



Citation: *BJ v Canada Employment Insurance Commission*, 2022 SST 752

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

Decision

Appellant: B. J.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (451157) dated January 27, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Videoconference

Hearing date: April 13, 2022

Hearing participant: Appellant

Decision date: May 5, 2022

File number: GE-22-760

Decision

[1] The appeal is dismissed.

[2] The Claimant has not shown just cause (in other words, a reason the law accepts) for having voluntarily taking a leave of absence from his employment.

Overview

[3] The Claimant works as a rehabilitation assistant at a hospital.

[4] The Claimant took a leave of absence from his job in order to finish his kinesiology degree.

[5] The program was full-time, so the Claimant could not continue to work full-time while taking the program. He spoke to the university about allowing him to take his courses online, but they said they could not do that.

[6] So, he took a leave of absence from his employer and put himself into the casual pool so he could take work around his school schedule.

[7] The Claimant says that he called the Commission before he started his university and they told he could be paid benefits while finishing his university degree. He says their assurance of benefits is why he took the leave of absence.

[8] The Commission says the Claimant did not have just cause for taking his leave of absence as he had reasonable alternatives open to him that he did not take advantage of. So, they disentitled him from benefits.

Matter I have to consider first

[9] The Claimant was adamant he had been approved for benefits while taking his training by the Commission.

[10] There was no direct information in the file about whether this was the case, so I asked the Commission for more information to clarify whether the Claimant had been approved for benefits while attending his university.

[11] They replied to my questions¹ and their detailed answers provided clarity on the issue of the Claimant's approval for benefits during his university.

[12] I considered their information in making my decision as it is directly related to the Claimant's core argument about why he took a leave of absence.

Issue

[13] Did the Claimant have just cause for taking his leave of absence?

Analysis

[14] The law says that a claimant is disentitled from receiving benefits if, without just cause, they voluntarily take a leave of absence from their job, and at any time before or after the start of the period of leave, it's authorized by their employer, and they agree on the day the claimant would resume work.²

[15] Having a good reason for 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 taking a leave of absence when you did. It says that I have to consider all the circumstances at the time the Claimant took his leave of absence.³

[17] It is up to the Claimant to prove he had just cause.⁴ He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not his only reasonable option was to take a leave of absence.

[18] The Claimant says it was not possible for him to finish his degree while working full-time as his university courses would conflict with his work schedule.

¹ GD06

² Section 32 of the *Employment Insurance Act* (Act).

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

⁴ See *Canada (Attorney General) v White*, 2011 FCA 190.

[19] He spoke to the university to see if they could allow him to take the courses online, but they could not modify the courses in this way.

[20] The Claimant says he spoke to the Commission in the middle of August 2021, before he took his leave of absence, to see if he could get benefits while he was attending his university as he needs income in order to cover his expenses.

[21] The Claimant says the Commission told him that he could get benefits while attending his university under the Life-long Learning Program.

[22] He then went in-person to a Service Canada centre to speak to them about this issue and they told him he just needed to fill out a form and submit it and then they could go through the approval process.

[23] The Claimant says he completed and submitted the application and he was approved for benefits while taking his university just as he had been told.

[24] The Claimant says it was because of this assurance from the Commission that he took the leave of absence from his employment as he could not survive without some sort of income.

[25] The Claimant says he also put himself into the casual pool at work so he could take shifts that worked around his schooling.

[26] The Commission says that they did approve the Claimant, under the Life-long Learning Program, to attend his university for the period of August 30, 2021, to April 29, 2022 but this was in error.⁵

[27] The Commission also says the Claimant's schooling was not approved until September 21, 2021, which is after the Claimant's schooling had already started.⁶

[28] The Commission says that regardless, the Claimant's availability is considered in order while he is taking his university, there is no disentitlement for being unavailable as

⁵ GD06-2

⁶ GD06-2

they are not going to change the approval at this point, but that does not mean he had just cause for taking his leave of absence.

[29] The Commission further submits that unless a referring authority issued an authorization for the Claimant to take leave from his employment for a sponsored course he does not have just cause simply because they approved him for benefits during his schooling.⁷

[30] The Commission says that while they were the ones who approved the Claimant for benefits while attending his schooling, they do not authorize or counsel someone to leave their job in order to take a course of instruction. That would have to be done by a provincial authority and then presented to the Commission who would then make a decision on it.

[31] The Commission says the Claimant had the reasonable alternatives of continuing to work while attending school outside the hours of his employment, to the extent such courses are available, or potentially during a period of lay-off

[32] In considering the arguments of both parties there are a couple of sub-issues that need to be addressed before turning to the main issue of just cause.

