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

[TRANSLATION]

Citation: *F. C. v. Canada Employment Insurance Commission,* 2017 SSTGDEI 9

Tribunal File Number: GE-16-2428

BETWEEN:

F. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: January 17, 2017

DATE OF DECISION: January 20, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, Mr. F. C., participated in the telephone hearing (teleconference) held on January 17, 2017.

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

INTRODUCTION

[3] On March 18, 2016, the Appellant filed an initial claim for benefits that took effect on February 28, 2016. The Appellant reported having worked for the employer, Chantier Davie Canada Inc., from December 7, 2015, to February 22, 2016, inclusively, and he reported having stopped working for this employer after a voluntary departure (Exhibits GD3-3 to GD3-12).

[4] On April 13, 2016, the Commission advised the Appellant that he was not entitled to regular Employment Insurance benefits starting on February 21, 2016, because he had voluntarily left his employment with the employer Chantier Davie Canada Inc. on March 1, 2016, without just cause within the meaning of the *Employment Insurance Act* (Act) (Exhibits GD3-18 and GD3-19).

[5] On May 9, 2016, the Appellant filed a Request for Reconsideration of an Employment Insurance decision (Exhibits GD3-20 and GD3-21).

[6] On June 2, 2016, the Commission notified the Appellant that it had upheld the decision rendered in his case respecting his voluntary leaving on April 13, 2016 (Exhibits GD3-23 and GD3-24).

[7] On June 20, 2016, the Appellant filed 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 GD2-9).

[8] This appeal was heard by teleconference for the following reasons:

a) The fact that the Appellant will be the only party present at the hearing;

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

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

EVIDENCE

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

a) A Record of Employment, dated March 8, 2016, indicates that the Appellant worked as a mechanical assembler for the employer Chantier Davie Canada Inc. from December 7, 2015, to March 1, 2016, inclusively, and that he stopped working for this employer after a voluntary departure (Code E-Quit) (Exhibit GD3-13).

b) A Record of Employment dated May 11, 2016, indicates that the Appellant worked for the employer, Jacobs Industrial Services Ltd., from April 4, 2016, to May 3, 2016, inclusively, and that he stopped working for this employer for another reason (Code K – Other). The following comment was included in Block 18 of the Record of Employment: "Site evacuated due to Fort McMurray fire [...]" (Exhibit GD3-14).

c) In his Notice of Appeal filed on June 20, 2016, the Appellant provided a copy of a document from the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Local Union 488 – Edmonton, Alberta) on April 8, 2016. This document indicates the procedure for enabling workers to obtain employment in Alberta under certain conditions (Exhibit GD2-1).

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

a) The Appellant recalled the circumstances in which he voluntarily left his employment with the employer Chantier Davie Canada Inc. in order to show that he had just cause for voluntarily leaving within the meaning of the Act.

PARTIES' ARGUMENTS

[12] The Appellant made the following submissions and arguments:

a) He explained that he had voluntarily left his employment with the employer, Chantier Davie Canada Inc., for a construction job in Fort McMurray, Alberta (Exhibits GD2-4, GD2-8, GD3-17 and GD3-22).

b) The Appellant testified that when he left his employment, he had assurance of another employment when he got to Alberta with one of his friends. He stated that he knew he would have no problem finding other employment, but that he did not know exactly when he would start (Exhibits GD3-17, GD3-22).

c) He explained that to obtain a job like the one he had with the employer, Jacobs Industrial Services Ltd., in Fort McMurray, he followed the directions provided by his trade union organization, Local 144, which is made up of pipefitters and welders. To that end, the Appellant indicated that he had consulted www.local488.ca, a reference website for workers established by an Alberta workers' union (United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada – Local Union 488) to keep workers informed of available jobs in the province (Exhibit GD2-1). He noted that he consulted the website every day, as new jobs were listed on a daily basis. The Appellant said that in order to obtain employment outside of Quebec (ex.: Alberta), his union organization (Local 144) had to first issue him a "travel card." He noted that, in this way, his union provides him with guidance in obtaining a job outside of Quebec (Exhibits GD2-1 to GD2-9).

