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

Citation: *E. G. v Canada Employment Insurance Commission*, 2020 SST 748

Tribunal File Number: AD-20-588

BETWEEN:

E. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: September 2, 2020

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

[2] I have made the decision that the General Division should have made and I find that the Appellant had just cause for leaving her employment.

OVERVIEW

[3] The Appellant, E. G. (Claimant), worked part-time while she attended university. At the end of her school term in the spring, she took a leave of absence from her part-time employer (SO) to return to her hometown. She obtained better-paid, full-time employment for the summer that was related to her training. When she returned to university in the fall, she chose not to return to her employment with SO. This was because she anticipated a heavier workload in the coming school year. She had also learned that the New Brunswick EI Connect (NB-EI Connect) program had approved her to obtain Employment Insurance benefits when she returned to school.

[4] The Claimant applied to the Canada Employment Insurance Commission (Commission) for Employment Insurance benefits but the Commission rejected her claim. It found that the Claimant had taken a leave without just cause in March 2019. After the Claimant requested a reconsideration, the Commission changed this decision. It appeared to accept that the Claimant had just cause for taking leave in March 2019, but then it found that she did not have just cause for quitting in September 2019.[1]

[5] The Claimant appealed to the General Division of the Social Security Tribunal but the General Division dismissed her appeal. She is now appealing to the Appeal Division.

[6] The appeal is allowed. The General Division made an error of law by failing to consider all of the circumstances when it assessed the Claimant's reasonable alternatives. I have made the

[1] According to the reconsideration decision itself, the Commission determined that the Claimant had good cause for taking leave. The Commission generally appreciates the difference between "good cause" and "just cause". However, it appears that the Commission reversed its decision related to the March 2019 leave, so I have assumed that it meant to say that she had "just cause" for taking leave.

decision the General Division should have made and I find that the Claimant had just cause for leaving her employment.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[7] "Grounds of appeal" are the reasons for the appeal. To allow the appeal, I must find that the General Division made one of these types of errors:[2]

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.

The General Division made an error of law when making its decision.

ISSUE

[8] Did the General Division consider all of the circumstances when it found that the Claimant could have taken a leave of absence as a reasonable alternative to leaving her employment?

ANALYSIS

Did the General Division consider all of the circumstances?

[9] Under the law, claimants who voluntarily leave their employment are disqualified from receiving benefits unless they can show they had just cause for doing so.[3] "Just cause" exists where a claimant had no reasonable alternative to leaving.

[10] The Claimant has argued that it was an error of law for the General Division to find that she could have taken a leave of absence instead of quitting. She argued that NB-EI Connect had approved her to obtain Employment Insurance benefits. She also argued that the General

[2] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).
[3] *Employment Insurance Act* (EI Act), sections 29(c) and 30(1).

Division did not appreciate that she would not have been entitled to benefits if she had taken a leave of absence.

[11] I find that the General Division made an error of law because it did not review the Claimant's reasonable alternatives, "having regard to all the circumstances".[4] The General Division found that the Claimant could have taken or extended her leave but it did not consider how all of the following circumstances together affected the reasonableness of that alternative:

- The Claimant needed financial assistance to go to school;
- A designated authority had referred the Claimant to her course of studies by the NB Connect program;
- She thought she had the financial assistance she needed to go to school through EI because of that referral;
- Obtaining a leave of absence "without just cause" would have disentitled her to EI benefits.

[12] I acknowledge that the General Division was aware that the Claimant had been referred by a designated authority and that it accepted this as fact. However, the General Division dismissed the Claimant's referral by saying that the referral, by itself, was not just cause for leaving a job. The General Division said that the referral only creates a presumption that a claimant was "unemployed and capable of and available for work while attending university."

