



[TRANSLATION]

Citation: *CL v Canada Employment Insurance Commission*, 2021 SST 911

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

## Decision

**Appellant:** C. L.  
**Representative:** G. Marc Henry  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (434830) dated October 4, 2021 (issued by Service Canada)

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**Tribunal member:** Josée Langlois  
**Type of hearing:** Teleconference  
**Hearing date:** December 13, 2021  
**Hearing participants:** Appellant  
Appellant's representative  
**Decision date:** December 14, 2021  
**File number:** GE-21-2095

## Decision

[1] The appeal is allowed in part.

[2] The Appellant has shown that he was available for work from September 30, 2021.

[3] The Appellant hasn't shown just cause, or a reason the *Employment Insurance Act* (Act) accepts, for leaving his job when he did. This means he is disqualified from receiving benefits from March 29, 2021.

## Overview

[4] The Appellant left his job at X on April 29, 2021. He explained that he had left his job to settle in X in the Gaspé, the home region of his partner, who was retiring.

[5] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause under the Act, so it wasn't able to pay him benefits.

[6] On October 4, 2021, the Commission also decided that the Appellant was disentitled to Employment Insurance (EI) regular benefits as of May 3, 2021, because he wasn't available for work.

[7] The Appellant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that the Appellant has to be searching for a job.

[8] The Appellant argues that finding a job has been difficult because of his age and limited job opportunities in his new area, but he says he is available for work. He also argues that accompanying his partner to X was good cause for voluntarily leaving his job, since he had no alternative.

[9] I have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[10] I also have to decide whether the Appellant was available for work. The Appellant 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.

## **Issues**

[11] Is the Appellant disqualified from receiving benefits because he voluntarily left his job without just cause?

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

[13] Was the Appellant available for work from May 3, 2020?

## **Analysis**

### **VOLUNTARY LEAVING**

#### **The parties agree that the Appellant voluntarily left**

[14] At the hearing, the Appellant confirmed that he voluntarily left his job on April 29, 2021, because he was moving from X, in the Laurentians, to X, in the Gaspé. The Appellant said that his new home was many kilometres from his job of over 15 years.

[15] The Commission is of the view that the Appellant voluntarily left his job on May 28, 2021. The Appellant's last day worked was April 29, 2021, but he was paid until May 28, 2021.

[16] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on April 29, 2021. I see no evidence to contradict this.

#### **The parties don't agree that the Appellant had just cause**

[17] The parties don't agree that the Appellant had just cause for voluntarily leaving his job when he did.

[18] The Act says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>1</sup> Having good cause (that is, a good reason) for leaving a job isn't enough to prove just cause.

[19] 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.<sup>2</sup>

[20] It is up to the Appellant to prove that he had just cause.<sup>3</sup> 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 his only reasonable option was to quit. I have to look at all of the circumstances that existed when the Appellant quit.

[21] When he submitted his application for benefits on May 6, 2021, the Appellant indicated that he had voluntarily left his job to accompany his partner, who was retiring and who wanted to settle in her home region in the Gaspé.

[22] The Appellant says that he had reasonable cause for leaving his job when he did given that they had decided to continue their relationship and that he intended to look for a job in X or the neighbouring villages.

[23] At the hearing, he argued that he had no choice but to leave his job on April 29, 2021, because he had to preserve the family unit by moving with his partner.

[24] As he had told the Commission, the Appellant explained that he didn't make efforts to find a job before leaving the one he had because he was working. But he started looking for a job once settled in X.

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<sup>1</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>2</sup> See *Attorney General of Canada v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>3</sup> See *Attorney General of Canada v White*, 2011 FCA 190 at para 3.

[25] In most cases, you have an obligation to make efforts to seek alternative employment before making a unilateral decision to quit your job.<sup>4</sup> The job search efforts the Appellant says he made were made after his move, that is, after May 7, 2021.

[26] At the hearing, the Appellant cited a decision of the Tribunal's General Division. In that decision, an obligation to move was shown, and it was also shown that the appellant had no reasonable alternative to leaving her job.<sup>5</sup>

[27] In addition, in *White*, the Court found that the claimant had just cause for voluntarily leaving her job because of changes to her work duties.<sup>6</sup>

[28] This isn't the case for the Appellant. Although moving may be good cause for the Appellant from a personal standpoint, it isn't good cause under the Act. For example, the Appellant wasn't accompanying his partner to care for her because of an illness and he could not leave his home because of some danger; he was accompanying his partner because she was retiring and they had decided together to settle in the Gaspé.

