Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *S. A. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 8

Tribunal File Number: GE-16-2411

BETWEEN:

S. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARING DATE: December 22, 2016

DATE OF DECISION: January 20, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, S. A., was present at the videoconference hearing held on December 22, 2016. Yvan Bousquet, from Mouvement Action-Chômage of Saint-Hyacinthe, represented her.

[2] The Respondent, the Employment Insurance Commission of Canada (Commission), did not attend the hearing.

INTRODUCTION

[3] On September 28, 2015, the Appellant submitted an initial application for benefits effective September 27, 2015 (Exhibits GD3-3 to GD3-10).

[4] The Appellant then worked for the employer, Les Résidences Soleil S. E. N. C., from November 11 to 13, 2015, inclusively, and she stopped working for that employer after voluntarily leaving (Exhibit GD3-11).

[5] On January 14, 2016, the Commission notified the Appellant that it had reconsidered her application for benefits and that she was still not entitled to regular Employment Insurance benefits as of November 8, 2015, because she had voluntarily stopped working for her employer, Les Résidences Soleil S. E. N. C., on November 13, 2015, without just cause within the meaning of the *Employment Insurance Act* (Act), (Exhibit GD3-16).

[6] On April 7, 2016, the Appellant, represented by Yvan Bousquet, submitted a Request for Reconsideration of an Employment Insurance decision (Exhibits GD3-17 to GD3-22).

[7] On June 7, 2016, the Commission notified the Appellant that it had upheld the decision rendered in her case on January 14, 2016, with regard to her voluntary leaving (Exhibits GD3-42 and GD3-43).

[8] On June 15, 2016, the Appellant, represented by Yvan Bousquet, submitted a Notice of Appeal with the Employment Insurance section of the General Division of the Social Security Tribunal of Canada (Tribunal) (Exhibits GD2-1 to GD2-6).

[9] This appeal was heard by videoconference for the following reasons:

a) The Appellant is represented or other parties are represented.

b) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit.

ISSUE

[10] The Tribunal must determine whether the Appellant had just cause for voluntarily leaving her employment under sections 29 and 30 of the Act.

EVIDENCE

[11] The evidence in the docket is as follows:

a) A Record of Employment, dated November 17, 2015, specifies that the Appellant worked as a "pay assistant" for the employer, Les Résidences Soleil S. E. N. C., from November 11 to 13, 2015, inclusively, and that she stopped working for that employer after voluntarily leaving (code E—voluntary leaving), (Exhibit GD3-11).

b) On January 14, 2016, the employer, Les Résidences Soleil S. E. N. C., explained that the Appellant had been hired to work on contract as a pay assistant until June 2016. The employer indicated that the Appellant had worked for three days, namely, from November 11 to 13, 2015, and that she phoned work on November 16, 2015, to say that she had fallen, that she had been injured, and that she was not going to come back to work (Exhibit GD3-15).

c) On May 17, 2016, the employer, Les Résidences Soleil S. E. N. C., stated that the Appellant had held a position of pay technician, and that it was a full-time

replacement position, for a period of nine (9) months, since the employee who had the position in question was stricken with cancer and, consequently, she was going to be absent from work for an indeterminate period. The employer specified that the Appellant had worked for only three (3) days. It also claimed to have noted, during a short period of time, that the Appellant seemed to be having difficulties in adapting to the company's methods and procedures. The employer said that it understood that the Appellant could have had problems adapting in this aspect, but that it was a normal process because she had worked for a long time for her previous employer. The employer also stated that the Appellant had sent an email on the morning of Monday, November 16, 2015, to inform it that she was quitting her job, and that, because she had been injured, she was not going to be coming back. The employer specified that it thought that there was perhaps something else behind the Appellant's decision to quit her job, but it could not say what, since the Appellant had never spoken to it about her situation. Questioned by the Commission on whether the Appellant could have taken leave on submission of a doctor's note, then resume her work after a recovery period, the employer indicated that it was difficult for it to answer, since the Appellant had quit her job and that this issue had not arisen. The employer explained that, normally, it is not a problem when employees benefit from sick leave, and that they are then they are willing to resume their position after a recovery period, since a replacement is possible during that period. The employer specified that other employees had found themselves in similar situations and that they had resumed work after their sick leave. The employer emphasized that the Appellant had been clear in her message in which she specified that she was resigning, without expressing the possibility of taking temporary leave. The employer indicated that another employee had replaced the Appellant, and that it was expected that the former would work at least until July 2016 and even until September 2016, depending on the state of health of the employee afflicted with cancer. The employer specified that it was also possible that, as all this could have been the case for the Appellant if she had stayed in her position, the employee who came after her and who ultimately replaced the employee afflicted cancer acquired a permanent position in case the latter, due to her state of health, would not be capable of resuming the job (Exhibit GD3-35);

d) On December 4, 2015, April 7, 2016 (Request for Reconsideration), and May 17, 2016, as well as on or around June 1, 2016, the Appellant and her representative sent to the Commission a copy of the following documents:

i. a proof of visit at the Clinique médicale du Faubourg (X) specifying that the Appellant had seen a physician on November 16, 2015 (time of appointment: 6:30 pm), (Exhibit GD3-14 or GD3-28);

ii. a letter from Service Canada addressed to the Appellant and dated March 30, 2016, informing her that the documents that she had requested had been sent to her (Exhibit GD3-21);

iii. the Commission's letter (initial decision) of January 14, 2016 to the Appellant (Exhibit GD3-22);

iv. a letter dated May 10, 2016, in which the Appellant explained that her voluntary leaving from the employer, Les Résidences Soleil S. E. N. C., was justified within the meaning of the Act (Exhibits GD3-24 and GD3-25);

v. a summary of the statement by the Appellant's former employer, Métro X Inc., dated October 29, 2015, indicating that the Appellant had received severance pay in the amount of $26,000.00 and that a portion of this amount, namely, the sum of $9,153.48, was vacation pay because the former had stopped working (Exhibit GD3-26);

