[TRANSLATION]

Citation: *PL v Canada Employment Insurance Commission*, 2022 SST 252

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	P. L.
Representative:	Martin Savoie (counsel)
Respondent:	Canada Employment Insurance Commission
Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (449489) dated January 19, 2022 (issued by Service Canada)

Tribunal member:	Josée Langlois
Type of hearing:	Videoconference
Hearing date:	March 23, 2022
Hearing participants:	Appellant Appellant's representative Witness
Decision date:	March 25, 2022
File number:	GE-22-476

Decision

[1] The appeal is allowed.

[2] The Appellant didn't voluntarily leave his job. This means he isn't disqualified from receiving benefits.

Overview

[3] The Appellant temporarily stopped working on October 20, 2018. He took advantage of a pre-retirement program offered by the employer, which alternated between work and leave. The Appellant stopped working because of an injury on September 12, 2019. As part of the pre-retirement program, he should have been laid off for a period of six months starting October 17, 2019, but he was already off work because of his injury.

[4] On January 19, 2022, the Canada Employment Insurance Commission (Commission) decided that the Appellant voluntarily left (or chose to quit) his job without just cause. So, it wasn't able to pay him benefits starting October 20, 2018, or October 17, 2019.

[5] The Appellant disagrees. He says that, had he known he wasn't entitled to Employment Insurance (EI) benefits, he would not have agreed to participate in this program. He argues that he didn't leave his job and that he is still employed by Quebec-Gatineau Railway.

[6] I have to decide whether the Appellant voluntarily left his job and, if so, whether he had just cause for leaving.

Issues

[7] Did the Appellant voluntarily leave his job?

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

[9] To answer the second question, I will need to determine whether the Appellant had reasonable alternatives to leaving his job when he did.

Analysis

The parties don't agree that the Appellant voluntarily left his job

[10] To determine whether the Appellant voluntarily left his job, I have to answer the following question: Did the Appellant have the choice to stay or to leave his job?[1]

[11] The undisputed facts on the record show that the Appellant took advantage of a pre-retirement program offered by the employer starting October 20, 2018. The program, which would last two years at most, involved the Appellant getting laid off for six months and working for the other six months of the year.

[12] According to the union representative who testified at the hearing, the program was put in place to hire and train new employees and to make it easier for more senior workers to retire. This program allows the employer to adjust lay-offs based on operational needs.

[13] When he filled out his first application for benefits on October 26, 2018, the Appellant noted that he had stopped working and specified that he would return to work April 21, 2019.

[14] The Appellant said he had stopped working because of a shortage of work, as stated on the Record of Employment issued by the employer on November 6, 2018.[2]

[15] The Commission argues that if someone creates their own unemployment situation, they have to show that voluntarily leaving was the only reasonable alternative in that case. It says that the Appellant chose to participate in the program, and it is of

[1] This principle is explained in *Peace*, 2004 FCA 56.
[2] GD3-15.

the view that this choice is voluntarily leaving. It says that by becoming a seasonal worker (alternating work every six months), the Appellant left his job because he knowingly chose to be laid off by the employer for several months.

[16] I agree with the basic principles the Commission outlined. I also agree with the fact that it isn't because the employer made an agreement with the employees' union, and assured employees that they would qualify for benefits in their pre-retirement leave, that they would automatically qualify. To be entitled to benefits, claimants have to meet the eligibility requirements from the *Employment Insurance Act* (Act).

[17] Even though I understand that the pre-retirement program negotiated between the union and the employer allows for targeted lay-offs that are based on operational needs. And without this program, the Appellant could have been laid off for longer because of a shortage of work during the winter season; or someone else would have stopped working because of a shortage of work. But when the Appellant stopped working October 20, 2018, it was to take advantage of the pre-retirement program offered by the employer. The Appellant stopped working to take a six-month leave and take advantage of the pre-retirement program.

[18] However, I disagree that the Appellant voluntarily left his job.

