Citation: *AV v Canada Employment Insurance Commission*, 2022 SST 230

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (439675) dated November 26, 2021 (issued by Service Canada)

Tribunal member:	Suzanne Graves
Type of hearing:	Teleconference
Hearing date:	January 12, 2022
Hearing participant:	Appellant
Decision date:	January 28, 2022
File number:	GE-21-2498

Decision

[1] The appeal is dismissed. The Claimant 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.

[2] The Claimant hasn't shown that he was available for work while taking a full-time course. This means that he is also disentitled from receiving benefits while in school.

Overview

[3] The Claimant left his job to take a course and applied for EI benefits. The Canada Employment Insurance Commission (Commission) decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits. It also decided that he was not available for work while in full-time school.

[4] The Commission says that the Claimant did not have just cause for leaving his job to go to school. It also says that the Claimant wasn't available for work because he was only looking for part-time work outside of his course hours.

[5] The Claimant was invited to take a two-month program in his chosen field. He says he had no alternative to leaving his job as he couldn't work the same hours and take the course at the same time. He also says that he was actively looking for work, and would definitely have left the course to take a full-time job.

[6] I have to decide whether the Claimant has proved that he had no reasonable alternative to leaving his job. I must also decide whether the Claimant has proved that he was available for work. The Claimant 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.

Issue

[7] I must decide whether the Claimant is disqualified from receiving EI benefits because he voluntarily left his job without just cause. To answer this, I first have to address the Claimant's voluntary leaving. I then must decide whether the Claimant had just cause for leaving.

[8] I also have to decide whether the Claimant has shown that he is available for work.

Analysis

Voluntarily leaving

The parties agree that the Claimant voluntarily left

[9] I accept that the Claimant voluntarily left his job. The Claimant agrees that he quit on August 27, 2021, to take a course. I see no evidence to contradict this.

What it means to have just cause

[10] The parties don't agree that the Claimant had just cause for voluntarily leaving his job when he did.

[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. 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.

[12] It is up to the Claimant to prove that he had just cause.[2] He has to prove this on a balance of probabilities. This means he has to show that it is more likely than not that his 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.[3]

Referral to take a course

[13] 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 his course.

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

[14] 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.[4]

[15] The parties agree that the Claimant didn't get a referral to take a course. Taking the course was the only reason why he decided to quit his job. So, the case law applies to him. This means that the Claimant doesn't have just cause.

[16] The Claimant says that, by taking the course, he was guaranteed to find work. He also says that he asked his employer for a leave of absence or a lay-off before leaving, but this was not available. He could not stay in his job as the hours would conflict with his school schedule. So, he had no choice but to quit his job.

[17] I understand that the Claimant may have had very good reasons for choosing to leave his job to go to school. But, this is a personal choice, and it goes against the idea behind the EI plan.[5]

[18] So the Claimant has not shown that he had just cause for leaving his job.

Availability for work

[19] The law requires claimants to show that they are available for work.[6] In addition, the Federal Court of Appeal says that there is a presumption that claimants who are attending school full time are unavailable for work.[7]

[20] I am going to start by looking at whether the presumption applies to the Claimant. Then, I will consider the law on availability. [8]

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[4] See *Canada (Attorney General) v Caron*, 2007 FCA 204.
[5] See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133. In *Canada (Attorney General) v. Martel,* A-1691-92, the Court says that it is contrary to the principles underlying the unemployment insurance system for an employee to impose the economic burden of their decision on contributors to the fund.
[6] Paragraph 18(1)(a) of the Act provides 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 available for work.
[7] *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.
[8] In *LD v Canada Employment Insurance Commission,* 2020 SST 688, 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 Act. There is no evidence that the Commission asked the Claimant for such proof. So, I will make no finding under section 50(8) and will only look at whether the Claimant was available for work under section 18(1)(a) of the Act.