vi. an excerpt from a document from the employer, Les Résidences Soleil S. E. N. C., pertaining to the training and evaluation of new employees. This document specifies that the welcoming and settling-in period of a new employee (two days in the case of a diver and three days for all the other functions or all the other jobs) is followed by an evaluation that the immediate supervisor conducts, after 10 days worked, and that this follow-up aims to determine the strengths and areas of improvement in order to enhance the contribution to the achievement of the company's objectives (Exhibit GD3-27);

vii. the results of a radiology exam of the right wrist and the right hand that the Appellant had undergone at the centre radiologie PB (X–X) on November 16, 2015, by Doctor Frédéric Desjardins, radiologist. The document indicates that there had been no sign of fracture (Exhibit GD3-29);

viii. an excerpt of the Appellant's medical file dated November 18, 2015 (Exhibit GD3-30);

ix. a medical document from the Centre de santé et de services sociaux X-X Health and Social Services Centre (CSSS X-X) specifying that the Appellant had undergone a medical exam (three-phrase bone scan of the forearms and hands), dated March 9, 2015 (Exhibits GD3-31 and GD3-32);

x. the results of a radiology exam of the right wrist that the Appellant had undergone at the PB Radiology Centre (X–X) on February 4, 2016. The document indicates that there had been no significant change with respect to the exam from November 16, 2015 (Exhibit GD3-33);

xi. a document from the Clinique médicale du Faubourg (X) indicating that the Appellant had conducted a medical consultation on February 4, 2016 (Exhibit GD3-34);

xii. a document from the Clinique médicale du Faubourg (X), that Dr. Johannie Boudreault had written on May 27, 2016, indicating that the Appellant had been seen on November 16, 2015, in the context of a sprain in the right wrist. The document specifies that the doctor had talked to the Appellant about her new job, because she was going through a lot of stress and the adjustment was very difficult. The doctor mentioned that she would have done a one-month leave of absence for health-related reasons, then a follow-up appointment. She specified that the leave of absence for health-related reasons in line with this diagnosis is generally four months (Exhibit GD3-38); and

xiii. a document from the Clinique médicale du Faubourg (X), dated May 27, 2016, indicating that the Appellant had submitted a consultation request that very day (Exhibit GD3-39).

e) On December 22, 2016, and January 4, 2017, the Appellant's representative sent to the Tribunal a copy of the following documents:

i. a summary of a portion of the Appellant's statements and her representative's arguments (Exhibits GD5-2 to GD5-4);

ii. a letter from the employer, Les Résidences Soleil S. E. N. C. (confirmation of employment), addressed to the Appellant, dated November 2, 2016, indicating that she had had had a temporary replacement position as a pay technician from November 11 to 13, 2015, inclusively. In that letter, the employer specified that the period had not been sufficient for allowing the Appellant to complete her assessment and that it was incapable of proceeding with an evaluation of the latter, given that she had resigned on November 16, 2015 (Exhibit GD5-5);

iii. a summary of the statement by the employer, Les Résidences Soleil S. E. N. C., made to the Commission on May 17, 2016 (Exhibit GD5-6 or GD3-35);

iv. a document from the Clinique médicale du Faubourg (X), that Dr. Johannie Boudreault had written on June 30, 2016 (addendum to the medical note that she had written on May 27, 2016), indicating that the Appellant had been seen on November 16, 2015, and that she had received a diagnosis of a right-wrist sprain. The document indicates that the doctor had talked to the Appellant about a leave of absence for health-related reasons to help with the healing of the right-wrist sprain. The note specifies that the patient (Appellant) is right-handed and that it had been difficult for her to work at a computer with the pain in her wrist. The doctor mentioned that the Appellant had had mood disorders and that a one-month leave of absence for health-related reasons would have been favourable following both diagnoses with a follow-up appointment as well (Exhibit GD5-7);

v. a document from the Clinique médicale du Faubourg (X), that Dr. Johannie Boudreault had written on May 27, 2016, indicating that the Appellant had been seen on November 16, 2015, for a right-wrist sprain (Exhibit GD3-38 or GD5-8);

vi. a ruling by the Federal Court of Appeal (Court) in ***Brisebois*** (**A-510-96**) and decision CUB 64302 (Exhibits GD5-9 to GD5-11);

vii. a letter from the Appellant addressed to the employer, dated November 16, 2015 (resignation letter, revised and edited on November 17, 2015), to notify it that she was resigning. In that letter, the Appellant explained that, following a medical consultation that she had conducted on November 16, 2015 (6:30 pm), and after reflection, it was preferable to her to maintain her health condition (Exhibit GD6-2).

[12] The evidence at the hearing is as follows:

a) The Appellant recalled the main items in the docket and the circumstances that led to her voluntarily leave her employment with the employer, Les Résidences Soleil S. E. N. C., on November 16, 2015, with the goal of showing that her leaving was justified within the meaning of the Act;

b) She claimed to have applied for pay technician ("pay assistant") position with the employer, Les Résidences Soleil S. E. N. C., and to have had an interview to that effect around the month of August or September 2015. She specified that her application had not been retained at first, but that the employer had then contacted her to offer the position in question, following the resignation of the other individual whose application had been retained initially;

c) The Appellant indicated that the employer had explained to her that it was about a replacement position of an indeterminate period, since she was going to replace an employee who was on leave for medical reasons. She explained that the employer had told her that the expected return to work of this individual was going to depend on what the sickness certificate of the latter was going to indicate;

d) She specified that she had begun working for this employer on November 11, 2015. She claimed to have signed documents about her hiring (ex. the employer's policies, void cheque signature) and that a person responsible for her training was introduced to her. The Appellant claimed to have worked in the presence of this person for three days during which she worked. She explained that, when she started working, it was about a ten-day training period, that she was thereby being mentored, because she was learning how to do pay and that, following the training period, she was going to be subject to an evaluation by the employer. She emphasized that it was about a job that she had never done before (Exhibit GD3-27);

e) The Appellant claimed to have notified the employer on the morning of November 16, 2015, that she would not be coming in to work that day because she had to attend a medical consultation since she had an appointment scheduled that same day, in the late afternoon, and that she was going to contact the employer, depending on what the physician was going to say. She specified that, after seeing the physician on November 16, 2015, she wrote a letter to the employer, Les Résidences Soleil S. E. N. C., to explain to the employer that, with the aim of preserving her health (ex. severe right-wrist sprain), she was resigning from the position that she had because the physician had initiated a leave of absence for health-related reasons (Exhibits GD3-14, GD3-28 and GD6-2);

f) She claimed to have submitted a letter to the Commission, dated May 10, 2016, to explain that she had voluntarily left in order to preserve her health (Exhibits GD3-24 and GD3-25);

g) The representative indicated that he was going to forward to the Tribunal a copy of the Appellant's resignation letter once the hearing had been held (Exhibits GD6-1 and GD6-2).

