called her about it. The manager stated that she had the bookkeeper put “other” because they did not have the hours to give him and he was not a really good fit. When asked why the ROE said “Left for job training”, the manager said she did not know the ROE said that.

[24] The Commission contacted the bookkeeper. She said:

- she works as a contractor for the employer;
- the manager faxes her the payroll and it is usually written on the payroll to complete the ROE;
- if someone quits, she usually finds out from the employer. She would have confirmed it with him before submitting the ROE;
- she would not have put down that the Claimant left for job training unless the employer told her to;
- the employer then told her it was a misunderstanding and it was a lack of hours. He wanted her to change the ROE;
- she did not want to change the ROE until after she spoke to the Commission.

[25] I place more weight on the bookkeeper’s evidence. The bookkeeper said she was initially instructed to indicate the Claimant left his job to attend training. This supports the reasons the

Claimant gave when he completed his application for EI benefits. She is not related to the Claimant, and works as an independent contractor. I have no reason to doubt her statement.

[26] I do not accept the Claimant was dismissed for unsuitability or for a lack of hours. The employer, the manager and the Claimant all gave reasons for his alleged dismissal, but their stories were not consistent. The Claimant had worked for this employer for eight months. If he had been unsuitable, this would have been discovered sooner. While the ROE indicates the hours were reduced, the Claimant continued to work after his course had started. He testified he quit his job because the trainer told him to quit and because he thought he was authorized to attend training.

[27] I favour the Commission's evidence that the Claimant voluntarily left his job to attend a training course. He admits that he did not know the process and he followed the advice given to him by the school. This is why he applied for EI benefits indicating he quit to go to school. He testified that he told the employer to provide the ROE with "left for job training", because this is what he was instructed to do. From this, I can only conclude the Claimant had a choice to stay or leave, and he chose to leave his employment. The Claimant voluntarily left his job.

The Claimant did not have just cause to voluntarily leave his job

[28] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause[3]. Having a good reason for leaving a job is not enough to prove just cause.

[29] The law says that you have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did. It is up to the Claimant to prove this[4]. When I decide this question, I have to look at all of the circumstances that existed at the time the Claimant quit.

[30] I find the Claimant had reasonable alternatives to quitting his job. He could have remained employed rather than attending the training course. He had a broken foot at the time he quit his job. He testified he was unsure if he was leaving to go to school, or leaving for medical

[3] This is set out at s 30 of the *Employment Insurance Act*.
[4] This is explained in the Federal Court of Appeal decision *Canada (Attorney General) v White*, 2011 FCA 190.

reasons. But he testified that he was not given modified duties and he was capable of doing the job. It was only after the course had started that the trainer learned that the Claimant was still working and instructed him to quit his job. The Claimant chose to leave his employment to attend training.

[31] The issue of voluntarily leaving employment to attend school has been dealt with many times by the Federal Court of Appeal. It has consistently determined that leaving one's employment to pursue studies not authorized by the Commission does not constitute just cause within the meaning of the EI Act[5].

[32] The Claimant argued in his letter requesting reconsideration that the counsellors at the training facility work with government employment and benefit experts who advise them about how the participants can collect EI benefits during the training. He was misinformed by the counsellors about how he should apply. He was the only participant who was misinformed and the only participant not to receive EI benefits.

[33] I understand the Claimant was not properly informed about how to qualify for EI benefits while on a training course. The evidence indicates that the trainer thought the Claimant left his employment for medical reasons before the training started. Even if he was misinformed, the law must still be followed[6]. It is the Claimant's responsibility to know the process and to ensure the process is followed.

[34] The Claimant did not prove just cause to leave his job because had reasonable alternatives available to him. He could have remained employed and learned the process to attend training before quitting his job. The EI system was put in place to assist workers who, for reasons beyond their control, find themselves unemployed. Leaving work to attend training was within the Claimant's control.

