



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AK v Canada Employment Insurance Commission*, 2021 SST 178

Tribunal File Number: GE-20-2407

BETWEEN:

A. K.

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: January 19, 2021

DATE OF DECISION: January 26, 2021

Decision

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

Overview

[2] The Claimant wanted to return to school. He spoke to an employment counsellor who told him how to get a referral to his training program. He needed to gather some information and meet with the counsellor again the next week. The Claimant then enrolled in his training program. The Claimant contacted his employer to explain he was going to attend training and needed to get information and certificates from a number of places. The employer encouraged the Claimant to leave his job for the training opportunity.

[3] The Commission looked at the Claimant's reasons for leaving his job and decided that he voluntarily left his job without just cause, so it was unable to pay him EI benefits. The Claimant disagrees with the Commission's decision. He says he took the proper steps for his employment insurance claim but his appointment with an employment counsellor was delayed due to COVID-19. The Claimant says that he had to leave work when he did, to get the information and certificates for the employment counsellor and the school.

Preliminary Matters

[4] The Claimant's mother is his Representative. At the hearing, she said that she had not received the Representations of the Commission (GD4) from the Tribunal. I arranged for the document to be emailed to the Representative during the hearing. I also offered to adjourn the hearing to another day to allow the Claimant and Representative an opportunity to read the document to prepare for the hearing. The Representative refused and, once she received the GD4 document, the hearing continued.

Issues

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

Analysis

[6] The law says that if you quit your job without just cause, you cannot receive EI benefits.¹

The Claimant voluntarily left his employment

[7] The courts have said that to determine if a claimant voluntarily left his employment, the question to be answered is whether he had a choice to stay in or to leave his employment.²

[8] The Claimant testified that he left his job to go to school. I see no evidence to contradict this. This means the Claimant voluntarily left his employment.

The Claimant had just cause to voluntarily leave his employment

[9] The parties, that is the Claimant and the Commission, do not agree that the Claimant had just cause for leaving his job when he did.

[10] The law says that a Claimant has just cause to leave a job if he had no reasonable alternatives to quitting.³ The Claimant has to prove this.⁴ Having a good reason for leaving a job is not enough to prove just cause.

[11] When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant left his job. The circumstances I have to look at include some set by law.⁵ After I decide which circumstances apply to the Claimant, he then has to show that there was no reasonable alternative to leaving his job at that time.⁶

¹ *Employment Insurance Act*, section 30(1). This is how I refer to the law that applies to this appeal

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), and *Canada (Attorney General) v White*, 2011 FCA 190.

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).

[12] 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

[13] The Claimant testified that he was working as a labourer. He was interested in becoming a Class 1E truck driver. On Thursday, August 13, 2020, he called and emailed a local college and applied for the Class 1E driver course that morning. He said the college called him on the afternoon of August 13, 2020, accepting him into the course.

[14] The Claimant testified that on the afternoon of August 12, 2020, and on August 13, 2020, he spoke to an employment counsellor with his provincial government. He said that the employment counsellor told him to “get everything started.” The Claimant testified that the employment counsellor said as soon as he finished the paperwork it would be approved. He said he was told that there should not be an issue, it was an approved school. The employment counsellor set up an appointment, by telephone, with the Claimant for Tuesday, August 18, 2020.

[15] The Claimant testified that his employer was closed on Friday, August 14, 2020, and he did not work on that day. On Monday, August 17, 2020, he spoke to his supervisor. He told his supervisor that he was accepted for the Class 1 driver training. The Claimant also explained that he had to get paperwork done for the school. He asked the supervisor if he should work out his two-week notice. The Claimant testified the supervisor replied no, that the Claimant should get the “stuff” done for school.

[16] The Representative said part of the information required by the employment counsellor was a rationale for why the Claimant should be approved for the course. He had to complete a skills assessment test, do a criminal record test, provide a driver’s abstract and a medical. In addition, the Claimant had to contact various employers for letters of intent to see if they would consider hiring him once he completed the course. The Representative said that the letters of intent were required because the Claimant is not yet 21 years old, which is the typical age requirement for companies that hire drivers. The Claimant also had to complete St. John Ambulance first aid training. The college also required a number of documents as well.

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

[17] The Claimant again met with the employment counsellor by phone on August 18, 2020. The Representative provided a copy of an email from the employment counsellor dated August 21, 2020, with the subject: Required Documents. The email says: “As discussed, here is the list of required documents that you will need to submit to me in order to be considered for TSD funding.” The email then lists the some of the documents the Representative said were required. The Claimant was approved for funding by the provincial government’s Department of Post-Secondary Education, Training and Labour. The Representative provided a copy of the Funding Confirmation Form along with an email dated September 11, 2020, from the employment counsellor. The email says “Find attached your TSD Contract / Agreement ...” The Claimant signed the Funding Confirmation Form on September 14, 2020. The Commission says that the information regarding the Claimant’s referral to training was received and processed by its systems effective the week beginning October 11, 2020. It says the referral was retroactively back dated to the week when the Claimant’s course began, September 6, 2020.