PARTIES' ARGUMENTS

[13] The Appellant and her representative have made the following observations and submissions:

a) The Appellant claims to have voluntarily left the job she had at the employer, Les Residences Soleil S. E. N. C., on November 16, 2015, in order to preserve her health. She said she believed that she did not have the ability to carry on her work due to the injury she had suffered in her wrist. The Appellant claims to have panicked after suffering this injury, that she immediately thought it could not work, that she was not going to be able to be effective in her job, and that she therefore gave her resignation. She confirmed that she had felt very anxious following the loss of her job at the employer Métro X after 29 years of service, and that this situation affected her enormously (Exhibits GD3-12, GD3-13, GD3-24, GD3-25 and GD6-2);

b) She claims to have seen a physician on November 16, 2015, and that the latter told her then that she should go on a leave of absence for health-related reasons. The Appellant specified that the physician advised her to quit her job (Exhibit GD3-12) or to have an "inactive period" (Exhibit GD3-25). She claims not to have asked, during this consultation, for a medical certificate that would have attested that she was, for medical reasons, incapable of working, because she did not have the employer's group insurance, given the temporary nature of the position she held. The Appellant indicated that she was not entitled to Employment Insurance benefits either because she had been receiving a separation allowance (separation monies) from her former employer (Métro X Inc.). She wondered why she would have needed a medical certificate indicating that she had to have a leave of absence for health-related reasons. The Appellant claims to have provided the Commission with a document specifying that she had seen a physician on November 16, 2015 (Exhibits GD3-12 to GD3-14, GD3-24 and GD3-25);

c) In a statement made to the Commission on November 30, 2015, the Appellant claims to have medical evidence clearly showing that her physician had recommended that she quit her job. The Appellant specified that her medical condition was temporary. She claims not to have asked her employer for authorized leave (Exhibit GD3-12);

d) She explained that she had not submitted medical evidence to the employer to notify it that she was going to be incapable of working. The Appellant specified that she thought it was wise to tell the employer that she was incapable of performing her job and that she did not want to keep him in suspense for four months. She confirmed that she felt anxious and stressed. The Appellant had still not received the results of her radiography of November 16, 2015, and she believed that she had a wrist fracture. She indicated that her decision was therefore to leave the job in question;

e) The Appellant asked how the employer would have reacted to a leave of absence for health-related reasons on his part. She wondered whether the employer would have waited "with a brick and a lantern." The Appellant confirmed that she was not in a state to undergo such stress. She emphasized that she had been monitored during the training that she took;

f) She said that, in her mind, she knew well, to have worked for more than 30 years in the medical service at the employer Métro X Inc., that, by continuing to use one's injured wrist, it can exacerbate one's injury. The Appellant emphasized that she had worn a brace for a four-month period and that she had maintained sequelae from her injury (e.g. need for infiltration to absorb the pain felt);

g) In a letter addressed to the Commission on May 10, 2016, the Appellant also argues that, contrary to what the employer had stated, the speech held during her hiring indicated that she was in training and, as the assessment period was going to be unfinished and an evaluation was going to be uncompleted, she had not been formally hired. She specified that the training period was paid. The Appellant explained that, before the injury had even arisen, she was wondering whether to carry on with the job because the training was very controlling and intimidating. She explained that the atmosphere was hardly endearing to a new employee. The Appellant emphasized that

she had discussed this situation, that she deemed it super stressful, with the physician she saw, and that it had been noted in her medical file. She specified that she was in training and that she had not gone through the formal stage of a regular employee. The Appellant explained that she was not entitled to group insurance (salary insurance) that the employer, Les Résidences Soleil S. E. N. C., offered, and that the allocation of sums received from her former employer, Métro X Inc., did not enable her to receive sickness benefits (special benefits). The Appellant confirmed that her physician recommended to her an inactive period, which would not enable her to continue her work. She explained that, even if her physician had made an offer in this regard, she did not ask for a document about recovery, because she was incapable of filling out an application for sickness benefits (special benefits), since she was ineligible for those benefits. She claims to have reported to the Commission's office with some documents of a medical nature in hand, and that the agent that she had met took only one of those documents. The Appellant argues that, given her particular situation, and that she was working "on a trial basis," she made the decision to prioritize her health and recovery. She confirmed that she had been incapable of using her wrist in a normal fashion until the 2015 holiday season, and that she had last had a medical appointment in March 2016 to that effect (Exhibits GD3-24 and GD3-25);

h) The representative explained that the Appellant had voluntarily left her job on November 16, 2015, after injuring her wrist (at home) that same day. He specified that the Appellant had notified the employer of the situation and that she had indicated to the employer that, due to her injury, she would not be coming back to work. The representative explained that the Appellant's condition did not enable her to conclude the training and evaluation stage that she had undertaken with the employer (Exhibits GD3-28 to GD3-34, GD3- 36, GD3-37 and GD5-2);

i) He argues that all the facts clearly show that when the Appellant made her decision to quit her job, she was legitimate to do it by reason of "working conditions that constitute a danger to health or safety," as provided for in paragraph 29(c)(iv) of the Act (Exhibit GD5-4);

