Citation: *GB v Canada Employment Insurance Commission*, 2023 SST 1267

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	G. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (566091) dated January 26, 2023 (issued by Service Canada)

Tribunal member:	Bret Edwards
Type of hearing:	Videoconference
Hearing date:	June 13, 2023
Hearing participant:	Appellant
Decision date:	June 20, 2023
File number:	GE-23-457

Decision

[1] The appeal is dismissed with modification. I disagree with the Appellant about his voluntarily leaving and availability while in school. But I agree with him about his availability since finishing school.

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

[3] I also find the Appellant hasn't proven his availability for work while he was in school. But I find he has proven his availability for work since finishing school. This means he is only disentitled from EI benefits for the period while he was in school.

Overview

[4] The Appellant left his job on September 1, 2022 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) decided he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[5] The Commission also decided the Appellant hasn't been available for work because he was in school, so it disentitled him from receiving EI benefits from September 4, 2022 onwards.

[6] The Appellant says he had to leave his job when he did because he was starting school and he didn't have any long-term job security. He also says he was dealing with some mental health challenges at the time that were related to his job status.

[7] The Appellant also says he was available to work full-time while in school outside of his school hours and has been available to work full-time since finishing school.

[8] I must decide whether the Appellant has proven he had no reasonable alternative to leaving his job.

[9] I also must decide whether the Appellant has been available for work from September 4, 2022 onwards.

Matter I have to consider first

I will accept the documents sent in after the hearing

[10] The Appellant sent in documents after the hearing. I accept the documents as they relate to the Appellant's availability since finishing school.[1]

Issue

[11] Did the Appellant voluntarily leave his job without just cause?

[12] Is the Appellant available for work?

Analysis

The Appellant voluntarily left his job

[13] I find the Appellant voluntarily left his job. The Appellant agrees he quit on September 1, 2022.[2] His employer also says he quit then.[3]

[14] But the Appellant also says he didn't have much of a choice to quit because he didn't have any long-term job security beyond the end of October 2022 (which is when his work contract ended) and was dealing with some mental health challenges at the time that were related to his job status.[4]

[15] I acknowledge the Appellant feels he didn't have much of a choice to quit when he did. But in this section, I'm just looking at whether he had **a choice** to stay or go when he left his job. And I find the evidence shows he did have this choice. His work contract wasn't about to end when he quit as there were almost two months left on it. There's also no evidence to show his employer forced him to quit for some reason.

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[1] GD5-1 to GD5-51.
[2] GD3-9.
[3] GD3-26.
[4] The Appellant said this at the hearing.

[16] So, for these reasons, I find the Appellant voluntarily left his job. He had a choice to stay or go at that time.

What it means to have just cause

[17] The Appellant and the Commission don't agree the Appellant had just cause for voluntarily leaving his job when he did.

[18] The law says you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[5] Having a good reason for leaving a job isn't enough to prove just cause.

[19] The law explains what it means by "just cause." The law says you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says you have to consider all the circumstances.[6]

[20] It is up to the Appellant to prove he had just cause.[7] He has to prove this on a balance of probabilities. This means he has to show that it is more likely than not that his only reasonable option was to quit. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit.

The circumstances that existed when the Appellant quit

[21] The Appellant's employer told the Commission[8]:

- He emailed a letter of resignation on August 18, 2022.
- His letter of resignation said he was returning to school and his last day would be September 1, 2022.

[22] The Appellant testified:

- His work contract was initially supposed to end at the end of August 2022.

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[5] Section 30 of the *Employment Insurance Act* (Act) sets out this rule.
[6] See *Canada (Attorney General) v White*, 2011 FCA 190; and section 29(c) of the Act.
[7] See *Canada (Attorney General) v White*, 2011 FCA 190.
[8] GD3-26.

