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

Citation: *KM v Canada Employment Insurance Commission*, 2021 SST 333

Tribunal File Number: GE-21-300

BETWEEN:

K. M.

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: March 12, 2021

DATE OF DECISION: March 25, 2021

Canada

DECISION

[1] The appeal is dismissed.

[2] K. M. (the Claimant) voluntarily left his employment. He has not proven that he had just cause to do so because he had a reasonable alternative to leaving his job when he did.

[3] This means the Claimant is disqualified from receiving employment insurance (EI) benefits.

OVERVIEW

[4] The Claimant was working when he applied for an apprenticeship training program. He contacted Service Canada and was told he would qualify for EI benefits while attending training. The Claimant left his job to attend the program and applied for EI benefits one week later.

[5] The Commission looked at the Claimant's reasons for leaving his job and decided that he did not have just cause for leaving. The Commission disqualified the Claimant from receiving EI benefits. The Claimant disagrees; he says that he was told he would qualify for EI benefits if he left his job to go to school. He would not have left his job if he was told he would not qualify for EI benefits.

[6] I have to decide if the Claimant had just cause for leaving his job when he did.

PRELIMINARY MATTERS

Documents received after the hearing

[7] After the hearing, the Claimant sent in three documents: his acceptance to school; his apprenticeship number; and, the acceptance letter from Fast Forward, Nova Scotia. The Claimant referred to all three of the documents during the hearing. I admitted the three documents into evidence because I consider all three documents to be relevant to the issue before

me.

The Commission made a clerical error

[8] The Commission submitted that it made an error when it wrote the Claimant about the disqualification. It says the letter said the disqualification was imposed effective September 6, 2020, when it should have been effective from August 30, 2020.

[9] Where an error does not cause prejudice or harm, it is not fatal to the decision under appeal.[1] Because the Commission's error did not prevent the Claimant from seeking reconsideration of the Commission's initial decision and, later to appeal the reconsideration decision, I find that the error does not cause the Claimant any prejudice or harm.

ISSUE

[10] I have to decide if the Claimant had just cause to voluntarily leave his employment.

[11] 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

The Claimant voluntarily left his employment

[12] 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]

[13] 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 did not have just cause to voluntarily leave his employment

[14] 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.

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[1] *Desrosiers v. Canada (AG)*, A-128-89. This is how I refer to court cases that apply to this appeal.
[2] *Canada (Attorney General) v. Peace*, 2004, FCA 56.

[15] 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.

[16] 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]

[17] The Claimant testified that he was working as a farm labourer. The job was seasonal and due to end in December 2020. He had looked for work elsewhere and had an interview for another job but then the COVID-19 pandemic happened and the interview was cancelled. The Claimant decided that he needed to better his situation so he looked into getting a trade. The Claimant applied to a building trades college in June 2020. The Claimant found out he was accepted into the college on August 15, 2020.

[18] The Claimant told his employer the next day that he was leaving his job in a few weeks to return to school. He said his boss did not take the news well and did not want him to leave. Before he stopped working, the Claimant learned that a new person had been hired to replace him after he left.

[19] The Claimant testified that when he found out he was accepted to the college he called Service Canada to see if he would be eligible for EI if he was in school. He says the Service Canada agent told him he would be qualified and to apply within seven days after he stopped working. The Claimant stopped working on September 4, 2020. He applied for EI benefits on September 4, 2020, and started school on September 8, 2020. The Claimant found out a week later that he was not approved for EI benefits.

[20] The Claimant testified that he was enrolled in a trades program. It is an apprenticeship

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[3] *Employment Insurance Act*, section 29(c). This is how I refer to the legislation that applies to this appeal. *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).

program that recognizes the hours he attends training. He will alternate working in the trade with his attendance at training. He said he was issued a 16-digit apprenticeship number by the college during his first week of classes.