j) The representative maintains that the Appellant's statements on her state of health were supported by medical documents to that effect. He specified that the Appellant had provided several medical reports attesting to her injury. The representative indicated that he was not a physician, but that the medical reports submitted provide details on the Appellant's health, including problems with osteoarthritis. He indicated that merely mentioning in the medical reports that the Appellant has an issue with osteoarthritis does not show that the latter had to quit the job that she had. The representative specified that he did not know whether the Appellant had been suffering from this illness or exhibiting this medical condition when she had worked at her former employer, Métro X Inc. He argues that the fact that the Appellant had been injured in the wrist prevented her from holding her position at the pay department. The representative specified that the Appellant had been working at the computer, that she is right-handed and that she sometimes had to use a pen (Exhibits GD3-36 and GD3-37);

k) He argues that, in reading between the lines of the content of the medical report written that Dr. Johannie Boudreault had written on May 27, 2016 (Exhibit GD3-38), it is possible to discern that the Appellant was incapable of returning to work on November 16, 2015. The representative specified that the Appellant had not known, on November 16, 2015, that her injury was going to render her unfit for four months, but that it was what the physician had written. According to the representative, the medical note written on May 27, 2016 (Exhibit GD3-38), certifies that the Appellant was still not fit for work by that date. He explained that no physician would sign a medical note certifying that the Appellant had to leave her job following the sprain (Exhibits GD3-40 and GD3-41);

l) The representative argues that the applicable case law clearly indicates that when the facts can explain the situation, a physician's document is in no way required to leave a job. He argues that the Appellant was suffering from an "adjustment disorder" after the dismissal she suffered after 30 years of service with her former employer and that she had sprained her wrist, which rendered her unfit for continuing her training. The representative indicated that, due to her wrist injury, the Appellant was unfit for work

during a long period, and that she retained some sequelae from that injury (Exhibit GD5-3);

m) According to the representative, the case law specifies that it is not necessary to provide a medical certificate to justify voluntarily leaving for health reasons (***Brisebois***, **A-510-96**). He argues that in ***Brisebois*** **(A-510-96)**, the Court stated:

> We all agree that both the Umpire and the Board of Referees erred in finding that the claimant should have produced a medical certificate to justify her contention that she had no alternative but to quit her employment. (...) It seems to us that the claimant was not invoking the existence of an illness when she confirmed working continually in an upright position was hurting her feet. She was 59 at the time and simply found the job in the restaurant that she had accepted too physically demanding. Since her credibility was not questioned, a medical certificate would have added nothing to her testimony. The application for judicial review will be allowed, the Umpire's decision will be overturned and the matter will be referred to an umpire for a reconsideration taking for granted that the claimant's appeal must be allowed. (Exhibits GD3-40, GD3-41 and GD5-9).

n) The representative argues that when a person meets a requirement regarding the circumstances justifying leaving voluntary leaving, under the Act, that person does not have to provide anything else to justify it. The representative argues that subsection 29(c) of the Act does not require that a person demonstrate that they have used all reasonable alternatives as long as they show that they quit their job (Exhibits GD3-40 and GD3-41);

o) The representative argues that an individual does not have to provide a medical certificate to resign when they know what they have, especially when the physician suggests it, which had been the case for the Appellant. He explained that the Appellant had decided not to stay in a position that was too stressful for her. She did not want to remain in that position and it was not a matter of leave. The representative emphasized that from the time they resign, an employee does not need to produce a medical document to resign, because they thereby have no further business with the employer, nor do they have reasons to provide it, unless the employee in question wants to receive Employment Insurance benefits or sickness benefits. According to

the him, the Appellant was fully within her right not to provide medical evidence, because she knew that she was, due to her state of health, incapable of continuing her work;

p) With the goal of showing that the Appellant did not have to provide medical evidence in order to justify her voluntary leaving, the representative also cites the content of the decision CUB 64302 in which the Umpire stated:

> [Translation]
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> […] Unlike *Canada (Minister of National Revenue—M.N.R.) v. Dietrich*, [1994] F.C.A. No 1921, the claimant's credibility was not an issue and a medical certificate was therefore not necessary to prove her fragile condition due to stress […]:
>
> > But, that does not mean that, in every case, there must be a medical certificate in order to find just cause for leaving. The presence or absence of a medical certificate is a question of evidence. If one exists, the evidence supporting the claimant's position may be stronger than otherwise. But, even in the absence of a medical certificate, it is still open to a Board to find that a person had just cause, on the basis of health, for leaving employment. (CUB 14805, dated February 19, 1988, by Madame Justice Reed)
>
> […] Does an employee have to wait to be sick before leaving a job or let stress, fatigue and work overload lead them to be at the end of their rope and force them to resign? [...] In my opinion, it is about a flagrant case of an individual who had not only a valid ground for leaving her job, but also just cause pursuant to the Act to quit her job. It is necessary to consider all the circumstances and particularly the increase in workload, as well as the addition of another lawyer, which constitutes, in my opinion, a significant change to the claimant's tasks. I have no other choice but to find that the employer unilaterally and fundamentally changed the claimant's work conditions and, in a significant way, changed her assignment." (Exhibits GD5-10 and GD5-11);

q) He also argues that in decision CUB 49198, the Umpire stated:

> [Translation]
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> [...] The Board finds that she [the claimant] was not in a physical state to resume work, but it assigns her the obligation to come to an agreement with the employer. However, she is described as being in a state of 'upheaval and torment' such that she cannot function. The Board has

adopted lesser role in the application of the section of the Act by assigning such an obligation to an individual in her condition. Although the medical evidence is compelling, the Board still added obligations to section 29 of the Act;

r) The representative alleges that the employer corroborates the adjustment disorder from which the Appellant is suffering and which she mentioned (Exhibit GD3-25) and that the employer found out that that was not going to work well for the latter's employment (Exhibit GD3-35), as well as from documents of a physician that she had seen. The representative specified the two different documents that Dr. Johannie Boudreault had written, one dated May 27, 2016 (Exhibits GD3-38 or GD5-8), and the other dated June 30, 2016 (Exhibit GD5-7), and that these documents indicate, according to him, a four-month recovery (Exhibits GD3-38, GD5-2, GD5-7 and GD5-8);

