



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. C. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 163

Tribunal File Number: GE-16-364

BETWEEN:

D. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

HEARD ON: August 31, 2016

DATE OF DECISION: September 2, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

D. C., the claimant, attended the hearing via teleconference.

INTRODUCTION

[1] The claimant became unemployed on September 23, 2015. He filed for Employment Insurance (EI) benefits on September 30, 2015. An initial claim for EI benefits was established on September 27, 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 December 7, 2015. 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 need for additional information.

[3] The claimant attended the hearing scheduled for August 17, 2016 however it was quickly realized that the claimant did not receive the appeal docket. The Tribunal determined that the claimant was unable to know the case against him and initiated an adjournment. The hearing was rescheduled for August 31, 2016.

ISSUE

[4] 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

[5] Subsection 30(1) of the EI Act states that a claimant is disqualified from receiving 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.

[6] 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).

[7] 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.

EVIDENCE

Information from the Docket

[8] The claimant applied to reactivate a claim for regular EI benefits on September 30, 2015 stating that he was no longer working due to a Leave of Absence (LOA) to visit family in Europe (Page GD3-3 to GD3-14).

[9] An employer submitted a Record of Employment (ROE) dated July 13, 2015 indicating that the claimant began working on February 10, 2015 and he quit on June 27, 2015 accumulating 932 hours of insurable employment (Page GD3-16).

[10] A subsequent employer submitted a ROE dated September 30, 2015 indicating that the claimant began working as an electrician on September 10, 2015 and he was no longer working due to a shortage of work on September 23, 2015 accumulating 124 hours of insurable employment (Page GD3-15).

[11] The employer was contacted by the Commission and confirmed that the claimant did not have an approved LOA. The employer further stated that the claimant called in from home one day and said he quit; no specific explanation for quitting was given (Page GD3-17).

[12] The claimant was contacted by the Commission and he confirmed that he quit his job to visit family in Europe. He argued that he should be able to go and see his family adding that he asked for a layoff and they would not give him one and he already had his ticket (Page GD3-18).

[13] The Commission sent a letter dated October 23, 2015 informing the claimant that he was unable to be paid EI benefits because he voluntarily left his employment on June 23, 2015 without just cause within the meaning of the EI Act. He was further informed that he had not worked long enough to receive benefits since leaving his employment without just cause. He has 124 hours of insurable employment, but he needed 700 hours of insurable employment (Page GD3-19).

[14] The claimant submitted his Request for Reconsideration stating that he wanted to spend some time with his family that is living outside of Canada. He added that he does this every year since 2011 but this time, he had to apply for EI benefits because the job market is not as good as it used to be. He explained that this is his yearly routine; work a couple of months and then go to Europe for the summer as his two daughters had vacation from school and kindergarten. He stated that his tickets are bought in advance. He would like an explanation about how he is supposed to act in order to keep the family together and work as well (Page GD3-22).

[15] The claimant was contacted by the Commission and he denied that he called from home and quit. He explained that when he was originally hired, he spoke to his original foreman about needing some time during the summer months and he was told that it would not be a problem. He believed that this was sometime in April 2015 and he was told that he could leave and would probably be rehired upon his return. He stated that he then had to switch crews and he discussed

the situation with his new foreman, the new foreman talked to his boss about the situation and he was told that he was not able to give him the time off nor were they able to lay him off due to the fact that the company was still hiring. The claimant added that he had purchased his plane tickets ahead of time when the fares were reduced and that is the only time that he is able to see his family who live in Europe (Page GD3-24).

Information from the Hearing

[16] The claimant testified at the hearing that he was approved leave to return to Romania to visit his family because when he came to Canada he purchased a return ticket and it was impossible to change it; he would have to buy another ticket. He stated that he was approved leave by his foreman and they would have given him a layoff but then he was transferred to another crew which was run by another union. He stated that this foreman said he would inquire and after he informed the claimant that he could not have a layoff because they were still hiring. He stated that they did not know his story and they did not care but he kept discussing this with the employer explaining that he had to go back because his family was counting on him. He stated that on his last day, he told his employer that he had to go and he later found out that they did not give him the layoff. He stated that he did not call from home and quit.

[17] The claimant stated he was not guaranteed a job forever and he could be given notice of a layoff at any time however this time, he was not given a layoff. He stated that he was surprised that he did not get the layoff because he spoke to everyone about his problem and he could not change his ticket because it would cost a fortune. He stated that he just wanted one month to spend with his family and then he would be coming back. He stated that his foreman understood and was willing to see what he could do but sometimes the decision from the office is different.

[18] The claimant stated that the employer was brand new and they were not used to the culture. He stated that people have to go on vacation but they do not get vacation time. He stated that when he was paid, they were given their vacation pay with every paycheque because they do not get vacation time. He stated that the employer expected that by September 2015 they would be offsite and so he was hoping to only go home for the month of July and then he would return to finish the job.