[33] The first is the importance of whether or not the Claimant needs some sort of authorization from a referring authority to take his leave of absence, as the Commission has argued he needs.

[34] The second is the issue of when the Claimant was approved for benefits during his schooling since there is strong disagreement between the parties on when this happened.

[35] This is important because the question of just cause depends on a specific point in time—when the Claimant took his leave of absence. Case law says that, if you choose to go to school without a referral, your choice goes against the idea behind the

⁷ GD04-2

EI plan.⁸ So, if the Claimant got a referral before he took his leave of absence, then the case law doesn't apply and he could have just cause for taking his leave of absence. But, if he didn't have a referral and decided to take leave anyway, then the case law is clear the Claimant would not have just cause.

Counsel to leave employment

[36] In considering the issue of the Claimant getting an authorization to leave his employment to attend his university, sometimes, programs that refer you to schooling give you a letter or authorization saying that you can quit your job to take your schooling. The Commission will often accept this letter or authorization as proof that you have just cause.

[37] But, this is just the Commission's practice. It is not the law. And I have to apply the law. In other words, the Claimant having just cause to take his leave of absence doesn't depend on having a letter or authorization saying he can take that leave to attend school. Instead, I have to look at all of the circumstances and decide whether the Claimant had no reasonable alternative to taking the leave of absence when he did.

When were benefits approved for the Claimants schooling?

[38] The Claimant says he spoke to the Commission in the middle of August 2021, before he took his leave of absence, and was told he could get benefits while attending his university under the Life-long Learning Program.

[39] He says he then went in-person to a Service Canada centre to speak to them about this issue and they told him he needed to fill out a form and submit it.

[40] The Claimant says he completed and submitted the application in September 2021 and he was approved for benefits while taking his university just as he had been told.

⁸ See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133, para 13.

[41] The Commission says that it was not until September 21, 2021, after the Claimant's school started and after he left his job, that he was approved for benefits during his schooling.

[42] I find I agree with the submission of the Commission that it was not until September 21, 2021, that the Claimant was approved for benefits during his schooling.

[43] While I accept that the Claimant called the Commission in August 2021, prior to his school starting, and that he was told by an agent he could get benefits while attending university under the Life-long Learning Program, that does not mean he was approved at that time.

[44] As the Claimant testified, he did not even complete the application for the program until September 2021, so clearly he was not approved for benefits when he called in August 2021.

[45] I find that the agent of the Commission telling the Claimant he **could** get benefits through the Life-long Learning Program, it is merely the presentation of a possibility, not an approval or guarantee.

[46] Just because an agent of the Commission has presented an option to the Claimant to explore does not mean it is a certainty.

[47] I find it would not be until September 21, 2021, when the Claimant was informed that a decision had been made and he had been approved for benefits for his schooling that he could be certain of benefits during his schooling.⁹

Did the Claimant have just cause for taking his leave of absence?

[48] No, the Claimant did not have just cause for taking his leave of absence.

⁹ GD03-21

[49] Case law clearly says that, if you leave your job just to go to school without a referral, you don't have just cause for leaving your job.¹⁰

[50] The Claimant did not get approval from the Commission to attend his schooling until September 21, 2021, which was after he left his job as the Claimant's Record of Employment says his last day of work was September 7, 2021,¹¹ and only circumstances which existed at the time the Claimant took his leave can be taken into consideration.¹²

[51] Finishing off his university degree was the only circumstance relating to the Claimant's decision to take a leave of absence. So, the case which says that, if you leave your job just to go to school without a referral, you don't have just cause for leaving your job law applies to the Claimant.¹³ This means that the Claimant doesn't have just cause.

[52] I understand that the Claimant may have good reasons for choosing to take a leave of absence to finish off his university degree. But, this is a personal choice, and it goes against the idea behind the EI plan¹⁴ as he had the reasonable alternative of continuing to work for his employer and looking to take his university course in a way that did not put him in a situation of unemployment.

Conclusion

[53] The appeal is dismissed. I find the Claimant has not shown just cause for taking a leave of absence when he did. The disentitlement from benefits is upheld.

Gary Conrad

Member, General Division – Employment Insurance Section

¹⁰ See *Canada (Attorney General) v Caron*, 2007 FCA 204.

¹¹ GD03-19

¹² *Canada (Attorney General) v Lamonde*, 2006 FCA 44. para 8

¹³ See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133. para 13 and 14

¹⁴ See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.