s) He argues that a document that the employer had signed confirms in all points the Appellant's version of the facts. The representative affirmed that, based on the statement that the employer had made to the Commission, it was evident that the employer had clearly noticed the Appellant's adjustment disorder over the course of the three days during which she worked (Exhibits GD5-2, GD5-3 and GD5-5);

t) The representative explained that the Appellant had every reason to believe that she would not have the job in question, at the end of her training period, and that she had not wanted it, given the stress she had been experiencing;

u) He asked whether it was possible, depending on a balance of probabilities, for an employer to wait beyond four months for the return to work of an employee in training only three days prior, and having been incapable of ending their training. He emphasized that the employer doubted the Appellant's ability to adjust, since she had just lost her job, which she had held for the previous 30 years at her former employer (Exhibit GD5-3);

v) The representative specified that the employer took the care to include, in the Appellant's contract of employment, a clause stipulating that, for official acquisition of the position, an evaluation had to be carried out after the 10-day training.

According to him, no employer hires, or keeps employed, an employee on assessment who is incapable of ending their training and undergoing their evaluation, while they must be absent for a period of at least four months, as indicated in the medical certificate (Exhibit GD5-3);

w) He asked whether the employer would have kept the Appellant employed if she had had to be absent for a four-month period, given that her job, a replacement position, was going to last for about six months. The representative claims that, in reality, when an employee is sick for two or three days, the employer disposes with them. He emphasized that the Appellant was employed for only three days and that the employer would not have kept her employed if she had requested sick leave for an indeterminate period (Exhibits GD3-40 and GD3-41);

x) The representative explained that, before voluntarily leaving, the Appellant had not asked her employer for sick leave and that she gave it her resignation, because she was receiving compensation (indemnity) from her former employer (Métro X Inc.), and that she was not entitled to Employment Insurance Benefits (regular benefits or special benefits). He specified that the Appellant was also not eligible for the group insurance (private insurance) from the employer (Les Résidences Soleil S. E. N. C.), (Exhibits GD3-24, GD3-36, GD3-37, GD3-40, GD3-41, GD5-2 and GD5-3);

y) He argues that the Appellant did not need a medical certificate since she was unentitled to Employment Insurance benefits and because she had no claims to make in that regard. The representative explained that the physician that the Appellant had seen had offered to write for her a note for sick leave, but that she had refused this offer because she was eligible for nothing anyhow. He argues the fact that the Appellant did not consider it appropriate to accept this document that her physician had offered her prior to her resignation has nothing to do with the legitimacy of her leaving (Exhibits GD3-36 and GD3-37 and GD5-3);

z) The representative explained that, even if there had been hiring papers, the Appellant had begun training at the employer, Les Résidences Soleil S. E. N. C., on November 11, 2015, as pay technician, with the goal of acquiring a new job. He

emphasized that the sought-after job was a replacement position for a recovering employee and that it was temporary. He specified that it was not a permanent position, as a Commission agent had mentioned. According to him, the Commission based its decision on erroneous components (Exhibits GD3-24 and GD5-2);

aa) He argues that the Appellant was not truly an employee, and that her status was unclear, given that it had been expected that she would be working on a trial basis for the first ten (10) days of being hired. He mentioned that the Appellant had been paid on her first day of work (Exhibits GD3-36, GD3-37, GD3-40 and GD3-41);

bb) The representative affirmed that the Appellant's written statement, dated May 10, 2016, shows that to obtain the position in question, she had to take training for 10 days. He emphasized that it had been mentioned to the Appellant that she was going to be formally hired only after the evaluation that was going to follow her training, as indicated in the employer's policy (Exhibits GD3-27 and GD5-2);

cc) He mentioned that the confirmation of employment letter that the employer had issued notifies the Appellant that she had held a temporary replacement position as pay technician, from November 11 to 13, 2015, inclusively, but that this period was not sufficient to make it possible to complete her assessment or to proceed with her evaluation, given that she had resigned on November 16, 2015. He alleges that the content of this letter means that there was no hiring, since the training that the Appellant took was not completed or completed successfully (Exhibit GD5-5);

dd) The representative affirmed that, contrary to what the Commission had indicated in this regard, he did not submit the fact that the Appellant was free from having to find herself another Job, since her former employer had been still paying her and that this situation represented a ground justifying her voluntary leaving (Exhibits GD3-24 and GD3-25);

ee) He maintains that there was no real administrative review on the part of the Commission, in the present case. The representative affirmed that when he talked to a Commission agent, at no moment had the agent in question wanted to understand

the arguments he wanted to make, including those which were related to the application of paragraph 29(c)(iv) of the Act and according to which "working conditions that constitute a danger to health or safety" representing a circumstance justifying a claimant to voluntarily leave their job or to take leave. He affirmed not having been capable of explaining what he wanted to explain to the Commission. The representative argues that the decision rendered in the Appellant's regard rests on the tendentious questioning and on a "far-fetched" interpretation of the employer's actual version, and that this situation effectively altered the reality and the background of the sum of the facts. He explained that the Commission agent responsible for the Appellant's file had based her decision on the fact that the Appellant should have immediately taken the document that the physician had proposed, while the case law instructs the opposite, even on the fact that the employer's testimony indicates that the person who ultimately got the job, was still employed by the employer. The representative argues that this situation had no link with the current file, because the case law instructs that the facts must be assessed at the time the Appellant made their decision. He affirmed that several words were not faithfully transcribed. The representative gave as an example the term "permanent," which was used to characterize the position that the Appellant wanted, which was in no way the case. He affirmed that when he contacted the Commission agent, she "showed her colours" by suggesting that she had spoken to the employer and that she had no intention of changing her decision. The representative indicated that during that initial discussion, while the file reconsideration process for the Appellant was not initiated, that already a long text on the part of the agent followed, on the subject of supposed testimony that he had made. He emphasized that, as representative, he makes submissions and presents arguments and never does he testify or make statements on the components to which he was not witness during an administrative review. The representative indicated that, during his discussions with the Commission agent, she had never given him the chance to explain the facts, as presented up to this day (Exhibit GD5-4);

ff) The representative affirmed that the Commission had rendered a decision (initial decision) without contacting the Appellant beforehand;

gg) He issued the notice that the Commission had judged the Appellant harshly with respect to the decision made in her regard. The representative specified that the Appellant had not been receiving benefits at the time of her voluntary leaving and that she was not obliged to find herself work due to the separation monies that she had already been receiving. He argues that the Appellant should not have been judged in this way since she was ineligible for benefits and that the Commission should have shown more flexibility in her regard, given the circumstances (Exhibits GD3-36 and GD3-37);

hh) The representative argues that the decision rendered with respect to the Appellant was baseless, in fact and in law. He argues that this decision did not respect the essence of social law that is the *Employment Insurance Act* or the case law in effect (Exhibit GD2-3 and GD3-19).