[19] The claimant stated that this is not the first time he did this, he stated that has done this for the last three or four years. He stated that in the previous years he was given a layoff because when he came back, if he had no job, he would be able to get EI benefits because he paid for it. He stated that there was no quitting; he always buys two way tickets and he needs one or two months off in the summer. He stated that this is what he has done since 2011 and this is the first time he has had this issue where they put quit on his ROE. He stated that he had applied before for EI benefits because he needed to leave work because his mother-in-law passed away and he had to be home for that; it was recognized that he was out of Canada for compassionate reasons.

[20] The claimant stated that he travelled back to Romania around June 29, 2015 and he returned at the beginning of September 2015. He stated that he started working on September 10, 2015 but the company made a mistake and they were removed from the site on September 23, 2015. The claimant stated that he knows he cannot get EI when he is out of the country but when he came back he got a job and was then laid off again.

[21] The claimant stated that he then got another job but he had to leave because of the fires in X and he heard that the government said those people affected by the fires would be entitled to EI benefits.

SUBMISSIONS

[22] The claimant submitted that:

- a) He has paid in to EI (Page GD3-18).
- b) His entire family, his wife and three children are in Romania. He booked the plane tickets in advance and he requested a LOA that he was told initially would be approved. He was transferred to another crew and the new bosses did not know his story (Page GD3-20).
- c) His LOA was accepted the first time but after he was transferred to another crew his request was denied because they thought there would not be any work when he returned. The job was winding down but he could not wait until he had been laid off because he bought his plane tickets from a Romanian travel agency and to change that was harder than buying another one. He did not tell the employer he quit and still believes that he was laid off (Page GD2-6).

- d) The employer did not care about family issues, for them he was only a number. Is he expected to stay forever and to get out only when there is no job available? He did pay for his EI benefits, a lot of money and he deserves some benefits too (Page GD3-22).
- e) He has a right to see his family overseas and in a unionized environment, they do not have scheduled vacations. He chooses when he goes and for how long (Page GD2-6).
- f) He had no intention to quit. When he quits a job he takes another one and he has only done this once before.

[23] The Commission submitted that:

- a) The claimant did not have just cause for leaving his employment on June 27, 2015 because he failed to exhaust all reasonable alternatives prior to leaving. Considering all of the evidence, a reasonable alternative to leaving would have been to ensure his requested period of leave was indeed approved by the employer prior to purchasing his airline tickets as the employer confirmed the claimant did not have a LOA approved, he could have remained employed and taken a leave to visit his family at a later date that was authorized and approved by the employer or he could have remained employed until he was actually laid off due to a shortage of work and then travelled to Romania to visit his family (Page GD4-2).
- b) Even though the claimant states that he visits his family every summer when his children are not in school, this is a personal preference because he can visit his family during other times of the year and this should be when a period of leave can be approved by the employer or when he is actually on a lay off from employment. Moreover, the claimant advised that he was told that he would probably be rehired upon his return to Canada and this further confirms that he was not on an approved period of leave as he would not have to be re-hired if the period of leave had in fact been approved (Page GD4-3).
- c) The claimant reasons for voluntarily leaving his employment are understandable, and could absolutely be considered good cause for leaving however jurisprudence distinguishes between good cause and just cause; and leaving employment for purely personal reasons without first exploring reasonable alternatives does not constitute just cause. Consequently, the claimant failed to prove that he left his employment with just cause within the meaning of the EI Act (Page GD4-3).

ANALYSIS

[24] The question of just cause for voluntarily 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).

[25] 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.

[26] According to the FCA decision *Canada (Attorney General) v. Laughland*, 2003 FCA 129, the issue is not whether it was reasonable for the claimant to leave his 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".

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

[28] In this case, the Tribunal accepts the claimant's evidence that he voluntarily left his employment in order to visit his family in Europe. He stated that he does this every year but this time he had to apply for EI benefits because the job market is not as good as it used to be. He further stated that initially he was approved a LOA but after switching crews, he was denied the LOA however he had already purchased his tickets so he chose to continue with his travel plans. The claimant stated that he still believes that he was laid off and he had no intention to quit. The Tribunal recognizes that when the claimant applied for EI benefits he stated that he was no longer working due to a LOA, his employer stated that he quit his employment and the claimant confirmed that he did in fact quit as he did not have an approved LOA. From this, the Tribunal is satisfied that the claimant is responsible for the separation of employment as he voluntarily left his employment to visit his family in Europe and he did so without an approved LOA or a layoff from his employment.

[29] In the FCA decision *Canada (Attorney General) v. Graham*, 2011 FCA 311, Justice Layden-Stevenson explains:

“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).

... The Board acknowledged the legal test for “just cause.” However, it did not examine the facts of the [claimant’s] case in relation to the above-noted principles of law. Rather than applying the no reasonable alternative test, the Board considered whether the [claimant’s] conduct was reasonable in the circumstances and concluded that his choice qualified as reasonable behaviour. On the basis of that finding, it determined he had just cause for leaving ...

...the Board erred in failing to assess the facts in accordance with the law.”

