



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. T. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 35

Tribunal File Number: GE-15-3429

BETWEEN:

P. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Day

HEARD ON: February 25, 2016

DATE OF DECISION: March 4, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant did not attend the hearing of her appeal. The Tribunal waited 25 minutes beyond the scheduled time for the hearing via teleconference, but the Appellant never joined the call. The Member then proceeded with the appeal in the absence of the Appellant in accordance with section 12 of the *Social Security Tribunal Regulations*. The Member is satisfied that the Appellant received the Notice of Hearing, which was sent to her by priority post on November 9, 2015. The tracking information from Canada Post shows that the Notice of Hearing was successfully delivered to the address on file for the Appellant on November 23, 2015, and includes a scan of the Appellant's signature on delivery.

INTRODUCTION

[1] On May 10, 2015, the Appellant made an initial application for regular employment insurance benefits (EI benefits). On her application, the Appellant indicated that she quit her job at Wal-Mart Canada (Wal-Mart) to follow her spouse to a new residence upon his retirement. The Respondent, the Canada Employment Insurance Commission (Commission), investigated the reason for separation from employment, and determined the Appellant voluntarily left her job without just cause. On June 3, 2015, the Commission advised the Appellant that she did not qualify for EI benefits because she quit her job without just cause.

[2] On June 28, 2015, the Appellant requested the Commission reconsider its decision, stating that she felt it was her obligation as a wife to follow her husband and that she felt there was a reasonable assurance of immediate employment upon moving to a larger community. On October 5, 2015, following an investigation, the Commission maintained its decision that the Appellant had not shown just cause for voluntarily leaving her employment at Wal-Mart.

[3] The Appellant appealed to the General Division of the Social Security Tribunal of Canada (Tribunal) on October 26, 2015.

[4] The hearing was held by videoconference because of the fact that more than one party would be in attendance, including potentially an interpreter, and because the form of hearing

respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[5] Whether a disqualification from EI benefits should be imposed upon the Appellant because she voluntarily left her employment at Wal-Mart without just cause.

THE LAW

[6] Subsection 30(1) of the *Employment Insurance Act* (EI Act) stipulates that 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
- (b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

[7] Whether a claimant has “just cause” involves a consideration of subsection 29(c) of the EI Act, which provides that for the purposes of sections 30 to 33,

- (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, common-law partner or 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 to 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.

[8] Subsection 30(2) of the EI Act stipulates that 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.

[9] 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).

EVIDENCE

[10] The Appellant made an initial application for EI benefits on May 10, 2015 (GD3-3 to GD3-15). On her application, the Appellant stated that her last day of work was April 24, 2015

and that she had quit her employment at Wal-Mart. In the “Quit – Follow another” questionnaire attached to her application (GD3-8 to GD3-9), the Appellant explained that she quit her job to follow her spouse, who had decided to move because he had retired. The Appellant stated that she did not request a transfer from her employer, nor look for a job with a different employer before quitting because they moved from Yellowknife (Northwest Territories) to Calgary (Alberta) and she was not familiar with her new area of residence and thought it would be best to see where she would be living and find out what opportunities would be closer to her residence, as she does not drive. According to the Appellant, she moved into her new location on May 1, 2015 and “will be seeking employment as soon as I am settled into, and familiar with my new residence”.

[11] A Record of Employment (ROE) was provided which confirmed the Appellant’s last day of work was April 24, 2015 and gave the reason for separation as “Quit” (GD3-16).

[12] On June 1, 2015, an agent of the Commission spoke with the Appellant’s husband regarding the reason the Appellant was no longer working at Wal-Mart, as the Appellant’s first language was not English and she authorized her husband to speak for her. The agent documented the conversation in a Supplementary Record of Claim (GD3-20). The agent noted the following:

- (a) The reason for the move from Yellowknife was because the Appellant’s husband retired from the workforce and they wanted to retire in Calgary.
- (b) There was some talk with Wal-Mart about a transfer, but they couldn’t request a transfer because as they did not know exactly where they were going to live and the employer needed a specific store location for a transfer request in order to see if Wal-Mart needed someone at that location or not.
- (c) They had about 3 months’ notice of the husband’s retirement, but didn’t have time to go to Calgary and check out places to live, nor would the husband have considered leaving his wife behind to go and look for places without her. They would never have considered living apart.

[13] The Commission advised the Appellant on June 1, 2015 (GD3-20), confirmed by letter dated June 3, 2015 (GD3-21 to GD3-22), that she would not be paid EI benefits because she had not shown just cause for voluntarily leaving her employment .

