



Citation: *YA v Canada Employment Insurance Commission*, 2022 SST 1072

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

Decision

Appellant: Y. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (450939) dated January 16, 2022 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Teleconference

Hearing date: March 10, 2022

Hearing participant: Appellant

Decision date: March 18, 2022

File number: GE-22-217

Decision

[1] The appeal is allowed in part.

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

[3] The Claimant has shown that he was available for work while in school. This means he isn't disentitled from receiving EI benefits from September 13, 2021, to January 3, 2022, for this reason.

Overview

[4] The Claimant was working a lot of hours. He was in school part-time and needed to work less hours to keep up with his school work. He left his job at the start of September 2021, because the employer wouldn't give him less hours. He was going to find a full-time job that he could work while in school. He applied for EI benefits in the meantime.

[5] The Canada Employment Insurance Commission (Commission) decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits. It also decided that the Claimant wasn't available for work while he was in school.

[6] The Commission says that the Claimant could have stayed employed instead of leaving his job to go to school. It says that he isn't available because he was only available for work around his school obligations.

[7] The Claimant disagrees and states that he had to leave his job because he was working excessive hours and didn't have any time to finish his school work. He was looking for a full-time job while in school, and returned to his employer at reduced (but still full-time) hours shortly after he stopped working.

Issue

[8] Did the Claimant have just cause to voluntarily leave his employment?

[9] Was the Claimant available for work from September 13, 2021, to January 3, 2022?

Analysis

The parties agree that the Claimant voluntarily left

[10] I accept that the Claimant voluntarily left his job. The Claimant agrees that he quit on September 10, 2021, to have time for his school program. I see no evidence to contradict this.

What it means to have just cause

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

[12] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ Having a good reason for leaving a job isn't enough to prove just cause.

[13] 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.²

[14] 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 quit. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

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 circumstances that existed when the Claimant quit

[15] The Claimant said that he left his job because he was working too many hours. He was in school part-time and needed to work less hours to complete his school program.

[16] The Claimant had a largely seasonal job. He worked long hours during the season. Sometimes 60 hours per week. Sometimes more. He would work 12-16 hours per day. He liked the money that he was making, but he had no time for anything else.

[17] At the same time, the Claimant was taking a part-time school program. He did one course over the summer. The courses are online and he can do the work at his own pace. But with his long work hours, he felt that he had no time to do the course work. So, in September 2021, he asked his employer to reduce his hours of work. He was doing two courses this semester. They were the final two courses he needed to graduate the program.

[18] Unfortunately, the employer told the Claimant that he couldn't work less hours. There was a lot of work because the season was still on. The Claimant knew that he couldn't finish his final two courses if he was working the same long hours. So, he quit his job.

[19] 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 course.

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

[21] The parties agree that the Claimant didn't get a referral to go to school. School was the only circumstance relating to the Claimant's decision to quit. So, the case law applies to the Claimant. This means that the Claimant doesn't have just cause.

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

[22] The Claimant's long hours of work were the reason that he quit, but he said that he was okay working the long hours because he was earning good money. The only reason he didn't want to work the long hours any more was because it interfered with his school program. He couldn't work those long hours while going to school because he didn't have enough time off to complete his coursework.

[23] I understand that the Claimant may have good reasons for choosing to leave his job to go to school. But, this is a personal choice, and it goes against the idea behind the EI plan.⁵

Is the Claimant available for work while in school?

[24] Two different sections of the law require claimants to show that they are available for work.

[25] First, the *Employment Insurance Act* (EI Act) says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.⁶ The *Employment Insurance Regulations* (EI Regulations) give criteria that help explain what "reasonable and customary efforts" mean.⁷

[26] Second, the EI Act says that a claimant has to prove that they are "capable of and available for work" but aren't able to find a suitable job.⁸ Case law gives three things a claimant has to prove to show that they are "available" in this sense.⁹

[27] The Commission decided that the Claimant was disentitled from receiving benefits because he isn't available for work based on these two sections of the law.

[28] I will now consider these two sections myself to determine whether the Claimant is available for work.

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

⁶ See section 50(8) of the EI Act.

⁷ See section 9.001 of the *Employment Insurance Regulations* (EI Regulations).

⁸ See section 18(1)(a) of the EI Act.

⁹ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

Reasonable and customary efforts to find a job

[29] The law sets out criteria for me to consider when deciding whether the Claimant's efforts are reasonable and customary.¹⁰ I have to look at whether his efforts are sustained and whether they are directed toward finding a suitable job. In other words, the Claimant has to have kept trying to find a suitable job.

[30] I also have to consider the Claimant's efforts to find a job. The Regulations list nine job-search activities I have to consider. Some examples of those activities are the following:¹¹

- assessing employment opportunities
- preparing a résumé or cover letter
- applying for jobs

[31] The Commission says that the Claimant isn't doing enough to try to find a job. It relies on the Claimant's statement that he wasn't looking for work until he graduated from his program on January 4, 2022.