[29] Even though it was the best decision for the Appellant at the time, and although he says he had no other option but to accompany his partner, the fact is that he voluntarily left his job without good cause under the Act. He hasn't shown that moving was an obligation or that he had assurance of another job when he left the one he had.

[30] When he left his job, other reasonable alternatives were available to the Appellant.

[31] The Appellant admits that he didn't make efforts to find a job before leaving the one he had, before moving, or even before getting settled in his new home. As the Commission points out, an alternative would have been to stay in his job until he had assurance of another job in X. The Commission says that the Appellant could have made efforts remotely using the Internet and social media.

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<sup>4</sup> This principle is explained in *Attorney General of Canada v White*, 2011 FCA 190.

<sup>5</sup> *SF v Canada Employment Insurance Commission*, 2018 SST 318.

<sup>6</sup> *Attorney General of Canada v White*, 2011 FCA 190.

[32] As he argued at the hearing, the Appellant knew that he was moving to a city and even an area with fewer job opportunities, and he made no effort to find a job before leaving the one he had, even though this decision had been made a year before the move.

[33] Unfortunately, when an employee voluntarily leaves their job, they are excluded from getting benefits. The Appellant hasn't shown that he could take advantage of one of the exceptions to get benefits in the case of voluntary leaving.

[34] First, the decision to move to accompany his partner was a joint decision and a personal choice. Second, even though he made some efforts to find a job once settled in X, the Appellant didn't have assurance of another job when he left his job of over 15 years.

[35] The Appellant voluntarily left his job on April 29, 2021, and I find that he didn't have just cause for leaving his job when he did.

## **AVAILABILITY**

### **Reasonable and customary efforts to find a job**

[36] The law sets out criteria for me to consider when deciding whether the Appellant's efforts are reasonable and customary.<sup>7</sup> I have to look at whether his efforts are sustained and whether they are directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[37] I also have to consider the Appellant's efforts to find a job. The *Employment Insurance Regulations* (Regulations) list nine job search activities I have to consider. Some examples of those activities are the following:<sup>8</sup>

- assessing employment opportunities

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<sup>7</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations) and section 50(8) of the Act.

<sup>8</sup> See section 9.001 of the Regulations.

- preparing a résumé or cover letter
- registering for job search tools or with online job banks or employment agencies
- contacting employers who may be hiring
- applying for jobs

[38] The Commission argues that the Appellant hasn't shown that he made reasonable and customary efforts to find a job from May 3, 2021.

[39] It says that, when a Commission agent contacted him several months after the move, the Appellant still hadn't started looking for a job. It says that, when he was contacted on September 28, 2021, the Appellant again confirmed that he had made no effort to find a job.

[40] Lastly, the Commission argues that the Appellant can't limit his job search efforts to a job as a machinist.

[41] The Appellant told the Commission that he had started looking for a job once settled in X. He told the Commission that he had moved on May 7, 2021. On August 3, 2021, he told a Commission agent that he was finishing up getting settled and that he hadn't started looking for a job yet.

[42] At the hearing, the Appellant explained that he had made efforts to find a job. About three or four months ago, in August or September 2021, he allegedly sent his résumé to X in X, about a 20-minute drive from his home.

[43] During that same period, he allegedly heard by word of mouth that there was a job opening at his local school board. So, he applied.

[44] He indicates that he also applied for jobs at two welding companies, and at X.

[45] The Appellant explains that he operates a lot by word of mouth and that he checks with the people he meets whether there are any job opportunities in the area. For example, he talked to his brother-in-law and also his nephew, and there may be an opportunity for him to work a few hours a week as a cleaner.

[46] The Appellant received the Commission's initial decision, dated September 2, 2021, and was contacted by a Commission agent in September 2021. As the Commission points out, on September 29, 2021, he said that he was available for work if a machinist position became available. During that same conversation, the Appellant admitted that there were no openings for a machinist in his new area.<sup>9</sup>

[47] I can't find that the Appellant made concrete efforts to find a job before September 29, 2021. But I see a change in his behaviour as of September 30, 2021. From then on, the Appellant made concrete efforts to find a job, but he said he hadn't made any before that.

[48] To be able to get regular benefits, the Appellant has to show, on a balance of probabilities, that he made significant efforts to find a job each working day of his benefit period. From September 30, 2021, the Appellant assessed job opportunities not only in his field, as a machinist, but also in other sectors.

[49] In my view, the job search efforts he described at the hearing, which are listed above, are reasonable and customary efforts the Appellant made to find a suitable job.

[50] I find that the Appellant has shown that he was available for work from September 30, 2021, within the meaning of section 50(8) of the Act and under sections 9.001 and 9.002 of the Regulations.

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<sup>9</sup> GD3-39.



