



Citation: *KD v Canada Employment Insurance Commission*, 2021 SST 718

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

**Decision**

**Appellant:** K. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (435621) dated October 1, 2021  
(issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Teleconference

**Hearing date:** November 9, 2021

**Hearing participant:** Appellant

**Decision date:** November 10, 2021

**File number:** GE-21-1888

## Decision

[1] The appeal is dismissed.

[2] The Claimant has not shown just cause (in other words, a reason the law accepts) for leaving her job when she did. This means she is disqualified from receiving Employment Insurance (EI) benefits.

[3] Further, the Claimant has not shown that she is available for work while attending school. This means the Claimant is disentitled from benefits.

## Overview

[4] The Claimant left her job to go to school and subsequently applied for employment insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) decided that she voluntarily left (or chose to quit) her job without just cause, so it wasn't able to pay her benefits.

[5] The Commission also decided they could not pay the Claimant benefits as she was not available for work since she was in school.

[6] The Claimant says she called the Commission and was told that she could get benefits if she quit her job to go to school as long as she continued looking for work.<sup>1</sup>

[7] The Claimant says she would have made different decisions if she had been given the correct information from the Commission. The Claimant says she should not have to suffer due to mistakes made by the person she spoke to at the Commission.<sup>2</sup>

[8] I have to decide whether the Claimant has proven that she had no reasonable alternative to leaving her job

[9] I also have to decide if the Claimant has proven that she is available for work.

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<sup>1</sup> GD02-9

<sup>2</sup> GD02-9

## **Matter I have to consider first**

[10] In their submissions the Commission states they disentitled the Claimant under subsection 50(8) of the *Employment Insurance Act* (Act). Subsection 50(8) of the Act relates to a person failing to prove to the Commission that they were making reasonable and customary efforts to find suitable employment.

[11] In looking through the evidence, I did not see any requests from the Commission to the Claimant to prove her reasonable and customary efforts, or any claims from the Commission that if they did, her proof was insufficient.

[12] The Commission also submits that they never asked the Claimant for a job search and therefore cannot determine whether her job search efforts were reasonable and customary.<sup>3</sup>

[13] I further find the Commission did not make any detailed submissions on how the Claimant failed to prove to them that she was making reasonable and customary efforts; the Commission only summarized what the legislation says in regard to subsection 50(8) of the Act and what it says about reasonable and customary efforts.

[14] Based on the lack of evidence the Commission asked the Claimant to prove her reasonable and customary efforts to find suitable employment under subsection 50(8) of the Act, the Commission did not disentitle the Claimant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

## **Issue**

[15] Is the Claimant disqualified from receiving EI benefits because she voluntarily left her job without just cause?

[16] Is the Claimant available for work?

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<sup>3</sup> GD06-3

## Analysis

### Voluntarily leaving employment

#### *The parties agree that the Claimant voluntarily left*

[17] I accept that the Claimant voluntarily left her job. The Claimant agrees that she quit her job to attend school. She told the Commission she quit to attend school.<sup>4</sup> I see no evidence to contradict this.

#### *Just cause*

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

[19] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>5</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[20] 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.<sup>6</sup>

[21] It is up to the Claimant to prove that she had just cause.<sup>7</sup> 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. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

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<sup>4</sup> GD03-24

<sup>5</sup> Section 30 of the *Employment Insurance Act* (Act) sets out this rule.

<sup>6</sup> See *Canada (Attorney General) v White*, 2011 FCA 190; and section 29(c) of the Act.

<sup>7</sup> See *Canada (Attorney General) v White*, 2011 FCA 190.

***Referral to take training***

[22] 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 Claimant to take her training.

[23] 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.<sup>8</sup>

[24] The parties agree that the Claimant didn't get a referral to go school. The Claimant testified it was her personal choice to quit her job to go to school.

[25] School was the only circumstance relating to the Claimant's decision to quit. So, the case law applies to the Claimant. This means that the Claimant doesn't have just cause.

[26] I understand that the Claimant may have good reasons for choosing to leave her job to go to school. But, this is a personal choice, and it goes against the idea behind the EI plan.<sup>9</sup>

[27] The Claimant has said that she was given incorrect information when she spoke to the Commission as was told she could collect EI if she quit her job and went to school.

[28] I have great sympathy for the situation the Claimant is in, having relied on information from the Commission to make her decision which later turned out to be incorrect; however, even if the Claimant is given incorrect information that does not mean the law does not apply, and I must apply the law. I can neither re-write legislation nor to interpret it in a manner that is contrary to its plain meaning<sup>10</sup> and there is no relief from a disqualification for voluntarily leaving for being given incorrect information.

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<sup>8</sup> See *Canada (Attorney General) v Caron*, 2007 FCA 204.

<sup>9</sup> See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

<sup>10</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301

## Is the Claimant available for work?

[29] The law requires claimants to show that they are available for work.<sup>11</sup> In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.<sup>12</sup>

[30] In considering whether a student is available pursuant to section 18 of the Act, the Federal Court of Appeal, in 2010, pronounced that there is a presumption that claimants who are attending school full-time are unavailable for work.

[31] The Act was recently changed and the new provisions apply to the Claimant.<sup>13</sup> As I read the new provisions the presumption of unavailability has been displaced. A full-time student is not presumed to be unavailable, but rather must prove their availability just like any other claimant.

