



Citation: *AR v Canada Employment Insurance Commission*, 2021 SST 780

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:

A. R.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (436007) dated October 4, 2021
(issued by Service Canada)

Tribunal member:

Gary Conrad

Type of hearing:

Teleconference

Hearing date:

November 30, 2021

Hearing participant:

Appellant

Decision date:

December 2, 2021

File number:

GE-21-2022

Decision

[1] The appeal is allowed in part.

[2] I find the Claimant did not voluntarily leave her employment, so the Claimant is not disqualified from benefits for that reason.

[3] I further find the Claimant has not proven her availability for work, so the disentitlement imposed by the Commission from September 8, 2021, onward is upheld.

Overview

[4] The Claimant did not continue in her job as she moved to another city to attend a Policing and Corrections course and applied for EI benefits. The Canada Employment Insurance Commission (Commission) decided that she voluntarily left (or chose to quit) her job without just cause, so it wasn't able to pay her benefits.

[5] The Commission also decided that the Claimant was not available for work as she was taking her course and disentitled her from benefits from September 8, 2021, onward.

[6] The Claimant says she left her job to attend her course so that she could get a better job and not be stuck working for minimum wage.

[7] The Claimant also says that she is looking for work while attending her course and can work evenings and weekends.

[8] I have to decide whether the Claimant voluntarily left her job and if so, whether she had just cause for doing so.

[9] I also have to decide whether the Claimant is available for work while attending her course.

Matter I have to consider first

[10] In their submissions the Commission states they disentitled the Claimant under subsection 50(8) of the *Employment Insurance Act* (Act). Subsection 50(8) of the Act

relates to a person failing to prove to the Commission that they were making reasonable and customary efforts to find suitable employment.

[11] In looking through the evidence, I did not see any requests from the Commission to the Claimant to prove her reasonable and customary efforts, or any claims from the Commission that if they did, her proof was insufficient.

[12] I further find the Commission did not make any detailed submissions on how the Claimant failed to prove to them that she was making reasonable and customary efforts; the Commission only summarized what the legislation says in regard to subsection 50(8) of the Act and what it says about reasonable and customary efforts.

[13] Based on the lack of evidence the Commission asked the Claimant to prove her reasonable and customary efforts to find suitable employment under subsection 50(8) of the Act, the Commission did not disentitle the Claimant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

Issues

[14] Is the Claimant disqualified from receiving EI benefits because she voluntarily left her job without just cause?

[15] Is the Claimant available for work?

Analysis

Did the Claimant voluntarily leave her job without just cause?

[16] I find the Claimant did not voluntarily leave her job. Her term of employment expired and there was no renewal offer.

[17] The Claimant says that a family friend had asked her if she could help them at their restaurant through the month of August 2021. The Claimant says she agreed to help the family friend.

[18] The Claimant says the family friend knew that she was going to start school in September 2021, so the work agreement they had was that the Claimant would only help the friend in the month of August 2021. The Claimant says this was an entirely verbal agreement.

[19] The Claimant says that once the month of August was over she moved and started attending school as planned.

[20] I note there are three issues that work against the Claimant's testimony. The first is that she said she quit to go to school in her application.¹ The second is that her Record of Employment (ROE) says "Quit / Return to school".² The third is that she told the Commission she quit her job.³

[21] However, I find none of these issues are fatal to the Claimant's testimony and I choose to place greater weight on her testimony, as opposed to the application, ROE, and a statement to the Commission she quit.

[22] The fact that an ROE, or an application for benefits, says that someone 'quit' is not the end of the analysis. All the circumstances surrounding the Claimant's employment ending must be considered in order to determine if she voluntarily left her employment. It is entirely possible that someone fills out a form saying 'quit' as they feel that employment ending is quitting, whether or not that is the most accurate description of what happened with their employment.

[23] When I consider the Claimant's statement to the Commission on September 22, 2021, I find it supports her testimony she had an agreement to only work for one month.⁴

[24] The Claimant told the Commission that she was only going to be working for her employer for one month, August 2021, as she was going to school and her employer

¹ GD03-9

² GD03-27

³ GD03-31

⁴ GD03-31

was aware of this. I find this is consistent with her testimony she had an agreement to only work for one month as her employer was aware she was going to school in September.

[25] I note the Claimant's statement to the Commission is prior to the initial decision denying the Claimant benefits, so it is not as if the Claimant would be aware that perhaps she should alter her story as to why she was no longer employed to try and avoid the disqualification.

[26] In order to determine whether the Claimant voluntarily left her employment the question to be asked is whether she had a choice to stay or leave.⁵

[27] I find the Claimant did not have a choice to stay or to leave. Her verbal employment agreement was for one month. When that ended no further extension was offered to the Claimant as the employer was aware she was moving away to go to school. So, with no further offer of employment, the Claimant could not have continued working, thus she had to choose about whether to stay on with her employment.