## Capable of and available for work

[51] Case law sets out three factors for me to consider when deciding whether a claimant is capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:<sup>10</sup>

- She [*sic*] wants to go back to work as soon as a suitable job is available.
- He has made efforts to find a suitable job.
- He hasn't set personal conditions that might unduly (in other words, overly) limit his chances of going back to work.

[52] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.<sup>11</sup>

### – Wanting to go back to work

[53] The Appellant showed a desire to go back to work as soon as a suitable job was available from September 30, 2021.

[54] The Appellant explained that he had moved on May 7, 2021, and that he had started looking for a job once settled in his new area.

[55] At the hearing, he mentioned that he had started making concrete efforts to find a job in September 2021, but that, from May 2021, he had checked with the people he met about job opportunities in the area.

[56] The Appellant argues that there aren't many job opportunities in his area and that he hasn't found a job as a machinist. But he has shown that he made some efforts to find a job from September 30, 2021.

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<sup>10</sup> 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.

<sup>11</sup> Two decisions set out this requirement. Those decisions are *Attorney General of Canada v Whiffen*, A-1472-92; and *Carpentier v The Attorney General of Canada*, A-474-97.

[57] I find that the Appellant has shown a desire to go back to work.

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

[58] To be able to get EI benefits, the Appellant is responsible for actively looking for a suitable job.<sup>12</sup>

[59] He told the Commission that he hadn't made efforts to find a job in X before getting settled in his new home.

[60] On September 2, 2021, he told the Commission that he would start looking for a job once settled in.

[61] That same day, the Commission made its initial decision informing the Appellant of his disentitlement to benefits.

[62] At the hearing, the Appellant said that he had made efforts to find a job after his move. He explained that he had talked to neighbours to find out about job opportunities, and he described concrete job search efforts he had allegedly made from September 2021.

[63] As mentioned in the previous section, the Appellant says he sent his résumé to X, to two welding companies, and to X.

[64] He explains that he contacted his local school board to offer his services after learning about an opening.

[65] He also argues that he has talked to about 15 or 20 people to find out about job opportunities in the area.

[66] As a result, his nephew has offered him the opportunity to work a few hours a week as a cleaner.

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<sup>12</sup> This principle is explained in the following decisions: *Cornelissen-O'Neill*, A-652-93; and *De Lamirande*, 2004 FCA 311.

[67] A claimant's availability is essentially a question of fact, and the Appellant has to prove that he was available for work each working day of his benefit period to be entitled to benefits.<sup>13</sup>

[68] The facts in the record and the Appellant's testimony at the hearing show that he wasn't available for work each working day of his benefit period before getting settled in his new home.

[69] But, from September 30, 2021, the Appellant applied for jobs, contacted someone in charge to find out about job opportunities, and checked with many people he knew to find a job.

[70] The Appellant hasn't shown that he made concrete efforts to find a job before September 30, 2021, but he has shown that he made efforts to find a job from then on.

[71] I find that the Appellant expressed his desire to go back to work through significant efforts to find a suitable job each working day of his benefit period from September 30, 2021.

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

[72] As mentioned in the previous section, on September 2, 2021, the Appellant said that he would make efforts to find a job once settled in his home. As a result, moving and getting settled in his new home were conditions that unduly limited the Appellant's chances of finding a job before September 2, 2021.

[73] In addition, on September 29, 2021, the Appellant said that there were no available machinist jobs and that he was available for work if a machinist position became available.

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<sup>13</sup> This principle is explained in the following decision: *Landry*, A-719-91.

[74] As the Commission points out, limiting himself to that type of job limits the Appellant's chances of going back to work because, by his own admission, there are no openings for a machinist in his new area.

[75] But the Appellant has shown that he made job search efforts after that date. From September 30, 2021, the Appellant had no personal conditions that unduly limited his chances of going back to work.

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

[76] I have to apply the criteria for determining whether the Appellant was available for work within the meaning of the Act and whether he can receive benefits as of May 3, 2021.

[77] A claimant's job search efforts must be made with the goal of accepting a suitable job as soon as possible. A claimant has to make these efforts each working day of their benefit period and prove that they are making serious efforts to go back to work.

[78] Based on my findings on the three factors, I find that the Appellant has shown that he was capable of and available for work but unable to find a suitable job from September 30, 2021.

## **Conclusion**

[79] The Appellant has shown that he was available for work within the meaning of the Act from September 30, 2021.

[80] However, the Appellant didn't have just cause for leaving his job on April 29, 2021.

[81] This means that the appeal is allowed in part.

Josée Langlois

Member, General Division – Employment Insurance Section