[13] The General Division correctly described what the *Employment Insurance Act* (EI Act) says about the referral. Claimants who are referred to a program of instruction or training by a designated authority are simply deemed to be "unemployed and capable of and available for work" when they are in school.[5]

[14] However, the Federal Court of Appeal has weighed in on how training that is authorized by the Commission in accordance with the EI Act also relates to whether a claimant has just cause for leaving an employment. There are a number of Federal Court of Appeal authorities that confirm that going to school is not just cause to leave employment. However, most of those court

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[4] This is a requirement under section 29(c) of the *Employment Insurance Act* (EI Act).
[5] Section 25(1)(a) of the EI Act.

decisions qualify that determination. They say that it is not just cause, *unless the claimant has been authorized to do so by the Commission.*[6] In other words, a claimant who leaves a job to take training authorized by the Commission (or its designate) may be found to have just cause. There is no judicial authority that says that the Commission must authorize the claimant to take training *and* separately authorize him or her to quit.

[15] One of the first of the Federal Court of Appeal authorities dealing with leaving employment to go to school is *Canada (Attorney General) v. Martel. Martel* acknowledged that taking a course authorized by the commission is a "statutory exception" that allows a claimant to be deemed to be available for work. The Court continues to decide that the claimant did not have just cause to quit, and it justifies this decision by stating that the claimant's training course did not meet the criteria of the statutory exception. The statutory criteria require that a claimant be referred by an authority designated by the Commission. The claimant had not been referred. However, the criteria did not require (and still does not require) any further approval from the Commission.[7]

[16] In my view, *Martel* (and the subsequent decisions citing *Martel* with approval), have recognized that claimants may have just cause for leaving employment to go to school in that unique circumstance where Parliament has specified that they will be deemed available for work despite their attendance in school. At a minimum, the decisions suggest that the Federal Court of Appeal views the referral by a designated authority to be a relevant circumstance where a claimant leaves employment to go to school.

[17] The Commission itself routinely allows claimants to claims for benefits when it has authorized them to attend training. According to its own policy, the Commission considers that such claimants have just cause:

> A person who leaves employment on the recommendation of an authorized official to take a course or program of instruction or employment activity to which he or she was referred is considered to have just cause for leaving that employment provided he or she

[6] For example, *Canada (Attorney General) v. Martel*, A-1691-92; *Canada (Attorney General) v. Lessard,* 2002 FCA 469; *Canada (Attorney General) v. Beaulieu*, 2008 FCA 133.
[7] The criteria is found in what is now section 25(1) of the EI Act.

> leaves within a reasonable period, that is, generally no more than two weeks before the start of the course or the employment activity.[8]

[18] The Commission policy is not binding on the General Division or on me. However, it seems to support the notion that a claimant has just cause if he or she leaves employment to take a course of instruction recommended by a designated authority. Like the Federal Court of Appeal authorities, the policy does not specify that a claimant must first have his or her claim approved, or separately obtain some kind of authorization to quit.

[19] When the General Division analyzed the Claimant's reasonable alternatives, it said that the Claimant's referral by an authority designated by the Commission was not just cause. However, it did not state why it apparently rejected the referral as a circumstance that was relevant to whether the Claimant had just cause. It said only that NB-EI Connect had told the Claimant that she needed to establish a claim for benefits and that Service Canada would have to make a decision on her application. The General Division may have been of the view that the Claimant could not rely on her referral unless she waited to ensure that the Commission accepted her claim. However, this is far from clear in the General Division's reasons.

[20] I find that the General Division made an error of law by failing to consider all of the relevant circumstances. It should have considered the Claimant's referral by a designated authority (which would have allowed her to go to school and collect Employment Insurance benefits). The General Division should have considered the fact of the referral together with the fact that the Claimant could not have obtained benefits if she simply took a leave of absence to go to school.

[21] I have found that the General Division made an error of law. This means that I must now consider the appropriate remedy.

[8] Digest of Benefit Entitlement Principles, 19.2.3, located at this web address https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-19/referred-claimants.html#a19_2_3

REMEDY

Nature of Remedy

[22] I have the authority to change the General Division decision or make the decision that the General Division should have made.[9] I could also send the matter back to the General Division for it to reconsider its decision.

[23] Both the Commission and the Claimant suggest that the General Division record is complete and that I should refer the matter to the General Division for a new decision.

[24] I accept that the General Division has considered all the issues raised by this case and that I can make the decision based on the evidence that was before the General Division.

NEW DECISION

Voluntary leaving

[25] The EI Act disqualifies claimants from receiving benefits if they voluntarily leave their jobs without just cause. In this case, the General Division apparently understood that the Claimant did not dispute that she voluntarily left her job.

