

Citation: *A. G. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 38

Appeal #: GE-13-1130

BETWEEN:

**A. G.**

Appellant  
Claimant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance**

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SOCIAL SECURITY TRIBUNAL MEMBER: Richard Sterne

HEARING DATE: February 25, 2014

TYPE OF HEARING: In person

DECISION: Appeal is allowed

## **PERSONS IN ATTENDANCE**

The Claimant, A. G., attended the in-person hearing.

## **DECISION**

[1] The Tribunal finds that the Claimant did prove that she had just cause for voluntarily leaving her employment, because she did not have other reasonable alternatives to leaving when she did, and she did have reasonable assurance of employment in the immediate future, pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[2] The Tribunal finds that the Claimant did have enough hours of insurable employment to qualify to receive employment insurance benefits (EI benefits), pursuant to subsection 7(2) of the Act.

[3] The appeal is allowed.

## **INTRODUCTION**

[4] The Claimant was employed full time by Nordia Inc. (employer1) from June 15, 2011 to May 9, 2012. She was employed part time by employer1 from May 9, 2012 to September 29, 2012, while she attended Conestoga College full time to take a human resources management course. The Claimant voluntarily resigned her employment on September 29, 2012, as she was accepted into the co-op program of the course. While attending the co-op program, the Claimant was employed by Com Dev Ltd. (employer2) on a co-op work term from January 15, 2013 to May 17, 2013.

[5] On May 21, 2013, the Claimant applied for regular EI benefits.

[6] On July 9, 2013, the Canada Employment Insurance Commission (Commission) advised the Claimant that they could not pay her any regular EI benefits because she had voluntarily left her employment with employer1 on September 29, 2012, without just cause, within the meaning of the Act. The Commission stated that they believed that voluntarily leaving her employment was not her only reasonable alternative.

[7] On July 15, 2013, the Claimant filed a request for reconsideration of the Commission's July 9, 2013 decision, which was denied on August 13, 2013.

## **FORM OF HEARING**

[8] The hearing was in person for the reasons provided in the Notice of Hearing dated January 29, 2014.

## **ISSUES**

[9] Did the Claimant have just cause for voluntarily leaving her employment?

[10] Did the Claimant have enough hours of insurable employment to qualify to receive EI benefits?

## **THE LAW**

### **[11] Subsection 7(1) of the Act:**

(1) Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

### **[12] Subsection 7(2) of the Act:**

(2) An insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person

(a) has had an interruption of earnings from employment; and

(b) has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person:

TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

**[13] Subsection 7(3) of the Act:**

(3) An insured person who is a new entrant or a re-entrant to the labour force qualifies to receive benefit if the person

- (a) has had an interruption of earnings from employment; and
- (b) has had 910 or more hours of insurable employment in their qualifying period.

**[14] Subsection 7(4) of the Act:**

(4) An insured person is a new entrant or re-entrant to the labour force if, during the last 52 weeks before their qualifying period, the person has had fewer than 490

- (a) hours of insurable employment,
- (b) hours for which benefits have been paid or were payable to the person, calculated on the basis of 35 hours for each week of benefits;
- (c) prescribed hours that relate to employment in the labour force; or
- (d) hours comprised of any combination of those hours.

**[15] Subsection 8(1) of the Act:**

(1) Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

(a) the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and

(b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

**[16] Section 29 of the Act:**

For the purposes of sections 30 to 33,

(a) "employment" refers to any employment of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another

employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(c) 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 any of the following:

- (i) sexual or other harassment,
- (ii) obligation to accompany a spouse or common-law partner or a dependent child to another residence
- (iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act,
- (iv) working conditions that constitute a danger to health or safety,
- (v) obligation to care for a child or a member of the immediate family,
- (vi) reasonable assurance of another employment in the immediate future,
- (vii) significant modification of terms and conditions respecting wages or salary,
- (viii) excessive overtime work or refusal to pay for overtime work,
- (ix) significant changes in work duties,
- (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
- (xi) practices of an employer that are contrary to law,
- (xii) discrimination with regard to employment because of membership in an association, organization or union of workers,

(xiii) undue pressure by an employer on the claimant to leave their employment, and

(xiv) any other reasonable circumstances that are prescribed

**[17] Subsection 30(1) of the Act:**

(1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or employment." (b) the claimant is disentitled under sections 31 to 33 in relation to the

**[18] Subsection 30(2) of the Act:**

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

**EVIDENCE**

[19] The Claimant was employed by Nordia Inc. (employer1) from June 15, 2011 to September 29, 2012.

[20] The Claimant was employed by Com Dev Ltd. (employer2) on a co-op work term from January 15, 2013 to May 17, 2013.

[21] On May 21, 2013, the Claimant applied for regular EI benefits. In her application, the Claimant indicated that the reason that she quit employer1 was to return to school full time on September 29, 2012. She indicated that her course ran from May 9, 2012 to May 1, 2013. She said that she was assured of other employment.

[22] On July 9, 2013, the Commission advised the Claimant that they could not pay her any regular benefits because she had voluntarily left her employment with employer1 on September 29, 2012, without just cause. The Commission stated that they believed that voluntarily leaving her employment was not her only reasonable alternative.

[23] On July 15, 2013, the Claimant filed a request for reconsideration of the Commission's July 9, 2013 decision. She argued that she had voluntarily left her job in September 2012, because she was enrolled full time in her course that included a co-op work term with employer2 for 659 hours.

[24] On August 13, 2013, the Commission advised the Claimant that they had not changed their July 9, 2013 decision. They stated that to receive regular benefits, the Claimant must work the required minimum number of insurable employment hours after voluntarily leaving her employment without just cause. They stated that she had not worked long enough to receive benefits since leaving her employment without just cause, as she only had 659 hours of insurable employment, but needed 665 hours of insurable employment.

