



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. M. v Canada Employment Insurance Commission*, 2020 SST 130

Tribunal File Number: GE-19-4230

BETWEEN:

D. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Manon Sauvé

HEARD ON: January 7, 2020

DATE OF DECISION: January 29, 2020

DECISION

[1] The appeal is dismissed. The Appellant voluntarily left his employment without just cause.

OVERVIEW

[2] D. M., the Appellant, worked as a floor clerk for X starting November 19, 2018. On January 12, 2019, he stopped working to return to school. The Appellant had already established an Employment Insurance benefit period. He did not tell the Commission that he voluntarily left his employment on January 12, 2018, to return to school. According to the Appellant, he did not leave his employment; he remained available to his employer to work on weekends. In the Commission's view, the Appellant voluntarily left his employment on January 12, 2018, without just cause. The Commission established an overpayment of \$6,961.

ISSUES

1. Did the Appellant voluntarily leave his employment?
2. If so, did the Appellant have just cause for leaving his employment?

ANALYSIS

[3] I must determine whether the Appellant should be disqualified from receiving benefits because he voluntarily left his employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (Act).

Issue 1: Did the Appellant voluntarily leave his employment?

[4] First, I must decide whether the Appellant voluntarily left his employment. The question to be answered is as follows: Did the Appellant have a choice to stay or to leave?¹

[5] The Commission has a duty to show, on a balance of probabilities, that the Appellant voluntarily left his employment. The term "balance of probabilities" means that the Commission

¹ *Canada (Attorney General) v Peace*, 2004 FCA 56.

must show that it is more likely than not that the Appellant voluntarily left his employment.² If the Commission proves that the Appellant voluntarily left his employment, the Appellant must prove that he had just cause for leaving.³

[6] I note from the Appellant's testimony that he did not tell his employer that he was leaving his employment. As far as he is concerned, he was available, but his employer did not call him to offer him hours. He began his studies at CEGEP in January 2019.

[7] According to information the Commission obtained, the employer was able to offer him 30 hours per week. However, the Appellant decided to leave his employment to return to school. In May, the employer asked the Appellant whether he would be returning to work during the summer, and the Appellant said no. At that time, the employer provided a Record of Employment.

[8] In the Appellant's view, this is proof that he did not leave his employment because the employer did not issue a Record of Employment until May.

[9] From the information the Commission obtained, I note that the Appellant left his employment to return to school. He also stated that his course schedule was not compatible with his work schedule. The Appellant's father contacted the Commission. He stated that his son could not work for the employer anymore because he had returned to school, but he was available to work on weekends. The employer did not call him.

[10] Even if the Appellant actually notified his employer that he could work only on weekends, I am of the view that, by reducing his hours with his employer, the Appellant voluntarily left his employment.⁴ As a result, the Appellant created an unemployment situation.

[11] I am of the view that the Appellant voluntarily left his employment. I have made this finding based on the information the Commission obtained from the Appellant, the employer,

² *Green v Canada (Attorney General)*, 2012 FCA 313.

³ *Green v Canada (Attorney General)*, 2012 FCA 313.

⁴ *Canada (Attorney General) v Côté*, 2006 FCA 219.

and the Appellant's father. I give little weight to the Appellant's testimony. He responded hesitantly, and he changed his version of the facts.

[12] In this context, I find that the Commission has proven that the Appellant voluntarily left his employment.

Issue 2: Did the Appellant have just cause for leaving his employment?

[13] From the information the Commission obtained through the Appellant and his testimony, I note that he returned to school in January 2019. It was not for training authorized by the Commission or Emploi Québec [Québec employment services]. He made a personal choice in deciding to return to school. It is commendable that the Appellant wants to improve his chances of securing better employment opportunities. However, he cannot force all insureds to take responsibility for his personal choice.

[14] Settled case law has long established that voluntarily leaving an employment to take a training course that is not authorized by the Commission does not constitute just cause under the Act.⁵

[15] In this context, I am of the view that the Appellant has not shown, on a balance of probabilities, that he had just cause for leaving his employment.

CONCLUSION

[16] I find that the Appellant must be disqualified from receiving benefits because he voluntarily left his employment on January 12, 2019, without just cause.

⁵ *Lakic v Canada (Attorney General)*, 2013 FCA 4.

[17] The appeal is dismissed.

Manon Sauvé
Member, General Division – Employment Insurance Section

HEARD ON:	January 7, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	D. M., Appellant