



Citation: *EB v Canada Employment Insurance Commission*, 2023 SST 1208

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:	E. B.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (584504) dated May 5, 2023 (issued by Service Canada)
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Tribunal member:	Angela Ryan Bourgeois
Type of hearing:	Teleconference
Hearing date:	July 13, 2023
Hearing participant:	Appellant
Decision date:	July 20, 2023
File number:	GE-23-1458

Decision

[1] The Appellant (Claimant) is appealing two decisions made by the Canada Employment Insurance Commission (Commission).

[2] I am dismissing the appeal on one issue, and allowing it on the other.

[3] The Claimant is disqualified from receiving Employment Insurance (EI) regular benefits because she hasn't shown just cause (in other words, a reason the law accepts) for leaving her job.

[4] The Claimant has proven her availability for work, so the disqualification for availability is removed.

Overview

[5] The Claimant worked as a deposit monitor for X in Nova Scotia. She left her job and moved to Saskatchewan where her son and grandchildren live. About a month later, she applied for EI regular benefits.

[6] The Commission decided that it couldn't pay her EI benefits for these two reasons:

- she voluntarily left her job without just cause¹
- she didn't prove that she was available for work.²

[7] The Claimant is appealing these two decisions.³

[8] I have to decide whether the Claimant has proven that she had no reasonable alternative to taking a leave from her job. I also have to decide if she was available for

¹ This is a disqualification under section 32 of the *Employment Insurance Act* (EI Act). It started on January 29, 2023. See initial decision letter on page GD3-27.

² The disqualification for availability started on January 29, 2023. See initial decision letter on page GD3-27.

³ The reconsideration decision letter is on page GD3-34.

work within the meaning of the law.

Issues

[9] I have to answer these questions:

- Is the Claimant disqualified from receiving EI benefits because she voluntarily left her job without just cause?
- Is the Claimant disentitled from receiving EI benefits because she wasn't available for work?

Analysis

Voluntarily leaving and just cause

– The Claimant voluntarily left her job

[10] I find that the Claimant voluntarily left her job on December 29, 2022. There is no dispute that she chose to leave her job and move to Saskatchewan.

– What it means to have just cause

[11] The law says that you are disqualified from receiving benefits if you voluntarily left your job and you didn't have just cause.⁴ Having a good reason for leaving a job isn't enough to prove just cause.

[12] The law says that you have just cause to leave if you had no reasonable alternative to leaving your job when you did. It says that you have to consider all the circumstances.⁵

⁴ Section 30 of the EI Act sets out this rule. It is an indefinite disqualification. This means that a claimant is disqualified from receiving EI benefits until they have enough insurable hours to again qualify for EI benefits.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190; and section 29(c) of the EI Act.

[13] It is up to the Claimant to prove that she had just cause.⁶ She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that her only reasonable alternative was to leave her job.

[14] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit. The law sets out some of the circumstances I have to look at.⁷ They include an obligation to care for immediate family.

[15] After I decide which circumstances apply to the Claimant, she then has to show that she had no reasonable alternative to leaving at that time.⁸

– **Why the Claimant left her job**

[16] There is conflicting information in the file about why the Claimant left her job.

[17] On her application form the Claimant said she left to care for dependants – helping her son and daughter-in-law in caring for her grandchildren.⁹ In her appeal forms, she didn't mention taking care of the children as a reason for leaving.¹⁰

[18] During the hearing the Claimant successfully explained the discrepancy.

[19] Many things came together for the Claimant to decide she was going to leave a job she enjoyed and move to Saskatchewan.

[20] She explained that her son had asked her to move there after her husband died twelve years ago, and again after her only daughter died, ten years ago. At that time, she decided to stay in Nova Scotia to be near her daughter's children. Although the Claimant was working, since the death of her husband, she had been struggling financially. Her rent and expenses were ever increasing. She had been looking for another place to live since her husband passed – someplace where she didn't have to

⁶ See *Canada (Attorney General) v White*, 2011 FCA 190.

⁷ See section 29(c) of the EI Act.

⁸ See section 29(c) of the EI Act.

⁹ For details see the application form starting on page GD3-8.