[26] The Claimant argued to the Appeal Division that she had not quit and that the employer only assumed she quit. However, the Claimant's representations to the General Division include a statement that she resigned from her employment in early September 2019.[10] Furthermore, her testimony was supportive of this position. The Claimant told the General Division that she was not aware she could continue with a leave of absence when she informed the employer she would not be able to accept any shifts for the school year.[11] The Claimant's employer concluded that she was quitting in response,[12] and the Claimant apparently did not reject this characterization at the time.

[9] My authority is set out in sections 59(1) and 64(1) of the DESD Act.
[10] GD7-3, para 7.
[11] Audio recording of General Division hearing at timestamp 00:31:00.
[12] Audio recording of General Division hearing at timestamp 00:31:30, 00:31:45.

[27] I have not discovered an error in the General Division decision that affects the General Division's finding that the Claimant voluntarily left her employment. Therefore, I have no reason to interfere with this part of the General Division decision.

Reasonable alternatives

[28] Because the Claimant voluntarily left her employment, she must prove that she had just cause for leaving. This means that she must show that she had no reasonable alternative to leaving. To decide whether the Claimant had no reasonable alternative, I must consider all the relevant circumstances.

[29] The General Division is correct that leaving employment to go to school is not "just cause" in itself.[13] Furthermore, "going to school" is not included as one of the circumstances that the General Division must consider when it assesses a claimant's reasonable alternatives under the EI Act.

[30] A claimant who leaves his or her job to go to school is not eligible for Employment Insurance benefits if that is the only reason for leaving. The purpose of the EI Act is to insure against involuntary employment loss; not to help employees to better themselves.[14] The fact that the Claimant left her job with the intention of going to school, in itself, would not be relevant to the presence or absence of reasonable alternatives.

[31] However, in this case, the Claimant did not quit her job to go to school without first obtaining a referral to her program of studies by NB-EI Connect, an authority designated by the Commission. In my view, this is a relevant circumstance and I must consider it. First, I will review the context of the Claimant's application to the NB-EI Connect program:

[32] The Claimant held a part-time job with SO while she attended the first and second years of her nursing school program. When the Claimant finished her second year of school in the spring of 2019, the Claimant asked SO for a leave of absence. This was so that she could return to her hometown where she hoped to obtain better-paid, full-time employment related to her nursing program. She anticipated that she would take up her part-time job again when she

[13] *Supra* note 7.
[14] *Canada (Attorney General) v Martel*, A-1691-92.

returned to school. However, she did not consider how difficult it would be to work part-time while she was in the third year of nursing.

[33] The Claimant eventually concluded that she would not be able to maintain part-time employment with SO in the third year of the nursing program. The third year included a nursing practicum and the Claimant expected a heavier and unpredictable workload. The Claimant decided to apply to the NB-EI Connect program for financial support to replace the income from SO.

[34] On August 19, 2019, the NB-EI Connect program informed the Claimant that she met its program criteria and it confirmed that it had submitted a Notice of Intent to authorize her training to Service Canada.[15] The Claimant was aware that she needed to establish a claim with the Commission. She had already applied on August 13, 2019.

[35] The Claimant only needed the Commission to accept her claim, and she would be entitled to benefits for the balance of her claim under the NB-EI Connect program. However, the Claimant's school year started before the Commission had made a decision on her claim. Early in September, the Claimant told SO that she would not be able to work during the school year.

[36] On September 20, 2019, the Commission wrote the Claimant to deny her claim. This decision was based on a finding that the Claimant had taken leave from SO in March 2019 without just cause. The Claimant disagreed with that decision but could not get the Commission to reconsider it until months later. In November, the Commission accepted that the Claimant had just cause for taking leave when she did.[16] However, it determined that she did not have just cause for quitting her part-time job to go to school in September.

[37] Based on the correspondence from the NB-EI Connect program, I accept that it is likely the Commission received the program's Notice of Intent to authorize her training before its September 20, 2019, decision. Perhaps even before the Claimant was to start her school year.

