



Citation: *JB v Canada Employment Insurance Commission*, 2021 SST 942

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

Decision

Appellant: J. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (436768) dated October 20, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference

Hearing date: December 8, 2021

Hearing participant: Appellant

Decision date: December 29, 2021

File number: GE-21-2153

Decision

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

[2] The Claimant has shown just cause (in other words, a reason the law accepts) for taking a period of leave from his part-time job when he did. The Claimant had just cause because he had no reasonable alternative to leaving. This means he is not disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant was working part-time and reduced his hours to casual to attend university in another province. He then applied for EI benefits. The Canada Employment Insurance Commission (Commission) decided that he voluntarily took a period of leave from his job without just cause, so it wasn't able to pay him EI benefits.

[4] I have to decide whether the Claimant has proven that he had no reasonable alternative to voluntarily taking a period of from his job.

[5] The Commission says that the Claimant could have continued working or could have secured other employment near his new location to ensure that he remained actively employed.

[6] The Claimant disagrees and says that he continues to be employed with his employer and that he was referred to school prior to attending school.

Matter I have to consider first

I accept the documents sent in after the hearing

[7] At the hearing, the Claimant testified that he had been referred to school before he started school. I asked the Claimant to send me a copy of the notice he received about the referral to training. The Claimant provided a copy of an email from his province's referring authority explaining when the approval was given. I have admitted the email into evidence because the information in the email is relevant to the issue of when the Claimant was approved for training.

[8] The Claimant sent in a second document after the hearing that contains his argument as to why his appeal should be allowed. Although this document was not requested, I am admitting it into evidence because the argument is relevant to the Claimant's position that he should be not be denied EI benefits.

[9] The Commission was sent a copy of the email and the Claimant's argument. As of date of writing, the Commission has not made any submissions on the email or the Claimant's argument.

Issue

[10] Is the Claimant disqualified from receiving EI benefits because he voluntarily took a period of leave from his job without just cause?

[11] To answer this, I first have to address the Claimant's voluntarily taking a period of leave. I then have to decide whether the Claimant had just cause for taking a period of leave.

Analysis

The Claimant voluntarily took a period of leave from his employment

[12] The appeal file shows that the Commission disqualified the Claimant from receiving EI benefits because he voluntarily took a period of leave from his job.

[13] The Claimant does not agree, he says that he only reduced his hours and remains employed. He testified that he was working as a part-time employee who was guaranteed a minimum of 15 hours a week. He said that he reduced his hours of work from part-time to casual. As a casual employee he had to work one shift every 90 days to maintain his employment with his employer. He said he worked over a long weekend in October 2021.

[14] The Claimant's employer told the Commission that it was the Claimant's choice to reduce his hours of employment. The employer's representative told the Commission

that the Claimant could maintain his employment status by working at least one shift every 90 days.

[15] The Claimant stopped working as a part-time employee on August 28, 2021. The Record of Employment notes that the Claimant was “continuing work, applying for a school program.”

[16] I find that the Claimant voluntarily took a period of leave from his part-time employment. He told his employer that he wanted to work less hours. To do that he became a casual employee. His employer confirmed that it was his decision to reduce his hours. He maintains an employment relationship with his employer by working one shift every 90 days. This evidence tells me the Claimant could return to his employment when he returned to his home province. As a result, I find that the Claimant voluntarily took a period of leave from his part-time employment.

What it means to have just cause

[17] The parties, that is the Claimant and the Commission, don’t agree that the Claimant had just cause for voluntarily taking a period of leave from his job when he did.

[18] The law says that you are disqualified from receiving benefits if you voluntarily take a period of leave from your job and you didn’t have just cause.¹ Having a good reason for taking a leave from 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 take a period of leave if you had no reasonable alternative to taking that leave from your job when you did. It says that I have to consider all the circumstances.²

[20] 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 his only reasonable option was to take a period of leave. When I decide whether

¹ Section 30 of the *Employment Insurance Act* (Act) sets out this rule.

² See *Canada (Attorney General) v White*, 2011 FCA 190; and section 29(c) of the Act.

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

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

Referral to take training

[21] Sometimes, the Commission (or a program the Commission authorizes) refers people to take training, a program, or a course. One of the circumstances I have to consider is whether the Commission referred the Claimant to take his training.

– The parties don't agree about a referral

[22] Case law clearly says that, if you quit your job to go to school without a referral, you don't have just cause for leaving your job.⁴

[23] This is important because the question of just cause depends on a specific point in time - when the Claimant started the leave from his job. Case law says that, if you choose to go to school without a referral, your choice goes against the idea behind the EI plan.⁵ So, if the Claimant got a referral before he took a period of leave from his job, then the case law doesn't apply. But, if he didn't have a referral and decided to take a period of leave anyway, then that part of the case law does apply. In that case, the Claimant wouldn't have just cause for taking leave.

[24] The Claimant was previously approved for training by his provincial authority (SkillsPEI) in September 2019. In the past he received EI benefits when he attended school while referred.

[25] The Claimant says that he had a referral to university before he stopped working part-time in August 2021. He was speaking to the provincial authority in May 2021 about getting an approval for training for September 2021. The Claimant testified that on July 19, 2021, he got an email from the provincial authority saying he was approved for training in September 2021.

⁴ See *Canada (Attorney General) v Caron*, 2007 FCA 204.

⁵ See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

[26] When the Claimant was denied EI benefits he got in touch with the provincial authority. The Program Officer replied to his email: “You are approved to receive benefits while attending FT training by SkillsPEI. It looks like once they denied you the referred dates were removed – I have just again added them to your claim.”

[27] The appeal file has an attestation certificate that shows the Claimant’s referral for training is from September 5, 2021 to April 30, 2022.

[28] I find that the Claimant was referred to training prior to taking a leave from his part-time employment. In May 2021 he spoke to SkillsPEI to arrange for a referral to training and received the referral in July 2021. That referral is for the period from September 5, 2021 to April 30, 2022. This evidence tells me the Claimant was referred to training before he took a period of leave from his part-time position.

[29] Case law says that, if you choose to go to school without a referral, your choice goes against the idea behind the EI plan.⁶ But this doesn’t apply to the Claimant because I have found he had a referral to go to school.

[30] Even though the Claimant had a referral to go to school, the Commission says that the Claimant didn’t have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says that the Claimant could have continued working or could have secured other employment near his new location to ensure he remained actively employed.

[31] The Claimant was obliged to pursue his studies once he was referred to training by SkillsPEI. He testified that he had to relocate to another province to attend his training. Given that the Claimant had to relocate to attend referred training I find that continuing to remain employed with his current employer was not a reasonable alternative. The Claimant testified that two of his courses were on-line and three of his courses required mandatory in-person attendance. He was also required to attend two eight-hour laboratory sessions that were unscheduled. I find that the Claimant’s class attendance requirements and study obligations in a program to which he was referred

⁶ See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

would not permit him to secure new employment that would allow him to meet those obligations. As a result, I find that securing new employment was not a reasonable alternative.

[32] As a result, having regards to all the circumstances, I find the Claimant has demonstrated there were no reasonable alternatives to taking a leave from his employment when he did. Accordingly, I find the Claimant's decision to voluntarily take a period of leave from his part-time employment meets the test of just cause as required by the EI Act and case law described above.

Conclusion

[33] I find that the Claimant is not disqualified from receiving EI benefits.

[34] This means the appeal is allowed.

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