[32] The Claimant disagrees. He was actively looking for full-time work since he stopped working on September 10, 2021. He updated his resume and applied for jobs with construction companies and restaurants. He networked with friends about potential job opportunities. After several weeks of unemployment, he returned to his former job at reduced (but still full-time) hours. After he graduated on December 4, 2021, he started looking for computer programming jobs because he was now qualified for them.

[33] The Claimant told the Commission that he started looking for computer programming jobs after he graduated, and said that he had graduated in early December 2021, but hadn't received his diploma until January 4, 2022.

[34] The Commission provided its notes of the conversation it had with the Claimant. These notes conflict with the Claimant's testimony. When there is conflicting evidence, I

¹⁰ See section 9.001 of the Regulations.

¹¹ See section 9.001 of the Regulations.

have to decide which version is most likely.¹² I have to consider all of the evidence and make a decision on the balance of probabilities.¹³ I have to ask myself the question: which information is more likely to be true?

[35] I recognize that the Commission's conversation records are not transcripts and so may not be accurate records of everything that was discussed. The Claimant gave open and straightforward testimony at the hearing. I was able to test his evidence by asking questions and he answered those questions in a straightforward manner. For this reason, I prefer to rely on the Claimant's testimony where it conflicts with the Commission's records of their conversations.

[36] The Claimant has proven that he was making reasonable and customary efforts to find a suitable job. His efforts of updating his resume, applying for jobs, and networking show that he was making reasonable and ongoing efforts to find suitable work.

Capable of and available for work

[37] Case law sets out three factors for me to consider when deciding this. The Claimant has to prove the following three things:¹⁴

- He wanted to go back to work as soon as a suitable job was available.
- He made efforts to find a suitable job.
- He didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

¹² See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

¹³ The Federal Court of Appeal says that the standard of proof is the balance of probabilities for employment insurance matters in *Canada (Attorney General) v Corner*, A-18-93.

¹⁴ These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision paraphrases those three factors for plain language.

[38] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.¹⁵

Wanting to go back to work

[39] The Claimant has shown that he wanted to go back to work as soon as a suitable job was available.

[40] The Claimant was working. He left his job on September 10, 2021, because his job's long hours conflicted with his ability to meet his school obligations. However, the Claimant immediately began searching for full-time work. He applied at several jobs over the next two weeks. He ultimately accepted a job offer from his former employer to return to his position at reduced (but still full-time) hours. When the season ended and he was laid off, he started looking for full-time computer programming jobs. This was in line with his qualifications as he finished his school program on December 4, 2021.

[41] The Claimant's conduct in leaving his job because of his school obligations doesn't support that he wanted to go back to work. But, I find that his attitude and conduct in looking for full-time work immediately after becoming unemployed are enough to overcome that. I think he has shown that he wanted to go back to work as soon as a suitable job was available from September 13, 2021, to January 3, 2022.

Making efforts to find a suitable job

[42] The Claimant has made enough effort to find a suitable job.

[43] The Claimant had an updated resume, spoke with his friends about job openings, and applied for jobs in the construction and restaurant industries. After he graduated in early December, he started looking for jobs in computer programming to match his qualifications.

¹⁵ Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

[44] The Claimant's efforts are enough to show that he was trying to find a suitable job as soon as possible because his efforts were aimed at finding full-time work in line with his qualifications and work experience.

Unduly limiting chances of going back to work

[45] The Claimant didn't set personal conditions that might have unduly limited his chances of going back to work.

[46] The Commission says the Claimant set a personal condition because he was only willing to accept employment around his course schedule.

[47] The Claimant disagrees and states that he did not have a set course schedule. He attended a seminar and a meeting for a group project on Wednesdays. But, the seminar was not mandatory for him to attend. And, if he had found work that conflicted with his meeting, he could have easily changed the meeting date and time.

[48] The Claimant was looking for full-time work. He left his job in early September because the hours he was working were much longer than full-time. He testified that he was able to work a full-time job around his course schedule. This is supported by his returning to his work at full-time hours in late September 2021.

[49] I am satisfied that the Claimant's school schedule was flexible and that he was available for full-time work while in school. So, I find his school obligations were not a personal condition that would have unduly limited his chances of going back to work for that reason.

So, is the Claimant capable of and available for work?

[50] Based on my findings on the three factors, I find that the Claimant has shown that he is capable of and available for work but unable to find a suitable job.

Conclusion

[51] I find that the Claimant is disqualified from receiving EI benefits because he voluntarily left his employment without just cause. This means his appeal on this issue is dismissed.

[52] He is not disentitled from receiving EI benefits from September 13, 2021, to January 3, 2022, because he has shown that he was available for work. This means his appeal on this issue is allowed.

Catherine Shaw

Member, General Division – Employment Insurance Section