¹⁰ See page GD2-7 for the reasons she listed.

shovel the snow. She says that the cost of living is higher in Nova Scotia than in Saskatchewan.

[21] Then the COVID-19 pandemic hit. The Claimant couldn't get vaccinated. This meant that she was especially isolated. Her only son lived across the country. She couldn't travel. People she considered friends harassed her because she wasn't vaccinated. She felt very alone. She was worried that the country would be shut down again.

[22] The Claimant is 70 years old. She was working evenings, and wanted to find a better work-life balance.

[23] She told me that she had to have counselling because she caught someone trying to break into her house. I didn't ask her to elaborate on this, but I believe this event made her nervous.

[24] She told me that when her son had an issue with her sitter, she told him she would go out and be his wife's back-up. But she always intended to get a job during the day.¹¹ Her son wouldn't need her help every day because his wife works from home, and she also had help from her father.

[25] She told me that if she could have, she would have taken her job with her. But her specific job is only done in Nova Scotia, Toronto and Vancouver. She looked online and thought she would be able to find a job in Saskatchewan.

[26] I accept everything the Claimant told me about why she left her job and moved to Saskatchewan. Life is rarely simple, and in the Claimant's case, there were many factors that led to her decision to move. She couldn't have reasonably written all these reasons on her application form.

¹¹ This can be found on the recording about 19:15.

– **Obligation to care for immediate family**

[27] The law lists some specific circumstances that I have to consider when deciding if someone had just cause to leave a job. Having an obligation to care for a member of your immediate family is one of the circumstances.¹² Immediate family includes grandchildren.¹³

[28] I find that the Claimant wasn't obligated to care for her grandchildren. First, she had refused to move there twice before. Secondly, at the hearing, she was clear that she was there to help, but her son understood that she was only a back-up.

[29] Next, I have to decide if, in all the circumstances, whether the Claimant had reasonable alternatives to leaving her job when she did.

The Claimant had a reasonable alternative

[30] I find that the Claimant had a reasonable alternative to leaving when she did.

[31] The Commission says that the Claimant could have secured a job in Saskatchewan before leaving. It says that there is no evidence that she looked for more affordable living accommodations or that she looked for a new job in Nova Scotia that would meet her financial needs. It says she made a personal decision to leave her employment to be nearer her family and help with the care of her grandchildren. There was no immediate need for her to move.¹⁴

[32] I don't agree with all of the Commission's alternatives. For example, I accept that the Claimant had looked for and couldn't find more suitable living accommodations. And finding another job in Nova Scotia wouldn't have helped with her feelings of isolation from being so far from her only living child.

¹² See sections 29(c)(v) and (xiv) of the EI Act, and section 55.1(b) of the *Employment Insurance Regulations*.

¹³ See sections 55.1 (b) and 55(1)(b) of the *Employment Insurance Regulations*.

¹⁴ See pages GD4-3 and 4-4.

[33] However, in all the circumstances, a reasonable alternative to leaving was to find a job in Saskatchewan (or even to have had a reasonable assurance of one) before she left her job in Nova Scotia.

[34] I find that this was a reasonable alternative because none of the circumstances created an urgency for her to move. For example, she confirmed that another grandparent was available to help with childcare.¹⁵ So there was no urgent need for her to be there for childcare purposes.

[35] I understand that her financial situation was a motivating factor in her move. But leaving a job to improve your financial situation isn't just cause under the EI Act. The courts are clear that staying employed until a new job is secured, without more, is generally a reasonable alternative to leaving.¹⁶

[36] Similarly, leaving a job for personal reasons, like wanting to be closer to family, or having a better work-life balance, isn't just cause under the EI Act.

[37] In all the Claimant's circumstances, looking for a new job before leaving the old one was a reasonable alternative.

[38] The Claimant told me that she looked to see what opportunities existed before she moved, but she didn't apply for any jobs. She felt she needed to be there before applying for work.¹⁷

[39] I disagree. It was reasonable for her to look for and apply for work in Saskatchewan before she left her job in Nova Scotia. Since moving she has looked for work online and has also applied for work online. She could have done the same from Nova Scotia, before leaving her job. If she had had an interview, she could have requested a video or telephone interview.

¹⁵ See the Claimant's notes on page GD2-7.

