



[TRANSLATION]

Citation: *PN v Canada Employment Insurance Commission*, 2023 SST 1921

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

**Decision**

**Appellant:** P. N.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (578583) dated May 3, 2023  
(issued by Service Canada)

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**Tribunal member:** Jacques Bouchard  
**Type of hearing:** Videoconference  
**Hearing date:** August 29, 2023  
**Hearing participant:** P. N.  
**Decision date:** September 12, 2023  
**File number:** GE-23-1486

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown just cause (in other words, a reason the law accepts) for leaving her job when she did. The Claimant had just cause because she had no reasonable alternative to leaving. This means she isn't disqualified from receiving Employment Insurance (EI) benefits.

## Overview

[3] The Claimant left her job on September 3, 2022, and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It found that she voluntarily left (or chose to quit) her job without just cause, so it wasn't able to pay her benefits.

[4] I have to decide whether the Claimant has proven that she had no reasonable alternative to leaving her job.

[5] The Commission says that, instead of leaving her job, the Claimant could have exhausted all reasonable alternatives before leaving, including keeping her job at X in Ottawa instead of returning to school in Sudbury.

[6] Also, the Commission adds that the Claimant refused a full-time position at X in Sudbury several times. The Commission says that the Claimant is taking training on her own initiative and hasn't shown that she is available for work.

[7] The Claimant disagrees and says that her employer refused her transfer from Ottawa to Sudbury. She didn't quit her job as the Commission says she did. Human resources (HR) had assured her she would be transferred from X Ottawa and had three interviews with X Sudbury. She adds that she was available for work and that the flexible hours at X made it possible for her to work and study at the same time.

[8] The Claimant decided, with her employer, to go back to school in special education to enhance her skills. She had been working as an orderly for the employer,

X Ottawa, since July 2018. Wishing to take training in special education techniques in Sudbury, the Claimant asked to be transferred to X Sudbury.

[9] This led to several discussions with the HR department in Ottawa and Sudbury which were initiated by the HR supervisor in Ottawa. The Claimant says that everything seemed in order and that her transfer would be just a formality. There were several email exchanges, she sent her resume and proof of vaccination, and she had three telephone interviews about schedules and work arrangements.

[10] During this transitional period, the Claimant finalized her enrolment at Collège Boréale in Sudbury, provided her schedule to the employer, and discussed her availability on Tuesdays, Wednesdays, and Fridays in the evening and on weekends. The Claimant explains that her availabilities fit very well with the duties of an orderly, since it is understood that this is a service offered 24/7.

[11] Following the Claimant's move, X from Sudbury changed its mind and said that her availability wasn't suitable for a full-time position. The Claimant seeks EI benefits and considers the refusal of X Sudbury to offer her a position suitable to her schedule to be a dismissal.

[12] The Claimant explains that she felt betrayed and misled by her employer about the hiring process when it was supposed to be a transfer.

[13] The issue before the Tribunal is whether the Claimant had just cause to leave and whether she had exhausted all reasonable alternatives before leaving. With this in mind, the Tribunal will consider whether the Claimant had reasonable assurance of another job in the immediate future, as set out in section 29(c)(vi) of the *Employment Insurance Act* (Act).

## **Issue**

[14] Is the Claimant disqualified from receiving benefits because she voluntarily left her job without just cause?

[15] To answer this, I must first address the Claimant's voluntary leaving. I then have to decide whether she had just cause for leaving and whether she was available, since she was taking a full-time course in special education.

## **Analysis**

### **The parties don't agree that the Claimant had just cause**

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

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

[18] The law explains what it means by "just cause." It 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.<sup>2</sup>

[19] It is up to the Claimant to prove that she had just cause. 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 quit.<sup>3</sup>

[20] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when she quit. The law sets out some of the circumstances I have to look at.<sup>4</sup>

[21] 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.<sup>5</sup>

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<sup>1</sup> See section 30 of the *Employment Insurance Act* (Act).

<sup>2</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>3</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

<sup>4</sup> See section 29(c) of the Act.

<sup>5</sup> See section 29(c) of the Act.

## **The circumstances that existed when the Claimant quit**

[22] The Claimant says that one of the circumstances set out in the law applies to her case. Specifically, she had reasonable assurance of another job as soon as she arrived in Sudbury. There was absolutely no indication that X Sudbury would not hire her, since HR in Ottawa had directed her favourably to that end, and her four years of experience with the company should have weighed in the balance of probabilities.

[23] The Tribunal finds the Claimant's statement credible that HR in Ottawa had directed her to transfer and had started the process with X Sudbury in her favour. In all likelihood and based on the information on file, the Claimant never thought of leaving her job. Instead, she thought of transferring to the Sudbury office. She says that she had reasonable assurance of a new job.

[24] Concerning the Commission's information that the Claimant was taking training on her own initiative and that she hadn't shown that she was available for work, the Tribunal finds that the hours the Claimant proposed show her availability and are suitable for an orderly's schedule. In fact, the Claimant testified at the hearing that she had worked for X Sudbury since October 18, 2022, which, in my view, removes the presumption that she could not work or wasn't available because she was studying special education techniques full-time.

[25] The Tribunal finds that experience working irregular hours is a factor to consider in the Claimant's file. She has worked irregular hours for four years and worked a lot of overtime, which shows her availability.

[26] The Tribunal also finds that the type of work the Claimant does also makes it possible for her to take a full-time course. Her recent work experience with X as an orderly shows this.

[27] I must now consider whether the Claimant had no reasonable alternative to leaving her job when she did.

[28] The Claimant says that this was the case because she was assured of a job transfer to an office in Sudbury and all discussions and emails indicated she would likely get the job. The Claimant never intended to leave; she intended to be transferred. Based on the information on file, the prospect of a job was real and well-founded according to the information from HR.

[29] The Commission disagrees and says that the Claimant could have continued working for X Ottawa instead of returning to school in Sudbury. The Commission also says that the Claimant didn't have just cause for leaving her job because leaving her job to go to school doesn't constitute just cause within the meaning of the Act.

[30] The Commission also says that this training was on her own initiative and that the Claimant hadn't shown that she was available for work.

[31] Considering everything mentioned above, I find that the Claimant had just cause for leaving her job at X Ottawa because she had reasonable grounds to believe that she would work in a similar position at X Sudbury, as set out in section 29(c)(vi) of the Act. She acted as any reasonable person would have acted in similar circumstances with the same assurances from the employer. With an impeccable record and the comments made by those involved, there was nothing to suggest her transfer would be refused.

[32] The only reason the employer gave was that every office director is independent when it comes to hiring procedures and transfers aren't automatic. The Tribunal finds that the Claimant could not have predicted such an outcome given all the administrative procedures that had been initiated beforehand.

[33] The Claimant provided an availability for work that fits with the type of job she was looking for—an availability that she had provided for more than four years at a similar job. The Tribunal finds that the Claimant was available for work, and she proved this by taking a new job from October 18, 2022; see *Page*.

[34] The Tribunal finds that the Claimant never intended to leave her job, but to transfer to another X office with HR's direction and encouragement.

[35] Given the circumstances that existed when the Claimant left her job, she had no reasonable alternative to leaving her job, for the reasons mentioned above.

[36] This means that the Claimant had just cause for leaving her job.

## **Conclusion**

[37] I find that the Claimant isn't disqualified from receiving benefits.

[38] This means that the appeal is allowed.

Jacques Bouchard  
Member, General Division – Employment Insurance Section