

**Citation: *B. B. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 102**

**Date: June 5, 2015**

**File number: GE-15-74**

**GENERAL DIVISION - Employment Insurance Section**

**Between:**

**B. B.**

**Appellant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

**Decision by: Katherine Wallocha, Member, General Division - Employment Insurance Section**

**Heard by Teleconference on June 3, 2015**

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

B. B., the claimant, attended the hearing via teleconference.

M. B., the claimant's wife attended the hearing to provide moral support.

### **INTRODUCTION**

[1] The claimant became unemployed on March 7, 2014. He filed for Employment Insurance (EI) benefits on March 10, 2014. An initial claim for EI benefits was established on March 9, 2015. The Canada Employment Insurance Commission (Commission) denied the claim because it was determined that the claimant voluntarily left his employment without just cause. The claimant sought reconsideration of the Commission's decision, which the Commission maintained in their letter dated November 15, 2014. The claimant appealed to the Social Security Tribunal (SST).

[2] The hearing was held by Teleconference for the following reasons:

- a) the complexity of the issue under appeal;
- b) the fact that the claimant will be the only party in attendance;
- c) the information in the file, including the nature of gaps or need for clarification in the information; and
- d) the cost-effectiveness and expediency of the hearing choice.

### **ISSUE**

[3] The issue under appeal is whether the claimant had just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

### **THE LAW**

[4] Section 30 of the EI Act states that a claimant is disqualified from receiving benefits if the claimant 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
- b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

[5] Subsection 30(5) of the EI Act provides that if a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:

- a) hours of insurable employment from that or any other employment before the employment was lost or left; and
- b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

[6] Paragraph 29(c) of the EI Act provides 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.

[7] In *Tanguay v. Canada (Canada Employment and Immigration Commission)* (A-1458-84) the Federal Court of Appeal (FCA) drew a distinction between a "good cause" and "just cause" for voluntary leaving.

[8] According to *Canada (Attorney General) v. Laughland* (2003 FCA 129), the issue is not whether it was reasonable for the claimant to leave her employment, but whether the claimant's only reasonable alternative, having regard to all the circumstances, was to leave the employment. Reasonableness may be "good cause", but it is not necessarily "just cause".

## **EVIDENCE**

[9] The claimant applied for EI benefits stating a shortage of work. He further stated that he had not worked for any other employer in the last 52 weeks (Pages GD3-6 and GD3-7).

[10] A Record of Employment (ROE) dated March 6, 2014 indicated that the claimant was laid off from his employment on March 7, 2015 accumulating 2042 insurable hours of employment (Page GD3-17).

[11] A ROE dated March 10, 2014 from another employer indicated that the claimant quit his employment on March 1, 2014 accumulating 583 insurable hours of employment (Page GD3-15).

[12] The claimant stated that he quit his part-time job as he as laid off from his full-time job and wanted to receive EI benefits. He did not want his EI benefits to be affected by his part-time earnings (Page GD3-19).

[13] The claimant stated that he thought his earnings would cut down his weekly EI benefits and decided to quit his part-time employment to avoid that. He stated that he did not speak with the Commission before quitting because he spoke to his wife and friends and thought this was the best thing to do. He answered “no” to having other employment in the last 52 weeks because he was afraid it would affect his benefits so he left it out. He explained that he now understands and wants the Commission to look past this incident as it was his first time applying for EI benefits and he did not know that it would be such a big issue. He confirmed that there were no other reasons for quitting his employment (Page GD3-20).

[14] The claimant was sent a Notice of Debt dated September 20, 2014 in the amount of 9,542.00 (Page GD3-23).

[15] The claimant submitted a Request for Reconsideration stating that he disagrees with the decision for not paying any EI benefits because this was his first time applying for EI benefits. He did not have any idea that he was allowed a part-time job while receiving EI benefits. He learned from his friends that if he had a part-time job, it would affect his EI benefits and that is why he voluntary quit this job; a job he worked only twice a week (Page GD3-28).

[16] The claimant further stated that he incorrectly answered the question about having other employment in the last 52 weeks because his wife was beside him and dictating to him and it was just a clerical error (Page GD3-28).

[17] The claimant testified that this was his first time applying for EI benefits and he did not know that you are allowed to have a part-time job when you are receiving EI benefits. He understands why he was disqualified for EI benefits and admitted that he did things wrong.

[18] The claimant testified that he received two weeks' notice of the layoff from his full-time employer.

[19] The claimant stated that he was scared that if he had a part-time job it would affect his EI benefits. People told him that if he had a part-time job it would affect his EI benefits, his earnings would be deducted from his EI benefits. He stated that he asked the Commission about the rules when he applied for EI benefits and was told he was allowed to have part-time but it was too late because he had already quit his part-time job. He did not ask his boss for full-time hours prior to quitting his part-time job. He looked for a new job after his layoff and he sent out resumes every day and after almost five months he found a job. He stated that he did look for other work before he quit but nobody called.

