



[TRANSLATION]

Citation: *ED v Canada Employment Insurance Commission*, 2022 SST 342

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

Decision

Appellant: E. D.
Representatives: Thomas Blackburn-Boily
Denis Poudrier

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (448199) dated January 28,
2022 (issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: Videoconference
Hearing date: April 11, 2022
Hearing participants: Appellant
Representatives

Decision date: April 13, 2022
File number: GE-22-779

Decision

[1] The appeal is allowed.

[2] The Appellant has shown that he had good cause not to attend his approved training. Additionally, the Commission didn't exercise its discretion judicially when it imposed a six-week disqualification.

[3] The Appellant has also shown just cause, or a reason the *Employment Insurance Act* (Act) accepts, for leaving his job when he did. This means he isn't disqualified from receiving benefits as of August 20, 2021.

Overview

[4] The Appellant applied for benefits on May 25, 2021. He indicated that he had been approved to take training as part of an employment or skills development program. Emploi-Québec [Quebec employment services]—the authority designated by the Canada Employment Insurance Commission (Commission)—approved the training; the Appellant was supposed to take it from May 3, 2021, to October 22, 2021.

[5] From May 8, 2021, the Appellant had to comply with two consecutive 14-day quarantines. Because of this, he missed school, and he was unable to resume his training in time. So, he went back to work at X.

[6] On January 28, 2022, the Commission looked at the Appellant's reasons for leaving his job at X on August 20, 2021.

[7] The Commission decided that the Appellant voluntarily left (or chose to quit) his job on August 20, 2021, without just cause under the Act, so it wasn't able to pay him benefits as of that time. It also decided that it wasn't able to pay him benefits for a period of six weeks as of July 4, 2021, because, without good cause, he had stopped attending training approved by Emploi-Québec.

[8] In addition, when making its initial decision, the Commission decided that the Appellant wasn't available for work as of July 4, 2021, because he hadn't responded to

its attempts to reach him. But the Commission reconsidered this decision in the Appellant's favour.

[9] I have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job. I also have to decide whether he was justified in withdrawing from the training that the authority designated by the Commission had referred him to.

Issues

Attending approved training

[10] Did the Appellant deliberately stop attending the training approved by Emploi-Québec on May 8, 2021?

[11] If so, did he have good cause to stop attending his training?

[12] Is the six-week disqualification imposed by the Commission justified?

Voluntary leaving

[13] Is the Appellant disqualified from receiving benefits because he voluntarily left his job without just cause on August 20, 2021?

[14] 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.

Analysis

Attending approved training

– **The parties agree that the Appellant deliberately stopped attending his training**

[15] As he had told the Commission, the Appellant confirmed at the hearing that he deliberately stopped attending his training on May 8, 2021. The training started on May 3, 2021, and was provided by the Centre d'éducation des adultes de Val-des-Sources [Val-des-Sources adult learning centre]. He attended a full week of

classes and, from Saturday, May 8, 2021, he had to quarantine for 14 days after being in contact with someone who had contracted COVID-19. Toward the end of that self-isolation period, the Appellant started feeling COVID-19 symptoms. After testing positive for the disease, he self-isolated for another 14 days.

[16] As he told the Commission, the Appellant was supposed to resume his training after his self-isolation period, but the director of the training centre told him that the training was too far along and that he could not resume it in June 2021. Since classes were set to end on June 25, 2021, and resume on September 6, 2021, the director asked the Appellant to wait until September 6, 2021, before going back to school.

[17] This led to a misunderstanding for the Appellant because, when he tried to resume his training on September 6, 2021, the director of the centre told him that he could not resume his training, since he no longer met the criteria for the referred training program. The Appellant wasn't receiving Employment Insurance (EI) benefits anymore. Between September 6, 2021, and October 18, 2021, the Appellant tried to resolve his EI file and waited for a decision from the Commission so that he could resume the approved training.

[18] With the situation still unresolved, the Appellant went back to work for his employer on October 18, 2021.

[19] The Commission agrees that the Appellant deliberately stopped attending his training, but it says that the Appellant's statement about when he stopped lacks credibility. So, it decided that the Appellant had attended only one day of classes, and it identified May 3 as the day he stopped attending classes.

[20] The Appellant provided the Tribunal with a document showing the coursework he had completed up to and including May 7, 2021.¹

¹ GD5-1 to GD5-4

[21] The Appellant's explanations seem plausible, and I find that it is more likely than not that the Appellant attended classes until May 7, 2021.