[28] However, I find that even if another employment contract was offered to the Claimant, and she turned that down, that would still not mean she voluntarily left as the Court has supported that it is not voluntary leaving if a person chooses to not renew their employment contract.⁶

[29] I find that since the Claimant had no choice on whether to stay or go her leaving was not voluntary.

[30] I further find that since the Claimant did not voluntarily leave her employment there is no need for me to determine if she had just cause for voluntarily leaving.

⁵ (*Canada (Attorney General) v Peace*, 2004 FCA 56)

⁶ See *Canada (Attorney General) v Cecconi*, A-49-94 which upholds CUB 23828

Is the Claimant available for work?

[31] The law requires claimants to show that they are available for work.⁷ In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.⁸

[32] In considering whether a student is available pursuant to section 18 of the Act, the Federal Court of Appeal, in 2010, pronounced that there is a presumption that claimants who are attending school full-time are unavailable for work.

[33] The Act was recently changed and the new provisions apply to the Claimant.⁹ As I read the new provisions the presumption of unavailability has been displaced. A full-time student is not presumed to be unavailable, but rather must prove their availability just like any other claimant.

[34] In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.¹⁰ The Claimant has to prove three things to show she is available:

1. A desire to return to the labour market as soon as a suitable job is available
2. That desire expressed through efforts to find a suitable job
3. No personal conditions that might unduly limit her chances of returning to the labour market¹¹

⁷ Paragraph 18(1)(a) of the *Employment Insurance Act* provides that a claimant is not entitled to be paid benefits for a working day in a benefit period for which he or she fails to prove that on that day he or she was capable of and available for work and unable to obtain suitable employment.

⁸ Paragraph 18(1)(a) of the *Employment Insurance Act*.

⁹ Subsection 153.161(1) of the *Employment Insurance Act*

¹⁰ Paragraph 18(1)(a) of the *Employment Insurance Act*.

¹¹ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[35] I have to consider each of these factors to decide the question of availability,¹² looking at the attitude and conduct of the Claimant.¹³

Does the Claimant have a desire to return to the labour market as soon as a suitable job is available?

[36] The Claimant has shown a desire to return to the labour market as soon as a suitable job is available.

[37] The Claimant testified that she has been applying for work since the start of her course as she needs to work.

[38] The Claimant says that she only has some savings to cover rent and food and such and so she needs to work to help cover her monthly expenses.

[39] I have no doubt the Claimant needs to, and wants to, work. I find the Claimant has a desire to return to the labour market as she is wanting to work in order to cover her monthly expenses.

Is the Claimant making enough efforts to find a suitable job?

[40] The Claimant is making enough efforts to find a suitable job.

[41] The Claimant testified that she is looking for work and has been since the start of her course.

[42] The Claimant said that she has not yet found anything that she can apply to, as none of the jobs she has seen have hours that lineup with her schooling, but she is looking at every job she can.

¹² *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹³ *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

[43] I find the Claimant is making sufficient efforts to find suitable employment by her continuous searching for work by looking at online postings, and evaluating those job opportunities.

Has the Claimant set personal conditions that might unduly limit her chances of returning to the labour market?

[44] The Claimant has set personal conditions that might unduly limit her chances of returning to the labour market.

[45] The Claimant says that her schooling is from Monday to Friday, but the times are erratic. She says the classes start between 8:30 AM to 10:30 AM and end some time between 3:00 PM to 5:30 PM depending on what is going on that day in the class.

[46] The Claimant says she has not yet found any jobs that she can apply to as no job so far has hours that work around her course schedule.

[47] The Claimant says that she can work evening and weekends and is looking for any type of job, as long as it will work around her class schedule.

[48] I note the Claimant as said she can work on weekends, but for the purpose of determining availability I am looking at working days and the law says that a weekend is not a working day.¹⁴ So, I am looking at her availability from Monday to Friday.

[49] I find the Claimant's course is a personal condition that would unduly limit her chances of returning to the labour market. I find it unduly limits her chances as the course takes up a significant amount of time in the week and any job would have to work around those hours, which would greatly limit the jobs the Claimant could accept.

[50] I note the Claimant has supported this with her testimony as she said that she has not applied to any jobs yet as she has not been able to find any that work with her class schedule.

¹⁴ Section 32 of the *Employment Insurance Regulations*

Was the Claimant capable of and available for work and unable to find suitable employment?

[51] Considering my findings on each of the three factors together, I find that the Claimant has not shown that she is capable of and available for work and unable to find suitable employment.¹⁵

Conclusion

[52] The appeal is allowed in part.

[53] I find the Claimant did not voluntarily leave her employment, so, the Claimant is not disqualified from benefits for that reason.

[54] I further find the Claimant has not proven her availability for work, so the disentitlement imposed by the Commission from September 8, 2021, onward is upheld.

Gary Conrad
Member, General Division – Employment Insurance Section

¹⁵ Paragraph 18(1)(a) of the *Employment Insurance Act*.