[18] I can only consider the circumstances that existed at the time the Claimant left his employment when determining whether just cause existed.⁸

[19] The Claimant testified that he spoke with the employment counsellor the day before and also on the day he was in contact with and was accepted by the college for the course. He says that during their conversations on August 12, 2020 and August 13, 2020, the employment counsellor told him that it should be no problem to be approved for the training. During the conversations on those two days the Claimant was also told that he needed to get and submit certain information and certificates. The employer confirmed to the Commission that the Claimant had left work to return to school. The Claimant’s testimony of the conversation with his supervisor on August 17, 2020, about returning to school and the need to get information and certificates tells me that he did discuss the referral to training with an employment counsellor prior to leaving his job. The Claimant testified he could not meet with the employment counsellor in person and had to wait until August 18, 2020, to have a phone meeting with the employment counsellor. That meeting was followed by an email on August 21, 2020, listing the documents he was required to provide to be considered for TSD funding. The funding

⁸ *Canada (Attorney General) v. Lamonde*, 2006 FCA 44

confirmation was issued to the Claimant and he signed it on September 14, 2020. The Commission noted that the Claimant's referral to training was retroactively back dated to the week the course began, that is September 6, 2020.

[20] The Claimant sought out funding from an employment counsellor prior to leaving his job. He understood, as early as August 13, 2020, that he would have the approval for the training as soon as he had the paperwork finished. He did not decide to quit his job until after he had this understanding from the employment counsellor and had spoken to his supervisor. On August 17, 2020, he spoke to his supervisor about the training and asked if he should work his two-week notice. He was told no and to pursue the training. This evidence tells me the Claimant was employed, although not at work, on August 17, 2020. The Claimant received his funding confirmation after he started the program, however, the referral to training was back dated to the week the course started. This evidence of the designated authority's referral to training taken together with the Claimant's understanding from the employment counsellor that he would be referred to training tells me that the Claimant was referred to training prior to leaving his employment.

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

[22] The Commission says that the Claimant did not have just cause to leave his employment because he failed to exhaust all reasonable alternatives prior to leaving. Specifically, it says that reasonable alternatives to leaving would have been to avoid making a personal decision that made him unemployed, explore the possibility of taking a temporary leave from work while doing the course, or to secure employment elsewhere. The Commission also argued that the Claimant has not presented evidence that the employment counsellor, a Training and Skills Development officer, had granted him authorization to quit his employment.

[23] The Representative says that the Claimant has been working since he was 14 years old. He was accepted quickly into the course. All the documentation would have been signed on

August 13, 2020, if the Claimant could have gone into the office. The Claimant has had four job offers since he started the course and that should be taken into account.

[24] I note the *Employment Insurance Act* does not require that a person receive authorization to quit 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.

[25] The Claimant was referred to training. He testified that he has not moved to take the training. He said the first 4 weeks of his course were taken online, and after that he traveled 140 km each way to attend the practical training which is located in a different city from where he resides. He is still doing practice sessions in two separate cities to pass certain parts of the course. As a result, I find that it was not a reasonable alternative for the Claimant to remain employed while he was engaged in his on line and practical sessions because he had a referral to the training and had accepted an obligation to meet the requirements of that program.

[26] The Commission did not ask the employer if the Claimant would be eligible for a leave of absence. The Claimant testified that he was a probationary employee and expected that he would be fired if he asked for a leave of absence to take the training. The Claimant testified that when he spoke to his supervisor about leaving to take training and the need to get information and certificates he asked if he should work his two-weeks notice. He said the supervisor told him no, that he should get the stuff needed for the training. There is no evidence that a leave of absence would have been available to the Claimant. As a result, I find that requesting a leave of absence is a not a reasonable alternative.

[27] A claimant has an obligation, in most cases, to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job.⁹ The Claimant was not required to secure employment prior to leaving his job. The Claimant told the Commission that he did not

⁹ *Canada (Attorney General) v White*, 2011 FCA 190

like the job he was doing and did not expect to return to it once he completed his training. He testified that he had applied for a job at a local gas station about two weeks before he left work. The Representative said there are few jobs in the area and most relate to truck driving. As a result, I find that the Claimant has exhausted this reasonable alternative.

[28] Having regards to all the circumstances, I find that the Claimant has demonstrated that there were no reasonable alternatives to leaving his employment when he did. Accordingly, I find the Claimant's decision to leave his job meets the test of just cause to voluntarily leave employment as required by the *Employment Insurance Act* and case law described above.

Conclusion

[29] The appeal is allowed.

Raelene R. Thomas
Member, General Division - Employment Insurance Section

HEARD ON:	January 19, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A.K., Appellant R. K., Representative for the Appellant