The Claimant was not available while he was on a training course

[5] This is explained in *Canada (Attorney General) v. Côté*, 2006 FCA 2019
[6] *Canada (Attorney General) v. Shaw*, 2002 FCA 325

[35] Two different sections of the law require claimants to show that they are available for work[7]; the Commission disentitled the Claimant from being paid benefits under both. I will first consider whether the Claimant has proven that his efforts to find a job were reasonable and customary[8].

Reasonable and customary efforts to find a job

[36] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary[9]. I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. I also have to consider the Claimant's efforts in the following job-search activities: assessing employment opportunities, preparing a resume or cover letter, registering for job search tools or with online job banks or employment agencies, attending job search workshops or job fairs, networking, contacting employers who may be hiring, submitting job applications, attending interviews and undergoing evaluations of competencies.

[37] The Commission says the Claimant has failed to rebut the presumption of non-availability while attending a training course because he was not authorized by a designated authority to attend the course and by his own admissions stated that his intentions were to focus on completing the course rather than seek work. This is demonstrated by the fact that the only effort made to find work was through a requirement by the school that he do so as part of his program.

[38] The Claimant confirmed that he only applied for jobs as part of the course requirements. When he spoke with the Commission on July 5, 2019, he stated he had applied for five jobs. At the hearing he stated that he applied for more jobs since then but he did not remember how many.

[39] I do not find the Claimant's efforts to find a job to be reasonable and customary. While he assessed employment opportunities, prepared a resume and cover letter, he only looked for

---

[7] Subsection 50(8) and paragraph 18(1)(a) of the *Employment Insurance Act*
[8] Subsection 50(8) of the *Employment Insurance Act*.
[9] Section 9.001 of the *Employment Insurance Regulations*.

work within his field of training and as part of his course curriculum. A serious job seeker would be looking for any job, including outside of his program's requirements.

Capable of and available for work and unable to find suitable employment

[40] I must also consider whether the Claimant has proven that he is capable of and available for work and unable to find suitable employment[10]. The Claimant has to prove three things to show he was available under this section:

1. A desire to return to the labour market as soon as a suitable job is available;
2. That desire expressed through efforts to find a suitable job;
3. No personal conditions that might/might have unduly limit/limited their chances of returning to the labour market[11].

[41] I have to consider each of these factors to decide the question of availability[12], looking at the attitude and conduct of the Claimant[13].

[42] The Claimant applied for EI benefits stating that he spent 25 hours or more per week on his studies and the time he spent in class. The Claimant told the Commission that he spent seven hours per day Monday to Friday in class. He spent another two hours and sometimes more studying. He was unable to work full-time while he was in school. If he were offered full-time work, he would accept it but his main focus was on training as opposed to finding a job.

[43] The Claimant testified that he answered the Commission's questions knowing he would show he was not available for work. He thought he was authorized training and he would not have to prove his availability. He stated he would accept a job because that is the way the course was designed. He was being trained in a field and expected to find work.

---

[10] Paragraph 18(1)(a) of the *Employment Insurance Act*.
[11] *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[12] *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[13] *Canada (Attorney General v Whiffen)*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

[44] I understand the Claimant thought he was authorized training. And while there was misinformation or a misunderstanding in the process to qualify for EI while on training, this does not change the fact that the Claimant was not authorized. He was required to prove his ability.

[45] The Claimant did not make enough efforts to find a suitable job because he only looked for work as a requirement of his course. He therefore has not shown a desire to return to the labour market. And he set personal conditions that might unduly limit his chances of returning to the labour market because he restricted his search for jobs in the field of his studies.

[46] Given the above findings, the Claimant did not show he was capable of and available for work and unable to find suitable employment.

CONCLUSION

[47] The Claimant is subject to a disqualification and disentitled from receiving benefits effective May 26, 2019. This means that the appeal is dismissed.

K. Wallocha

Member, General Division - Employment Insurance Section

HEARD ON:	November 7, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	D. Z., Appellant