[14] On June 29, 2015, the Appellant requested the Commission reconsider its decision to deny the Appellant's claim for benefits (GD3-23 to GD3-27). Attached to the reconsideration request was a letter from the Appellant in which she stated:

“As a wife, I feel it is my obligation to follow my husband. I also felt that there was reasonable assurance of immediate employment as I was moving to a much larger community.”

[15] The Appellant further stated that she should be entitled to receive EI benefits because she had contributed to the employment insurance plan for 8 years, and then cited a number of decisions by the Umpire on the issue of a claimant's obligation to accompany a spouse (see GD3-27), which she felt applied to her situation as well.

[16] On October 5, 2015, a different agent of the Commission telephoned the Appellant and spoke with the Appellant's husband (as authorized by the Appellant) regarding her request for reconsideration. The agent documented the call in a Supplementary Record of Claim (GD3-28). The agent noted the following:

- (a) After the Appellant's husband's permanent retirement from the workforce, the Appellant resigned from her employment in order to accompany him to Calgary. They had elected to move from Yellowknife to Calgary as they wished to reside in a larger city after having lived in a small rural community for a prolonged period and to be closer to the husband's son and grandchildren.
- (b) The husband stated it would have been unreasonable for the couple to live apart until the Appellant could secure employment in Calgary, and it would have been very difficult for her to search for work in Calgary while she was still in the Northwest Territories.

(c) The Appellant secured new employment approximately 2 months after they relocated and, therefore, would only require payments for a short time.

[17] By correspondence dated October 5, 2015, the Commission advised the Appellant that its decision of June 3, 2015 was maintained (GD3-29 to GD3-30).

[18] In her appeal materials (GD2), the Appellant included an “Appeal Letter” (GD2-2 to GD2-4), in which her husband explained that the Appellant’s first language was not English and that it made no sense for them to pay 2 rents while she continued to work in Yellowknife until she found a job in Calgary. The husband further stated that “as a Christian family” it is the Appellant’s “obligation to follow her husband” (GD2-4).

SUBMISSIONS

[19] The Appellant submitted that she had just cause for leaving her employment at Wal-Mart because, as a wife and a Christian, she had an obligation to follow her husband and not be left behind when he moved to Calgary upon his retirement.

[20] The Commission submitted that moving to Calgary upon the husband’s retirement was a personal decision and not a situation where the Appellant quit her job to follow her spouse but rather where they made a mutual decision to leave their jobs and relocate. A reasonable alternative to leaving her job would have been for the Appellant to remain in Yellowknife and continue working until a transfer to another Wal-Mart location could be completed, or taking a leave of absence until the Appellant was settled in her new residence. Therefore, the Appellant failed to prove that she left her employment with just cause within the meaning of the EI Act.

ANALYSIS

[21] Section 30 of the EI Act stipulates that a claimant who voluntarily leaves her employment is disqualified from receiving any benefits unless she can establish “just cause” for leaving.

[22] It is a well-established principle that “just cause” exists where, having regard to all the circumstances, on balance of probabilities, the claimant had no reasonable alternative to leaving the employment (*White 2011 FCA 190, Macleod 2010 FCA 301, Imram 2008 FCA 17, Astronomo A-141-97, Tanguay A-1458-84*).

[23] The list of circumstances enumerated as “just cause” in paragraph 29(c) is neither restrictive nor exhaustive, but delineates the type of circumstances that must be considered (*Campeau 2006 FCA 376; Lessard 2002 FCA 469*). It is not imperative that the Appellant fit precisely within one the factors listed in subsection 29(c) of the EI Act in order for there to be a finding of “just cause”. The proper test is whether, on the balance of probabilities, the Appellant had no reasonable alternative to leaving her employment, having regard to all the circumstances, including but not limited to those specified in paragraphs 29(c)(i) to (xiv) of the EI Act (*Canada (Attorney General) v. Landry (1993) 2 C.C.E.L. (2d) 92 (FCA)*).

[24] The initial onus is on the Commission to show that the Appellant left her employment voluntarily; once that onus is met, the burden shifts to the Appellant to show that she left his employment for “just cause” (*White, supra; Patel A-274-09*).

[25] In the present case, it is undisputed that the Appellant left her job voluntarily when she quit her job at Wal-Mart on April 24, 2015.

[26] The onus of proof then shifts to the Appellant to prove that she had no reasonable alternative to leaving her job when she did.

