Citation: *MS v Canada Employment Insurance Commission*, 2025 SST 705

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	M. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (694544) dated December 4, 2024 (issued by Service Canada)

Tribunal member:	Suzanne Graves
Type of hearing:	Videoconference
Hearing date:	March 10, 2025
Hearing participant:	Appellant
Decision date:	March 24, 2025
File number:	GE-25-487

Decision

[1] The appeal is allowed in part.

[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 from June 20, 2024.

[3] The Appellant showed he was available for work from August 25, 2024, until November 2, 2024. But even though he was available for work, he still can't claim EI for that period because he is disqualified from receiving benefits.

Overview

[4] The Appellant worked as a Clinical Surgical Assistant. He left his job on June 20, 2024, to take a three-month paid course to qualify for a better job as a physician in another province. After finishing the course, he applied for regular EI benefits. The Commission decided it couldn't pay him benefits because he voluntarily left his job without just cause, and also because he wasn't available for work.

[5] The Commission argues the Appellant didn't have just cause for quitting his job to take training, as he had reasonable alternatives available to him. It also says the Appellant is disentitled from receiving EI benefits from August 25, 2024, because he didn't show that he was available for work.

[6] 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.

[7] The Appellant argues that he quit his job to take a higher-level position. He had to take a course to qualify as a general medical practitioner in another province. He says that he was actively looking for work after his course finished from August 25, 2024, until he started a new position as a family doctor on November 2, 2024.

Issues

[8] Is the Appellant disqualified from receiving EI benefits from June 20, 2024, because he voluntarily left his job without just cause? 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.

[9] Was the Appellant available for work from August 25, 2024, until he started a new position on November 2, 2024?

Analysis

Issue #1—Did the Appellant leave his job voluntarily without just cause?

Did the Appellant voluntarily leave his job?

[10] The Appellant doesn't dispute that he quit his employment. There is no evidence that contradicts this. So, I find that the Appellant left his job voluntarily.

What it means to have just cause

[11] 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.

[12] The law explains what it means by "just cause." The law says you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that I have to consider all the circumstances that existed when the Appellant quit.[2]

[13] 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.

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

Reasonable assurance of new employment

[14] The Appellant argues that he resigned to take a promotion to a higher-level job. I first considered whether the Appellant had a reasonable assurance of a new job in the immediate future.[4]

[15] To show that a claimant has a reasonable assurance of another employment in the immediate future, a claimant must prove three things. First, they must show that, when they became unemployed, they knew that they would have another job. Second, they must know what job they would have, and with what employer. Third, they must know at what moment in the future they would have employment.[5]

[16] The Appellant argues he left his job to take a better position as a family doctor.[6] His new job would be more highly paid than his job as a surgical assistant. But he testified that the new position wasn't guaranteed. He would first have to pass a course, and then meet all other licensing requirements before being approved to take a position as a family physician.

[17] The Appellant was optimistic about getting a new position, but it wasn't guaranteed at the time he left his job. So, the Appellant unfortunately didn't have a reasonable assurance of new employment when he quit.

The Appellant left his job to take a course

[18] I next considered whether the Appellant had just cause for leaving his job to take a course to qualify for a better job as a family physician.

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[4] Section 29(c)(vi) of the EI Act states that "just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including … reasonable assurance of another employment in the immediate future…"
[5] These three factors are set out in the Federal Court of Appeal decision in *Canada (Attorney General) v Imran*, 2008 FCA 17, at paragraph 12.
[6] The Appellant makes this argument at GD2-10.

[19] The Commission argues that the Appellant had reasonable alternatives to leaving his job. It says that he decided to quit his job to attend school for his own personal reason to pursue a career path.[7]

[20] The Appellant says he had to leave his job to take a course so he could qualify for a promotion. He was accepted into the Ontario Practice Ready Assessment Program, after which he would be eligible for a higher-level position as a physician. He had moved from another province to take the course, and so couldn't commute to his previous job while waiting for his licence approval.[8]

[21] Sometimes, the Commission (or a program it authorizes) refers people to take training. The Appellant says he was approved to attend the Practice Ready Assessment program, but there is no evidence that he was referred by the Commission or its designate to take the course.

[22] The Appellant testified that he didn't call Service Canada before leaving his job to ask whether he could receive benefits. He relied on information he got from a friend who took the same program in another province.