¹⁶ See *Canada (Attorney General) v Graham*, 2011 FCA 311.

¹⁷ This is on the recording about 27:25.

[40] There is no doubt that the Claimant had very good reasons for leaving her job. But those reasons, even when considered together, don't amount to just cause under the EI Act.

[41] Because the Claimant had a reasonable alternative to leaving, she didn't have just cause for leaving her job.

[42] So, the disqualification from receiving EI benefits remains.

Availability

[43] To receive EI benefits, claimants have to prove that they are "capable of and available for work" and can't find a suitable job.¹⁸ A claimant has to prove this on a balance of probabilities. This means they have to show that it is more likely than not that they were available for work.

– Capable of and available for work

[44] To prove her availability, the Claimant has to prove the following three things:

- a) She wanted to go back to work as soon as a suitable job was available.
- b) She made efforts to find a suitable job.
- c) She didn't set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.¹⁹

¹⁸ See section 18(1)(a) of the Act. There is also a section of law that says that the Commission can ask the Claimant to prove that she was making reasonable and customary efforts to find work. This is set out in section 50(8) of Act. The Commission mentioned this section of law in its representations (see page GD4-5), but it didn't explain how the Claimant failed to meet this condition, and it didn't mention a disentitlement under this section in its documents (GD3). As it seems the Commission didn't disentitle the Claimant under this section of law, I haven't included it in my decision. But if I had, I would have found that she had made reasonable and customary efforts.

¹⁹ 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.

[45] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.²⁰

[46] The Commission says that according to the Claimant's initial statements on her application form, she relocated to care for her grandchildren as there was no one else to help. She placed restrictions on the hours of her availability, which restricted her ability to accept all suitable work. And at the time it reviewed her availability, she hadn't applied for any jobs.²¹

[47] The Claimant told me that she always intended on finding a job in Saskatchewan. She said that she didn't apply for EI benefits as soon as she moved because she thought she was going to find a job. She wanted a job more than she wanted EI benefits. She thought she would have to repay the benefits the next year on her taxes.

[48] I find that the Claimant has proven her availability. This is why:-

– **A desire to return to work**

[49] She has proven that she had a desire to return to work as soon as a suitable job was available.

[50] I recognize that she left a full-time job. But since moving to Saskatchewan in early January 2023, before her benefit period started, she's been actively looking for work. She doesn't want to have to rely on her son's financial help. She is a worker and wants to work. During the hearing she expressed how upset she is with the ageism she has experienced during her job search.

– **Job search proves she wants to work**

[51] The Claimant's job search efforts show that she wanted to get back to work. To find a job she:

²⁰ These two decisions set out this requirement: *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

²¹ See page GD4-4.

- Has looked for work online, twice a day, Monday to Friday, using the library computer (Bank websites, different companies, Indeed, Jobbank.ca)
- Has registered with Jobbank.ca
- Has applied for two jobs online (the only suitable jobs she has found)
- Asked about a job at a clothing store
- Carries her resume with her and leaves them where they will accept them
- Has expanded her job search beyond banking jobs, including temp jobs

– **No personal conditions**

[52] The Claimant doesn't have any personal conditions that would have unduly limited her chances of finding a job.

[53] At the hearing, she clarified her availability. She is available Monday to Friday, during normal business hours. She is only a back-up sitter for her grandchildren. She told her son that she wasn't a sitter – it wasn't a job that she would ever want.²² Since moving, she only had to pick up the kids from school twice, and she isn't babysitting during the summer.²³ So acting as a back-up sitter wouldn't have unduly limited her chances of finding a job.

– **She's proven her availability for work**

[54] Given my findings on the three factors, the Claimant has proven her availability for work. This means there is no disentitlement for availability.

²² This is on the recoding about 41:40.

²³ The oldest watches the youngest, and the middle child is at camp.

Conclusion

[55] The Claimant didn't have just cause to voluntarily leave her job, but she has proven that she was available for work. This means the disqualification stays but the disentitlement is removed.

[56] Because the disqualification stays, the Commission can't pay her EI benefits.

[57] The part of the appeal about just cause for voluntarily leaving her job is dismissed. The part of the appeal about availability is allowed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section