[22] The Appellant deliberately stopped attending classes because he had to follow the health rules imposed by the government during the COVID-19 pandemic.

– **Did the Appellant have good cause to stop attending his training?**

[23] The Act says that a claimant is disqualified from receiving benefits when they stop attending approved training without good cause.²

[24] The Emploi-Québec agency approved the Appellant for training that ran from May 3, 2021, to October 22, 2021.

[25] The Appellant showed up for his classes on May 3, 2021, and he attended his training during the first week, that is, up to and including Friday, May 7, 2021.

[26] On Saturday, May 8, 2021, the Appellant was told that he had been in contact with someone who had contracted COVID-19. To follow the government-imposed health rules in place at the time, the Appellant started a 14-day quarantine. At the end of that period, he started feeling symptoms himself. So, he self-isolated for another 14 days as required under the health rules.

[27] After that period, the Appellant contacted the director of the centre that provided the training. Apparently, she told him that, since classes would end in late June 2021, it was too late to resume the training. She asked him to resume his training at the start of the next term, on September 6, 2021.

[28] For this reason, the Appellant went back to work temporarily on July 4, 2021, as soon as his employer needed his services. The plan was for him to stop working on August 20, 2021, so that he could attend his training.

² Section 27(1.1)(b)(i) of the *Employment Insurance Act* (Act)

[29] On August 20, 2021, the Appellant contacted the director of the training centre to find out the exact date he would be going back to school, since he hadn't received any information about it. She told him that he could not come back, since he wasn't receiving EI benefits—this condition was one of the criteria for referral to the program.³

[30] The Appellant then contacted the Emploi-Québec agent. Apparently, he left her a message, but she didn't call him back. He also contacted the Commission to resolve his file. He waited until October 2021 and, since he hadn't gotten a positive response, he went back to work on October 18, 2021.

[31] This misunderstanding had unfortunate consequences for the Appellant, who had been approved to take training while receiving EI benefits. At the hearing, he also explained that he had to complete that training successfully to work as a carpenter-joiner instead of a day labourer.

[32] The Commission argues that the Appellant didn't contact his agent at Emploi-Québec. It also says that, because it wasn't able to reach the Appellant, it can't establish that he had a good cause to withdraw from the course.

[33] I agree with the Appellant.

[34] When he stopped attending classes on Monday, May 10, 2021, the Appellant had good cause. He had to follow the government-issued health guidelines. Because he had been in contact with someone who had contracted COVID-19, he had to self-isolate for 14 days to comply with the rules in place at the time. His quarantine was extended because he had also contracted COVID-19.

[35] This means that the Appellant had good cause to stop attending his training during that period. After that, he wasn't able to resume his training in either June 2021 or September 2021, since the director would not let him. There was a

³ GD3-40

misunderstanding, and the Appellant wasn't able to resume this approved training, since he wasn't an EI claimant anymore. So, he went back to work at X.

[36] Even though the Appellant should have contacted the Emploi-Québec agent to make sure his file was updated, the fact is that, when he stopped attending his training on May 10, 2021, he had good cause to do so.

– **Was the Commission justified in imposing a six-week disqualification?**

[37] When a claimant has been approved for training by a designated authority and stops attending it without good cause, they are disqualified from benefits for up to six weeks.

[38] The disqualification reduces the number of weeks of benefits the claimant is entitled to. The weeks of disqualification are deducted from the number of weeks for which benefits are payable during the benefit period.

[39] The disqualification could not last more than six weeks in the Appellant's case.⁴

[40] The Commission has the discretion to determine the length of a disqualification (up to six weeks). I can't intervene unless the Commission exercised its discretion in a non-judicial manner, that is, on the basis of irrelevant considerations or without taking all relevant considerations into account.⁵

[41] The Commission decided that the Appellant had to be disqualified from receiving benefits for six weeks. As it pointed out, it initially disqualified him from receiving benefits as of May 3, 2021, which resulted in an overpayment of \$3,570.⁶

⁴ Sections 27(1.1) and 28(1)(b) of the Act

⁵ *Attorney General of Canada v Thompson*, A-8-95; and *Attorney General of Canada v Owen*, A-465-94

⁶ GD3-35

[42] During the reconsideration, the Commission changed the start date of the disqualification. As a result, the overpayment was written off, and the Appellant doesn't have to pay back the \$3,570 he owed the Commission.⁷

[43] However, the Commission still disqualified the Appellant from receiving benefits for a period of six weeks as of July 4, 2021.