[27] The Tribunal must consider the test set out in sections 29 and 30 of the EI Act and the circumstances referred to in subsection 29(c) of the EI Act, and determine whether any existed at the time the Appellant left her employment. These circumstances must be assessed as of that time (*Lamonde A-566-04*), **namely the day she quit her job: April 24, 2015.**

[28] The Tribunal first considered the Appellant’s statements and testimony that she quit her job at Wal-Mart because she and her husband had decided to relocate from Yellowknife to Calgary following her husband’s permanent retirement from the workforce. The Tribunal notes that the Appellant’s husband had not obtained work in Calgary, nor would he be looking for work when they moved to Calgary. It was also not a situation where the Appellant’s husband was moving to Calgary to receive needed health care. Rather, the couple made a decision to relocate and live in Calgary upon the husband’s retirement, close to his son and grandchildren.

[29] The Tribunal finds that the Appellant has not proven that she had an obligation to accompany her spouse to another residence that would constitute “just cause” within the

meaning of paragraph 29(c)(ii) of the EI Act. The Federal Court of Appeal has held that, while the policy of preserving the unity of a claimant's family underlies the circumstance enumerated in paragraph 29(c)(ii) of the EI Act, the policy should never be applied blindly and automatically without due regard to the particular circumstances of the claimant: *Blondahl A-209-93*. In the present case, the Tribunal finds the Appellant did not move to follow her husband, but rather made a personal decision, together with her husband, that they would relocate to Calgary upon the husband's retirement. A decision to relocate for strictly personal reasons will not constitute just cause pursuant to paragraph 29(c)(ii) of the EI Act, especially where the evidence does not establish the need for the claimant to accompany her spouse: *CUB 68759, Canada (AG) v. Gagne, 1996 FCA 633*.

[30] The Tribunal finds that a reasonable alternative would have been for the couple to live apart temporarily while the Appellant continued to work in Yellowknife and search for work in Calgary or allow her husband to get settled and request a transfer to a Wal-Mart at a suitable location in Calgary.

[31] The Tribunal next considered the Appellant's statements regarding her reasonable assurance of another employment upon moving to Calgary. The Tribunal notes the Appellant's admission that she did not look for work in Calgary prior to quitting her job at Wal-Mart, nor did she request a transfer to a Wal-Mart location in Calgary prior to quitting. The Tribunal accepts the Appellant's testimony that she had every intention of looking for work once she was settled in Calgary, and notes the Appellant was employed again within a relatively short period of time after the move. Nonetheless, the Tribunal finds that the Appellant has not proven that she had a reasonable assurance of another employment in the immediate future that would constitute "just cause" within the meaning of paragraph 29(c)(vi) of the EI Act. The Federal Court of Appeal has stipulated that for paragraph 29(c)(vi) of the EI Act to apply, there must be three things: "reasonable assurance", "another employment" and "the immediate future" (*Lessard 2002 FCA 469*). The Appellant's intention of looking for work in a larger urban center once she was settled in the new location does not constitute a reasonable assurance of another employment. In the present case, the Appellant was not in contact with any employer in Calgary prior to quitting, let alone in receipt of an offer of employment.

[32] The Appellant may have had good personal reasons for leaving her job at Wal-Mart, but the Federal Court of Appeal has clearly held that good cause for quitting a job is not the same as “just cause” (*Laughland 203 FCA 129*), and that it is possible for a claimant to have good cause for leaving their employment, but not “just cause” within the meaning of section 29 of the EI Act (*Vairumuthu 2009 FCA 277*).

[33] The Tribunal finds that a reasonable alternative to quitting would have been for the Appellant to continue working at Wal-Mart in Yellowknife until she had secured other employment in Calgary, or taken a leave of absence from job until she could have arranged a transfer to a Wal-Mart location in Calgary.

[34] Finally, the Tribunal considered the Appellant’s submission that she is entitled to EI benefits because she paid into the employment insurance program for a number of years. The Tribunal notes that it is not enough to pay into the employment insurance plan: the Appellant must comply with the provisions of the EI Act in order to qualify for EI benefits. While the Tribunal acknowledges that the Appellant’s disappointment at having paid into the plan and been disqualified from receipt of EI benefits, the act of contributing to the plan over time is not relevant to whether the Appellant had just cause for voluntarily leaving her employment at Wal-Mart.

CONCLUSION

[35] Having regard to all of the circumstances noted above, the Tribunal finds that the Appellant did not prove that she was left with no reasonable alternative but to leave her employment at Wal-Mart on April 24, 2015. The Tribunal therefore finds that the Appellant did not demonstrate just cause for voluntarily leaving her employment and is, accordingly, subject to an indefinite disqualification from EI benefits pursuant to sections 29 and 30 of the EI Act.

[36] The appeal is dismissed.

Teresa M. Day
Member, General Division - Employment Insurance Section