Citation: *OD v Canada Employment Insurance Commission*, 2025 SST 757

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

# Decision

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| **Appellant:** | O. D. |
| **Respondent:** | Canada Employment Insurance Commission |

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| **Decision under appeal:** | Canada Employment Insurance Commission reconsideration decision (721592) dated May 7, 2025 (issued by Service Canada) |

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| **Tribunal member:** | Gerry McCarthy |
| **Type of hearing:** | Teleconference |
| **Hearing date:** | July 3, 2025 |
| **Hearing participant:** | Appellant |
| **Decision date:** | July 7, 2025 |
| **File number:** | GE-25-1869 |

## Decision

## Issue 1 (Voluntary Leaving)

[1] 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. The Appellant didn't show just cause because he had reasonable alternatives to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits from December 29, 2024.

## Issue 2 (Availability for Work)

[3] The appeal is dismissed.

[4] The Appellant hasn't shown that he was available for work while in school. This means he can't receive EI benefits from January 6, 2025.

## Overview

## Issue 1 (Voluntary Leaving)

[5] The Appellant left his job with "X of the National Capital" on December 31, 2024, and applied for EI benefits on January 11, 2025. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

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

[7] The Commission says the Appellant's decision to leave his job "prioritized" education over employment and was made voluntarily.

[8] The Appellant says he left his job because of the demands of his full-time school program. He further says there was no flexibility in his work schedule with the former employer, and they wouldn't accommodate him. The Appellant also says his job caused him stress and was affecting his health.

## Issue 2 (Availability for Work)

[9] The Commission decided the Appellant was disentitled from receiving EI regular benefits from January 6, 2025, because he 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.

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

[11] The Commission says the Appellant wasn't available because he was in school full-time.

[12] The Appellant says working at a job while attending his school program was "absolutely impossible."

## Issue 1 (Voluntary Leaving)

[13] Is the Appellant disqualified from receiving benefits because he voluntarily left his job without just cause?

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

## Analysis

### The parties agree the Appellant voluntarily left

[15] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit his job on December 31, 2024. I see no evidence to contradict this.

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

[16] The parties don't agree the Appellant had just cause for voluntarily leaving his job when he 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.[1] 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." 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]

[19] It is up to the Appellant to prove that he had just cause. 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.[3]

[20] 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]

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

## The circumstances that existed when the Appellant quit

[22] The Appellant says one of the circumstances set out in the law applies. Specifically, he says that working conditions constituted a danger to his health.

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

[23] The Appellant testified that he left his job to attend a full-time school program which started on January 6, 2025. The Appellant specifically explained that he left his job because of the volume of work he was expecting in the school program.

[24] However, the Appellant further testified there was no flexibility in the work schedule with "X of the National Capital" (GD2-36 and GD3-37). The Appellant also testified that his work schedule with the employer caused him stress, and he worried about his high blood pressure. Still, the Appellant testified that his medical condition hadn't stopped him from working before.

[25] I accept the Appellant was concerned about his health because of the schedule he worked for the employer. Nevertheless, I'm unable to accept the Appellant's work schedule constituted a danger to his health because he testified that he primarily left his job to attend a full-time school program that started January 6, 2025.

[26] In summary: The circumstances that existed when the Appellant quit were that he started a full-time school program on January 6, 2025, and couldn't continue working at his job owing to the demands of the school program.

## The Appellant had reasonable alternatives

[27] I must now look at whether the Appellant had no reasonable alternative to leaving his job when he did.

[28] The Appellant says he had no reasonable alternative because the demands of his full-time school program meant he couldn't continue to work at his job. He further says his health condition added to the issue of leaving his job.

[29] The Commission disagrees and says the Appellant's decision to leave his job was fundamentally a personal choice made at his own initiative, rather than a necessity imposed by uncontrollable circumstances.

[30] I find the Appellant had reasonable alternatives for the following reasons:

[31] First: The Appellant could have postponed attending his school program and asked the employer about taking a medical leave or inquired about the availability of sick benefits. I realize the Appellant testified he didn't think any employer would grant a medical leave for high blood pressure. However, if the Appellant was *that* concerned about his medical health he could have considered postponing his schooling and at least made some inquiries with the employer about a medical leave or possible sick benefits available to him.

[32] Second: The Appellant could have made the personal choice to continue working instead of going to school. I recognize the Appellant had been planning on attending school for awhile. I further realize the Appellant had arranged grants and loans to attend his full-time school program at "Algonquin College." However, the case law has consistently upheld the principle that leaving one's job to go to school didn't constitute "just cause"[6]

[33] Considering the circumstances that existed when the Appellant quit, the Appellant had reasonable alternatives to leaving when he did, for the reasons set out above.

[34] This means the Appellant didn't have just cause for leaving his job.

## Additional Testimony from the Appellant

[35] I recognize the Appellant testified there was "no flexibility" in the employer's work schedule and they wouldn't accommodate him. Nevertheless, the Appellant still had the reasonable alternative of looking for other employment before leaving his job if he desired a different work schedule. However, I wish to emphasize the Appellant testified that he left his job because of the volume of work he expected in his full-time school program that started on January 6, 2025.

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[6] *Macleod v Canada (Attorney General)* 2010 FCA 301; *Beaulieu v Canada (Attorney General)*, 2008 FCA 133.

[36] Finally, I realize the Appellant had made numerous arrangements to attend school full-time starting on January 6, 2025. I further accept the Appellant had his own good personal reasons for leaving his job to attend school. However, case law has consistently affirmed the principle that good personal reasons wasn't the same as just cause for leaving a job.[7]

## Issue 2 (Availability for Work)

[37] Was the Appellant available for work while in school?