[21] The Claimant said when he found out that he was not approved for EI benefits an instructor suggested that he apply to the Fast Forward Program. The Fast Forward program, run by the provincial government, provides referrals to training. The Claimant applied to the Fast Forward program. On October 2, 2020, he was notified he was conditionally approved for funding from September 7, 2020 to May 28, 2021, based on the necessary qualifications, status and approval of his employment insurance claim. The financial support the Claimant would receive was his regular EI benefits.

[22] The Fast Forward representative told the Claimant he sent the approval to Service Canada. The Claimant contacted Service Canada and was told that he would be receiving his EI benefits in 21 days. He has not received any benefits.

[23] The Claimant said that he first found out about the "Authorization to Quit" form when he was talking to a Service Canada agent after he requested reconsideration. The Claimant said had the first agent he spoke to in August told him he needed the form he would have gotten it. Had he known that he needed the form he would have gotten it prior to leaving his job.

[24] The Representative said that he asked a Service Canada agent about the content of the reconsideration letter. He asked the agent what was meant by "prior authorization from an approved provincial authority" and where the authorization could be obtained. The Service Canada agent replied that an approved provincial authority meant the Royal Canadian Mounted Police. The Representative said that the first time "an approved provincial authority" was explained to him and the Claimant was in the Commission's representations to the Tribunal. The Representative sent a copy of the Nova Scotia Labour and Workforce Development Request for an Authorization to Quit Employment form to the Tribunal before the hearing. He got the form after doing a search on the internet.

[25] The Commission says that the receipt of a Request for Authorization to Quit Employment confirms that a designated authority authorized the Claimant to quit the employment. It says it

falls on the Claimant to request the authorization. The Commission says if a Request for Authorization to Quit Employment is not submitted it makes a decision to allow EI benefits on the voluntary leaving based on the information in the file.

[26] The Commission says the fact that the Claimant was not advised that he needed approval from a designated authority does not prevent it from applying the legislation. It says the Claimant made a personal decision to leave his job, which does not prove just cause within the meaning of Section 29(c) of the *Employment Insurance Act*.

[27] The Commission says that the course referral does not establish just cause for leaving employment. A claimant who is referred to training must still show they had no reasonable alternatives to leaving their employment when they did.

[28] The Claimant submitted the acceptance package he received from the college. This package contains an acceptance letter, information about the program and a schedule of wages for apprentices in his trade. He testified that the hours he spends in school will be credited towards his apprenticeship. He will alternate periods of training with periods of work as an apprentice. When the Claimant completed his application for EI benefits, he indicated that he was no longer working because he was on apprenticeship training. The Claimant testified that he was issued a 16-digit apprentice code during his first week of classes. He provided this number to a Service Canada agent in October 2020. He sent the number to the Tribunal after the hearing. An apprenticeship reference code is usually the simplest proof available of a referral to attend full-time technical training.

[29] The Claimant testified that he was approved for training by the Nova Scotia government's Fast Forward program. As noted above, on October 2, 2020, he was notified he was conditionally approved for funding from September 7, 2020 to May 28, 2021, based on the necessary qualifications, status and approval of his employment insurance claim. The financial support the Claimant would receive was his regular EI benefits. He is approved from September

7, 2020, to May 28, 2021.

[30] It is important for me to consider when the Claimant received the apprenticeship code and the approval from Fast Forward because the question of just cause depends on a specific point in time, that is, the day the Claimant left his job. The Courts have said 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] This means that if the Claimant did not have a referral to training before he stopped working he cannot rely on a referral made after he stopped working to show just cause for leaving his employment.

[31] In the Claimant's case, the apprenticeship number was given to him the week after he stopped working. He applied for the Fast Forward program after he stopped working and was notified that he was accepted on October 2, 2020, approximately one month after he stopped working. As a result, I find that the Claimant was not referred to training before he left his job. Accordingly, I find he cannot establish he had just cause for leaving his job for this reason.

[32] A referral only creates the presumption that a claimant was unemployed and capable of and available for work while attending training.[8] Even if the Claimant had been referred prior to leaving his job, the Claimant still has the obligation to prove he had just cause for leaving his employment.

