



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. J. v Canada Employment Insurance Commission*, 2019 SST 1613

Tribunal File Number: GE-19-3412

BETWEEN:

**M. J.**

Appellant

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: Christianna Scott

DATE OF DECISION: December 3, 2019

## **DECISION**

[1] On the topic of voluntarily leaving without just cause, I am dismissing the Claimant's appeal. M. J. ("the Claimant") has not proven that he had just cause to voluntarily leave his employment.

[2] On the topic of the penalty, the appeal is allowed. I find that the Claimant did not knowingly make a false statement.

## **OVERVIEW**

[3] The Claimant started working for X located in Barrie, Ontario. He lived with his girlfriend. He left his job to attend a ten-week approved apprenticeship-training course. He received employment insurance benefits during the time he was taking the course. He did not return to his job when his apprenticeship course ended. Instead, he moved to North Bay to join his girlfriend who had moved there several months earlier.

[4] The Canada Employment Insurance Commission ("the Commission") conducted a review of the Claimant's request for benefits. The Commission disqualified the Claimant from receiving employment insurance (EI) benefits because he voluntarily left his employment without just cause. This resulted in an overpayment.

[5] The Commission also imposed a penalty on the Claimant because the Commission decided that the Claimant knowingly made a false statement when he failed to report that he left his job.

[6] The Claimant has appealed these decisions. The Claimant says that he had just cause to leave his employment because he left to reunite with his girlfriend. He says that it did not make economic sense for him to continue living in Barrie while his girlfriend was in North Bay.

[7] The Claimant also says that he did not knowingly make a false statement because he did not know that he was required to tell the Commission that he had left his job. He says that since he was already receiving benefits because of his approved apprenticeship training he thought that his renewal application had to include the same information as his original application.

## **PRELIMINARY ISSUES**

[8] The Claimant asked for the hearing by question and answer. The Claimant insisted upon this method because it allowed him to think over and review his answers.

[9] I did the hearing by question and answer. The Claimant answered my initial questions. Based on the Claimant's answers, I asked for additional documents, which the Claimant sent to the Tribunal. The Commission was given the chance to respond to the additional documents. The Commission did not respond.

## **ISSUES**

[10] I must decide two issues:

- First, 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 address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.
- Second, I must decide if the Commission has proven that the Claimant knowingly provided false or misleading information to the Commission. If he did, then I must also consider whether the Commission properly decided the penalty amount.

## **ANALYSIS**

**Issue # 1: Did the Claimant voluntarily leave his employment and if so, did he have just cause to do so?**

**There is no dispute that the Claimant voluntarily left his job**

[11] I accept that the Claimant voluntarily left his job. The Claimant says that his last day of work was on March 17, 2018. He says that after he finished his apprenticeship course he did not go back to work. He resigned from his job. I see no evidence to contradict this.

**The parties dispute that the Claimant had just cause for voluntarily leaving**

[12] The parties do not agree that the Claimant had just cause for voluntarily leaving his job when he did.

[13] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>1</sup> Having a good reason for leaving a job is not enough to prove just cause.

[14] 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.<sup>2</sup> It is up to the Claimant to prove this.<sup>3</sup> When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant quit.

[15] The Claimant says that he left his employment because he followed his girlfriend who had moved from Barrie earlier in the year. He says that his girlfriend is his common-law partner. He also left because it did not make financial sense for him to keep his apartment in Barrie while his common-law partner lived in North Bay. He argues that he had no reasonable alternatives to leaving at that time.

[16] The Commission says that the Claimant did not have just cause, because he had reasonable alternatives to leaving when he did. Specifically, the Commission says that the Claimant could have stayed in Barrie until he found employment in North Bay and continued to commute to see his girlfriend.

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<sup>1</sup> This is set out at s 30 of the *Employment Insurance Act*.

<sup>2</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

<sup>3</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

***Obligation to Accompany a Spouse or Common-law Partner to Another Residence***

[17] The law says that I must consider whether a claimant has just cause to voluntarily leave their employment because the Claimant has an obligation to follow a spouse or a common-law partner to another residence.

[18] The Claimant argues that he left his job to follow his common-law partner. He explains that between September 2014 and January 2018, he lived with his girlfriend in Barrie. His girlfriend left Barrie in January 2018 to move to the North Bay area where she had found work. The Claimant said that he did not move back at the time because he had a spot for apprenticeship training in March 2018, at X. Once the training was over, the Claimant moved to join his girlfriend in North Bay.