[14] The Respondent (the Commission) made the following submissions and arguments:

a) It explained that subsection 30(2) of the Act provides for an indefinite disqualification when a claimant voluntarily leaves their employment without just cause. The Commission specified that the legal test consists of determining whether leaving the employment was the only reasonable alternative for the claimant in their case (Exhibit GD4-3).

b) The Commission determined that, because the Appellant had failed to exhaust all reasonable alternatives before quitting her job, she had not had just cause in leaving her job. It considered that, given all the evidence, a reasonable alternative would have been to ask her employer for leave. The Commission explained that, instead of doing that, the Appellant had simply notified the employer that she would no longer be returning to work. The Commission determined that, as a result, the Appellant had failed to show just cause under the Act for leaving her employment (Exhibit GD4-3).

c) It explained that the Appellant had affirmed that she was not entitled to Employment Insurance, due to the sums that her previous employer had paid out, and that this fact freed her from having to be available and looking for work. The Commission specified that, despite this situation, it had to make a decision on all issues in the docket. It explained that, in the present case, the Appellant had gotten a job and, instead of asking the employer for leave in order to ensure that she kept that job, she resigned (Exhibit GD3-35). The Commission argues that this situation is not one of a reasonable and concerned person to keep their job (Exhibit GD4-4);

d) The Commission indicated that the Appellant had provided a document on the training procedure (Exhibit GD3-27). It argues that this document confirms that a new employee receives an evaluation by a superior after ten (10) days worked, and that this follow-up makes it possible to determine the strengths and areas for improvement. According to the Commission, this document therefore does not dispute the fact that an employee is an employee, even within the ten (10) days of settling in. It argues that the company, Les Résidences Soleil S. E. N. C., employed the Appellant, even though she had worked there for only three (3) days. The Commission emphasized that the Appellant had been hired to work on contract until June 2016 (Exhibit GD3-15), (Exhibit GD4-4);

e) It concluded that the Appellant had not had good cause for voluntarily leaving her job. According to the Commission, the Appellant should have asked her employer for medical leave to thereby ensure that she kept her job, which she did not do (Exhibit GD4-4).

ANALYSIS

[15] The relevant legislative provisions appear in an appendix to this decision.

[16] In ***Rena Astronomo* (A-141-97)**, which confirmed the principle established in ***Tanguay* (A-1458-84)** that the onus is on the claimant who voluntarily left their employment to prove that there was no reasonable alternative to leaving their employment when they did, the Court issued the following reminder: “The test to be applied having regard to all the circumstances is

whether, on the balance of probabilities, the claimant had no reasonable alternative to immediately leaving his or her employment."

[17] This principle was confirmed in other decisions of the Court (***Peace*, 2004 FCA 56, and *Landry*, A-1210-92)**.

[18] Moreover, the words "just cause," as used in paragraph 29(c) and subsection 30(1) of the Act, are interpreted by the Court in ***Tanguay v. UIC*** (**A-1458-84** (October 2, 1985); 68 N.R. 154) as follows:

> In the context in which they are used these words are not synonymous with "reason" or "motive". An employee who has won a lottery or inherited a fortune May have an excellent reason for leaving his employment: he does not thereby have just cause within the meaning of s. 41(1). This subsection is an important provision in an Act which creates a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur. To be more precise, I would say that an employee who has, voluntarily left his employment and has not found another has deliberately placed himself in a situation which enables him to compel third parties to pay him unemployment insurance benefits. He is only justified in acting in this way if, at the time he left, circumstances existed which excused him for thus taking the risk of causing others to bear the burden of his unemployment.

[19] The Court also held that the claimant who voluntarily leaves their employment has the onus of proving that they had no reasonable alternative to leaving at that time (***White*, 2011 FCA 190**).

[20] In ***Dietrich* (A-640-93)**, the Court stated that:

> [Translation]
>
> […] in determining whether medical reasons constituted "just cause" for leaving, the Umpire applied a subjective rather than objective criterion and, in the absence of any objective evidence, came to determination in the Respondent's favour. This is where there are errors justifying the Court's intervention. The application for judicial review must be granted, the Umpire's decision rescinded, and the decision of the Board of Referees reinstated.

[21] A claimant has just cause for voluntarily leaving their employment if, having regard to all the circumstances, including those set out in paragraph 29(c) of the Act, leaving is the only reasonable alternative in their case.

[22] In this case, the Tribunal finds that, having regard to all the circumstances, the Appellant's decision to leave the employment she held with the employer, Les Résidences Soleil S. E. N. C., cannot be considered the only reasonable alternative in this situation (***White*, 2011 FCA 190, *Astronomo*, A-141-97, *Tanguay*, A-1458-84, *Peace*, 2004 FCA 56, *Landry*, A-1210-92**, ***Dietrich*, A-640-93**).

[23] The Tribunal finds that the Appellant has failed to demonstrate that she had no other choice but to quit her job on November 16, 2015.

[24] Following the injury that she had suffered, the Appellant did not discuss her situation with the employer, and she did not submit the evidence that she was, for medical reasons, incapable of working or that there were "working conditions that constitute a danger to health or safety," as provided for in paragraph 29(c)(iv) of the Act.

