



Citation: *SN v Canada Employment Insurance Commission*, 2022 SST 416

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

## Decision

**Claimant:** S. N.

**Commission:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decisions (438789 and 440375) dated November 9, 2021 (issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Teleconference

**Hearing date:** January 24, 2022

**Hearing participant:** Claimant

**Decision date:** January 25, 2022

**File number:** GE-21-2452 & GE-21-2453

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown just cause (in other words, a reason the law accepts) for leaving his jobs when he did. The Claimant didn't have just cause because he had reasonable alternatives to leaving. This means he is disqualified and disentitled from receiving Employment Insurance (EI) benefits.

## Overview

[3] The Claimant was laid off from his primary job. He got another job, but left this job on January 15, 2021 while receiving training and applied for EI benefits. The Claimant was called back to his primary job in July 2021, but took a leave of absence from July 12, 2021. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving both jobs. They decided that he voluntarily left (or chose to quit and chose to take a leave of absence) his jobs without just cause, so they weren't able to pay him benefits.

[4] I have to decide whether the Claimant has proven that he had no reasonable alternative to leaving his jobs.

[5] The Commission says that, instead of quitting when he did, the Claimant could have requested a medical exemption or discussed other alternatives with the employer. Concerning the leave of absence, the Commission says since the Claimant didn't give an explanation for taking the leave of absence, he hasn't proven that he had no reasonable alternative to leaving.

[6] The Claimant disagrees. He says that the employer of the new job refused to exempt him from the defensive training which he could not do because of his high blood pressure. Concerning the leave of absence, he says that he didn't know the law. He said he thought he was entitled to EI benefits until October 2021 like it said in his My Service Canada account.

## **Matters I have to consider first**

### **The Claimant is appealing two reconsideration decisions**

[7] The Claimant filed a notice of appeal concerning two decisions of the Commission. There are common facts related to both appeals. Because of this, and because no injustice is likely to be caused to any party to the appeals, I have joined the appeals.<sup>1</sup> On December 22, 2021, the Tribunal notified the Claimant that the appeals would be joined.

### **The Commission is correcting the reconsideration record number**

[8] The Commission sent a second copy of the reconsideration file on the issue of voluntary leave of absence. They say that the correct number of the reconsideration file is 440375 instead of 440357.

## **Issues**

[9] Is the Claimant disqualified from receiving benefits because he voluntarily left his second job without just cause?

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

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

## **Analysis**

### **The parties agree that the Claimant voluntarily left his second job and voluntarily took a leave of absence from his primary job**

[12] I accept that the Claimant voluntarily left his second job. The Claimant agrees that he quit on January 15, 2021. I see no evidence to contradict this.

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<sup>1</sup> Section 13 of the *Social Security Tribunal Regulations*

[13] I also accept that the Claimant voluntarily took a leave of absence from his primary job on July 12, 2021. He confirmed this at the hearing.

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

[14] The parties don't agree that the Claimant had just cause for voluntarily leaving his jobs when he did.

[15] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>2</sup> It also says that you are disentitled from receiving benefits if you voluntarily took a leave of absence and you didn't have just cause.<sup>3</sup> Having a good reason for leaving a job or taking a leave of absence isn't enough to prove just cause.

[16] 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 or taking a leave of absence when you did. It says that you have to consider all the circumstances.<sup>4</sup>

[17] It is up to the Claimant to prove that he had just cause. 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 and/or to take the leave of absence.<sup>5</sup>

[18] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant left his jobs. The law sets out some of the circumstances I have to look at.<sup>6</sup>

[19] After I decide which circumstances apply to the Claimant, he then has to show that he had no reasonable alternative to leaving at that time.<sup>7</sup>

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<sup>2</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>3</sup> Section 32 of the Act explains this.

<sup>4</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>5</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

<sup>6</sup> See section 29(c) of the Act.

<sup>7</sup> See section 29(c) of the Act.

### **The circumstances that existed when the Claimant quit his second job**

[20] The Claimant says that one of the circumstances set out in the law applies. Specifically, he says that the training at his second job constituted a danger to his health or safety due to his blood pressure.

[21] After he was laid off from his primary job, the Claimant got a second job. He completed the first part of the required training. The next part of training was defensive tactics training. The Claimant said that because of his high blood pressure, he could not do the training. He said that no one had told him in his job interview that he would have to take defensive tactics training.