## Analysis

[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, he/she has to meet the criteria of both sections to get benefits.

[39] First, the *Employment Insurance Act* (EI Act) says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.[8] The. *Employment Insurance Regulations* (Ei Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[9] I will look at those criteria below.

[40] Second, the EI 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.[10] Case law gives three things a claimant has to prove to show that they are "available" in this sense.[11] I will look at those factors below.

[41] The Commission decided the Appellant was disentitled from receiving benefits because wasn't available for work based on these two sections of the law.

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[7] *Imran v Canada (Attorney General)*, 2008 FCA 17 affirmed the principle that good reasons or good cause was not the same as "just cause."
[8] See section 50(8) of the *Employment Insurance Act* (EI Act).
[9] See section 9.001 of the *Employment Insurance Regulations* (EI Regulations).
[10] See section 18(1)(a) of the EI Act.
[11] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[42] In addition, the Federal Court of Appeal has said that claimants who are in school full-time are presumed to be unavailable for work.[12] This is called the "presumption of non-availability." It means we can suppose that students aren't available for work when the evidence shows that they are in school full-time.

[43] I will start by looking at whether I can presume that the Appellant wasn't available for work. Then, I will look at whether he was available based on the two sections of the law on availability.

**Presuming full-time students aren't available for work**

[44] The presumption that students aren't available for work applies only to full-time students.

[45] The Appellant agrees that he is a full-time student, and I see no evidence that shows otherwise. So, I accept the Appellant is in school full-time.

**The Appellant is a full-time student**

[46] The Appellant is a full-time student. But the presumption that full-time students aren't available for work can be rebutted (that is, shown to not apply). The Federal Court of Appeal says that I have to do a contextual analysis when deciding whether the Appellant has rebutted the presumption of non-availability.[13]

[47] The Appellant says he *wasn't* available for work while he attended his full-time school program at "Algonquin College."

[48] The Commission says the Appellant failed to rebut the presumption of non-availability while attending a full-time course, because he admitted to not being available for work which didn't meet the availability requirements under the law.

[49] I find the Appellant hasn't rebutted the presumption of non-availability, because he testified that it was "absolutely impossible" for him to attend school and work. On this

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[12] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.
[13] See *Page* v *Canada (Attorney General)*, 2023 FCA 169.

matter, I commend the Appellant for his forthright testimony and his willingness to provide his school schedule (GD2-28).

[50] In short, the Appellant hasn't rebutted the presumption that he was unavailable for work.

[51] I am now going to continue on to decide the sections of the law dealing with availability.

**Reasonable and customary efforts to find a job**

[52] The first section of the law that I am going to consider says that claimants have to prove their efforts to find a job were reasonable and customary.[14]

[53] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.[15] I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[54] I also have to consider the Appellant's efforts to find a job. The Regulations list nine job-search activities I have to consider. Some examples of those are the following:[16]

a) assessing employment opportunities

b) contacting employers who may be hiring

c) applying for jobs

[55] The Commission says the Appellant didn't do enough to try to find a job. Specifically, the Commission says the nature of the Appellant's commitment to his studies directly prevented his availability for work.

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[14] See section 50(8) of the EI Act.
[15] See section 9.001 of the EI Regulations.
[16] See section 9.001 of the EI Regulations.

[56] The Appellant says he had no availability for work while attending school.

[57] I find the Appellant hasn't shown that he was making reasonable and customary efforts to find work, because he testified that he wasn't available for work when he started attending school full-time on January 6, 2025.

[58] In summary: The Appellant hasn't proven that his efforts to find a job were reasonable and customary.

**Capable of and available for work**

[59] I also have to consider whether the Appellant was capable of and available for work but unable to find a suitable job.[17] Case law sets out three factors for me to consider when deciding this. The Appellant has to prove the following three things:[18]

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.

[60] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[19]

**Wanting to go back to work**

[61] The Appellant hasn't shown that he wanted to go back to work as soon as a suitable job was available. I make this finding because the Appellant was forthright in his testimony that he wasn't available for work while attending school.

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[17] See section 18(1)(a) of the EI Act.
[18] 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.
[19] 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.

**Making efforts to find a suitable job**

[62] The Appellant hasn't made any effort to find a suitable job.

[63] I have considered the list of job-search activities given above in deciding this second factor. For this factor, that list is for guidance only.[20]

[64] The Appellant specifically testified that he wasn't available for work.

[65] Those efforts weren't enough to meet the requirements of this second factor, because the Appellant specifically testified that he wasn't making any effort to find work while attending school full-time.

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

[66] The Appellant has set personal conditions that have unduly limited his chances of going back to work.

[67] The Appellant testified that it was "absolutely impossible" to attend work while attending school.

[68] The Commission says the nature of the Appellant's commitment to his studies directly prevented his availability for work.

[69] I find the Appellant unduly limited his chances of going back to work, because he testified that he had "no availability" for work while attending school full-time at "Algonquin College."

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

[70] Based on my findings, I find the Appellant hasn't shown that he was capable of and available for work but unable to find a suitable job.

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[20] I am not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

## Conclusion

## Issue 1 (Voluntary Leaving)

[71] I find the Appellant is disqualified from receiving benefits from December 29, 2024.

[72] This means the appeal is dismissed.

## Issue 2 (Availability for Work)

[73] The Appellant hasn't shown that he was available for work within the meaning of the law. Because of this, I find the Appellant can't receive EI benefits from January 6, 2025.

[74] This means the appeal is dismissed.

*Gerry McCarthy*

Member, General Division

Employment Insurance Section