



Citation: *WD v Canada Employment Insurance Commission*, 2023 SST 1475

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: W. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (601560) dated June 28, 2023 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Teleconference

Hearing date: September 5, 2023

Hearing participant: Appellant

Decision date: September 6, 2023

File number: GE-23-1968

Decision

[1] On the issue of voluntary leaving, the appeal is dismissed.

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

[3] On the issue of availability, the appeal is allowed in part.

[4] The Appellant hasn't shown that he was available for work while he was in school. But, he stopped attending school by July 1, 2023. He has shown that he was available from this date. However, he still can't be paid benefits because of the disqualification set out above.

Overview

[5] The Appellant left his job to attend school. He applied for EI benefits. 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 the Appellant wasn't available for work while he was in school.

[6] I have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job. And whether he has proven he was available for work.

[7] The Commission says that the Appellant could have continued working rather than make a personal decision to go to school. It says the Appellant's school program restricted him from finding work.

[8] The Appellant disagrees and states that he attended school to better himself and improve his career opportunities to be a productive member of society. He was looking for part-time work while in school, but eventually had to leave his school program because he had no financial support. He is looking for full-time work now.

Issue

[9] Did the Appellant have just cause to voluntarily leave his job?

[10] Is the Appellant available for work?

Analysis

Did the Appellant have just cause to voluntarily leave his job?

– **The parties agree that the Appellant voluntarily left**

[11] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit. I see no evidence to contradict this.

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

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

[13] 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.

[14] 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

[15] It is up to the Appellant 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 Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant 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.

Circumstances that existed when the Appellant quit

[16] 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 Appellant to go to school.

[17] The parties agree that the Appellant didn't get a referral to go to school. So, this circumstance doesn't apply to him.

[18] The Appellant said that he quit because he wanted to change careers. He had been transferred into his job two years before he left. He had been working as a water technician at a different location, but his duties changed when he was transferred. He was working as a labourer, which wasn't using his skills and didn't have chances to progress his career. He applied for other jobs with the employer, but was never hired.

[19] He applied for other jobs outside of his employer, too. Then, he looked at starting a school program. He found a practical nursing program that would allow him to change careers. He applied and was accepted into the program in early 2023. He told his employer that he was leaving to pursue other opportunities.

[20] I accept that the Appellant's job duties changed when he was transferred to this location.⁴ But, that was two years ago. I recognize and understand that he was unhappy in his job and felt that his skills weren't being used to their full potential. However, by continuing to work in this job for two years, the Appellant accepted this change to his duties. He hasn't shown that there was a reason he had to leave his job when he did because of this change in his job duties.

[21] Further, the Appellant stated clearly and consistently that he left his job when he did because he was starting school. He told the Commission that he wouldn't have left his job without having "something to go into" before he quit. For this reason, I find the Appellant left his job to go to school.

⁴ Significant changes to work duties is one of the circumstances set out in law as an example that I have to consider when I look at whether a claimant had just cause to leave their job. See section 29(c) of the Act.

[22] 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.⁵

[23] School was the real reason the Appellant's decided to quit. So, the case law applies to the Appellant. This means that the Appellant doesn't have just cause.

[24] I understand that the Appellant 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.⁶

Was the Appellant available for work?

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

[26] 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.⁷ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.⁸

[27] Second, the 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.⁹ Case law gives three things a claimant has to prove to show that they are "available" in this sense.¹⁰

- The Appellant is only disentitled under one section of the law

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

⁵ See *Canada (Attorney General) v Caron*, 2007 FCA 204.

⁶ See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

⁷ See section 50(8) of the *Employment Insurance Act* (Act).

⁸ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁹ See section 18(1)(a) of the Act.

¹⁰ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[29] But, the Commission didn't require him to prove that he made reasonable and customary efforts. When the Commission decided that he was disentitled, it didn't discuss his job search efforts or ask him to prove that his efforts met certain criteria.¹¹ Rather, its focus was on him attending school full-time.

[30] The Commission must reconsider an issue before the Tribunal can make a decision about it.¹² In this case, there's no evidence that the Commission looked at whether the Appellant's efforts to find work were reasonable and customary.

[31] I would be exceeding my jurisdiction if I considered whether the Appellant had made reasonable and customary efforts to find a suitable job. So, I will only look at whether he was capable of and available for work and unable to find suitable employment.