[23] Case law clearly says that, if you quit your job just to take a course without a referral, you don't have just cause for leaving your job.[9]

[24] The course was the main reason for the Appellant's decision to quit. So, that part of the case law applies to him.

[25] The Appellant unfortunately hasn't shown that he had just cause for leaving his job. I understand that he may have had very good reasons for choosing to leave his job to take the course so he could qualify for a higher-level position. But this is a personal choice, and it goes against the idea behind the EI plan.[10]

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[7] The Commission makes this argument at GD4-6.
[8] The Appellant makes this argument at GD2-10.
[9] See *Canada (Attorney General) v Caron*, 2007 FCA 204.
[10] See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

Issue #2—Was the Appellant available for work from August 25, 2024?

[26] The Commission also decided that the Appellant wasn't available for work from August 25, 2024.

[27] The law requires claimants to show they are available for work.[11] The *Employment Insurance Act* (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.[12]

Capable of and available for work

[27] I have to consider whether the Appellant was capable of and available for work but unable to find a suitable job. Case law sets out three factors for me to consider when deciding this. When I consider each of those factors, I have to look at the Appellant's attitude and conduct.[13]

[28] The Appellant has to prove the following three things:[14]

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.

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[11] Section 18(1)(a) of the EI Act says that a claimant is not entitled to be paid benefits for a working day in a benefit period for which they fail to prove that on that day they were capable of and available for work and unable to obtain suitable employment. I agree with the reasoning in *LD v Canada Employment Insurance Commission,* 2020 SST 688. In that case, the Tribunal's Appeal Division decided that a claimant should first be required to provide proof of reasonable and customary efforts to find work before being disentitled to benefits under section 50(8) of the EI Act. There is no evidence that the Commission asked the Appellant for such proof. So, I will make no finding under section 50(8) and will only look at whether the Appellant was available for work under section 18(1)(a) of the EI Act.
[12] See section 18(1)(a) of the EI Act.
[13] 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.
[14] 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.

Wanting to go back to work

[29] The Appellant testified that he wanted to go back to work as soon as possible after finishing his course. I accept his testimony that he wanted to work.

Making efforts to find a suitable job

[30] The Appellant made enough efforts to find a suitable job. I have considered the list of job-search activities set out in the *Employment Insurance Regulations* in deciding this second factor.[15]

[31] The Commission says that the Appellant told an officer he wasn't looking for work, but rather waiting for the outcome of the licensing process.[16]

[32] The Appellant testified that he applied to a number of clinical assistant programs and attended several interviews while waiting to be approved by the licensing board. He testified in a sincere and straightforward manner and his testimony about his job search was detailed and specific. I have put most weight on his sworn testimony and find that the Appellant didn't only wait for his licence to be approved.

[33] The Appellant showed he was actively looking for work. So, he meets the requirements of this second factor.

Unduly limiting chances of going back to work

[34] The Appellant applied for suitable jobs in the medical field. He didn't wait for his licence to be approved so that he could accept a higher-level physician position. I find that the Appellant didn't set personal conditions that might have unduly limited his chances of going back to work.

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[15] I am not bound by the list of job-search activities in deciding this second factor. I have used the list for guidance only.
[16] The Commission's notes of its discussions with an officer on December 3, 2024, are at GD3-36 to 38.

So, was the Appellant capable of and available for work from August 25, 2024?

[35] Based on my findings on the three factors, I find that the Appellant showed he was capable of and available for work from August 25, 2024, until November 2, 2024.

[36] As stated above, even though the Appellant showed he was available for work, he cannot claim benefits because he left his job voluntarily without just cause.

[37] The Appellant says he knows another person who took the Practice Ready Assessment qualifying course and was approved for benefits. I only have the authority to review the circumstances of this case and apply the law to those specific facts.

[38] I have sympathy for the Appellant, but I have to follow the rules set out in the EI Act, even if the outcome seems harsh or unfair.[17]

Conclusion

[39] I find that the Appellant is disqualified from receiving EI benefits because he voluntarily left his job without just cause. Because of this, I find that the Appellant can't receive EI benefits from June 20, 2024.

[40] The Appellant showed that he was available for work from August 25, 2024, until he started a new position on November 2, 2024. But he still cannot receive EI, because he is disqualified from receiving benefits.

[41] This means that the appeal is allowed in part.

Suzanne Graves
Member, General Division—Employment Insurance Section

[17] See *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141.