Citation: *AW v Canada Employment Insurance Commission*, 2023 SST 687

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. W.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (561617) dated January 4, 2023 (issued by Service Canada)

Tribunal member:	Susan Stapleton
Type of hearing:	Teleconference
Hearing date:	May 10, 2023
Hearing participants:	Appellant Appellant's representative
Decision date:	May 26, 2023
File number:	GE-23-261

Decision

[1] The appeal is allowed. The Appellant didn't take a voluntary leave of absence from her job, as defined by section 32 of the *Employment Insurance Act* (Act). This means she is not disentitled from receiving Employment Insurance (EI) benefits.

Overview

[2] The Appellant stopped working as a Central Supply Aide for Health Prince Edward Island (PEI), on September 4, 2022. She started the second year of a university nursing course on September 7, 2022.

[3] The Commission decided that the Appellant had voluntarily left her employment without just cause, so it was unable to pay her EI benefits. On reconsideration, it decided that she was not entitled to benefits because she had taken a voluntary leave of absence from her job without just cause. It says that even though the Appellant was approved by a designated referral authority to take her course, she didn't have authorization to take a leave of absence from her job. It says that she didn't have just cause to take a leave of absence from her job to go to school.[1]

[4] The Appellant disagrees with the Commission's decision. She says she didn't take a voluntary leave of absence from her job. She says that her job was a temporary position – she signed a contract at the beginning of July, and it ended on September 6th. She was approved to take her course. She worked in the same job under the same circumstances the previous year, and received EI when she went back to school.[2]

Matter I must consider first

[5] After the hearing, the Appellant submitted a copy of an email from the employer.[3] The email is related to the employer amending the Appellant's Record of Employment (ROE).

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[1] See GD4-4.
[2] See GD2-6.
[3] See GD7-2.

[6] After reviewing the document, I find that it is relevant to the issue on appeal, because it relates to the question of why the Appellant's employment ended. So, I accepted it into evidence and will consider it in deciding this appeal.

Issue

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

Analysis

[8] Claimants are disentitled from receiving EI benefits when they take a period of leave from their employment without just cause.[4] First, the Commission must prove that the Appellant voluntarily took the leave. Then the Appellant must show that she has just cause for voluntarily taking the leave by showing that, given her circumstances, she had no reasonable alternative to leaving her employment when she did.[5]

The Appellant didn't take a voluntary leave of absence according to the Act

[9] A voluntary leave of absence must meet criteria. The Appellant must have asked for the leave. The employer must authorize the leave, and both the Appellant and the employer must agree to a date of return to employment.[6]

[10] In her application for benefits, the Appellant said that she stopped working because there was a shortage of work. She said she didn't know whether she would be returning to work for the employer. She said she was referred to take her nursing course at the University of X, beginning on September 7, 2022, and ending the following May 1st.[7]

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[4] See Section 32(1) of the Act.
[5] See *Canada (A.G.) v. White*, 2011 FCA 190.
[6] See Section 32(1)(a) and (b) of the Act.
[7] See GD3-3 to GD3-17.

[11] The employer issued an ROE on October 17, 2022. The ROE was completed by R. S. It said that the Appellant had quit her job to return to school, "not due to a lack of shifts."[8]

[12] On October 25, 2022, the Appellant told the Commission that the reason for separation from her employment was a shortage of work. She said she would contact her employer to update her ROE.[9]

[13] The employer issued a second ROE on October 31, 2022. This ROE was completed by M. M. The reason for issuing was "other" and it was noted that the Appellant was working reduced hours and had returned to school.[10]

[14] The Commission spoke to T. B. from the employer on November 2, 2022. T. B. said that the Appellant had asked for a leave of absence to return to school, and that it was approved. T. B. said the Appellant was still on the employer's payroll and could work if she was available. She said there was no shortage of work.[11]

[15] The Appellant's Member of Parliament (MP)'s assistant contacted the Commission on November 22, 2022, and said that the Appellant had a contract with the employer, and the contract ended.[12] The assistant told the Commission on November 30, 2022, that the Appellant was a casual employee who had returned to school, and that the reason for separation indicated on the October 31, 2022 ROE was incorrect.[13]

[16] The Commission decided that the Appellant wasn't entitled to benefits because she voluntarily left her employment without just cause.[14]

[17] In her request for reconsideration form, the Appellant said that she left her job to go to school through a government-approved program. She said she received EI

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[8] See GD3-18.
[9] See GD3-24.
[10] See GD3-19.
[11] See GD3-25.
[12] See GD3-28.
[13] See GD3-30.
[14] See GD3-27.

benefits the previous year without issues, and that her situation this year was the same.[15]

[18] A third ROE was issued by the employer on December 12, 2022. This ROE was completed by M. D. The reason for issue was noted to be "shortage of work/end of contract or season." M. D. noted that the Appellant was returning to school.[16]

[19] The Commission's reconsideration officer tried unsuccessfully to reach the Appellant to discuss her request for reconsideration.[17] On reconsideration, the Commission changed its original decision, and found that the Appellant was disentitled from receiving benefits under section 32 of the Act, because she stopped working by voluntarily taking leave from her job without just cause.[18]

[20] A fourth ROE was issued by the employer on January 20, 2023. This ROE was also completed by M. D. The reason for issue was noted to be "shortage of work/end of contract or season."[19]

