



Citation: *PS v Canada Employment Insurance Commission*, 2021 SST 880

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: P. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (430173) dated August 24, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas
Type of hearing: Teleconference
Hearing date: November 3, 2021
Hearing participants: Appellant
Appellant's representative
Decision date: November 15, 2021
File number: GE-21-1708

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown that he had just cause for leaving his job when he did. This means he is not disqualified from receiving benefits.

[3] The Claimant has shown that he was capable of and available for work from May 27, 2021 to June 8, 2021. This means that he is not disentitled from receiving benefits.

Overview

[4] The Claimant was off work without pay due to illness. He was receiving EI sickness benefits. His parents, who he lived with, decided to move to another province. He resigned his job on April 25, 2021, and moved to the new province. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving his job. It decided that he voluntarily left (or chose to quit) his job without just cause, so it disqualified him from receiving benefits. This meant the Commission wasn't able to pay the Claimant benefits from April 25, 2021.

[5] I must decide whether the Claimant has proven that he had no reasonable alternative to leaving his job.

[6] The Commission says that the Claimant could have looked for work before he left his job, got a job in the new province before he left his job, asked for a transfer from his employer to a job in the new province, or find a place to live in his home province without his parents.

[7] The Claimant disagrees and says his parents are financially dependent on him, he was not cleared to return to work until after he moved to the new province, he asked for a transfer but could not get one and he was successful in getting a job in the new province.

[8] The Commission also decided that the Claimant was disentitled from receiving EI regular benefits from May 16, 2021 to June 7, 2021 because he wasn't available for work. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[9] I must decide whether the Claimant has proven that he was available for work. The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he was available for work.

[10] The Commission says that the Claimant was not available for work in the new province from the time he was cleared to return to work to when he started his new job. It said that he did not look for work once he knew he had a new job, so it wasn't able to pay him benefits for this reason.

[11] The Claimant disagrees he says that he was looking for work, had an interview and was hired for the new job. That he could not start the job for a few weeks after he was hired was not his choice. He said that it would not make sense for him to take a job when he would have to leave it in a few weeks.

[12] I have to decide if the Claimant was available for work.

Matter I have to consider first

The Claimant required an interpreter

[13] The hearing was originally scheduled for October 20, 2021. The Claimant and his father attended the hearing. The Claimant's father explained that English was not the Claimant's first language and that he wanted to interpret for the Claimant and to provide explanations where necessary.

[14] I understand that the Claimant's father was trying to help. But, as I explained, the hearing is a legal proceeding and as such interpretation must be provided by an independent interpreter. I adjourned the hearing so that an interpreter could be provided.

[15] The hearing was rescheduled to November 3, 2021, and proceeded on that date. The Claimant agreed that his father could be his representative at the hearing. The hearing was conducted through an interpreter, to ensure the Claimant had a meaningful opportunity to understand the proceedings.

Issues

[16] Did the Claimant voluntarily leave his job on April 25, 2021, without just cause?

[17] To answer this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

[18] Was the Claimant available for work from May 16, 2021 to June 7, 2021?

Analysis ~ Voluntary Leaving

The parties agree that the Claimant voluntarily left

[19] I accept that the Claimant voluntarily left his job. The Claimant agrees that resigned from his job on April 25, 2021. I see no evidence to contradict this.

The parties don't agree that the Claimant had just cause

[20] The parties, that is the Claimant and the Commission, don't agree that the Claimant had just cause for voluntarily leaving his job when he did.

[21] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ Having a good reason for leaving a job isn't enough to prove just cause.

[22] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.²

[23] It is up to the Claimant to prove that he had just cause.³ He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he only reasonable alternative was to quit. When I decide whether the Claimant

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

² Section 29(c) of the EI Act; and, *Canada (Attorney General) v White*, 2011 FCA 190. This is how I refer to court cases that apply to the circumstances of this appeal.

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

[24] The Claimant says that he left his job because his parents decided to move to a new province. (I will call the province where the Claimant was living before the move the “old” province) The Claimant explained that he was off work due to an injury at the time he resigned from his job. His parents had no work and decided to move to another province where they thought they could get work. The Claimant testified that he gives over 70% of what he earns to his parents. He pays for the rent and for groceries.

[25] The Claimant testified that his parents help him to read and write. The Claimant’s representative, affirmed to give evidence, explained that the Claimant’s first language is not English. He does not speak English in the home. When the Claimant was in school he had a teaching assistant, and when he would do his homework at home his parents would translate the work into his native language. The Claimant completed high school when he was 20 years old.

[26] The Claimant’s representative testified that the Claimant needs help to manage his money and his affairs. He said that the Claimant is not as grown up the same as people his age. He is not independent.

[27] The Claimant testified that his parents made the decision to move to the new province. He said that if he had said no to them moving the family still would not have stayed in the old province.