[20] The claimant testified that he made an error when he indicated that he did not work for any other employer in the last 52 weeks. He did not intend to deny his part-time employment.

## **SUBMISSIONS**

[21] The claimant submitted that:

- a) It was his first time applying for EI benefits and he did not know the rules and regulations. He was scared that if he had continued with his part-time job that it would have affected his EI application and he was only making \$500 per month with his part-time job; not enough to support his family and his parents back home (Page GD2-4).
- b) It is unfair that he was disqualified to receive EI benefits while he is paying EI with every pay cheque he receives. He received the benefits for only five months and he was trying his very best to find a full-time job that would fit his experience and a rate that was close to his previous job before he was laid off (Page GD2-4).
- c) When he received the letter and Notice of Debt, he was shocked because he does not have a lot of money to pay that debt. He was trying his very best to find a job so he would not have to receive EI benefits anymore that he took a job at less pay than his

previous employer. He was just so thankful that he got a new job suitable to his experience (Page GD3-29).

[22] The Commission submitted that:

- a) The claimant did not demonstrate just cause for voluntarily leaving his employment. The Commission, therefore, imposed an indefinite disqualification pursuant to sections 29 and 30 of the EI Act, effective March 9, 2014 (Page GD4-2).
- b) Considering all of the evidence, a reasonable alternative to leaving would have been to keep the part-time employment he had available to him, upon losing his full-time work, until such time as he found other suitable full-time work. It would have been reasonable, even for a person with little or no EI experience, to inform themselves as to the effect of voluntarily leaving an employment or as to the effect of choosing to leave information off of an application for EI benefits. The claimant did not do so (Page GD4-3).
- c) The claimant's explanation as to being a first time applicant and financial worries are part of the reason no penalty was imposed, but that explanation does not give him just cause for choosing to become unemployed voluntarily. Consequently, the claimant failed to prove that he left his employment with just cause within the meaning of the EI Act (Page GD4-4).

## **ANALYSIS**

[23] The question of just cause for leaving employment requires an examination of whether having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment: *MacNeil v. Canada (Employment Insurance Commission)* (2009 FCA 306); *Canada (Attorney General) v. Imran* (2008 FCA 17).

[24] The claimant bears the burden of establishing just cause: *Canada (Attorney General) v. Patel* (2010 FCA 95).

[25] The Tribunal accepts the claimant's testimony that he was given two weeks' notice of the impending layoff from his full-time employment and because of advice he received from friends and family, he decided to quit his part-time job so it would not impact his EI benefits. He stated he quit his part-time job because he did not know the rules and he only learned of his

mistake when he applied for EI benefits after he had already quit his part-time job. He admitted that he did not ask his part-time employer for more hours and while he started looking for work before the layoff, he was not successful in finding a job until almost five months later.

[26] The Tribunal finds that the claimant has not demonstrated just cause to voluntarily leave his part-time employment. The claimant is responsible for proving just cause and he must show that he had no reasonable alternative but to leave his employment when he did. In this case, the claimant had the reasonable alternative of remaining employed in his part-time employment until he found full-time work, asking this employer for more hours if possible or contacting the Commission or Service Canada to learn the rules before he decided to quit. The claimant did none of these things.

[27] While the claimant quit his part-time employment prior to being laid off from his full-time employment, the FCA decision *Canada (Attorney General) v. Trochimchuk* (2011 FCA 268) explained that subsection 30(5) of the EI Act, read together with subsection 30(1) of the EI Act makes clear that in circumstances where an individual voluntarily leaves employment without just cause, the hours of insurable employment accumulated in any employment before the date upon which the person left the employment are excluded from the computation in relation to qualifications for benefits. The Tribunal is satisfied that the claimant, once disqualified from EI benefits for voluntarily leaving his part-time employment, did not qualify for EI benefits when he was laid off from his full-time employment.

[28] The claimant argued that it is unfair that he was disqualified to receive EI benefits while he pays into the EI with every pay cheque. As has often been stated, the EI system was put in place to assist workers who, for reasons beyond their control, find themselves unemployed. The Tribunal finds that the reasons provided by the claimant for leaving his employment were not beyond his control.

[29] The claimant further argues that he does not have a lot of money to pay the debt. While the Tribunal is sympathetic to the claimant's situation, section 44 of the EI Act states that a person who has received or obtained a benefit payment to which the person is disentitled, or a benefit payment in excess of the amount to which the person is entitled, shall without delay return the amount, the excess amount or the special warrant for payment of the amount, as the

case may be. The Tribunal has not been granted the discretion to alter or write-off an overpayment.

[30] For these reasons, the Tribunal finds that the claimant has not proven just cause to have voluntarily left his employment pursuant to sections 29 and 30 of the EI Act.

## **CONCLUSION**

[31] The appeal is dismissed.

*K. Wallocha*

Member, General Division - Employment Insurance Section