d) The Appellant explained that he then had to travel to Alberta, in the spring of 2016, to choose among the jobs available in his field and in specific regions (ex.: Fort McMurray, Edmonton). He noted that the "first-come, first served" rule applied, but that he was guaranteed a job. The Appellant specified that the only thing that he could not confirm was the exact start date of employment. He explained that when he started with the employer Jacobs Industrial Services Ltd., a document that had been issued on March 23, 2016, was given to him. This document indicated that he would begin work on March 28, 2016. However, there was a delay, and he began work on April 4, 2016 (Exhibits GD2-4 and GD2-8, GD3-14, GD3-17 and GD3-22).

e) He stated that in accordance with the process for obtaining a construction job in Alberta, he did not participate in a job interview with his employer of choice, and that such a procedure was very rare in this field. The Appellant mentioned that he did, however, have to take a drug test. He specified that no contracts were signed when he was hired by an employer. The Appellant said that the duration of contracts offered was several or more weeks, from the beginning. He specified that they were open contracts that could be extended (Exhibits GD2-4 and GD2-8, GD3-17 and GD3-22).

f) The Appellant explained that the employment he had with the employer Jacobs Industrial Services Ltd. ended earlier than expected due to forest fires in the Fort McMurray region. He noted that if there had not been forest fires, he would have continued working for this employer, even if a contract had not been signed. The Appellant explained that when he had been evacuated due to forest fires, he had completed a document in which he specified that he wanted to return to work when the fires were under control and not that he wanted to be laid off. He specified that he had returned to Quebec and had been called back to work by this employer, five weeks after being evacuated. He indicated that he returned to work on June 10, 2016, and had worked 30 12-hour days. The Appellant specified that he then worked in another job, a few days after that, with another employer (Horton CBI Ltd.), after reporting to the local union (Local 488), (Exhibits GD2-4 and GD2-8).

g) He stated that he had gone to Alberta several times for employment, in 2015 and 2016 (ex.: fall 2015, spring 2016 and summer 2016). The Appellant noted that he had always worked in the Fort McMurray region. He specified that needs were great in his field of work. The Appellant explained that the demand for labour was highest in the spring and fall with the "shut down" schedules (closure of part of a unit to replace pipes, valves) (Exhibits GD2-4 and GD2-8).

h) The Appellant explained that by working in Alberta, he could accumulate more than 1,000 hours during a three-month period. He specified that he could work 12 hours per day. The Appellant mentioned that shifts were scheduled according to the following cycles: six days of work and one day off, 12 days of work and two days off, 18 days of work and three days off, 24 days of work and four days off.

i) He explained that he was earning $24.77 ($24.00) per hour in his employment with Chantier Davie Canada Inc., while he earned a lot more with Jacobs Industrial Services Ltd. He specified that he earned $45.79 per hour with that employer and that he could be paid at time and a half or at double time. The Appellant indicated that his employment with Chantier Davie Canada Inc. as a mechanical assembler had nothing to do with his work in industrial piping. He explained that departments and schedules were also continuously changing with the employer Chantier Davie Canada Inc. The Appellant specified that he had worked day, evening and night shifts and that he had difficulty adapting to these changes every time. He stated that there was also job insecurity, due to rumours that were circulating to that effect, and that there had subsequently been a massive layoff. The Appellant said that he did not discuss the situation with his employer before voluntarily leaving. He specified that the employment he had with Jacobs Industrial Services Ltd. gave him a number of benefits (ex. a construction pension fund, vacation pay and "Medic Construction"). The Appellant stated that this employment was expected to be of longer duration than the one he had left and that it offered him greater job security. He also noted that he needed hours working in construction for his pension fund (Exhibits GD3-15, GD3-16, GD3-20 and GD3-21).

j) The Appellant submitted that the 435 hours of work that he had performed with Chantier Davie Canada Inc. (Exhibit GD3-13) could not be taken from him and that he did not want to lose everything. He said that he found it unacceptable to cut all the hours he had worked because he had left an employment (Exhibits GD2-4, GD2-8, GD3-13 and GD3-20 to GD3-22).

k) He argued that he did not think it was normal to be disentitled from receiving benefits. The Appellant noted that he had traveled 4,300 kilometres to go work in Alberta, when it was a quiet period in Quebec's construction sector (Exhibits GD2-4 and GD2-8).

l) The Appellant said that one of his friends also went to work in Alberta and that he was entitled to receive benefits. The Appellant submitted that what works for one, works for the other (Exhibits GD2-4 and GD2-8 and GD3-22).