[28] The Claimant testified that he was working in a retail store that is part of a national chain. He asked the manager at his work if he could get a transfer to a store in the new province. He was told no because the stores are unionized. The Claimant testified that he applied for some jobs in the new province before the move. He looked on the internet under company names for restaurants and fast food places. He also searched for “jobs in [city name]” on the internet. He called some people on the phone about working for them at the end of March 2021.

[29] The Commission says that the Claimant did not have just cause for leaving his job because he failed to exhaust all reasonable alternatives before he left his job. It says that it would have been reasonable for the Claimant to seek employment in the new province before he left his old province, to have an offer of employment before he left his old province, ask for a transfer from his employer, or, consider living independently to keep his job.

[30] I think that, having regards to all the circumstances, the Claimant had no reasonable alternatives to leaving his job when he did.

[31] The Claimant's parents made a decision to move to a new province. I recognize that the Claimant does work and turns over more than 70% of his wages to his parents. However, the Claimant, although not a minor, relies on his parents to manage his affairs. His parents help him with reading and writing. His first language is not English and, while he is able to speak some English, they translate for him. His representative testified that the Claimant is not as mature as people his age and that he is not independent. I think, that given the Claimant's circumstances, it was not reasonable for the Claimant to live independently of his parents.

[32] The Claimant has an obligation to seek alternative employment before taking a unilateral decision to quit a job.⁴ He is not required to secure a job.

[33] The Claimant testified that he looked for work before he left his old province and moved to the new province. He searched for "jobs in [city]" and he telephoned some people about working. The Claimant asked his manager about getting transferred to a store in the new province and was told no, because the stores were unionized. This evidence tells me the Claimant exhausted all reasonable alternatives prior to leaving his job.

[34] Considering the circumstances that existed when the Claimant quit, I find the Claimant had no reasonable alternative to leaving when he did, for the reasons set out above. This means the Claimant had just cause for leaving his job.

⁴ *Canada (Attorney General) v White*, 2011 FCA 190

Issue ~ Availability

[35] Was the Claimant available for work from May 16, 2021 to June 7, 2021?

Analysis

[36] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Claimant was disentitled under both of these sections.

[37] However, I find that I only need to decide if the Claimant was available for work under one section of the EI Act. That is section 18(1)(a). My reasons for this finding follow.

[38] First, the EI Act says that a claimant has to prove that they are making “reasonable and customary efforts” to find a suitable job.⁵ The *Employment Insurance Regulations* (EI Regulations) at section 9.001 help explain what “reasonable and customary efforts” mean.

[39] Second, the EI Act says that a claimant has to prove that they are “capable of and available for work” but aren’t able to find a suitable job. This requirement is at section 18(1)(a) of the EI Act. Case law says there are three things a claimant has to prove to show that they are “available” in this sense. I will look at those factors below.

[40] The Commission said that the Claimant was disentitled from receiving benefits because he wasn’t available for work based on these two sections of the law. It said that he told them he was not looking for work from May 16, 2021 to June 7, 2021.

[41] Under section 50(8) of the EI Act, the Commission may ask a claimant to prove that he has made reasonable and customary efforts to obtain suitable employment in accordance with the criteria in section 9.001 of the EI Regulations. Section 9.001 states that its criteria are to be used when applying section 50(8) of the EI Act. Section 9.001

⁵ This requirement is at section 50(8) of the EI Act.

does not say that its criteria apply to determine availability under section 18(1)(a) of the EI Act.

[42] If a claimant does not comply with a section 50(8) request to prove that he has made reasonable and customary efforts, then he may be disentitled from receiving benefits under section 50(1) of the EI Act until he complies with the Commission's request to provide proof of his job search.

[43] A review of the appeal file shows that the Commission did not disentitle the Claimant for his failure to comply with its request for his job search activities. The appeal file shows the Commission's first decision disentitled the Claimant from May 16, 2021 (when he was medically cleared to return to work) to June 7, 2021 because he was waiting to start his new job on June 7, 2021.

[44] The Commission did not ask the Claimant about his job search activities during the reconsideration process. The Commission could not decide to disentitle the Claimant for the reason that he did not comply with their request for job search activities because it did not ask him about his job search activities. As a result, I find I do not need to decide that the Claimant's job search activities satisfy the section 9.001 criteria in order to find him to be available for work and entitled to EI benefits.

[45] This means I only need to decide if the Claimant was capable and available for work under paragraph 18(1)(a) of the EI Act.

Capable of and available for work

[46] As noted above, I only need to decide if the Claimant was available for work under paragraph 18(1)(a) of the EI Act.

[47] Case law sets out three factors for me to consider when deciding whether the Claimant was capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:⁶

⁶ These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision paraphrases those three factors for plain language.