[38] The Commission's September 20, 2019, determination that the Claimant was disentitled to benefits because she took a leave in March 2019, which it later reversed, likely influenced

[15] GD7-8,9.
[16] *Supra*, note 1.

how it viewed the Claimant's referral. I will not speculate what the Commission's decision would have been, if it had not originally found that the Claimant did not have just cause for taking leave. However, nothing in the reconsideration file suggests that the Commission would have had reason to reject the NB-EI Connect referral that it received in August or early September 2019.

[39] I do not think the Claimant should be faulted for relying on the referral when she started school or for informing her employer that she would be unavailable for work before learning of the Commission's response to that referral. I am not legally required to follow decisions of this Tribunal's General Division or other decisions of the Appeal Division. However, I agree with the General Division's reasoning in *S.W. and Canada Employment Insurance Commission.*[17] That decision also concerned a claimant who was referred to her training program by NB-EI Connect program. .Like the Claimant in this case, the claimant could not continue with her job because of the demands of her school program. In *S.W.,* the General Division held that the Claimant had just cause for leaving her job even though she did so without the Commission's authorization to quit. The General Division said that there is no legislative requirement that the Claimant have an "authorization to quit" before leaving her job.

[40] In *Canada Employment Insurance Commission and L.S.,*[18] the Appeal Division found that the General Division made an error when it found that a claimant had just cause for leaving because NB-EI Connect had referred the claimant to a training program. However, the claimant in that case had left her employment to go to school *before NB-EI Connect agreed to refer her*. When the Appeal Division substituted its decision for that of the General Division, its decision relied on the fact that the law states that a claimant must obtain the referral or approval *before* leaving his or her employment. In this case, the Claimant did obtain the referral from NB-EI Connect before she left her job. I have also found that the Commission likely had notice of the referral from NB-EI Connect before it made its initial decision.

[41] The Claimant's third-year school schedule was in evidence before the General Division.[19] In addition, the Claimant testified that her nursing practicum demanded an additional 15 hours a

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[17] *S.W. and Canada Employment Insurance Commission*, 2018 SST 366.
[18] *Canada Employment Insurance Commission and L.S.*, 2019 SST 969.
[19] GD7-75.

week on top of her classes. She said that she could be required to work unpredictably in evenings and weekends or even in the middle of the night.[20] She also said that her placement could be in any of a number of communities and that this changed every six weeks.[21] I agree with the General Division that the Claimant could not have continued to work part-time and continued her studies at the same time. This would mean that she would either have to extend her leave, or return to her part-time job but abandon her schooling.

[42] The Claimant had already obtained a lengthy leave of absence from SO that ran from March 2019 to September 2019. According to the Claimant, her communication with her employer in early September did not suggest that an extension of her leave was an option. She testified that she did not know she could even extend her leave.

[43] Regardless, at least part of the reason the Claimant did not return to her employment was that she believed the NB-EI Connect program would support her to continue her studies. Even if she had known that she could extend her leave, taking leave would have meant that she had neither income from a part-time job nor benefits to replace her employment income.

[44] The Commission would likely have found she did not have just cause to take another leave from SO for the same reason that it found she did not have just cause for voluntarily leaving her job–that she was leaving to go to school.[22] Therefore, the Claimant would have been disentitled to receive benefits for at least the time that she remained in school without resuming her part-time job.[23]

[45] I find that the Claimant had no reasonable alternative to leaving her job to continue her program. I find that extending her leave would not have been a reasonable alternative to leaving, given that she had obtained a referral from NB-EI Connect that she reasonably believed would give her the support of Employment Insurance benefits. She would have had no support if she had simply taken a leave from her part-time employment.

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[20] Audio recording of General Division hearing at timestamp 00:15:05.
[21] Audio recording of General Division hearing at timestamp 00:18:00.
[22] In this case, "voluntary leaving" means failing to resume her employment: section 29(b.1)(ii) of the EI Act.
[23] Section 29(c) and section 32(1) of the EI Act.

CONCLUSION

[46] The appeal is allowed. I have made the decision the General Division should have made and I find that the Claimant had just cause for leaving her employment in September 2019.

Stephen Bergen
Member, Appeal Division

HEARD ON:	August 4, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. G., Appellant Josée Lachance, Representative for the Respondent