[44] When it imposed this disqualification, the Commission considered the following:

- It considered that the Appellant hadn't contacted his agent at Emploi-Québec to tell her about his absence from his training.
- It considered a Commission agent's alleged unsuccessful attempts to contact the Appellant. The Commission indicates that, given these failed attempts to reach him, it can't establish that there are extenuating circumstances to explain his absence from school.
- It considered the Appellant's failure to contact the Commission.
- It considered that the Appellant hadn't done what a reasonable person would have done because he hadn't looked into the requirements of his referred training.

[45] For these reasons, it disqualified the Appellant for the maximum six weeks. It attributes the length of the disqualification to the training's scheduled end date of October 22, 2021.

[46] I agree with the Appellant. The Commission didn't consider the exceptional circumstances related to the COVID-19 pandemic. It didn't consider that, at the end of his quarantine, the mandatory self-isolation required by the government at the time, the director of the training centre had asked the Appellant to come back on September 6, 2021. The Commission didn't consider that the Appellant had contacted the director of

⁷ GD4-4 and GD4-5

the training centre for information both in June 2021 and in August 2021, and it didn't consider what she had instructed the Appellant to do.

[47] I would point out that this situation caused quite a misunderstanding for the Appellant, who stopped working on August 20, 2021, to go back to school, and that he was never able to resume his approved training given his unresolved administrative file. He wanted to resume his training in early June 2021, and again on September 6, 2021, but the director of the training centre would not let him come back—first, because the term was too far along, and second, because of his unresolved EI file.

[48] This situation is unfortunate for the Appellant, and I can't find that the Commission considered all relevant factors when it imposed the length of the disqualification from receiving benefits.

[49] I find that the Commission didn't exercise its discretion judicially, since it didn't consider the exceptional circumstances related to the COVID-19 pandemic or the instructions from the director of the training centre.

Voluntary leaving

– The parties agree that the Appellant voluntarily left

[50] As he had told the Commission, the Appellant confirmed at the hearing that he voluntarily left his job on August 20, 2021.⁸

[51] The Commission is also of the view that the Appellant voluntarily left his job on August 20, 2021.

[52] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on August 20, 2021, and I see no evidence to contradict this.

⁸ GD3-9

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

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

[54] The Act says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁹ Having good cause (that is, a good reason) for leaving a job isn't enough to prove just cause.

[55] 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.¹⁰

[56] It is up to the Appellant to prove that he had just cause.¹¹ 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 had no reasonable alternative to quitting when he did. I have to look at all of the circumstances that existed when the Appellant quit.

[57] When he applied for benefits, the Appellant indicated that he had voluntarily left his job to take training that Emploi-Québec had referred him to.

[58] Notes from a Commission agent dated June 8, 2021, show that the Appellant's training is duly approved by Emploi-Québec and that the Appellant was authorized to quit his job to participate in a training activity.¹²

[59] The Record of Employment the employer issued on April 27, 2021, indicates that the Appellant quit his job to go back to school.¹³

[60] The Appellant said that he intended to work for his employer in the summer of 2021 and, at the hearing, he explained that he intended to continue working for his

⁹ Section 30 of the Act explains this.

¹⁰ See *Attorney General of Canada v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

¹¹ See *Attorney General of Canada v White*, 2011 FCA 190 at para 3.

¹² GD3-20

¹³ GD3-21

employer X after his training. The evidence also shows that the Appellant went back to work for that employer twice, in July 2021 and October 2021.

[61] Through his representative, he explained at the hearing that his employer had only one or two workers and accepted contracts based on worker availability. As a result, the plan was to rehire the Appellant when his training was over. Although the Appellant wasn't able to resume his training, the employer still rehired him.

[62] So, the Appellant left his job to allow the employer to hire another worker while he was in training. Emploi-Québec had approved his training, and, furthermore, he had been authorized to quit his job to take referred training. The Appellant had no choice but to leave his job to attend his training, which ran full-time from May 3, 2021, to October 22, 2021.

[63] Before he quit, the Appellant spoke with the employer and assessed his options. He expected his employer to hire him for the summer, which is what happened.