- a) He wanted to go back to work as soon as a suitable job was available.
- b) He has made efforts to find a suitable job.
- c) He hasn't set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[48] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.⁷

– **Wanting to go back to work**

[49] The Claimant has shown that he wanted to go back to work as soon as a suitable job was available.

[50] The Claimant testified his doctor cleared him to return to work effective May 16, 2021. He knew this before his family moved to the new province. He started to look for work before he left the new province by doing on-line searches and asking his employer for a transfer to a store in the new province. When he got to the new province he continued to look for work. He had a telephone interview on May 25, 2021 and was offered a job on May 27, 2021, for a job starting on June 7, 2021. The Claimant says he works to give financial support to his parents. This evidence tells me the Claimant has shown a desire to work.

– **Making efforts to find a suitable job**

[51] The Claimant has made enough effort to find a suitable job.

[52] There is a list of job search activities to look at when deciding availability under a different section of the law.⁸ This other section does not apply in the Claimant's appeal. But, I am choosing look at that list for guidance to help me decide whether the Claimant made efforts to find a suitable job.⁹

⁷ Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

⁸ Section 9.001 of the EI Regulations, which is for the purposes of subsection 50(8) of the EI Act.

⁹ I am not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

[53] There are nine job search activities in the list of job search activities: assessing employment opportunities, preparing a resume or cover letter, registering for job search tools or with online job banks or employment agencies, attending job search workshops or job fairs, networking, contacting employers who may be hiring, submitting job applications, attending interviews and undergoing evaluations of competencies.¹⁰

[54] The Claimant testified that he looked for work by searching on-line for jobs. He searched for “jobs in [city]” and looked for jobs with restaurants and in fast food restaurants. He has a resume and gave it to employers. The Claimant asked for a transfer to a store in the new province before he resigned from his job in the old province. The Claimant applied for jobs when he got to the new province. He had an interview and was offered a job on May 27, 2021 that would start on June 8, 2021. He accepted that job offer and continues to work at that job.

[55] The Commission says that in this case the Claimant was not actively seeking work for the period from May 16, 2021 to June 7, 2021 because he had already secured employment that he was waiting to start. It says the Claimant was required to continue making reasonable and customary efforts to obtain suitable employment for this period, even if it appeared unreasonable for him to do so, as he was unemployed and no longer restricted due to his injury.

[56] As noted above the “reasonable and customary” requirement does not apply to the Claimant’s circumstances because there is no evidence the Commission asked the Claimant to provide a copy of his job search under section 50.8 of the EI Act.

[57] Case law has said that when a claimant has good cause to believe that he will be recalled to work that he is entitled to a reasonable period to regard the promise of recall to work as the most probable means of obtaining employment.¹¹

¹⁰ Section 9.001 of the EI Regulations.

¹¹ See Canada Umpire Benefits (CUBs) 14685, 14554, and 21160. Although I am not bound by CUBs, I am guided by the principles contained in these CUBs in reaching my decision.

[58] The Claimant became aware on May 27, 2021 that he had a job that would start on June 8, 2021. The delay in starting his new employment was not of his making. It was his new employer's decision that he would start work on that date.

[59] In my opinion, the Claimant's job search efforts taken together with the May 27, 2021, job offer to start a new job on June 8, 2021, demonstrates that he made efforts to find a suitable job.

– **Unduly limiting chances of going back to work**

[60] The Claimant did not set personal conditions that might have unduly limited his chances of going back to work from May 16, 2021 to June 7, 2021.

[61] The Claimant testified that he has access to transportation to go to work and has a driver's license. There are no restrictions on the length of time or distance he can commute to go to work. He looked for work in the new province that was consistent with his experience working in a retail store. He has completed high school. He was willing to accept a job that might require on the job training. There were no jobs that he could not do due to moral convictions or religious beliefs.

[62] The Claimant became aware on May 27, 2021 that he had a job that would start on June 8, 2021. The delay in starting his new employment was not of his making. It was his new employer's decision that he would start work on that date. I do not think that the delay in starting work was a personal condition set by the Claimant because it was his new employer's decision as to when the Claimant could start working.

[63] As a result, I find that the Claimant did not set any personal conditions from May 27, 2021 to June 7, 2021 that might limit his chances of returning to work.

– **So, was the Claimant capable of and available for work?**

[64] Based on my findings on the three factors, I find that the Claimant has shown that he was capable of and available for work from May 27, 2021 to June 8, 2021.

Conclusion

[65] I find that the Claimant has shown that he had just cause for leaving his job when he did. He is not disqualified from receiving benefits.

[66] I find that the Claimant has shown that he was capable of and available for work from May 27, 2021 to June 8, 2021. This means that he is not disentitled from receiving benefits.

[67] This means the appeal is allowed.

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