[19] Of course, the Appellant voluntarily chose to participate in the program, but he wasn't choosing to leave his job when he made that personal choice. On the contrary. In the application for benefits he filled out on October 26, 2018, the Appellant noted his return-to-work date was April 21, 2019. The Record of Employment issued by the employer on November 15, 2019, shows that the Appellant worked from April 22, 2019, to October 17, 2019.[3]

[20] I can't find that the Appellant voluntarily left his job on October 20, 2018. On that date, the Appellant had the choice to stay or to leave his job, and he didn't leave his job. He took advantage of a pre-retirement program involving being laid off for six months,

[3] GD3-32.

but he didn’t stop working on that date. During his entire leave or lay-off, the Appellant kept his seniority, his vacation bank, and his group insurance coverage. He returned to work April 22, 2019.

[21] According to the agreement between the employer and the Appellant, the Appellant had to take advantage of the program for two years at most before retiring. In other words, the Appellant should have taken advantage of another leave or lay-off after working for six months. The Appellant should have been laid off around October 17, 2019. However, like he said at the hearing, he became injured on September 12, 2019.

[22] The employer still filled out a Record of Employment on November 15, 2019, noting that the Appellant had stopped working on October 17, 2019, because of a shortage of work.

[23] The Appellant says he didn’t take advantage of the pre-retirement program as planned because he became injured. And since his injury is a work accident, he filed a claim with the CNESST [Quebec’s labour standards commission]. The employer also noted on the Record of Employment dated November 15, 2019, that his return-to-work date was unknown.

[24] The Appellant didn’t leave his job on September 12, 2019, when he became injured, or on October 17, 2019, because he was or wanted to be compensated by the CNESST. The situation dragged out and led to a conflict with the employer. The Appellant says that the conflict is unresolved and that he is still employed by Quebec-Gatineau Railway. He didn’t voluntarily leave his job on October 17, 2019, when he was off work after becoming injured. I can’t find that the Appellant voluntarily left his job on October 17, 2019, when he still had ties to his employer at that time.

[25] However, I point out that when the Appellant fills out his claimant reports, it is the Appellant’s responsibility to report income from his job for each week in his benefit

period, including compensation received from a provincial plan and paid out after a work accident.[4]

[26] As mentioned above, contrary to what the employer told the Commission, namely that the Appellant was expected to get EI benefits while on pre-retirement leave, that the Appellant should get them, and that it did indeed note “shortage of work” on the Record of Employment, I note that the EI program, as it is currently designed, doesn’t set out to compensate individuals in this type of situation, even if the employer agrees with the facts.

[27] A claimant has to be available for work to be paid benefits, and availability can be shown through actively looking for a job. However, in this case, the Commission found the Appellant voluntarily left his job on both of these dates, and I will focus on determining whether this was the case.[5] So, I don’t have to decide whether the Appellant has a personal condition that unduly limits his chances of going back to work, whether he was available for work as of those two dates, or whether he voluntarily took leave under section 32 of the Act and whether he had just cause to take it.

[28] The facts show that the Appellant didn’t leave his job. He didn’t leave it on October 20, 2018, when he took advantage of the pre-retirement program offered by his employer and went back to work on April 22, 2019, and he didn’t leave it on October 17, 2019, when he was off work because of a work accident. For obvious reasons, the Appellant didn’t want to sever ties with the employer on that date, since he had asked the CNESST to be compensated for an injury. The Appellant didn’t voluntarily leave his job that day.

[29] I am making this decision on a balance of probabilities, and given the facts presented in the Commission’s file and by the Appellant at the hearing, given the circumstances surrounding the Appellant’s lay-off outlined above, I find that the Appellant didn’t voluntarily leave his job on October 20, 2018, or on October 17, 2019.

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[4] Section 35(2)(b) of the *Employment Insurance Regulations*.
[5] Section 113 of the *Employment Insurance Act*.

[30] Since the Appellant didn't voluntarily leave his job, he doesn't have to prove that he had just cause.[6]

Conclusion

[31] I find that the Appellant isn't disqualified from receiving benefits.

[32] This means that the appeal is allowed.

Josée Langlois
Member, General Division – Employment Insurance Section

[6] See the following decisions: *Green*, 2012 FCA 313; *White*, 2011 FCA 190; *Patel*, 2010 FCA 95.