



Citation: *ZU v Canada Employment Insurance Commission*, 2023 SST 1645

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

## Decision

**Appellant:** Z. U.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (559673) dated December 15, 2022 (issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Teleconference

**Hearing date:** July 18, 2023

**Hearing participant:** Appellant

**Decision date:** July 31, 2023

**File number:** GE-23-910

## Decision

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

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for taking a leave of absence from her job when she did. The Appellant didn't have just cause because she had reasonable alternatives to leaving. This means she is disentitled from receiving Employment Insurance (EI) benefits.

[3] The Appellant isn't entitled to EI benefits while she was outside Canada.

[4] The Appellant hasn't shown that she was available for work. This means that she is disentitled from receiving EI benefits for this reason.

## Overview

[5] The Appellant's mother passed away. She asked her employer for a leave of absence, then left Canada to attend the funeral. The Appellant applied for EI benefits.

[6] The Appellant intended to be outside Canada for one month. But her permanent resident (PR) card was expired. It took several months for her to get a travel document to return to Canada.

[7] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for taking a leave of absence. It decided that she voluntarily took a leave of absence from her job without just cause, so it wasn't able to pay her benefits.

[8] I have to decide whether the Appellant voluntarily took a leave of, and if so, whether she has proven that she had no reasonable alternative to taking the period of leave from her job.

[9] The Commission says the Appellant could have returned to work before she exhausted her paid leave. It says although the circumstances were unfortunate, the leave she took was personal in nature, and it was her responsibility to ensure her documents were in order before leaving Canada.

[10] The Appellant disagrees and says she didn't plan to stay outside Canada and be off work for more than one month.

[11] The Commission decided that the Appellant was disentitled from receiving EI regular benefits from July 20, 2022, because she was outside Canada.

[12] I have to decide if the Appellant was entitled to benefits while she was outside Canada. Usually, claimants aren't entitled to benefits while outside Canada. To be entitled to benefits, they have to prove that they meet one of the exemptions listed in the law.

[13] The Commission says the Appellant isn't entitled to benefits while outside Canada. The Appellant doesn't disagree, but she says she has suffered emotional and financial injury while outside Canada.

[14] The Commission also decided that the Appellant is disentitled from receiving EI benefits as of July 20, 2022, because she wasn't available for work. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[15] I must decide whether the Appellant has proven that she is available for work. The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she is available for work.

[16] The Commission says the Appellant wasn't available because she was been outside Canada beyond the seven-day period allowed for attending a funeral of an immediate family member.

## **Matter I have to consider first**

### **The Appellant didn't send the Commission's reconsideration decision**

[17] The Claimant has to send the Tribunal a copy of the Commission's decision with her notice of appeal.<sup>1</sup> She didn't do so. I have a copy of the Commission's file that has this decision. So, I don't need the Claimant to send it.<sup>2</sup>

## **Issues**

[18] Is the Appellant disentitled from receiving benefits because she voluntarily took a leave of absence from her job without just cause?

[19] Was the Appellant entitled to EI benefits while she was outside Canada?

[20] Was the Appellant available for work?

## **Analysis**

### **Voluntary leave of absence**

[21] To decide whether the Appellant is entitled to EI benefits, I must first address the Appellant's voluntary leave of absence. I then have to decide whether the Appellant had just cause for leaving.

[22] The Commission must prove that the Appellant voluntarily took a leave of absence from her job. Then, the Appellant must show just cause for voluntarily taking the leave of absence. She must show that she had no reasonable alternative to taking the leave from her job.<sup>3</sup>

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<sup>1</sup> Paragraph 24(1)(b) of the *Social Security Regulations* .

<sup>2</sup> Paragraph 3(1)(b) of the *Social Security Regulations*.

<sup>3</sup> *Green v. Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v. White*, 2011 FCA 190.

– **The parties agree that the Appellant voluntarily took a leave of absence**

[23] I accept that the Appellant voluntarily took a period of leave from her job. The Appellant agrees that she did so as of July 29, 2022. I see no evidence to contradict this.

– **The parties don't agree that the Appellant had just cause**

[24] The parties don't agree that the Appellant had just cause for voluntarily leaving her job when she did.

