



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MB v Canada Employment Insurance Commission*, 2020 SST 1213

Tribunal File Number: GE-20-2275

BETWEEN:

M. B.

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 18, 2020

Decision

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

Overview

[2] The Claimant was enrolled in a training program and working over the summer. She told her employer that she would be returning to university in September. Her employer agreed to her taking a period of leave for the fall and winter semesters. The Commission looked at the Claimant's reasons for taking a period of leave and decided that she voluntarily took a period of leave without just cause, so it was unable to pay her EI benefits. The Claimant disagrees with the Commission's decision. She says she was approved for training funding through her aboriginal community council and that the Record of Employment issued by her employer showed she stopped working due to a shortage of work.

Issue

[3] I have to decide if, under the *Employment Insurance Act*, the Claimant had just cause to take a voluntary period of leave from her employment. This decision takes two steps. First, I have to see if she voluntarily took a period of leave. Second, I have to see if she had just cause for taking the period of leave.

Reasons for my Decision

[4] A claimant is disentitled from receiving regular EI benefits if she voluntarily took a period of leave from any employment, without just cause, while authorized by her employer for a mutually agreed-upon period of time. The disentitlement lasts until the claimant returns to work.¹

The Claimant voluntarily took a period of leave from her employment

[5] A voluntary period of leave is treated the same as voluntarily leaving employment. The

¹ *Employment Insurance Act* (Act), section 32. This is how I refer to the legislation that applies to this appeal.

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.²

[6] The Claimant testified that she told her employer that she would be returning to school in September. She stated that she took a leave of absence so that she could return to work when she was on break from school. The dates of her absences correspond to the time she would be attending school. The employer told the Commission that the Claimant was on an educational leave of absence. I see no evidence to contradict this. This means the Claimant voluntarily took a period of leave from her employment.

The Claimant had just cause to take a period of leave from her employment

[7] 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.

[8] The law says that a claimant has just cause for taking a leave from a job if she had no reasonable alternatives to taking the leave.³ The Claimant has to prove this.⁴ Having a good reason for taking a leave from a job is not enough to prove just cause.

[9] When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant took the period of leave. The circumstances I have to look at include some set by law.⁵ 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.⁶

[10] 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*.⁷

² *Canada (Attorney General) v. Peace*, 2004, FCA 56. This is how I refer to court cases that apply to this appeal.

³ *Employment Insurance Act*, section 29(c), *Canada (Attorney General) v. White*, 2011 FCA 190 and *Canada (Attorney General) v. Imran*, 2008 FCA 17.

⁴ *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.

⁵ *Employment Insurance Act*, section 29(c).

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

⁷ *Canada (Attorney General) v. Shaw*, 2002 FCA 325

[11] The Claimant testified that she told her employer when she was hired that she would be returning to school to finish her education. She is enrolled in a Bachelor of Nursing program and was working as a personal care attendant in a long-term personal care unit of a clinic. The Claimant testified that she called her aboriginal community council to see if she could get funding. She was told over the phone that she was approved for training and that the Commission was notified of the approval. 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.

[12] However, the referral to training does not establish that the Claimant had just cause for taking a period of leave from her job. The referral only creates the presumption that she was unemployed and capable of and available for work while attending training.⁸ The referral does not relieve the Claimant of the obligation to prove she had just cause for taking a leave from her employment.

[13] The Commission says that the Claimant did not have just cause for voluntarily taking a leave of absence from her employment because she failed to exhaust all reasonable alternatives prior to taking leave. 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, seek different employment to allow her to work while attending school or remain employed and not attend the course of instruction.

[14] I note the *Employment Insurance Act* does not require that a person receive authorization to take a voluntary leave of absence from 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 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.

⁸ *Employment Insurance Act*, section 25(1).

[15] The Claimant was obliged to pursue her studies when she received funding for her training and was referred to the training by a designated authority. She was also granted a leave of absence from her employment for the specific purpose of returning to school. The Claimant testified that she lived about an hour's drive from her place of employment. She said that she relocated from her home to a city to attend her training. To get to that city required a two-hour ferry ride and four hours of driving. I find that given the location of her training, six hours away from her residence, the Claimant could not have remained employed while attending her training. As a result, I find that continuing to remain employed was not a reasonable alternative. I find that requesting a modified schedule is also not a reasonable option given the distance from her training to her place of work.

[16] The Claimant testified that her training required that she attend classes approximately 12 to 16 hours a week, and do one 12-hour clinical day each week. Her classes and clinical day took place during weekdays. She was expected to meet with her assigned patient for a few hours the night before she worked the clinical day. The Claimant testified that she studied for approximately 20 hours a week. The Claimant said that she might have found other employment that would allow her to attend her training. Given the Claimant's extensive course obligations and attendance requirements, I do not find that seeking other work was a reasonable alternative to taking a period of leave. The hours that she would have been available for work outside of class and study hours are minimal and the Claimant's class attendance requirements and study obligations in a program to which she was referred would not permit her to secure employment that would allow her to meet those obligations. As a result, I find that securing new employment was not a reasonable alternative.

[17] 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 take a period of leave from her employment meets the test of just cause to voluntarily take leave from employment as required by the *Employment Insurance Act* and case law described above.

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Conclusion

[18] The appeal is allowed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	December 17, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. B., Appellant