[22] I asked the Claimant if he had spoken to his doctor about taking the defensive tactics training before he quit the job. The Claimant says that he has taken high blood pressure medication since September 2019. He testified that he had stopped taking the medication and then started having headaches. The doctor told him not to stop the medication without consulting him. The Claimant added that the doctor said that he should be careful with his diet and stay away from things that would “raise the blood circulation in his body”.

[23] The Claimant did not directly answer the question. Because he quit on the day he learned about the training, I find it likely that he did not speak to his doctor before quitting his job.

[24] I have no reason to doubt the Claimant’s testimony that he has high blood pressure and that this is the reason he didn’t want to do the defensive tactics training. I found the Claimant to be articulate, open and honest. However, without evidence from a medical professional, I don’t have enough information to conclude that doing the defensive tactics training constituted a danger to the Claimant’s health or safety.

### **The Claimant had reasonable alternatives to leaving his second job**

[25] I must now look at whether the Claimant had no reasonable alternative to leaving his job when he did.

[26] The Claimant says that he had no reasonable alternative because the employer refused to exempt him from the defensive tactics training. He maintains that he could not do the training because of his high blood pressure.

[27] The Commission disagrees and says that the Claimant could have asked for a medical exemption.

[28] I find that the Claimant hasn't shown that he had no reasonable alternatives to quit his job when he did.

[29] The Claimant testified that he spoke to his manager by telephone. He asked the manager if he could exempt him from the training. The manager told the Claimant that he could not do this. The Claimant then quit his job.

[30] The Claimant says that the employer didn't tell him about the training during the interview process. He also testified that he told the employer about his high blood pressure.

[31] The Commission spoke to a Human Resources (HR) representative from the employer. The HR representative told the Commission that the Claimant said that he did not request a medical accommodation. I note that the Claimant says that he spoke to his manager. Given the Claimant's testimony under oath, and because the Commission did not speak to the Claimant's manager, I give more weight to his testimony that he told his manager about his high blood pressure. I also accept as fact that he asked to be exempted from the training for this reason.

[32] Although I accept the Claimant's statements about his health, I find that he could have tried the training to see if he could do it without impacting his blood pressure. I also find that he could have checked with his doctor to get advice on whether to take the training or not.

[33] The Claimant asked that I consider his personal situation as well as the law. I understand that he is a relatively new immigrant to Canada and does not know the law.

However, I can't depart from the law for any reason, no matter how compelling the circumstances.<sup>8</sup>

[34] Considering the circumstances that existed when the Claimant quit, the Claimant had reasonable alternatives to leaving when he did, for the reasons set out above.

[35] This means the Claimant didn't have just cause for leaving his job.

### **The Claimant had reasonable alternatives to taking a leave of absence from his primary job**

[36] The Claimant told the Commission that he took a leave of absence from his primary job for personal reasons. At the hearing he gave the reasons for the leave. He said that his wife got pregnant unexpectedly and they needed to move. He took time off work to be with his wife and to find a new place for his family to live. He confirmed that he took the leave of absence from July 12, 2021 to September 30, 2021.

[37] I find that the reasons the Claimant took the leave of absence are personal. The Claimant testified that he saw in his My Service Canada account that his EI benefits had been approved until October 2021. He thought that he could get EI benefits until then, so he took the leave of absence.

[38] The Claimant pointed out that he did not argue about the disentitlement for the leave of absence he took. I find that he could have stayed at work without taking the leave of absence and tried to manage his personal matters around his work schedule. This is especially the case since the Claimant said that he works part-time. I agree with the Commission and find that the Claimant hasn't proven that he had no reasonable alternative to taking the leave of absence.

[39] The effect of this decision is that the Claimant will have to repay an overpayment, which may cause him financial hardship. As the Claimant noted, it is unfortunate that it took so long for the Commission to disqualify and disentitle him from benefits. The Commission recommends that the Claimant contact the Canada Revenue Agency to

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<sup>8</sup> *Granger v. Canada Employment and Immigration Commission*, A-684-85.

make arrangements for the repayment given his situation. I urge the Claimant to do this.

## **Conclusion**

[40] I find that the Claimant is disqualified from receiving benefits because he quit his second job. I find that the Claimant is disentitled from receiving benefits because he took a leave of absence from his primary job.

[41] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section