- He was going through a lot of stress and mental health challenges at the time because he didn't have a full-time, permanent job with his employer, and he was worried about his job security going forward.
- He talked to his employer about what he was going through, and they said they could reduce his workload for a week or so to see if that helped.
- He also asked his employer if they had any full-time, permanent positions. They said they didn't, but then decided to extend his current contract until the end of October 2022.
- But he felt things were too tough and there was nothing on the horizon at his job beyond that extension.
- He was also confused because his employer had hinted that he might be let go, but then randomly gave him the extension to the end of October 2022.
- Not having any long-term job security with his employer made it an unhealthy work environment for him.
- He thought it would be best for him to leave his job to go to school and that would be enough for the time being, and he could try to pick up work again while in school.
- He also thought it would be best for him to leave his job because he didn't think his employer would renew his contract or extend it again, and it was hard for him to deal with the stress of not having a permanent position there.
- His mental health started to improve after he left his job and started school.
- He doesn't think his situation leading up to when he quit shows he voluntarily left his job. Voluntarily leaving should be leaving a job with 100% security, where a person goes to work every day knowing their job is there no matter what.

Why the Appellant left his job

[23] I find the Appellant left his job specifically when he did because of school.

[24] I note in his application for benefits, the Appellant said he quit his job to go to school and that his course started on September 7, 2022.[9]

[25] But the Appellant testified that he made a mistake in his application for benefits. He was ashamed about what was going on with his mental health and didn't want to mention this in his application, so he just said he was quitting to go to school.

[26] I asked the Appellant if he had made the decision to go to school before he quit his job. He testified that yes, he had.

[27] I then asked the Appellant to clarify if his decision to quit his job was related to going to school. He testified that yes, it was part of why he stopped working. He thought school would be enough and he could try to pick up work again after he started school.

[28] I also note the Appellant's employer told the Commission the Appellant's letter of resignation said he was returning to school, as noted above.

[29] I asked the Appellant about what his employer told the Commission. He testified he wished his employer had told the Commission the whole story, which was that he also quit because his contract was ending at the end of October 2022 and he was dealing with mental health issues.

[30] I acknowledge the Appellant says he stopped working for various reasons. But I find the evidence shows he primarily quit his job to go to school. In my view, I find the fact the Appellant confirmed he had already decided to go to school when he made the decision to leave his job shows that his school schedule (and specifically when his program started) is what led him to leave when he did more than anything else.

The Appellant didn't have a referral for school when he left his job

[9] GD3-8 to GD3-9.

[31] 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 Appellant had such a referral when he decided to leave his job.

[32] Case law says:

- If you quit your job to go to school without a referral, you don't have just cause for leaving your job.[10]
- If you choose to go to school without a referral, your choice goes against the idea behind the EI plan.[11]

[33] I find the Appellant wasn't referred for his course before he quit. In his application for benefits, he said he didn't have a referral for school.[12] He also told the Commission he made a personal decision to go to school[13], which I find confirms he didn't have a referral.

[34] Since the Appellant didn't have a referral before he quit his job, the case law applies. This means he didn't have just cause for leaving his job.

[35] I will now look at whether the Appellant had just cause for leaving his job for the other reason he says (he didn't have long-term job security, which was affecting his mental health).

The Appellant didn't have just cause for leaving his job because of a lack of long-term job security

[36] The law says an employee has just cause for leaving their job for any other reasonable circumstances that are prescribed and they had no reasonable alternative to leaving.[14]

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[10] See *Canada (Attorney General)* v *Caron*, 2007 FCA 204.
[11] See *Canada (Attorney General)* v *Beaulieu*, 2008 FCA 133.
[12] GD3-8, GD3-11.
[13] GD3-25.
[14] Section 29(c)(xiv) of the *Employment Insurance Act* (Act) says this.

[37] I find the Appellant hasn't shown a lack of long-term job security was a reasonable circumstance for leaving his job when he did.

[38] The Appellant says his employer told him they didn't have any full-time, permanent jobs when he asked in August 2022, but they then decided to extend his contract to the end of October 2022, as noted above. He says he felt he didn't have any long-term job security with his employer because he didn't have a full-time, permanent position there. He says his job status was affecting his mental health, which is part of why he decided to quit.

[39] I acknowledge the Appellant felt he didn't have any long-term job security when he quit and that he was dealing with mental health challenges at the time because of that.

