



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *HA v Canada Employment Insurance Commission*, 2021 SST 172

Tribunal File Number: AD-21-46

BETWEEN:

H. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: April 29, 2021

DECISION AND REASONS

DECISION

[1] I am allowing the appeal.

[2] The Claimant is not disqualified from receiving benefits for having left her employment, or taken leave from her employment without just cause. I am rescinding the decision that the Claimant is disentitled from August 28, 2020.

OVERVIEW

[3] The Applicant, H. A. (Claimant), took a leave of absence from her employment in October 2019 because her mother was very sick. She applied for Employment Insurance benefits and received fifteen weeks of family caregiver benefits. After that, she received the Canada Emergency Response Benefit for a period. The Claimant's mother died in August 2020, and the Claimant reapplied for Employment Insurance benefits in October 2020.

[4] The Respondent, the Canadian Employment Insurance Commission (Commission), reactivated her claim but found that she was not entitled to regular benefits because she voluntarily left her employment without just cause. The Claimant did not return to work immediately after her mother died and the Commission treated this as though she had chosen to leave her employment. The Claimant asked the Commission to reconsider, but it would not change its decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed her claim. It accepted that the Claimant had not voluntarily left her employment but it also found that she no longer had just cause for voluntarily taking leave after her mother died. The Claimant is now appealing the General Division decision to the Appeal Division.

[6] I am allowing the appeal. The General Division made an error of jurisdiction when it decided that the Claimant was disentitled from receiving benefits. It also made an error of law when it found that the Claimant ceased to have just cause for leaving her employment or taking leave.

ISSUES

[7] Did the General Division have jurisdiction to consider whether the Claimant should be disentitled for having taken leave without just cause?

[8] Did the General Division make an error of law when it found that the Claimant no longer had just cause for leaving her employment or taking leave, after the death of her mother?

ANALYSIS

[9] When a claimant leaves a job or takes leave from a job without just cause this affects the claimant's Employment Insurance benefits. However, a claimant has "just cause," if he or she has no reasonable alternative in the circumstances to leaving or taking leave.¹

[10] The law says that a claimant voluntarily leaves her employment without just cause is disqualified from receiving Employment Insurance benefits.² Normally, a claimant qualifies for benefits based on the hours of insurable employment that he or she accumulated before leaving the employment. When a claimant is disqualified, he or she cannot use any of those hours to qualify for benefits.

[11] The consequences are different for a claimant who takes a *leave of absence* without just cause. In this case, the claimant is disentitled instead of being disqualified. Assuming that the claimant had sufficient insurable hours to qualify for benefits in the first place, the disentitlement would only defer the payment of benefits until the disentitlement ends. At that point, the claimant could receive benefits until the end of the benefit period or until the time when the claimant's weeks of benefits are used up (whichever is first).

[12] A *disentitlement* for taking a leave without just cause can only be applied if, before or after the beginning of the leave period,

- a. the leave was authorized by the employer, and;

¹ Section 29(c) of the EI Act.

² Section 30(1) of the *Employment Insurance Act* (EI Act).

- b. the claimant and the employer agreed on the day that the claimant would resume employment.³

[13] This kind of disentitlement ordinarily ends when the claimant resumes employment, or when the claimant loses or voluntarily leaves his or her employment.⁴

Issue 1: The General Division's Jurisdiction to Consider a Disentitlement for Taking Leave

[14] The Commission decided that the Claimant did not have just cause for leaving her employment. It understood that the Claimant had taken an employer-approved leave to look after her sick mother. However, the Claimant did not immediately return to work after her mother died, so the Commission decided that she had quit.

[15] The General Division did not agree with the Commission that the Claimant had quit. It found that she had taken leave. The General Division found that the Claimant had just cause for leaving until her mother died.

[16] However, the General Division also found that she no longer had just cause for taking leave *after* her mother died. As a result, it found that the Claimant was disentitled to benefits after her mother died.

[17] The Commission made submissions in support of the Claimant's appeal. It argued that the General Division did not have jurisdiction to decide whether the Claimant should be disentitled for taking leave. According to the Commission, the only decision before the General Division was the Commission's decision disqualifying the Claimant for having left her employment without just cause.

[18] I accept the Commission's concession. I agree that the issue in the reconsideration decision was the Claimant's disqualification for having left her employment without just cause.⁵

³ Section 32(1) of the EI Act.

⁴ Section 32(2) of the EI Act.

⁵ The authority to disqualify for leaving without just cause comes from section 29(c) and section 30 of the EI Act.

The General Division strayed beyond its jurisdiction when it decided that the Claimant should be disentitled for taking a leave of absence without just cause.⁶

Issue 2: Ability of the General Division to Find that the Claimant Ceased to have Just Cause for Taking Leave.

[19] Even if the General Division had the jurisdiction to make a decision on whether the Claimant should be disentitled, I find that it made an error of law in its interpretation of “just cause.”

[20] “Just cause,” is determined at the point that a person leaves their employment or takes leave from their employment. There is no requirement in the legislation or in the case law that a claimant who has good cause to take a leave must then maintain “just cause” for taking leave on an ongoing basis and for the entire period of their leave.

[21] The Commission concedes that the General Division added a requirement to the legal test for “just cause” that is not supported by the law.

[22] Because I have found that the General Division made errors in how it reached its decision, I must consider what I should do about the error (remedy).

REMEDY

[23] I have the authority to change the General Division decision or make the decision that the General Division should have made. I could also send the matter back to the General Division for it to reconsider its decision.⁷

[24] The Claimant and the Commission agree that the Claimant had a fair opportunity to present her evidence to the General Division and that I have all the evidence I need to make the decision. I agree. I will make the decision that the General Division should have made.

[25] The Commission says that I should allow the appeal and that I should find that the Claimant is not disqualified from receiving benefits. The Commission also submits that the

⁶ The authority to disentitle for taking leave without just cause comes from section 29(c) and section 32 of the EI Act.

⁷ My authority is set out in sections 59(1) and 64(1) of the DESD Act.

Claimant should not be disentitled after August 28, 2020, for continuing her leave after her mother died.

[26] I agree with the Commission. I have found no error that requires me to interfere with the General Division's conclusion that the Claimant did not quit her employment but instead took an approved leave of absence. Similarly, I have not discovered an error of fact that would affect the General Division's conclusion that the Claimant had just cause at the time she first left on leave. As noted by the General Division, the employer confirmed that the Claimant was off on an indefinite leave of absence, and the Claimant eventually returned to work for that employer. As a result, I find that the Claimant should not be disqualified from receiving benefits for having left her employment without just cause.

[27] There is no legal justification for the General Division's finding that the Claimant no longer had just cause *after* her mother died. The only thing that is important is that the Claimant had just cause at the time that she began her leave.

[28] The General Division did not have the jurisdiction to consider the Claimant's disentitlement in the first place, which means that I cannot consider it either. I cannot replace the General Division decision on this issue with my own decision. However, I can rescind the General Division's decision that the Claimant was disentitled, which means that this part of the decision has no legal effect on the Claimant.

CONCLUSION

[29] I am allowing the appeal.

[30] The Claimant is not disqualified for having left her employment or taken leave from her employment without just cause.

[31] In addition, I am rescinding the General Division's decision that the Claimant is disentitled as of August 28, 2020.

Stephen Bergen
Member, Appeal Division

HEARD ON:	April 21, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	H. A., Appellant Jose Lachance, Representative for the Respondent