## **SUBMISSIONS**

[25] The Claimant submitted that:

- a) she worked part time at employer1, while taking a human resources management course full time at Conestoga College, from May 2012 until September 2012.
- b) she resigned her position with employer1 at the end of September 2012, when she was accepted into the co-op portion of the program which included a work term with employer2.
- c) she did not have any other reasonable alternative to resigning, as the school work load had become so heavy that it was difficult to study and work at the same time.
- d) Employer1 had declined a leave of absence and a change in her hours.



- e) she voluntarily left her employment with employee1 with just cause.
- f) she worked for employer2 from January 15, 2013 until May17, 2013 and had accumulated 659 hours of eligible employment.
- g) the hours that she worked with employer1 during her qualifying period, should count along with the 659 hours with employer2 so that she exceeds the minimum 665 hours she required to be eligible to receive EI benefits.

[26] The Respondent submitted that:

- a) the Claimant had voluntarily left her employment without just cause;
- b) the Claimant was not a new entrant/re-entrant to the labour force because she had at least 490 hours of labour force attachment in the 52 weeks preceding her qualifying period, as required by subsection 7(4) of the Act. Therefore the Claimant needed the number of insured hours specified in paragraph 7(2)(b) of the Act to qualify for benefits.
- c) the Claimant had not accumulated the number of hours of insurable employment required by subsections 7(1) and 7(2) in order to receive EI benefits.
- d) the Claimant was advised that she must have 665 insured hours after voluntarily leaving her employment without just cause to qualify for a claim for benefits. She had only 659 hours.

## ANALYSIS

[27] The purpose of the Act is to compensate persons whose employment was terminated involuntarily and who are without work (**Gagnon [1988] SCR 29**).

[28] Subsection 30(1) of the Act provides for an indefinite disqualification when the claimant voluntarily leaves her employment without just cause. The test to be applied, having

regard to all the circumstances, is whether the claimant had a reasonable alternative to leaving her employment when she did.

[29] The Claimant worked for employer1 as a call-in center technical representative from June 15, 2011 to September 29, 2012. While working for employer1 she decided to return to school full time to take the human resources management course at Conestoga College from May 9, 2012 to May 1, 2013. The course was eight months, and if accepted, a four month co-op work term. She continued to work part time for employer1 (20 hours a week), while full time in school from May 9, 2012 until September 29, 2012.

[30] The Claimant said that she voluntarily left her part time job after she was accepted into the co-op portion of the course. She said that because the school workload was so heavy, that she couldn't continue to attend school full time and work part time. She was promised a co-op work term as part of the co-op program. She was full time in school from September 2012 to January 2013, when she started the 4 month co-op work term. Everyone who had been accepted into the co-op program did receive employment. Some of her classmates did not get accepted into the co-op course and finished after eight months of school only. She said that she wanted the co-op program so that she could get some real world experience.

[31] The Claimant said that she did ask her employer1 for a leave of absence while she took her course, but employer1 would not give her one because she would have to be retrained when she returned. Employer1 said that she could apply as a rehire and start over when she finished her course if she was interested.

[32] The Claimant said that she did explore changing her part time hours with employer1 so that she could complete her course, but employer1 said that it wasn't feasible.

[33] The Commission has stated that the Claimant failed to exhaust all reasonable alternatives prior to leaving. The Tribunal finds that the Claimant did explore other alternatives to leaving her employment, such as taking a leave of absence or changing her hours of work. The Tribunal finds that the Claimant did exhaust all reasonable alternatives prior to leaving her job. She did work part time for employer1 until such time as it was no longer feasible to work part time and attend school full time.

[34] The Tribunal finds that the Claimant did prove that there were no reasonable alternatives to leaving when she did, as she did ask her employer<sup>1</sup> for a leave of absence or a change in her work hours, but was denied.

[35] The Federal Court of Appeal reaffirmed the principle that where a claimant voluntarily leaves her employment, the burden is on that claimant to prove that there was no reasonable alternative to leaving when she did.

**Canada (AG) v. White, 2011 FCA 190**

[36] Subsection 29(c)(vi) of the Act states that just cause for voluntarily leaving an employment exists if the claimant had reasonable assurance of another employment in the immediate future. The Tribunal finds that the Claimant did not voluntarily leave her employment until after she had been accepted into the co-op program of her course, which included a work term. The Tribunal finds that the Claimant did have just cause for voluntarily leaving her employment when she did because she was assured of employment in the future, and therefore qualifies as an exception pursuant to subsection 29(c)(vi) of the Act.

[37] The Tribunal finds that the Claimant was not a new entrant/re-entrant to the labour force because she had at least 490 hours of labour force attachment in the 52 weeks preceding her qualifying period, as required by subsection 7(4) of the Act. Therefore the Claimant needed the number of insured hours specified in paragraph 7(2)(b) of the Act to qualify for benefits.

[38] The Tribunal finds that, pursuant to the Table in subsection 7(2) of the Act and the rate of unemployment of 7 % in the economic region where the Claimant resides, that the Claimant required 665 hours of insurable employment to qualify for benefits. The Tribunal finds that since the Claimant did have just cause to voluntarily leave her job with employer<sup>1</sup>, that the employment hours she worked for employer<sup>1</sup>, during her qualifying period, will count and therefore that she has enough hours of insurable employment, to qualify to receive EI benefits.

## **CONCLUSION**

[39] The appeal is allowed.

Richard Sterne  
Member, General Division

DATED: May 12, 2014