[19] The term common-law partner means “a person who **is cohabitating** with the individual in a conjugal relationship, having so cohabited for a period of at least one year.” (emphasis added)<sup>4</sup>

[20] I find that the Claimant and his girlfriend were neither spouses nor common-law partners. The Claimant stated that when he left his job his girlfriend had moved to North Bay about five months before. The Claimant and his girlfriend therefore were not cohabiting and therefore were not common-law partners within the meaning of the law, despite the fact that they had previously lived together for over 3 years. Moreover, the Claimant confirmed that at the time, he and his girlfriend were not engaged, were not making plans to marry and did not have a child.<sup>5</sup>

[21] Even if I concluded that the Claimant and his girlfriend were in a common-law partnership, I cannot conclude that he had an obligation to accompany his girlfriend. The Claimant and his girlfriend had lived apart for about five months so that he could do his training course in Barrie and she could start work in North Bay. Since the couple lived apart for five months, I cannot conclude that the Claimant had just cause to leave his job because he had an obligation to accompany his girlfriend. I find that the Claimant’s decision to leave his job was

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<sup>44</sup> Section 2(1) of the *Employment Insurance Act* (Act).

<sup>5</sup> *Canada (Attorney General) v. Dueck*, A-535-96; *Canada (Attorney General) v. Landry*, A -1210-92.

fuelled by a desire to be with his girlfriend as opposed to his obligation to follow a common-law partner.<sup>6</sup>

### ***Financial Constraints***

[22] The Claimant also argues that it did not make financial sense for him to stay in Barrie. He says that he was paying \$1,100/month in rent. His other monthly expenses were vehicle payments of \$562, a phone bill of \$100 and vehicle insurance of \$208. The Claimant also says that he was spending \$100 in gas every weekend to see his girlfriend and there were additional expenses related to the use of his car. The Claimant says that he earned \$18.00/hour and worked approximately 40 hours a week. The Claimant's record of employment confirms the Claimant's statement.

[23] Although I recognize that the Claimant's expenses would decrease by moving with his girlfriend who was living with family members, this does not amount to just cause. The Federal Court has consistently stated that a Claimant's desire to improve their financial situation may be a good reason to leave their employment, but it does not amount to just cause under the law.<sup>7</sup>

[24] Also, a review of the Claimant's expenses shows that he was able to meet his monthly expenses for several months (January to May 2018) even though his girlfriend moved away from Barrie. I therefore find that the Claimant's desire to improve his financial situation by moving from Barrie to North Bay is not just cause under the law.

### ***Reasonable Alternatives***

[25] The Claimant argues that he had no reasonable alternative to quitting his job. The Commission argues that a reasonable alternative would have been for the Claimant to stay at his job until he found work in the North Bay area.

[26] I agree with the Commission. I find that a reasonable alternative for the Claimant would have been to continue working at his job until he found work in the North Bay.<sup>8</sup> The Claimant

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<sup>6</sup>Canada (Attorney General) v. Thompson, A-26-06.

<sup>7</sup>Richard, A – 518-08 and Langlois A -75-07.

<sup>8</sup>Canada (Attorney General) v. Graham, 2011 FCA 311.

says that between January and May, he was commuting to North Bay on weekends to see his girlfriend. He would then return to Barrie during the week to either work or do his apprenticeship training. The evidence shows that the Claimant did the weekend commute between Barrie and North Bay for several months before he quit and left Barrie. The evidence also shows that the Claimant was able to apply for positions in the North Bay area even though he was working and doing his training in Barrie.<sup>9</sup> I therefore find that it was a reasonable alternative for the Claimant to have stayed in his job and continued commuting to see his girlfriend, until he found work in North Bay.

[27] Therefore, I find that the Claimant had a reasonable alternative to quitting. He left his job without just cause.