The Appellant's employment status

[25] The Tribunal specifies that, despite the explanations that the Appellant and her representative have given that she was in training, or that she was working on a trial basis, for a 10-day period, the Tribunal finds that the employer, Les Résidences Soleil S. E. N. C., did employ the Appellant from November 11 to 13, 2015.

[26] The Tribunal rejects the argument of the Appellant's representative that she was not really an employee and that her status was unclear in this regard (Exhibits GD3-36, GD3-37, GD3-40 and GD3-41).

[27] The employer issued a Record of Employment indicating that the Appellant had worked from November 11 to 13, 2015, inclusively (Exhibit GD3-11). The Appellant was paid for work performed.

[28] The employer wrote a letter confirming that the Appellant had held a temporary replacement position as pay technician, from November 11 to 13, 2015, inclusively, and that she had resigned on November 16, 2015 (Exhibit GD5-5).

[29] In that letter, the employer specified that the Appellant's period of employment had not been sufficient to enable her to complete her assessment period and that the employer had had been incapable of proceeding with its evaluation, given that she had resigned (Exhibit GD5-5). This document neglects to indicate that there was no hiring as the Appellant's representative has alleged.

Reasons for voluntary leaving

[30] The Appellant argues that health problems led her to voluntarily leave the job that she had at the employer, Les Résidences Soleil S. E. N. C., on November 16, 2015.

[31] The representative argues that the Appellant's voluntary leaving can also be explained by the existence of "working conditions that constitute a danger to health or safety," as provided for in paragraph 29(c)(iv) of the Act (Exhibit GD5-4).

The approach to the employer

[32] In the present case, a reasonable alternative to voluntary leaving would have been for her to discuss the situation with the employer following her injury that she had suffered in her wrist, rather than advise the employer, on November 16, 2015, after three days of work, that she was not going to report to work and then inform it that, to preserve her health, she would not be returning to work (Exhibit GD6-2).

[33] The Tribunal finds that such an approach to the employer could have made it possible to find a solution to the Appellant's problem, which was due to her injury. The Appellant instead chose to voluntarily leave and, thereby, to present the employer with a done deal.

[34] The Appellant did not ask her employer for authorized leave (Exhibit GD3-12). As she did to announce her resignation to the employer, the Appellant could have sent it a letter to ask it for a period of leave, by specifying the grounds of this request.

[35] The Tribunal is also of the opinion that, if the Appellant was considering that there was "working conditions that constitute a danger to health or safety," as provided for in subparagraph 29(c)(iv) of the Act, she could have argued this aspect to the employer.

[36] On this specific issue, the Appellant could have also pursued recourse such as the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* ([translation:] the occupational health, safety, equity and standards commission) in order to show that the working conditions could pose a danger to her health or her safety.

[37] The Tribunal rejects the Appellant's argument that she preferred to tell the employer that she had been incapable of achieving her work and that she did not want to leave it in suspense for a period of several months.

[38] The Appellant asked how the employer would have reacted if she had said that she was going to take a leave of absence for health-related reasons and whether, at the time of such an announcement, the employer would have waited for her "with a brick and a lantern."

[39] The Appellant could not assume how the employer would have managed the situation which it would have thereby had to face if she had asked it for leave or if she had said that she was going to have to be absent from work for health reasons.

[40] Furthermore, the Tribunal rejects the representative's argument that the employer would not have kept the Appellant employed if she had asked for a period of leave for medical reasons, since the employer did not take such an approach.

[41] Nothing indicates that the employer would have refused to find alternatives, through the implementation of accommodations to give the Appellant the option of continuing her work or authorizing her to take leave, that would have enabled the Appellant to continue her work.

[42] On this aspect, the Tribunal emphasizes that the employer indicated that such an issue had not emerged, since the Appellant had chosen to quit her job. The employer specified that other employees had already taken sick leave and had resumed work thereafter. The employer emphasized that the Appellant had never talked to it about her situation (Exhibit GD3-35).

[43] The Tribunal cannot support the representative's analysis that the employer had clearly noticed the Appellant's adjustment disorder during her work period and that it doubted her ability to adjust to her work environment (Exhibits GD5-2 and GD5-3).

[44] The employer indicated that it had noticed that, during her short period of employment (three days), the Appellant had seemed to have trouble adjusting to the company's methods and processes, but that it understood that she could encounter problems of this kind and that it was a normal procedure (Exhibit GD3-35).

[45] The employer also explained that the Appellant's employment period was insufficient for her to complete her assessment period and that the employer had been unable to proceed with its evaluation, given that she had resigned on November 16, 2015 (Exhibit GD5-5).

[46] The employer also specified that if the Appellant had stayed in the position, she could have obtained a permanent position, in the event that the person she was replacing would not have been capable of resuming her work due to her state of health (Exhibit GD3-35).

[47] There is no evidence to suggest that the employer would have terminated the Appellant's employment following her assessment period or at any other time. If such had been the employer's intention in this regard, it would have had to assume responsibility for its decision.

[48] No pertinent evidence shows that the Appellant's voluntary leaving was justified by the fact that she worked in an environment that exhibited "working conditions that constitute a danger to health or safety," as provided for in paragraph 29(c)(iv) of the Act.

Medical evidence

[49] A reasonable alternative to voluntary leaving would have been for her, before voluntarily leaving her job, to get a medical certificate recommending that take a leave of absence for health-related reasons.

[50] The Appellant could have provided medical evidence to the employer specifying the nature of her injury, the period of unfitness to work for medical reasons and the functional limitations that she could have.

[51] In a statement made to the Commission on November 30, 2015, the Appellant claimed to have medical evidence clearly certifying that her physician had recommended that she quit her job (Exhibit GD3-12). The Appellant also explained that her physician had advised her to take an inactive period, which would not enable her to continue with her work (Exhibit GD3-24).

[52] Despite the health problems that the Appellant experienced, following the injury she had suffered in her wrist and the symptoms she described (e.g. wrist pain, anxiety, adjustment disorder with depressive mood or mood disorder, sprain), the medical evidence that she has submitted, however abundant, does not show that, before voluntarily leaving her job, she was incapable of working for health reasons.