[13] The Respondent (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 test to be applied, having regard to all the circumstances, is whether the claimant had a reasonable alternative to leaving his employment at that time (Exhibit GD4-3).

b) The Commission indicated that the Appellant left his employment to go work in Western Canada. It noted that before leaving, the Appellant did not have assurance of other employment. The Commission indicated that the Appellant was certain that he would find another employment quickly, and that he mentioned that there was a three-week delay before he found one (Exhibit GD4-3).

c) The Commission argued that the fact that the Appellant was informed of employment opportunities and was optimistic that he would find another job, in another region, is insufficient to justify that he had voluntarily left his employment for another one. The Commission specified that nothing was preventing the Appellant from remaining employed while undertaking a job search.

d) The Commission explained that to establish that a claimant has assurance of other employment, there must have been contact with the employer, some form of employment offer, and the hiring conditions and timelines must have been specified. It noted that there was no proof of an official offer of employment before the Appellant left his employment. The Commission submitted that before leaving an employment, a claimant must have assurance of another job in the immediate future (Exhibit GD4-3).

e) The Commission concluded that the Appellant did not have just cause for leaving his employment on March 1, 2016, since he did not show that he had exhausted all reasonable alternatives to leaving. The Commission determined that, having regard to all the circumstances, a reasonable alternative would have been to find another employment before resigning. The Commission therefore determined that the Appellant did not prove he had just cause for leaving his employment under the Act (***White*, 2011 FCA 190**).

f) The Commission indicated that the Notice of Decision sent to the Appellant contained a writing error with the start date of the disqualification imposed on him. It indicated that this document mentions that: [translation] "you are not entitled to receive regular Employment Insurance benefits as of February 21, 2016," when it should have read "you are not entitled to receive regular Employment Insurance benefits as of February 28, 2016" (Exhibits GD3-18 and GD3-19). The Commission pointed out that this error was not prejudicial to the Appellant. It stated that the Federal Court of Appeal (Court) confirmed the principle established by the Umpire in CUB 16233, according to which a clerical error that does not cause hardship to the claimant is not fatal to the decision under appeal, and grants the Tribunal the right to uphold the Commission's decision (***Desrosiers*, A-128-89**).

ANALYSIS

[14] The relevant legislative provisions are reproduced in an appendix to this decision.

[15] 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 his employment to prove there was no reasonable alternative to leaving his employment when he 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."

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

[17] 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.

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

[19] 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.

[20] In this case, the Tribunal finds that the Appellant's decision to voluntarily leave the employment he had with the employer Chantier Davie Canada Inc. must be considered as the only reasonable alternative in this situation. Under paragraph 29(*c*) of the Act, there existed circumstances justifying his leaving voluntarily (***White*, 2011 FCA 190; *Rena Astronomo*, A-141-97; *Tanguay*, A-1458-84; *Peace*, 2004 FCA 56; *Landry*, A-1210-92**).

Reasonable assurance of another employment

[21] The Tribunal finds that when the Appellant voluntarily left his employment with Chantier Davie Canada Inc., he had obtained "reasonable assurance of another employment in the immediate future," as provided for by paragraph 29(*c*) of the Act.

[22] The Tribunal finds that the Appellant's credible testimony during the hearing yielded a comprehensive and highly detailed picture of the circumstances leading to his voluntary departure from Chantier Davie Canada Inc., to go work for the employer Jacobs Industrial Services Ltd. in Fort McMurray, Alberta.

[23] The Appellant has shown that he had obtained reasonable assurance of another employment from the union of which he is a member, Local 144, a body that is made up of pipefitters and welders.

[24] The Appellant's evidence is that, in order to obtain new employment, he had to comply with the requirements put in place by the union that represents him as well as by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada – Local Union 488.

[25] The Appellant completed the steps required to secure employment in Alberta, by following the procedure and directions that had been given to him by the trade union organization of which he is a member.

[26] The Appellant explained that after having consulted the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada – Local Union 488 reference website for workers, and after having obtained a travel card, he had met all the conditions necessary to obtain employment in Alberta, once he got there.

[27] The Tribunal rejects the Commission's argument that there was no proof of the existence of an official letter of offer before the Appellant left the employment he had (Exhibit GD4-3).

[28] The crucial role played by Local 144, as well as by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Local 488), shows that the Appellant had the possibility of other employment, before his voluntary departure.