**Issue # 2: Has the Commission proven that the Claimant knowingly provided false or misleading information? If he so, did the Commission properly decide the penalty amount?**

**The Parties dispute that the Claimant knowingly provided false or misleading information.**

[28] To impose a penalty, the Commission has to prove that the Claimant knowingly provided false or misleading information.<sup>10</sup>

[29] It is not enough that the information is false or misleading. To be subject to a penalty, the Commission has to show that it is more likely than not that the Claimant provided it, knowing that it was false or misleading.<sup>11</sup>

[30] If it is clear from the evidence that the questions were simple and the Claimant answered incorrectly, then I can infer that the Claimant knew the information was false or misleading. Then, the Claimant must explain why he gave incorrect answers and show that he did not do it knowingly.<sup>12</sup>

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<sup>9</sup> See GD5-2 and GD5-3

<sup>10</sup> Section 38 of the *Employment Insurance Act*.

<sup>11</sup> *Bajwa v Canada*, 2003 FCA 341; the Commission has to prove this on a balance of probabilities, which means it is more likely than not.

<sup>12</sup> *Nangle v Canada (Attorney General)*, 2003 FCA 210.

[31] I do not need to consider whether the Claimant intended to defraud or deceive the Commission when deciding whether he is subject to a penalty.<sup>13</sup>

[32] The Commission says that the Claimant knowingly made a false or misleading statement because he did not tell the Commission that he quit his job. The Commission says that when the Claimant completed his renewal claim for employment insurance benefits in May 2018, he answered that he was no longer working due to a “shortage of work (includes Layoff, End of Contract, End of Season, Office Closure)”. The Commission says that when the Claimant completed the renewal form, he had resigned to accompany his girlfriend and therefore knowingly made a false statement because he should have written “quit.”

[33] The Claimant says that that he did not knowingly provide false or misleading information because he did not know that he had to tell the Commission that he had quit when his apprenticeship course ended in May 2018. He says that he was confused about the process and since he was already receiving benefits because of his apprenticeship training, he did not know that he had to tell the Commission that he left his job. The Claimant also argues that he has a learning disability which accounts for the error on the application form. The Claimant sent documents to explain his learning disability.

[34] I find that the Commission has proven that the Claimant provided false or misleading information. The application for benefits that appears in the Commission’s documents is the initial application completed by the Claimant when he first stopped working to do his apprenticeship training. The Claimant wrote, “shortage of work” in response to the question, “Why are you no longer working?” The Claimant chose this answer even though he left the workplace for an approved apprenticeship training. He did not choose the option “Apprentice Training.”

[35] The Commission did not submit the renewal application into evidence. However, the Claimant agreed that he kept “shortage of work” as the reason for not working even after he quit his job to move to North Bay.

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<sup>13</sup> *Canada (Attorney General) v Miller*, 2002 FCA 24.



[36] Even though he gave incorrect information, I find that the Claimant did not knowingly provide the false or misleading statement to the Commission. The Claimant submitted a psycho-education report which shows that he has a learning disability. The report shows that the Claimant's challenges are mostly in the area of reading ability, reading comprehension and organizations skills. This information confirms the Claimant's statement that, despite the apparent simplicity of the questions, he had difficulty understanding the forms and was confused about what was required of him when he made his renewal application for benefits.

[37] I also note that when the Claimant first made his application for benefits in March 2018, he wrote "shortage of work" even though he had temporarily left his work because of his approved apprenticeship training. I see no evidence that the Commission informed him of this error or brought this misinformation to the Claimant's attention. I therefore accept the Claimant's explanation that he thought that his renewal claim was simply a continuation of the original application and therefore indicated the same reason, "shortage of work." The confusion created by the uncorrected error in the Claimant's original claim is compounded by the Claimant's struggles with reading and reading comprehension. These two reasons lead me to decide that the Claimant did not make the incorrect statement to the Commission knowing that it was false. In short, I find that the Claimant has explained why he gave incorrect answers and has shown that he did not do it knowingly.

**The Parties dispute whether the penalty amount was properly decided.**

[38] Given that I concluded that the Claimant did not knowingly make a false statement, I do not need to decide if the Commission properly exercised its discretion when it decided upon the penalty amount.

**CONCLUSION**

[39] The appeal on the topic of voluntarily leaving without just cause is dismissed. I find that the Claimant quit his job without just cause.

[40] The appeal on the penalty is allowed.

Christianna Scott

Member, General Division - Employment Insurance Section

HEARD ON:	
METHOD OF PROCEEDING:	Questions and answers
APPEARANCES:	M. J., Appellant