[53] Among the medical documents submitted, the medical certificate from Dr. Johannie Boudreau, produced on May 27, 2016, indicates that the Appellant had been seen on November 16, 2015, for a right-wrist sprain. In this document, Dr. Boudreault claimed to have talked to the Appellant about her new job, because she was experiencing a lot of stress and because adjusting was very difficult. Dr. Boudreault mentioned that the Appellant was showing signs of adjustment disorder with depressive mood. She claimed to have prescribed medication to the Appellant and that she would have given her a one-month leave of absence for health-related reasons with a follow-up appointment. Dr. Boudreau specified that the leave of absence for health-related reasons with respect to this diagnosis is generally four months (Exhibit GD3-38 or GD5-8).

[54] A similar document, which Dr. Boudreault also produced, dated June 30, 2016 (addendum to the medical note written on May 27, 2016), specifies that a discussion took place with the Appellant on a leave of absence for health-related reasons to guide the healing of the right-wrist sprain. This document specifies that the Appellant is right-handed and that it was difficult for her work at the computer with the pain in her wrist. The doctor mentioned that the Appellant had mood disorders and that a one-month leave of absence for health-related reasons would have been favourable for both diagnoses, with a follow-up appointment thereafter (Exhibit GD5-7).

[55] The medical evidence that the Appellant has submitted does not objectively support the notion that, before her voluntary leaving, she was incapable of working due to health reasons (***Dietrich*, A-640-93**).

[56] None of the medical documents that the Appellant has provided certifies that, for medical reasons, she was incapable of working when she voluntarily left her job on November 16, 2015.

[57] The Tribunal rejects the argument of the Appellant's representative that medical evidence is not required for justifying the Appellant's voluntary leaving **(*Brisebois*, A-510-96**, decision CUB 64302).

[58] In ***Brisebois* (A-510-96)**, it is first and foremost a matter of a claimant who is not citing the existence of a sickness. In that decision **(*Brisebois* A-510-96)**, the Court wrote: "[...] the claimant was not relying on an illness when she stated that working constantly in a standing position gave her sore fee. […] Since her credibility was not questioned, a medical certificate would have added nothing to her testimony."

[59] The situation is different in the present case. The Appellant and her representative have cited several medical issues (e.g. injury and pain felt in the wrist, anxiety, adjustment disorder with depressive mood, mood disorder, sprain).

[60] The Appellant then determined on her own, following the medical consultation that she had had on November 16, 2015, that she was resigning, because she thought it was preferable to preserve her state of health (Exhibit GD6-2).

[61] The existence of "working conditions that constitute a danger to health or safety" for the Appellant's health or safety is equally alleged based on paragraph 29(c)(iv) of the Act.

[62] In this context, the Tribunal finds that objective evidence is necessary in order to determine whether the medical reasons that the Appellant has cited constitute just cause for her voluntary leaving (***Dietrich*, A-640-93**).

[63] The Tribunal also finds that the content of decision CUB 49128 is not pertinent to the present docket. In that decision (CUB 49198), where the claimant's appeal had been allowed, the Umpire found that the claimant had submitted compelling evidence that she was not in a physical state to resume work. However, the Board of Referees, having heard this case, had further determined that she had the obligation to reach an agreement with the employer, while section 29 of the Act in no way impose such a requirement.

[64] In the case before us, the Tribunal finds that the Appellant has not submitted any compelling evidence that she was, for medical reasons, incapable of working.

[65] The Tribunal rejects the argument that, because the Appellant was ineligible for benefits since she was receiving sums of money from her employer or because she could not get the benefits provided for in the employer's group's insurance, she did not need—or did not believe she needed—to ask for a medical certificate. These reasons cannot justify her voluntary leaving.

[66] In sum, instead of establishing her own diagnosis that—due to health reasons—she was no longer capable of carrying out her work, the Appellant could have, before voluntarily leaving, obtained medical evidence that she was no longer capable of doing it.

[67] Furthermore, the Appellant has not shown that, in continuing to work for the employer, Les Résidences Soleil S. E. N. C., she could have exacerbated her wrist injury, or her health could have been compromised.

The Commission's handling of the file

[68] The representative argues that, during the stage of the reconsideration application, the Commission had not faithfully conveyed his words, and that he had been incapable of explaining the facts or of submitting all the intended arguments. The representative argues that the reconsideration decision rendered with respect to the Appellant's relied on tendentious questioning by the Commission, a situation that effectively, according to him, altered the reality and background of the sum of the facts. He also affirmed that the Commission's initial decision had been rendered without the Commission contacting the Appellant.

[69] It is not necessary that the Tribunal adjudicate on this aspect. The representative was given full opportunity to argue the Appellant's case before the Tribunal on the basis of a just, equitable and impartial proceeding.

[70] Based on the above-mentioned case law, the Tribunal finds that the Appellant has not demonstrated that there had been no reasonable alternative to leaving her employment with the employer, Les Résidences Soleil S. E. N. C. (***White*, 2011 FCA 190, *Rena-Astronomo*, A-141-97, *Tanguay*, A-1458-84, *Peace*, 2004 FCA 56, *Landry*, A-1210-92, *Dietrich*, A-640-93**).

[71] Before voluntarily leaving, the Appellant could have discussed her situation with the employer in order to find a solution to the problems she was facing, or she could have even asked the employer for a period of leave from employment. The Appellant could have provided pertinent medical evidence with the aim of showing that, due to health reasons, she was no longer capable of carrying out her work.

[72] The Tribunal finds, having regard to all the circumstances, that the Appellant did not have just cause for voluntarily leaving her employment under sections 29 and 30 of the Act.

[73] The appeal on the issue has no merit.

CONCLUSION

[74] The appeal is dismissed.

Normand Morin
Member, General Division—Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

30 (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; and
>
> **(b)** the claimant is disentitled under sections 31 to 33 in relation to the employment.

(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.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(5) 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) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), May be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant May be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.

29 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, 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 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.