[25] The law says that you are disentitled from receiving benefits if you voluntarily take a period of leave from your job and you didn't have just cause.<sup>4</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[26] 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 take leave from your job when you did. It says you have to consider all the circumstances.<sup>5</sup>

[27] It is up to the Appellant to prove that she had just cause.<sup>6</sup> 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 option was to take a leave of absence. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant took her leave of absence.

[28] The Appellant says she took a leave of absence from her job because her mother passed away. She had to leave Canada to go to the funeral.

[29] The Commission says the Appellant didn't have just cause, because she had reasonable alternatives to taking the period of leave when she did. Specifically, it says the Appellant could have exhausted her leave before taking a leave of absence. It also

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<sup>4</sup> Section 32 of the *Employment Insurance Act* (Act) explains this.

<sup>5</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>6</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

says it was her responsibility to make sure her documents were in order before she left Canada.

[30] I find that the Appellant had good cause to take the period of leave when she did. But I don't find that she had no reasonable alternatives to taking the leave of absence for reasons that follow.

[31] The Appellant's mother passed away on July 12, 2022. On the same day, the Appellant asked her employer for a non-medical leave of absence for 40 days. She left Canada on July 17, 2022, to attend her mother's funeral.

[32] The Commission spoke to the Appellant's employer. The employer said the Appellant took banked time, statutory leave, and vacation from July 12 to 27, 2022. The employer said that after this, the Appellant was on unpaid general personal leave.

[33] The employer issued a record of employment. It shows that the last day it paid the Appellant for was July 28, 2022, and that the reason it was issued was due to a leave of absence. So, despite what the employer told the Commission, I find that the Appellant took a leave of absence from her job from July 29, 2022, since she was last paid for July 28, 2022.

[34] The Appellant testified that her plan wasn't to stay longer than about a month. She said she left Canada on July 17, 2022. She added that maybe it wasn't the right decision, but if she didn't go, maybe that would not have been the right decision either.

[35] The Appellant said she had been off work from December 3, 2021, to March 29, 2022, spending time with her mother who had stage four cancer. She said she knew that her PR card had expired before she left Canada. But she was advised that she would be able to return to Canada with a PR travel document. Her return to Canada was delayed until January 22, 2023, while she waited for this travel document.

[36] I find that the Appellant was in a very difficult position given the circumstance of losing her mother. So, I agree with her that she made the right decision to take a leave of absence from work so she could attend the funeral. But I find that this is a personal

choice which doesn't amount to just cause. I find she could have tried to renew her PR card before leaving Canada so she could return when she intended.

– **So, did the Appellant have just cause to take a voluntary leave of absence?**

[37] Based on my findings, I don't find that the Appellant has shown that she had no reasonable alternative to taking the leave of absence when she did. This means she did not have just cause to take the leave of absence from July 29, 2022.

### **Availability**

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

[39] First, the *Employment Insurance Act* (Act) says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.<sup>7</sup> The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.<sup>8</sup>

[40] The Commission states that they disentitled the Appellant under section 50 of the Act along with sections 9.001 of the Regulations for failing to prove her availability for work. In its submissions, the Commission says that showing availability requires a claimant to make reasonable and customary efforts to find suitable employment.

[41] I find a decision of the Appeal Division on disentitlements under section 50 of the Act persuasive. The decision says the Commission can ask a claimant to prove that they have made reasonable and customary efforts to find a job. It can disentitle a claimant for failing to comply with this request. But the Commission has to ask the claimant to provide this proof and tell the claimant what kind of proof will satisfy its requirements.<sup>9</sup>

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<sup>7</sup> See section 50(8) of the Act.

<sup>8</sup> See section 9.001 of the Regulations)

<sup>9</sup> *L. D. v. Canada Employment Insurance Commission*, 2020 SST 688

[42] I don't find that the Commission asked the Appellant to provide her job search record to prove her availability. So, I don't find that she is disentitled under this part of the law.

[43] The second section of the law concerning availability 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.<sup>10</sup> Case law gives three things a claimant has to prove to show that they are "available" in this sense.<sup>11</sup> The Appellant has to prove the following three things:<sup>12</sup>

- a) She wants to go back to work as soon as a suitable job is available.
- b) She has made efforts to find a suitable job.
- c) She hasn't set personal conditions that might unduly (in other words, overly) limit her chances of going back to work.