[64] The Appellant explains that he was a day labourer and that the plan was to hire him as a carpenter-joiner as soon as he finished his training. On this point, he argues that he is well acquainted with his employer—who is also his neighbour—and that the employment relationship was never really severed.

[65] On August 20, 2021, the Appellant stopped working at X as agreed, given that he expected to resume his referred training and that the employer had no more work for him. It is true that the Appellant had neck pain at the time, but that didn't make him unable to attend classes.

[66] However, the Appellant wasn't able to resume his training on September 6, 2021, like the director of the training centre had told him in June 2021. Given the misunderstandings in the handling of his file with the Commission and with Emploi-Québec, the Appellant explains that he never got a positive response that his file had been resolved. He explains that he even lost [translation] "[his] competency cards" because he hadn't completed Secondary IV as required by the CCQ [Quebec's

construction commission]. The Appellant still works for the same employer, having officially gone back to work on October 18, 2021.¹⁴

[67] It is true that, in most cases, you have an obligation to make efforts to seek alternative employment before making a unilateral decision to quit your job.¹⁵ In this case, a proper authority—Emploi-Québec—had approved the Appellant for training, he had been authorized to quit his job to take the training, and, as his employer had suggested, he intended to go back to work for that same employer when his training was over.

[68] Given those circumstances, particularly the fact that full-time training from May 3, 2021, to October 22, 2021, had been approved, I find that the Appellant had just cause for leaving his job when he did. He did what he had to: He discussed the situation with the employer and obtained authorization to voluntarily leave his job to take the training.

[69] The Appellant had to take this training to resolve his file with the CCQ and have valid [translation] “competency cards” to be able to work in construction. So, he first stopped working on April 27, 2021, and then he stopped working on August 20, 2021.

[70] The Appellant assessed all reasonable alternatives before quitting, since Emploi-Québec had approved his training and he had confirmed the employer’s intention to take him back after his course.

[71] Although the Commission argues that the Appellant left his job because of neck pain, the facts show that the plan was for him to go back to school at that time and that the employer, having agreed to take him back only for the summer, had no more work for him then.

[72] The Commission takes the view that the Appellant should have consulted a health professional before taking time off to rest because of an injury. But, when you look at the case more broadly, the situation shows that the plan was to rehire the

¹⁴ GD3-43

¹⁵ This principle is explained in *Attorney General of Canada v White*, 2011 FCA 190.

Appellant only temporarily. More importantly, the Commission didn't consider that the Appellant was authorized to quit to take his course. Due to this administrative confusion, the Appellant never resumed his course: The director of the training centre could not admit him because he wasn't receiving EI benefits.

[73] When an employee leaves their job voluntarily, they are disqualified from receiving benefits. It is true that taking training referred by Emploi-Québec and approved by the Commission makes it possible to overcome the presumption of non-availability that applies to full-time students. It is true that this isn't the case for disqualification, but, to study full-time according to the schedule for his approved training, the Appellant had no choice but to quit his job. What is more, he had obtained authorization to do so.

[74] Although the Commission says there was no "urgency" for the Appellant to withdraw from his training, I find that the Appellant had to follow the health rules set out by the government and that he temporarily stopped attending his training in the hope of resuming it later.¹⁶

[75] Unfortunately for the Appellant, after first coming into contact with someone who had contracted COVID-19, he then became infected with it. According to the director, the Appellant could not resume his training in June 2021, since classes were set to end in late June 2021. She asked the Appellant to resume his training on September 6, 2021.

[76] If it hadn't been for this exceptional circumstance related to the COVID-19 pandemic, the Appellant would have resumed his training. Instead, both the Commission and Emploi-Québec reviewed his file; because of this, he was never able to resume his previously approved training. But one fact remains: He still works at X.

[77] The Appellant had just cause for voluntarily leaving his job on August 20, 2021.

¹⁶ GD4-8

[78] I would point out, however, that the Appellant is responsible for informing the Commission of his situation and that he has to declare his earnings by regularly submitting his claimant reports.

Conclusion

[79] The Appellant has shown that he had good cause not to attend his training, and the Commission didn't exercise its discretion judicially when it imposed a six-week disqualification.

[80] The Appellant has shown just cause for leaving his job on August 20, 2021.

[81] This means that the appeal is allowed.

Josée Langlois

Member, General Division – Employment Insurance Section