[40] But I find there isn't any evidence that the Appellant was about to lose his job or that his contract was about to run out when he quit. In fact, as noted above, the Appellant's employer had recently extended his contract (to the end of October 2022) when he quit. In my view, since the Appellant's employer extended his contract once, it's reasonable to believe they could have decided to do it again in the future if he hadn't left.

[41] And, as noted above, the Appellant quit almost two months (on September 1, 2022) before his extended contract was supposed to end, which I find means he wasn't facing an urgent situation where he was about to lose his job, even despite his mental health challenges.

[42] So, in my view, there isn't enough evidence to show the Appellant had to quit when he did because he didn't have any long-term job security. Instead, the evidence shows he quit well before his contract ended and only just after his employer had extended it.

[43] I therefore find this circumstance doesn't apply here.

The Appellant had reasonable alternatives to leaving his job

[44] I must now look at whether the Appellant had no reasonable alternatives to leaving his job when he did.

[45] The Appellant says he had to quit because he didn't have any long-term job security and it wasn't a healthy work environment for him anymore because of that.[15]

[46] The Commission says the Appellant had reasonable alternatives to leaving when he did, such as continuing to work instead of going to school and looking for other work first.[16]

[47] I find the Appellant had two reasonable alternatives to leaving that he didn't explore.

[48] First, I find the Appellant could have continued to work for his employer instead of going to school. I understand he had good reasons for leaving his job to go to school. But I find it was a personal choice as he didn't have a referral for school. Quitting for school isn't just cause for leaving a job.[17]

[49] Second, even if the Appellant hadn't decided to go to school, I find he could have looked for other work before he quit.

[50] I asked the Appellant if he felt it was reasonable for him to look for other work before he quit. He said he didn't think it was reasonable because he wasn't in the right frame of mind at the time and could barely hang on and do the job he was doing.

[51] I acknowledge the Appellant's job status was affecting his mental health and sympathize with him. But as discussed above, his employer had recently extended his contract to the end of October 2022 and he had almost two months left on his contract when he quit. In my view, it's reasonable to believe the Appellant could have looked for work at some point before he quit even though he was stressed and anxious about his

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[15] The Appellant said this at the hearing.
[16] GD4-3.
[17] See *Canada (Attorney General)* v *Beaulieu*, 2008 FCA 133.

job status. His contract wasn't about to end, so he had time to look for work on his terms, meaning on the days when he had the energy and focus to do that.

[52] So, considering the circumstances that existed when the Appellant voluntarily left his job, I find he had reasonable alternatives to leaving when he did.

[53] I therefore find the Appellant didn't have just cause for leaving his job.

[54] I acknowledge the Appellant doesn't feel his situation leading up to when he quit shows he voluntarily left because voluntarily leaving should be quitting a job with 100% security, which he didn't have.

[55] But I disagree. As discussed above, the law says you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause. It doesn't say anything about your job status when you left. I have to follow the law the way it's written[18], and in this case, I find the Appellant didn't have just cause for leaving his job, for the reasons set out above.

Is the Appellant available for work?

[56] I will now look at the Appellant's availability for work.

[57] The Appellant was a student during most of his disentitlement period. According to the Federal Court of Appeal (FCA), there is a presumption that full-time students are not available for work.[19]

[58] So, the first thing I need to do is see if this presumption applies to the Appellant.

[59] The Appellant disagrees he was a full-time student. He told the Commission and testified he didn't have classes every day, and on some of the days he had classes, he didn't have many hours.[20]

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[18] See *Canada (Attorney General) v Knee*, 2011 FCA 301.
[19] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.
[20] GD3-37.

[60] Based on this evidence, I find the Appellant wasn't in school full-time during this period and therefore the presumption doesn't apply to him.

[61] I will now look at whether the Appellant is available based on the two sections of the law on availability.

[62] Two different sections of the law require appellants to show they are available for work. The Commission decided the Appellant was disentitled under both sections. So, he has to meet the criteria of both sections to get benefits.

[63] First, the *Employment Insurance Act* (Act) says an appellant has to prove they are making "reasonable and customary efforts" to find a suitable job.[21] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[22] I will look at those criteria below.