Presumption that full-time students are not available for work

[21] The presumption only applies to full-time students. The Claimant agrees that he was studying full time and I see no evidence that shows otherwise. So, I accept that the Claimant was in school full time. This means that the presumption applies to him.

[22] This presumption can be rebutted, which means that it would not apply. The Claimant can rebut the presumption that full-time students are unavailable for work by showing that he has a history of working full time while also studying[9] or by showing exceptional circumstances.[10]

[23] There is no evidence that the Claimant worked full time while in school in the past, or showed that his circumstances were exceptional. So, the Claimant hasn't rebutted the presumption that he is unavailable for work.

[24] The Federal Court of Appeal hasn't yet told us how the presumption and the sections of the law dealing with availability relate to each other. Because this is unclear, I am going to continue on to decide the sections of the law dealing with availability, even though I have already found that the Claimant is presumed to be unavailable.

Availability for work

[25] I also have to consider whether the Claimant is capable of and available for work but unable to find a suitable job.[11] Case law sets out three factors for me to consider when deciding this. The Claimant has to prove the following three things:[12]

1. He wants to go back to work as soon as a suitable job is available.
2. He has made efforts to find a suitable job.
3. He hasn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

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[9] *Canada (Attorney General) v Rideout*, 2004 FCA 304.
[10] *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.
[11] See section 18(1)(a) of the Act.
[12] 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.

[26] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.[13]

Wanting to return to the labour market

[27] The Claimant has shown a desire to return to the labour market as soon as a suitable job is available. He testified that he wants to work, and has been actively searching for a job. I accept his evidence and find that he wants to work.

Efforts to find a suitable job

[28] The Claimant has made efforts to look for a job. He testified that his school professors would occasionally provide offers of employment, and he followed up on any potential recruitment opportunities. He also emailed prospective employers. He says that he was looking for work in the evenings while he was at school, but would have left his course early if he was offered a suitable full-time job.

[29] He finished his course on October 28, 2021, and kept looking for work. He was put on a wait list at his school for any positions, and searched on multiple websites, including LinkedIn and Indeed. As a result of his job search efforts, in December 2021, the Claimant was offered a new job in his chosen career. The Claimant testified in a direct and forthright manner and I accept his evidence that he was actively looking for work. So I find that he has made efforts to find a suitable job.

Personal conditions

[30] The Claimant set personal conditions that might have unduly limited his chances of returning to the labour market while he was in school. The Claimant says he would have been willing to leave his course early to take a suitable job in his field. But he also

[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.

testified that, for the period that he was in school, he looked for evening work, around his school hours, which were 11:00 a.m. to 2:00 p.m. from Monday to Friday.

[31] I accept the Claimant's testimony that he set no personal conditions on his job search after his course finished on October 28, 2021, and his job search efforts resulted in an offer of a full-time job.

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

[32] Considering my findings on each of the three factors together, I find that the Claimant did not show that he was capable of and available for work and unable to find suitable employment from August 28, 2021, to October 28, 2021.[14] He has shown that he was available for work from October 29, 2021.

[33] However, since I have already found that the Claimant is disqualified from receiving benefits, he cannot receive benefits from August 28, 2021.

[34] I have sympathy for the Claimant's situation but have to follow the rules in the Act and cannot make exceptions for special cases even in the interest of compassion.[15]

Conclusion

[35] I find that the Claimant is disqualified from receiving EI benefits.

[36] I also find that the Claimant is disentitled from receiving EI benefits while he was in school from August 28, 2021, to October 28, 2021.

[37] This means that the appeal is dismissed.

Suzanne Graves

Member, General Division – Employment Insurance Section

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[14] Paragraph 18(1)(a) of the Act.
[15] In *Canada (Attorney General) v Lévesque*, 2001 FCA 304, the Federal Court of Appeal held that the legislation has to be followed, regardless of the personal circumstances of the appellant (see also *Pannu v Canada (Attorney General),* 2004 FCA 90).