[29] The Tribunal is of the view that contact had been established with a number of potential employers, including Jacobs Industrial Services Ltd., through the union organization to which the Appellant belongs. The Appellant was then able to choose among several employment offers, the conditions and timelines for which had been established.

[30] The Appellant also demonstrated that he had already been employed in Alberta in the past (fall 2015), by way of the same process that he had followed in the spring of 2016, before going to work for the employer Jacobs Industrial Services Ltd.

[31] With this in mind, the Tribunal also rejects the Commission's argument that the fact that the Appellant was informed of employment possibilities and that he was optimistic that he would find employment in another region was insufficient to justify voluntarily leaving to obtain another employment (Exhibit GD4-3).

[32] The Appellant did not just enquire about employment possibilities in Alberta. He was guided by the trade union organization he belongs to and he followed the specific directions to ensure he would obtain new employment. The Appellant was not just optimistic that he would find employment in another region; he had also met the requirements put in place by the trade union organizations in question to obtain other employment.

[33] The Appellant demonstrated that he would be able to obtain employment in Alberta, by following the rules to which he was subject as a member of his union. He met all those requirements and completed the prescribed steps in that regard.

[34] About a four-week delay elapsed between the time when the Appellant voluntarily left his employment with the employer Chantier Davie Canada Inc. on March 1, 2016 (Exhibit GD3-13), and the time when he started his new employment with the employer Jacobs Industrial Services Inc. on April 4, 2016 (Exhibit GD3-14).

[35] The Tribunal finds that this delay is not excessive and does not in any way undermine the Appellant's reasonable assurance of obtaining another employment in the immediate future.

[36] On this point, the Appellant demonstrated that under the rules that he had to follow, he first had to spend the time traveling to Fort McMurray, a region that is located several thousand kilometres from his place of residence, before he could then choose among the available jobs.

[37] In addition to the time it took him to move to Alberta, after his voluntary departure on March 1, 2016, the Appellant explained that a document issued by the employer Jacobs Services Ltd. on March 23, 2016, indicated that he would begin work on March 28, 2016, but that there had been a delay and that his start date had been on April 4, 2016.

[38] Even if the Appellant had not signed a contract, it did not mean that he did not have reasonable assurance of another employment before leaving the employment that he had. On this point, the Appellant explained that based on the existing hiring conditions, no contract was signed with potential employers. He specified that these were short-term contracts, beginning at several weeks, which could be extended.

[39] Despite the duration of the available contracts, the Appellant had the possibility of finding another employment among the other available jobs in the Fort McMurray region. He thus had reasonable assurance of other employment.

[40] The Appellant also had no way of knowing that his employment with the employer Jacobs Industrial Services Ltd. would abruptly end on May 3, 2016, due to forest fires in Fort McMurray, which forced the authorities to evacuate the town.

[41] The Tribunal is of the opinion that the Appellant had every reason to believe that this employment would continue, but that serious circumstances, that were entirely beyond his control, resulted in his employment ending prematurely for a five-week period.

[42] The Record of Employment issued by the employer Jacobs Industrial Services Ltd. indicates that the Appellant had stopped working on May 3, 2016, for an "other" reason (Code K – Other). The employer added the following comment in block 18: "Site evacuated due to Fort McMurray fire […]" (Exhibit GD3-14).

[43] The Appellant then went back to work for this employer on June 10, 2016.

[44] He then worked for another employer, in July and August 2016, after reporting to the office of the Local 488 (United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada).

[45] Having regard to the particular circumstances brought to its attention in this case, and on the basis of the aforementioned jurisprudence, the Tribunal finds that the Appellant has shown that there was no reasonable alternative to leaving his employment with the employer Chantier Davie Canada Inc. (***White,* 2011 FCA 190; *Rena-Astronomo,* A-141-97; *Tanguay,* A-1458-84; *Peace,* 2004 FCA 56; *Landry,* A-1210-92**).

[46] Before leaving his employment with the employer Chantier Davie Canada Inc., the Appellant had "reasonable assurance of another employment in the immediate future," as provided for by paragraph 29(*c*)(vi) of the Act.

[47] Having regard to all the circumstances, the Tribunal concludes that the Appellant had just cause, under sections 29 and 30 of the Act, for voluntarily leaving his employment.

[48] The appeal on the issue has merit.

CONCLUSION

[49] The appeal is allowed.

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.