[30] The Tribunal sought guidance from CUB 69892 where Justice Goulard states:

“There is a consistent line of authority that leaving employment for purely personal reasons, such as the desire to be close to family members, does not constitute just cause within the meaning of section 29(c) of the Act (CUBs 17643, 58461 and 58277). In the decision in CUB 17643, Dubé J. writes:

From a personal point of view, I can readily understand that a person must occasionally change location for personal reasons: it is quite normal that she should elicit our sympathy. However, such a reason is not a justification under the Act or the case law in the sense that it relates to the abandoned employment; rather it relates to other purely personal reasons (*Tanguay*, A-1458-84).

[31] And, the Tribunal sought further guidance from CUB 66811 which is a case similar to this one. The Umpire stated:

“I have considered this matter and I am satisfied that the Board of Referees made an error in law. The reasonable alternative for the claimant would have been to cancel her vacation or move it to another time. She could have then continued with her employment. It seems to me that in this case the claimant made a personal choice to have her vacation as she had arranged. She was put in an unfortunate position in that she would probably lose money having made commitments for the vacation if she tried to alter it. That was a decision that she had to make. The position is, however, that in law the claimant has to have just cause for leaving their employment. In this case the claimant was offered further employment which she refused. That being so, she then expected to receive

employment insurance benefits. Employment insurance benefits, however, are for those who through no fault of their own find themselves in an unemployed situation. In this case, the claimant by her own decision, although a difficult one, chose not to take the extension of work offered to her and therefore did not show just cause for leaving her employment. There is no provision under s. 29 of the Act that allows a person to leave her employment and seek employment insurance benefits so that she can go on vacation. That is not one of the enumerated causes. Also the section requires that the claimant must exhaust all reasonable alternatives prior to quitting. In this case she did not.”

[32] The Tribunal finds that the claimant did not have just cause to voluntarily leave his employment. While the Tribunal recognizes that the claimant was initially approved a LOA in order to visit his family and then the leave request was denied, the Tribunal finds that the approval and subsequent cancellation of his leave is not relevant. The claimant stated that he was not authorize time off and they were not able to give him a layoff as they were still hiring; he chose to continue with his travel arrangements as planned and the Tribunal considers this to be a personal choice.

[33] The legal test that must be applied is whether the claimant had no reasonable alternative but to quit his job when he did. The Tribunal finds that the claimant did have reasonable alternatives to leaving his employment. The claimant had the reasonable alternative of remaining employed and altering his travel arrangements to a time that was agreeable to the employer. Alternatively, it is the claimant’s responsibility to protect his employment and therefore, the claimant had the reasonable alternative of waiting until there was an actual layoff before travelling. While the Tribunal recognizes that this would have caused the claimant to lose money, this was the unfortunate position he was in and the decision that he had to make.

[34] The claimant argued that the employer does not care about family issues and to them, he was only a number. The Tribunal respects the claimant’s argument however; an employer has the right to determine when someone is allowed to have vacation time based on the operational requirements of the business. Furthermore, a layoff as a reason for separation on the ROE should only be selected when there is an actual shortage of work and not because there might not be any more work when the claimant returns from vacation.

[35] The claimant further argued that he has a right to see his family overseas, as a unionized worker they do not have scheduled vacations and he wondered if he is expected to stay forever

and to only visit his family when there are no jobs available. The Tribunal does not dispute that the claimant has a desire to visit his young family however; he is now expecting to receive EI benefits after having voluntarily left his employment without just cause. Unfortunately, as has often been said, EI benefits are paid to those who find themselves unemployed through no fault of their own and not to provide benefits to those who create their own unemployment when they had other reasonable alternatives to doing so. In this case, the claimant created his own unemployment when he severed his employment when he took unauthorized leave to visit his family.

[36] The claimant further argued that he has paid EI premiums and he deserves his EI benefits. However, simply paying EI premiums is not a guarantee that EI benefits will be payable. A claimant is still required to meet the necessary conditions of eligibility.

[37] Following the claimant's return to Canada, he began working for a subsequent employer and was eventually laid off accumulating 124 hours of insurable employment. The Tribunal accepts that the claimant was not a new entrant or re-entrant to the workforce and therefore he required 700 hours of insurable employment.

[38] 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 calculation in relation to qualifications for benefits. The Tribunal is satisfied that the claimant, once disqualified from EI benefits for voluntarily leaving his employment, did not qualify for EI benefits when he was laid off from his subsequent employment because he only had 124 hours of insurable employment from this employment but he required 700 hours of insurable employment.

[39] The claimant added that he was forced to leave another job due to the fires in X and he heard that the government said that those people affected by the fires would be entitled to EI benefits. The Tribunal is unable to respond to this as the fires occurred after the timeframe that is in question in this appeal.

[40] For these reasons, the Tribunal concludes that the claimant has not proven just cause to have voluntarily left his employment on June 27, 2015 pursuant to paragraph 29(c) of the EI Act and has not accumulated sufficient hours of insurable employment since voluntarily leaving to qualify for EI benefits pursuant to paragraph 30(1)(a) of the EI Act.

CONCLUSION

[41] The appeal is dismissed.

K. Wallocha

Member, General Division - Employment Insurance Section