[TRANSLATION]

Citation: *HB v Canada Employment Insurance Commission*, 2024 SST 885

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	H. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (654765) dated April 30, 2024 (issued by Service Canada)

Tribunal member:	Jacques Bouchard
Type of hearing:	Videoconference
Hearing date:	July 3, 2024
Hearing participants:	H. B.
Decision date:	July 15, 2024
File number:	GE-24-1889

Decision

[1] The appeal is allowed in part. The Tribunal agrees with the Appellant that she had just cause for voluntarily leaving under sections 29 and 30 of the *Employment Insurance Act* (Act), but she didn't prove her availability. The issue of availability will be looked at in the second part—under sections 18, 50, and 9.001 of the *Employment Insurance Regulations* (Regulations).

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

Overview

[3] The Appellant left her job on February 15, 2021, and asked for EI benefits on April 18, 2021, after having received the Canada Emergency Response Benefit (CERB). The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided 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 Appellant has proven that she had no reasonable alternative to leaving her job.

[5] The Commission says that, instead of leaving her job when she did, the Appellant could have kept working part-time for Lunch Lady while taking training or until she found a suitable job.

[6] The Appellant disagrees and says that the working conditions were financially unsustainable. She says that she had to leave since she had COVID-19 symptoms, and that her employer could no longer give her enough hours because of the pandemic and the slowdown in business. The Appellant says that the work hours the employer offered didn't cover work-related expenses like travel and daycare. The Appellant says that the

employer told her to stay home given the public health situation, and that she would be told when business resumed (GD2-15).

[7] The Tribunal's General Division understands that the Appellant worked in an industry affected by the pandemic. During the period in question, different governments put health guidelines in place to mitigate the damage caused by the COVID-19 pandemic. The Appellant worked in the school system preparing meals—it was forced to shut down several times.

[8] At the hearing, the Appellant insisted that she first stayed home on preventive withdrawal—having COVID-19 symptoms—and that she then remained there following the employer's instructions, waiting for business to resume. In the meantime, the Appellant registered for part-time, remote early childhood training—15 to 24 hours per week—while claiming to be available for work. It should be noted that the Commission never reached the employer to confirm or deny the Appellant's statement. The Record of Employment (ROE) at GD03B-21 says that the Appellant left her job. The ROE covers the last period from October 10, 2020, to February 15, 2021.

[9] Although the Appellant said that she was available, her electronic reports provide new insight: At GD-03-B-8 and GD-03-B-10, she said that she would accept a job as long as she could finish her course. She said that her course ended on July 9, 2021, and that she spent about 2 hours a day on it. The certificate confirming her training shows that the Appellant completed 180 hours of training between April 2021 and July 2021. At the hearing, she said that there had been some confusion because she had always been available to go back to working for her employer since her training barely took up 2 hours a day—or about 15 hours a week—until July 9, 2021.

The Appellant says that she was available, but that employer X didn't call her back—which the employer doesn't deny.

Issue

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

[11] To answer this, I first have to address the Appellant's voluntary leaving. I then have to decide whether the Appellant had just cause for leaving.

Analysis

The parties agree that the Appellant voluntarily left

[12] I accept that the Appellant voluntarily left her job. The Appellant agrees that she quit on February 15, 2021. I see no evidence to contradict this.

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

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

[14] 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.

[15] 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]

[16] It is up to the Appellant 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.[3]

[17] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I have to look at.[4]

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[1] See section 30 of the *Employment Insurance Act* (Act).
[2] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[3] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[4] See section 29(c) of the Act.

[18] After I decide which circumstances apply to the Appellant, she then has to show that she had no reasonable alternative to leaving at that time.[5]

The circumstances that existed when the Appellant quit

[19] The Appellant says that some circumstances set out in the law apply. Specifically, she says there were significant changes in the terms and conditions respecting wages or salary because of a pandemic, as noted above: The employer offered a number of hours that don't cover travel or daycare expenses (GD3A-21).

[20] Based on the facts and evidence on file, the Appellant's statement is credible. The ROE on file confirms that the hours the Appellant worked fluctuated greatly, with some periods showing no earnings. It is more likely than not that the employer asked the employee to stay home until business resumed. In a situation like this, the Appellant had just cause to wait for business to resume. It should be noted that the employer didn't deny this agreement. The Appellant had a reasonable expectation of going back to her job—a job she had been doing since November 1, 2019.

[21] The circumstances that existed when the Appellant quit were exceptional because of the pandemic. At that time, several schools closed, and many restrictions impacted a large number of businesses; this included the Appellant's employer, which partly depended on schools.

The Appellant had no reasonable alternative

[22] I now have to look at whether the Appellant had no reasonable alternative to leaving her job when she did.

[23] The Appellant says that this was the case because the employer didn't give her enough hours to cover her travel expenses and other expenses related to keeping her job.

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[5] See section 29(c) of the Act.

[24] The Commission disagrees and says that the Appellant could have kept her part-time job while taking training.

[25] I find that the Appellant acted as any reasonable person would have acted in the same situation, given the exceptional nature of the period in question, the reasons set out above, and the employer assuring her that she would be called back as soon as business resumed.

[26] With an ongoing pandemic and a major cut in her working hours, the Appellant had no choice but to leave when she did. She had a reasonable assurance of being called back. It should also be noted that the training ended on July 9, 2021, and started again in October 2021.

[27] Considering the circumstances that existed when the Appellant quit, the Appellant had no reasonable alternative to leaving when she did, for the reasons set out above.

[28] This means the Appellant had just cause for leaving her job.

Availability

[29] The Commission imposed a disentitlement under sections 18 and 50 of the Act and section 9.001 of the Regulations because the Appellant didn't prove that she was available for work while taking a training course.

[30] The Appellant registered for training in the early childhood training and computer workshop program that started on April 19, 2021. Her training was from Monday to Friday, in the morning and afternoon. The Appellant said that she would not accept a job if it conflicted with her studies. She also mentioned that she hadn't looked for a job since she started her training (GD3B-8 to GD3B-11). In fact, the Appellant said that [translation] "if a full-time job became available and conflicted with the training program, [she] would choose the training instead of accepting the job" (GD3B-23 to GD3B-27).

[31] The evidence on file shows that her priority was to finish her training, and the Appellant failed to rebut the presumption that she wasn't available for work while taking training. The Appellant's responses are clear in that she would not give up her training if she were offered a job that conflicted with her schedule. At the hearing, the Appellant didn't contradict her statements to the Employment Insurance Commission. She maintained that she would have gone back to work for Lunch Lady if she had been called back.

[32] Considering the facts of the case and the Appellant's statements, I find that the Appellant hasn't shown a desire to go back to work or made efforts to enter the workforce, and that she has set conditions that would limit her chances of finding a job (*Faucher v Canada (AG)*, A56-96). The Appellant's statements are clear in that she wasn't available for work during her training.

[33] I find that the Appellant hasn't proven that she was available for work while taking training. It seems clear that the Appellant had a reasonable expectation of going back to her job on February 15, 2021—when she left—but that, from April 19, 2021, she hasn't proven her availability.

[34] So, the Tribunal's General Division agrees with the Commission on the disentitlement imposed under sections 18 and 50 of the Act and section 9.001 for the reasons mentioned above.

[35] Conclusion: Although the Appellant had just cause for leaving when she did, she hasn't proven her availability within the meaning of the Act.

[36] This means that the appeal is dismissed.

Jacques Bouchard

Member, General Division – Employment Insurance Section