[21] The Appellant submitted a screenshot of a text message sent to her by M. D. on January 19, 2023. In it, M. D. wrote "not sure why they are having an issue with 'returning to school,' when I have shortage of work or end of contract…we have over 6000 employees and according to what we see, you are not set up as a normal student. You went into a temporary position this summer…This is why the first ROE was done up the way it was, you look like a casual employee who applied and received a temporary position, now decided to reduce her hours and go back to school."[20]

[22] After the hearing, the Appellant submitted a copy of an email message sent to her by M. D. On December 12, 2022, M. D. wrote "…I have reviewed everything and we have amended your ROE to say 'shortage of work/end of detail' with a comment that you are returning to school. We very much appreciate you working with us while going

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[15] See GD3-31-32.
[16] See GD3-20.
[17] See GD3-33.
[18] See GD3-34.
[19] See GD3-21.
[20] See GD2-14.

to school. I hope this will resolve your problems." On January 20, 2023, M.D. wrote "I removed the comment about going to school. 'Shortage of work/end of contract' is the same pick and that is what we have."[21]

[23] The Appellant testified as follows:

- She is taking a university nursing program, and has completed two years of the course. She was referred by Skills PEI to take the course.

- She was working in a temporary position from July to September, 2022. The employer told her to apply for the temporary position, which she did. The position guaranteed that she would work a certain number of hours every week. She signed a contract for the position.

- T. B. (who spoke to the Commission) was confused about her situation, because she had taken the temporary position. T. B. wasn't her boss and didn't schedule her for work.

- Her first two ROEs were filled out incorrectly. The people who filled them out were confused about her situation, due to her taking the temporary position. The last two ROEs, that were completed by M. D. and say "shortage of work/end of contract or season," are correct. Her contract came to an end.

- She never asked her employer for a leave of absence. She talked to her manager about returning to work after she completed her 2022-2023 school year. She told him that she would probably be able to return at the beginning of May, but that she would speak to him about it closer to that date.

- She had to reapply to return to work for the employer in 2023. She went on the employer's website and submitted her application. She also talked to M. D. about returning to work.

[21] See GD7-2.

- She returned to work for the employer in May, 2023.

[24] The Appellant is represented by her mother. The representative gave the following sworn testimony at the hearing:

- She is a pharmacist and worked for the employer 25 years ago.
- When the Covid pandemic occurred, the employer was looking for pharmacists to give Covid vaccinations. The employer still had her on its payroll after 25 years, and she still had a valid employee number. But she doesn't consider herself an employee of the employer. Nevertheless, she worked for the employer for a period of time, giving Covid vaccinations.
- It worked the same way for the Appellant. After she finished high school and started working for the employer, the employer kept her on the payroll, but she had to reapply to return to work each summer.
- In 2022, the employer offered a new type of contract. The employer told the Appellant to apply for that contract, which she did. The contract ensured that the Appellant would work a certain number of hours every week.
- There was no commitment or agreement between the Appellant and the employer for her to return to work after her 2022-2023 school year. She only let the employer know in April or May 2023, that she wanted to return to work for the summer.

[25] I find that the Appellant is not disentitled from receiving benefits under section 32 of the Act.

[26] A claimant who voluntarily takes a leave of absence from employment without just cause, is not entitled to receive benefits **if** the period of leave was authorized by the

employer **and** the claimant and the employer agreed as to the date on which the claimant would resume employment.[22]

[27] The Commission argues that the Appellant took a leave of absence from her job without just cause.

[28] However, I find that the Appellant didn't take a leave of absence from her job. She didn't ask the employer for a leave of absence. There was no agreement about a date when the Appellant would return to work for the employer, or even if she would return.

[29] I acknowledge that there are discrepancies among the Appellant's ROEs. The Appellant testified, and I accept, that until the ROEs were completed by M.D., they were completed incorrectly. This is because because M. D. confirmed in her email that the Appellant was in a temporary position and her contract came to an end. M. D. explained in her email that the first ROE was completed the way it was because there was confusion around the Appellant's employment status, because she had taken the temporary position.

[30] I acknowledge that T. B. told the Commission that the Appellant asked for a leave of absence and was approved, and that the Appellant was still on their payroll and could work if she was available.

[31] But I accept the Appellant's testimony that she never asked for a leave of absence, and that there was no agreement between her and the employer that she would return to work in the summer of 2023. This is because the Appellant provided her testimony directly to me under affirmation and answered my questions about whether she had taken a leave of absence in a manner that was straightforward and consistent throughout the hearing.

[32] Although the Appellant was still on the employer's payroll, keeping employees on its payroll appears to be a practice of the employer, as explained by the representative

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[22] See *Canada (Attorney General)* v *Lamonde*, 2006 FCA 44

during the hearing. Being kept on the payroll doesn't lead me to conclude that the Appellant had taken a leave of absence.

[33] While I understand that the Appellant did return to work for the employer after she completed her 2022-2023 school year, this doesn't mean that she took a leave of absence in September 2022, as defined by section 32 of the Act. She testified that she reapplied to work for the employer, after she completed her 2022-2023 school year.

[34] For the above reasons, I find that the Appellant didn't take a leave of absence from her employment as defined by section 32 of the Act.

Conclusion

[35] The appeal is allowed. This means the Appellant isn't disentitled from receiving EI benefits under section 32 of the Act.

Susan Stapleton
Member, General Division – Employment Insurance Section