[64] Second, the Act says an appellant has to prove they are "capable of and available for work" but aren't able to find a suitable job.[23] Case law gives three things an appellant has to prove to show that they are "available" in this sense.[24] I will look at those factors below.

[65] The Commission decided the Appellant is disentitled from receiving benefits because he hasn't been available for work based on these two sections of the law.

[66] I will now consider these two sections myself to determine whether the Appellant has been available for work.

Reasonable and customary efforts to find a job

[67] The law sets out criteria for me to consider when deciding whether the Appellant's efforts have been reasonable and customary.[25] I have to look at whether his

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[21] See section 50(8) of the *Employment Insurance Act* (Act).
[22] See section 9.001 of the *Employment Insurance Regulations* (Regulations).
[23] See section 18(1)(a) of the Act.
[24] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[25] See section 9.001 of the Regulations.

efforts have been sustained and whether they have been directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[68] I also have to consider the Appellant'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:[26]

- assessing employment opportunities
- registering for job-search tools or with online job banks or employment agencies
- applying for jobs

[69] The Commission says the Appellant didn't do enough to try to find a job. It says he didn't provide a detailed job search for the period he was in school when asked, so he hasn't shown he was actively seeking suitable work.[27]

[70] The Appellant disagrees. He says he was always looking for work while in school even though he didn't provide a detailed job search. He also says he's been actively looking for work since finishing school too.[28]

[71] I find the Appellant made reasonable and customary efforts to find a job during his disentitlement period.

[72] The Appellant provided a job search list to the Commission.[29] I note the list has eight restaurant server jobs on it, but it doesn't include contact information for any employer or indicate when the Appellant applied for each job.

[73] The Appellant testified he applied for more jobs than he included on the list, but he couldn't remember any others when he put together the list. He also testified he applied to these jobs in person, which was common for the restaurant industry. And he testified he didn't care about giving more information to the Commission about his job

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[26] See section 9.001 of the Regulations.
[27] GD4-4.
[28] The Appellant said these things at the hearing.
[29] GD3-39.

search because he had a negative experience when speaking with the Commission agents about his claim.

[74] I accept the Appellant's explanation. His testimony was clear and detailed. I find it's plausible he could have applied for these jobs in person and forgotten other jobs he had applied to when he put together the list. I also don't see any information or evidence to counter what he says. From his testimony, I accept that he was actively looking for work while in school and focused mainly on applying in person for server jobs in the restaurant industry.

[75] The Appellant also testified he continued to actively look for work after he finished school in early May 2023. He testified he has switched to looking mainly online for jobs more related to his schooling. He also provided extensive evidence (specifically copies of his Indeed searches and applications) that he has been actively looking for and applying for work since then.[30]

[76] Based on the Appellant's testimony and evidence, I'm satisfied he has shown he has made ongoing and extensive efforts to find work during his entire disentitlement period, both while he was in school and since finishing school.

[77] I therefore find the Appellant has proven his efforts to find a job were reasonable and customary.

Capable of and available for work

[78] Case law sets out three factors for me to consider when deciding whether the Appellant has been capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:[31]

a) He has wanted to go back to work as soon as a suitable job was available.

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[30] GD5-1 to GD5-51.
[31] 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.

b) He has made efforts to find a suitable job.

c) He hasn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[79] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[32]

– **Wanting to go back to work**

[80] The Appellant has shown he has wanted to go back to work as soon as a suitable job is available.

[81] The Appellant testified he wanted to go back to work while in school and continues to want to work since finishing school.

[82] I accept the Appellant's testimony as he made it clear he wanted to work while in school and since finishing school. I also don't see any evidence to counter what he says.

[83] I therefore find the Appellant has wanted to go back to work during his entire disentitlement period (both while in school and since finishing school).

– **Making efforts to find a suitable job**

[84] The Appellant has made enough effort to find a suitable job.

[85] I have considered the list of job-search activities given above in deciding this second factor. For this factor, that list is for guidance only.[33]

[86] The Appellant's efforts to find a new job included assessing employment opportunities, registering for job-search tools or with online job banks or employment

[32] 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.
[33] I am not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

agencies, and applying for jobs. I explained these reasons above when looking at whether the Appellant has made reasonable and customary efforts to find a job.