[33] The Commission says that it concluded the Claimant did not have just cause to leave his employment because he failed to exhaust all reasonable alternatives prior to leaving his job. It says reasonable alternatives to leaving his job would have been to keep his job, secure another suitable employment prior to leaving his job, request a leave of absence, or wait to receive authorization to quit prior to leaving his job.

[34] My understanding is that, sometimes, programs that refer you to training give you a letter or authorization saying that you can quit your job to start training. The Commission will often accept this letter or authorization as proof that you have just cause.But, this is just the Commission's practice. It is not the law. And, I have to apply the law. In other words, having

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[7] *Canada (Attorney General) v. Shaw*, 2002 FCA 325
[8] *Employment Insurance Act* , section 25(1).

just cause to quit doesn't depend on having a letter or authorization saying you can quit to start training. In my opinion, the Commission's practice 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.

[35] The Claimant testified that he did not request a leave of absence. He said when he told his employer in mid-August that he would be leaving in early September that his boss wanted him to stay on the job and not leave. The Claimant said that he learned his replacement was hired to start work once he left. The Claimant said that he would be working in other employment related to the apprenticeship program once he completed his school hours so he would be unable to return to his former employer at that time. 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 not a reasonable alternative.

[36] The Claimant was not required to secure employment prior to leaving his job. Instead, 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 testified that had been looking for work elsewhere. He applied for another job and had an interview scheduled in March 2020. The interview was cancelled and the company is not hiring due the COVID-19 pandemic. The Claimant testified that he also looked into other work and continued to work when he looked into going to school. As a result, I find that the Claimant has exhausted this reasonable alternative.

[37] There is a distinction between the concepts of "good cause" and "just cause" for voluntarily leaving a job. It is not sufficient for a claimant to prove they were reasonable in leaving their employment; reasonableness may be good cause but it is not just cause. It must be shown that, after considering all of the circumstances, the claimant had no reasonable alternative to leaving their employment.[10]

[38] I find the Claimant has not proven that, on a balance of probabilities there were no reasonable alternatives to leaving his job when he did. I accept that the Claimant firmly believed that leaving his job to go to school was the best decision for him and his family and it was a good

[9] *Canada (Attorney General) v White*, 2011 FCA 190
[10] *McCarthy* A-600-93

reason to leave his job. Attending school may have been a good personal decision for the Claimant, but it does not amount to just cause because the Claimant had a reasonable alternative to leaving his job. I find that it would have been reasonable for the Claimant to continue working rather than make the personal decision to leave work to go to school. As a result, he failed to exhaust this reasonable alternative. Accordingly, I find the Claimant's decision to leave his employment does not meet the test of just cause to voluntarily leave employment as required by the *Employment Insurance Act* and case law described above.

[39] I acknowledge the Claimant's argument that he was not given the correct information from the outset that would allow him to be eligible for EI benefits. While this may be true, the Federal Court of Appeal has found that it is obvious that Commission agents have no power to amend the law, so any interpretation they make of the law does not, by itself, have the force of law.[11] The Court also stated that any commitment the Commission's representatives might make, "whether in good or bad faith, to act in a way other than" written in the law, is "absolutely void." This means that even if the Claimant did receive incorrect information from Commission agents, what is important is what is written in the *Employment Insurance Act*, and whether the Claimant complied with those provisions.

[40] I am sympathetic to the financial hardship and difficulties the Claimant is facing and admire his decision to better his opportunities. As tempting as it may be in such cases (and this may well be one), I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.[12] I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

CONCLUSION

[41] The appeal is dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

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[11] *Granger v. Employment and Immigration Commission*, A-684-85

[12] *Canada (Attorney General) v. Knee*, 2011 FCA 301, says "rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme … adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning."

HEARD ON:	March 12, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	K. M., Appellant Glen Miller, Representative for the Appellant