– **Wanting to go back to work**

[44] In this case, I find that the Appellant wanted to return to work, and she had a job to return to. She sent the Tribunal copies of emails she exchanged with her employer in September and October 2022. Once she was able to return to Canada, she returned to her job. So, I am satisfied that she wanted to return to work.

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

[45] The Appellant testified that as a citizen of the country where she was, she could have worked. But she didn't look for any work there for the first couple of months she was outside Canada. She said at that time, she didn't know she could work where she was. She stated that although finding a job wasn't easy where she was, she found a job in a hospital and was going to start the job, but she got the travel document to return to Canada.

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<sup>10</sup> See section 18(1)(a) of the Act.

<sup>11</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>12</sup> 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.



[46] I find that the Appellant had a job to return to and she made some efforts to look for a job where she was when she could not return to Canada. So, I'm satisfied that she made enough effort to find a suitable job.

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

[47] Despite the above, I find that the Appellant set a personal condition that unduly limited her chances of returning to work. I find this because the Appellant didn't have a valid travel document to return to Canada.

[48] As noted above, the Appellant's PR card expired before she left Canada. She called the responsible government department and learned that she could get a PR travel document to return to Canada.

[49] The Appellant applied for the required travel document from outside Canada. Due to the unexpected length of time it took to get the travel document, the Appellant was unable to return to Canada until January 22, 2023.

[50] I sympathize with the Appellant given the loss of her mother and the added experience of not being able to return to Canada because she didn't have a valid travel document. But I find that not having a travel document to return to Canada prevented her from returning to Canada so she could return to her job.

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

[51] Based on my findings on the three factors, I find that from July 18, 2022, when the Appellant was outside Canada, until she returned on January 22, 2023, she hasn't shown that she was capable of and available for work but unable to find a suitable job.

## **Outside Canada**

[52] Claimants are not entitled to receive benefits for any period when they are not in Canada.<sup>13</sup> There are some exceptions to this rule.<sup>14</sup> There is an exemption for a claimant who is outside Canada to attend the funeral of a member of the claimant's

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<sup>13</sup> See section 37(b) of the *Employment Insurance Act* (Act).

<sup>14</sup> See section 55(1) of the *Employment Insurance Regulations* (Regulations).

immediate family.<sup>15</sup> But these exemptions are subject to the requirement that a claimant can prove they are available for work.<sup>16</sup>

[53] The Appellant testified that she left Canada on July 17, 2022, to attend her mother's funeral. This is the same as what she told the Commission. She also told the Commission that the funeral was held on July 21, 2022.

[54] The Commission decided that the Appellant was entitled to benefits from July 13, 2022, to July 19, 2022, because she was outside Canada for the purpose of attending her mother's funeral.

[55] I don't agree with the dates that the Commission says the Appellant was entitled to benefits. This is because the Appellant didn't leave Canada until 11:45 p.m. on July 17, 2020. I have no reason to disbelieve her evidence about the date she left, especially since this is the same date she gave the Commission. So, I find that if she were entitled to benefits, it would be from July 18, 2022, to July 24, 2022. The reason would be that she was outside Canada to attend her mother's funeral.

[56] Despite the above, I have already found that the Appellant hasn't prove that she was available for work. So, for this reason, I don't find that she meets the exception to the rule that claimant's who are outside Canada aren't entitled to EI benefits.

[57] The Appellant and her two witnesses testified about the financial challenges and stress she faced because of not being able to return to Canada when she intended. Each believes that the Appellant deserves the help she would get from being able to get EI benefits.

[58] I sympathize with the Appellant in the circumstances. But, while I sympathize with her situation, I can't change the law.<sup>17</sup> I don't find that any other exception to the rule about not getting benefits while outside Canada applies to the Appellant. So, I find

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<sup>15</sup> See section 55(1)(b) of the Regulations.

<sup>16</sup> See section 55(1) of the Regulations and section 18 of the Act.

<sup>17</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

that she isn't entitled to EI benefits for this reason from July 18, 2022, to January 22, 2023.

## **Conclusion**

[59] On the issue of voluntarily taking a period of leave, the Appellant is disentitled from receiving benefits because she did not have just cause to take the leave of absence when she did.

[60] On the issue of being outside Canada, the Appellant hasn't shown that she is entitled to EI benefits.

[61] On the issue of availability, the Appellant hasn't shown that she was available for work within the meaning of the law. Because of this, I find that she is disentitled from receiving EI benefits.

[62] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section