[87] Those efforts were enough to meet the requirements of this second factor because the Appellant provided clear and detailed testimony about his different steps to look for a job, which included looking for and applying for jobs in person and online and registering for online job databases like Indeed.

[88] Based on this evidence, I find the Appellant made enough effort to find a suitable job during his entire disentitlement period (both while in school and since finishing school).

– **Unduly limiting chances of going back to work**

[89] The Appellant did set personal conditions that might have unduly limited his chances of going back to work while he was in school. But he hasn't set personal conditions since finishing school.

[90] The Appellant told the Commission and testified he had classes from September 2022 to December 2022 on Mondays, Tuesdays, and Wednesdays from 8:30am to 3:00pm, and 2 hours a day online and in-class on Thursdays and Fridays.[34]

[91] The Appellant also told the Commission and testified he had classes from January 2023 to May 2023 on Mondays and Tuesdays from 9:00am to 3:30pm and 2 hours a day online and in-class on Thursdays and Fridays.[35]

[92] The Appellant testified he was available to work during the week around his classes and on weekends. He testified he has experience working as a server at restaurants and most of those shifts are in the evenings, so he had time to work those shifts on days when he had classes.

[93] The Appellant also testified the Commission failed to consider that many people, like himself, have work schedules that don't conform to the typical 9-5 job. He testified

[34] GD3-37.
[35] GD3-37.

the Commission didn't look at non-traditional work patterns and schedules when deciding he wasn't available for work while in school.

[94] I acknowledge the Appellant has experience working in the restaurant industry and was mostly focused on applying for similar jobs, which mostly had evening shifts, while he was in school. I also acknowledge he was available to work a schedule while in school that was outside typical or traditional work hours.

[95] But I still find the Appellant's school schedule overly limited when he was available to work and prevented him from applying for other suitable work that didn't offer only evening shifts, like other restaurant server jobs focused on breakfast or lunch. He confirmed he had to attend his classes at set times on set days. This means his availability was restricted to certain times on certain days, which has limited his chances of finding work as he could only take jobs that worked around his school schedule.

[96] I acknowledge the Appellant also testified he could have worked on weekends. But I'm only looking at his availability for working days and the law says weekends aren't working days.[36]

[97] The Appellant also testified he has been able to work anytime since finishing school.

[98] I accept the Appellant's testimony. I see no information to counter what he says. This means I find he hasn't set any personal conditions that might unduly limit his chances of going back to work since finishing school as he can work anytime now.

[99] I therefore find the Appellant's school schedule unduly limited his chances of going back to work while he was in school, specifically from September 7, 2022 to May 9, 2023. But I find this changed once his schooling ended, specifically from May 10, 2023 onwards, as he no longer has any restrictions on when he can work.

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[36] See section 32 of the *Employment Insurance Regulations*.

– **So, was the Appellant capable of and available for work?**

[100] I find the Appellant has shown he made reasonable and customary efforts to find work during his entire disentitlement period. I find he also had the desire to work and made efforts to find work while in school, but he also set personal conditions that might have unduly limited his chances of going back to work then.

[101] But I also find the Appellant has had the desire to work, made efforts to find work, and hasn't set any personal conditions that might unduly limit his chances of going back to work since finishing school.

[102] This means the Appellant hasn't shown he was capable of and available for work but unable to find a suitable job while he was in school, so from September 7, 2022 to May 9, 2023. But it also means he has shown he has been capable of and available for work but unable to find a suitable job since finishing school, so from May 10, 2023 onwards.

Conclusion

[103] The appeal is dismissed with modification.

[104] I find the Appellant hasn't shown just cause for leaving his job when he did. He had reasonable alternatives to leaving that he didn't explore. This means he is disqualified from receiving EI benefits for this reason.

[105] I also find the Appellant hasn't proven his availability for work while he was in school, specifically from September 7, 2022 to May 9, 2023. But I find he has proven his availability for work since finishing school, specifically from May 10, 2023 onwards. This means he is only disentitled from receiving EI benefits for the period while he was in school.

Bret Edwards

Member, General Division – Employment Insurance Section