



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AL v Canada Employment Insurance Commission*, 2020 SST 1214

Tribunal File Number: GE-20-2310

BETWEEN:

A. L.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: December 17, 2020

DATE OF DECISION: December 17, 2020

Decision

[1] The appeal is allowed. The Claimant has proven that she had no reasonable alternatives to leaving her employment when she did. This means the Claimant is not disqualified from receiving Employment Insurance (EI) benefits.

Overview

[2] The Claimant received approval from a designated authority to attend training. She stopped working on August 22, 2020, and began attending training on September 8, 2020. The Claimant applied for EI benefits on October 11, 2020. The Commission looked at the Claimant's reasons for leaving her job and decided that she voluntarily left her employment without just cause, so it was unable to pay her EI benefits. The Claimant disagrees with the Commission's decision. She says that she read on-line that she would be eligible for EI benefits. She says that, unknown to her, she had been receiving the Canada Emergency Response Benefit and when that stopped she was told that she would not be receiving EI benefits.

Preliminary Matters ~

[3] The Claimant did not attend the hearing. A hearing is allowed to go ahead without the Claimant if she received notice of the hearing.¹ I find the Claimant received the notice of hearing. She authorized the Tribunal to communicate with her by e-mail and none of the emails, sent to her from December 2, 2020, onward, including the notice of hearing, sent to her on December 9, were returned as undeliverable. In addition, staff of the Tribunal contacted the Claimant on December 15, 2020, to remind her of the hearing time and date. I started the teleconference hearing at the scheduled time and waited 30 minutes for the Claimant to appear. The Claimant did not appear and the hearing went ahead as scheduled without the Claimant. As of date of writing this decision, the Claimant has not contacted the Tribunal to explain her absence.

¹ *Social Security Tribunal Regulations*, section 12. This is how I refer to the legislation that applies to this appeal.

Issue

[4] I have to decide if, under the *Employment Insurance Act*, the Claimant had just cause to voluntarily leave her employment. This decision takes two steps. First, I have to see if she chose to leave her job. Second, I have to see if she had just cause for leaving.

Reasons for my decision

[5] The law says that if you quit your job without just cause, you cannot receive EI benefits.²

The Claimant voluntarily left her employment

[6] The courts have said that to determine if a claimant voluntarily left her employment, the question to be answered is whether she had a choice to stay in or to leave her employment.³

[7] The Claimant wrote in her appeal that she left her job to put all her focus on her education. I see no evidence to contradict this. This means the Claimant voluntarily left her employment.

The Claimant had just cause to voluntarily leave her employment

[8] The parties, that is the Claimant and the Commission, do not agree that the Claimant had just cause for leaving her job when she did.

[9] The law says that a Claimant has just cause to leave a job if she had no reasonable alternatives to quitting.⁴ The Claimant has to prove this.⁵ Having a good reason for leaving a job is not enough to prove just cause.

[10] When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant left her job. The circumstances I have to look at include some set by law.⁶

² *Employment Insurance Act*, section 30(1).

³ *Canada (Attorney General) v. Peace*, 2004, FCA 56. This is how I refer to court cases that apply to this appeal.

⁴ *Employment Insurance Act*, section 29(c), and *Canada (Attorney General) v White*, 2011 FCA 190.

⁵ *Canada (Attorney General) v White*, 2011 FCA 190 says that you have to show it is more likely than not that you had no reasonable alternative.

⁶ *Employment Insurance Act*, section 29(c).

After I decide which circumstances apply to the Claimant, she then has to show that there was no reasonable alternative to leaving her job at that time.⁷

[11] It is well established by the courts that leaving employment to pursue studies not authorized by the Commission or a designated authority does not constitute just cause within the meaning of the *Employment Insurance Act*.⁸

[12] The Claimant told the Commission that she made the decision to apply for school months before quitting her job. She told the Commission she was approved for training by the New Brunswick – Employment Insurance Connect Program.⁹ The Commission recognizes that the Claimant was authorized to attend a training course. This evidence tells me the Claimant was referred to training by a designated authority.

[13] However, the referral to training does not establish that the Claimant had just cause for leaving her job. The referral only creates the presumption that she was unemployed and capable of and available for work while attending training.¹⁰ The referral does not relieve the Claimant of the obligation to prove she had just cause for leaving her employment.

[14] The Commission says that the Claimant did not have just cause for leaving her employment because she failed to exhaust all reasonable alternatives prior to leaving. Specifically, it says that a reasonable alternative to leaving would have been to seek approval to voluntarily leave her position from a designated authority prior to leaving, request a modified work schedule to allow her to attend school while working, sought different employment to allow her to work while attending school or remain employed and not attend training.

[15] I note the *Employment Insurance Act* does not require that a person receive authorization to voluntarily leave their employment when referred to training or to provide that authorization to the Commission. The Commission appears to have a policy that requires a person to obtain permission to quit or to take a leave before attending a referred training program. However, in my opinion that policy does not have legislative authority and cannot disqualify the Claimant

⁷ *Employment Insurance Act*, section 29(c).

⁸ *Canada (Attorney General) v. Shaw*, 2002 FCA 325

⁹ NB-EI Connect

¹⁰ *Employment Insurance Act*, section 25(1).

from EI benefits that are provided for by the legislation. As a result, I find that obtaining an authorization to quit is not a reasonable alternative.

[16] The Claimant's former employer told the Commission that "a leave of absence would not have been an option, as they need staff there and could not authorize that." The employer also told the Commission that "the only way for the Claimant to return to school was to quit her position or attempt to do both but she did not want to do that." I find that seeking a modified work schedule is not be a reasonable alternative because, it is more likely than not that such a schedule would not be available given the employer told the Commission the Claimant would have to remain in her position, which was full time, and attempt to return to school while working those full time hours.

[17] The Claimant was referred to training. She told the Commission that she wanted to focus on her training and that she did not think she would be able to balance a job and school. I find that it was not a reasonable alternative for her to remain employed or seek other employment to permit her to attend school while she was engaged in her studies because she had a referral to the training and had accepted an obligation to meet the requirements of her program. As a result, having regards to all the circumstances, I find the Claimant has demonstrated there were no reasonable alternatives to leaving her employment when she did. Accordingly, I find the Claimant's decision to leave her employment meets the test of just cause to voluntarily leave employment as required by the *Employment Insurance Act* and case law described above.

Conclusion

[18] The appeal is allowed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	December 17, 2020
METHOD OF PROCEEDING:	Teleconference