Capable of and available for work

[32] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:¹³

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

[33] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹⁴

¹¹ Some criteria help explain what "reasonable and customary efforts" means. These are set out in section 9.002 of the Act.

¹² Section 113 of the Act says that I can't decide an issue if it has never been reconsidered by the Commission under section 112 of the Act

¹³ 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.

¹⁴ 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.

– **Wanting to go back to work**

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

[35] The Appellant was working full-time. He left that job in April 2023, to start a full-time school program. He said that he couldn't continue working because his work schedule conflicted with his course schedule. Before leaving, the Appellant asked his employer if he could work part-time or flexible hours around his course. The employer refused because it didn't have any part-time positions available.

[36] The Appellant testified that he started looking for another job immediately. At first, he was seeking part-time work around his school schedule. But, after months had passed, he realized he needed to leave school to find a full-time job. He couldn't pay his bills. He needed to work and couldn't find a part-time job. He left his school program by July 1, 2023, and started looking for a full-time job.

[37] The Appellant left his full-time job to go to school. Typically this would tell me that he hasn't shown that he wanted to go back to work as soon as he could. However, I put weight on the efforts he made to try to keep his job while attending school. He asked the employer for part-time hours or flexible hours so he could keep working. Unfortunately, the employer couldn't provide anything other than a full-time job during daytime hours.

[38] The Appellant's attitude and conduct in looking for work around his school schedule tells me that he wanted to go back to work as soon as he could find a suitable job. When he left school, he started looking for full-time jobs, which supports that finding work was his first priority.

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

[39] The Appellant made enough efforts to find a suitable job.

[40] The Appellant was actively looking for other work. He had a resume prepared in both French and English, as he is multi-lingual and open to job opportunities in both of

those languages. He used job search websites, visited prospective employers, and networked with friends about potential jobs.

[41] The Appellant said he was looking for and applying for jobs every day, even while he was in school. He attended several interviews, as well.

[42] I believe the Appellant was looking for work. He has met this second factor.

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

[43] The Appellant did set personal conditions that might have unduly limited his chances of going back to work from April 17, 2023, to June 30, 2023 (while he was in school).

[44] The Commission says the Appellant set a personal condition because he was attending a full-time school program and wasn't willing to leave school to accept a job.

[45] The Appellant agreed that he was only willing to work around his course schedule at first, but says he was available for a part-time job that he could work in the evenings.

[46] The Appellant was seeking a part-time job while he was in school, but said that he had trouble finding one. Most of the employers he spoke to were only offering full-time jobs.

[47] Availability must be demonstrated during regular hours for every working day and cannot be restricted to irregular hours resulting from a course schedule that significantly limits availability.¹⁵

[48] As a result, I find the Appellant's school attendance was a personal condition that might have overly limited his chances of returning to work.

¹⁵ See *Attorney General of Canada v Bertrand*, A-613-81.

[49] However, this only applies while he was in school. He testified that he left school by July 1, 2023.¹⁶ So, this restriction doesn't apply to him from that time.

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

[50] Based on my findings on the three factors, I find that the Appellant hasn't shown that he was capable of and available for work but unable to find a suitable job from April 17, 2023, to June 30, 2023. His school attendance was a personal condition that might have overly limited his chances of returning to work.

[51] I find the Appellant has met all three factors by July 1, 2023, when he left school.

Conclusion

[52] The Appellant voluntarily left his job without just cause. This means he is disqualified from receiving EI benefits.

[53] The Appellant has shown he was available for work from July 1, 2023. However, he still can't be paid EI benefits because of the disqualification.

Catherine Shaw

Member, General Division – Employment Insurance Section

¹⁶ The Appellant stated at the hearing that he left school "around June 17th"; however, this conflicts with information that he had previously given the Commission. For example, the Commission provided notes of a conversation it had with the Appellant on June 29, 2023. These notes indicate the Appellant said he was currently attending school full-time and was only available for part-time work (see GD3-43). I believe the Appellant when he said that he had left school, but the estimated date he gave at the hearing doesn't make sense in relation to the other evidence. So, I have used July 1, 2023, as the date he left school by. I think this date is close to the date he gave at the hearing, but is past the latest evidence on file that he was still attending school.