[32] In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.<sup>14</sup> The Claimant has to prove three things to show she is available:

1. A desire to return to the labour market as soon as a suitable job was available
2. That desire expressed through efforts to find a suitable job
3. No personal conditions that might unduly limit their chances of returning to the labour market<sup>15</sup>

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<sup>11</sup> Paragraph 18(1)(a) of the *Employment Insurance Act* provides that a claimant is not entitled to be paid benefits for a working day in a benefit period for which he or she fails to prove that on that day he or she was capable of and available for work and unable to obtain suitable employment.

<sup>12</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

<sup>13</sup> Subsection 153.161(1) of the *Employment Insurance Act*

<sup>14</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

<sup>15</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[33] I have to consider each of these factors to decide the question of availability,<sup>16</sup> looking at the attitude and conduct of the Claimant.<sup>17</sup>

Does the Claimant have a desire to return to the labour market as soon as a suitable job is available?

[34] I find the Claimant does have a desire to return to the labour market as soon as a suitable job is available.

[35] The Commission says the Claimant told them she left her employment as her work hours conflicted with her school obligations and said on her application for benefits that she had not made efforts to find work.<sup>18</sup>

[36] The Claimant says with her financial situation she cannot afford to attend school without working, so that is why she called EI, before she quit her job, to see if she would have some coverage should she be unable to find work while in school.

[37] I accept the Claimant desires to work. I accept the Claimant's financial situation puts her in a situation where she cannot afford to attend school without working. I find her need to work while attending school is further supported by her testimony she contacted EI to see if she could get benefits while attending school, just in case she could not find work.

[38] I find the Claimant's need to work while attending school supports she has a desire to return to the job market as soon as she can.

Has the Claimant made efforts to find a suitable job?

[39] I find the Claimant has made sufficient efforts to find suitable employment.

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<sup>16</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>17</sup> *Canada (Attorney General) v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

<sup>18</sup> GD06-3

[40] The Claimant says she has been looking for work almost since the start of her schooling as she cannot afford to attend school without working.

[41] The Claimant says she has applied in-person to multiple places such as restaurants, convenience stores and retail stores. The Claimant says that she has been unsuccessful in finding employment as it is hard to find work around her school schedule and people do not really want to hire students.

[42] I note that on the Claimant's training questionnaire she said she was not looking for work.<sup>19</sup> I asked her about this statement since it conflicts with her testimony she has been looking for work.

[43] The Claimant testified she wrote she was not looking for work on the training questionnaire as she was not looking for work at that exact time she completed the questionnaire. She started looking for work shortly after her schooling started.

[44] I find I accept the Claimant's explanation for her response on the training questionnaire. I find the training questionnaire was completed on August 21, 2021,<sup>20</sup> and that is right before her school started and she testified that at the very start of her schooling she had not yet started looking for work. So, I find her statement on the training questionnaire is only reflective of the time she completed the questionnaire and not reflective of her efforts as a whole.

[45] I further find that a slight delay to the start of her job search efforts due to starting her schooling does not prevent her from being found to have made sufficient efforts to find a job.

[46] I find the Claimant's efforts to find work are sufficient. I find they are sustained, as I accept she has been applying since nearly the start of her course, dropping off resumes at multiple employers.

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<sup>19</sup> GD06-10

<sup>20</sup> GD06-1



Has the Claimant set personal conditions that might unduly limit her chances of returning to the labour market?

[47] I find the Claimant has set personal conditions that might unduly limit her chances of returning to the labour market.

[48] The Commission says they accept that the Claimant is willing to accept work but only if it does not conflict with her school schedule. The Commission says this is a personal condition that unduly limits her chances of finding suitable work.

[49] I find I agree with the Commission's submission.

[50] The Claimant testified that she is in school from Monday to Friday and has mandatory attendance at class from 12:00 PM to 3:00 PM every weekday. She also has homework and assignments she needs to complete on her own outside of those hours.

[51] The Claimant has said she has not found any work as it has been very hard to find a position that does not conflict with her schooling. The Claimant testified having that three hour window where she must be at class makes it very challenging to find work.

[52] I find the Claimant's school schedule would unduly, or overly, limit the jobs she could apply to, as any job would have to work around her school schedule. This is not mere speculation, the Claimant has testified that she has had trouble finding a job that would work around her school schedule and had to not apply for certain jobs since the hours would conflict with her schooling.

[53] The Federal Court of Appeal also supports that restricting availability due to a course to certain times on certain days limits the chances of finding employment and can support a finding of not being available for work.<sup>21</sup>

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<sup>21</sup> *Duquet v Canada (Employment and Immigration Commission)*, 2008 FCA 313

***Was the Claimant capable of and available for work and unable to find suitable employment?***

[54] Considering my findings on each of the three factors together, I find that the Claimant was not available for work as she did not meet all of the three factors outlined above.

**Conclusion**

[55] I find that the Claimant is disqualified from receiving EI benefits as she did not have just cause for voluntarily leaving her employment.

[56] I further find the Claimant has not proven she is available for work, so the disentitlement imposed by the Commission is upheld.

[57] This means the appeal is dismissed.

Gary Conrad

Member, General Division – Employment Insurance Section