



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. F. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 62

Tribunal File Number: GE-16-4237

BETWEEN:

**J. F.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Angela Ryan Bourgeois

HEARD ON: May 1, 2017

DATE OF DECISION: May 2, 2017

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

J. F., Appellant

### **INTRODUCTION**

[1] The Appellant left his employment with the Employer on July 7, 2016. He then applied for regular employment insurance benefits (EI) under the *Employment Insurance Act* (EI Act) and a benefit period was established effective July 10, 2016.

[2] The Respondent determined that the Appellant had voluntarily left his employment with the Employer without just cause and imposed a disqualification from receiving EI pursuant to sections 29 and 30 of the EI Act.

[3] The Appellant requested a reconsideration of the Respondent's decision and the Respondent maintained its original decision. The Appellant has now appealed the reconsideration decision to the Tribunal.

[4] The Tribunal decided to hear this appeal by way of teleconference hearing after considering:

- a) the complexity of the issue under appeal;
- b) that the Appellant was likely to be the only party in attendance; and
- c) the information in the file, including the need for additional information.

### **ISSUE**

[5] The issue under appeal is whether the Appellant voluntarily left his employment with the Employer without just cause.

## **EVIDENCE**

[6] The Appellant lives in X, New Brunswick. Sometime after the Appellant's wife passed away, he accepted a position in British Columbia with the Employer. He informally agreed with the Employer that he would work for them for two years. In exchange, the Employer paid for the Appellant's moving expenses. There was no written contract of employment.

[7] About a month before he left, the Appellant started seeing someone (L). The Appellant, however, had committed to the Employer and went to work in British Columbia. The Appellant and L did not live together before he moved to British Columbia.

[8] The Appellant and L continued in their relationship. L made numerous trips to British Columbia and the Appellant went to New Brunswick every two months or so.

[9] The Appellant indicated that they purchased an engagement ring in December 2015 and wedding rings in March 2016. They are not currently married.

[10] The Appellant maintained his house in New Brunswick while he was working in British Columbia and rented in British Columbia. L also had her own house in New Brunswick and worked full time.

[11] In his written evidence (GD3-21) the Appellant indicated that he moved home to be with L and because the costs and distance between them was more than they could be expected to endure. The Appellant reiterated these reasons at the hearing. The Appellant also indicated that his house was falling into disrepair. The Appellant did not think that it made sense for them to sell everything in New Brunswick to move to British Columbia.

[12] The Appellant indicated that he decided to quit his employment when he did because he felt it was a good time of year to travel. He drove from British Columbia to his home in New Brunswick.

[13] The Appellant indicated that he did not look for work in New Brunswick before he left his employment in British Columbia.

[14] When asked if he was planning on returning to the workforce he stated that he was not sure and that it depended on whether something comes up that is suitable; if so, he will return to the workforce. He indicated that since he returned to New Brunswick he has checked on-line for opportunities. He indicated that there is not much work to find.

[15] The Appellant's Record of Employment indicates that the reason for its issuance is "Quit/Voluntary Retirement". The Appellant indicated that it was not retirement with that company because there was no retirement pension with the Employer. He was retiring from his place of work in British Columbia.

[16] The Appellant set out estimates of his basic expenses for the period he worked for the Employer at GD2-3.

## **SUBMISSIONS**

[17] The Appellant submitted that he should be entitled to receive the benefit of EI because he contributed to this insurance for many years.

[18] The Appellant agreed that he left his job voluntarily but not without just cause. The Appellant submitted that he left because it was life draining and stressful on him to be working just to pay rent in British Columbia, up keep his primary residence in New Brunswick and pay for travel to see L. The Appellant submitted that it is not humane to expect someone to work just to pay expenses and to be separated from the one they love by such a great distance.

[19] The Respondent submitted that a reasonable alternative to leaving when he did would have been for the Appellant to find a job in New Brunswick before he quit his job in British Columbia. The Respondent submitted that the Appellant's decision to return home to New Brunswick was a personal decision because of financial and personal stress. The Respondent further submitted that the Appellant and L do not fall within the definition of common law because there is no history of cohabitation and they maintained two residences in New Brunswick.

## **ANALYSIS**

[20] The relevant legislative provisions are reproduced in the Annex to this decision.

[21] There are two elements to the issue as to whether the Appellant voluntarily left his employment with the Employer without just cause. The first element is whether the Appellant voluntarily left his employment, and if so, we then turn our minds to whether the leaving was with just cause.

[22] With respect to the burden of proof in such matters, the burden is on the Respondent to prove that the leaving was *voluntary*, and once that is established, the burden shifts to the Appellant to demonstrate that he had *just cause* for leaving. Just cause is not the same as a good reason. In order to establish that he had just cause the Appellant must demonstrate that he had no *reasonable* alternative to leaving or taking leave, having regards to all of the circumstances, some of which are enumerated in paragraph 29(c) of the EI Act. The standard of proof is on a balance of probabilities. (*Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Imran*, 2008 FCA 17)

### **Voluntarily leaving**

[23] The Appellant confirmed that he voluntarily left his employment.

[24] Based on the evidence before it, including the Appellant's testimony and written evidence, the Tribunal finds that the Appellant voluntarily left his employment with the Employer.

[25] The burden now shifts to the Appellant to prove that he had just cause for leaving his employment.

### **Just cause**

[26] The Appellant left his employment because it was difficult for him to maintain a relationship with L while living across the country, and further, the distance was causing emotional and financial stress.

[27] The Appellant did not look for work before he moved home to New Brunswick and is not seriously looking for work at present. He will only be re-entering the workforce if the right opportunity presents itself. Based on this evidence, the Tribunal finds that the Appellant also

left his employment in British Columbia with the expectation that he was leaving the workforce, at least on a temporary basis.

[28] Having regard to all of the circumstances, the Tribunal considered whether these reasons for leaving amount to “just cause” for voluntarily leaving. The Tribunal finds that although the Appellant had good reasons for leaving his employment when he did and that it may have been the right personal decision for him to make, the Appellant’s reasons, whether considered alone or in combination, do not amount to just cause under the EI Act.

[29] The Tribunal finds on a balance of probabilities that a reasonable alternative to leaving when he did would have been to have waited until he had secured employment in New Brunswick.

[30] The Tribunal finds that the evidence on file does not support a finding that there was such urgency in the Appellant’s circumstances as to constitute just cause for the Appellant leaving when he did without first having looked for and found alternate employment in New Brunswick. The Appellant had worked in British Columbia under the same circumstances for almost two years and nothing on file indicates that his circumstances had changed so drastically around the time that he left that he had no reasonable alternative to leaving when he did without first securing other employment in New Brunswick.

[31] The Tribunal acknowledges that given the Appellant’s personal circumstances the timing was right, however, the right personal choice does not always equate to just cause under the EI Act.

### **Obligation to accompany a common-law partner**

[32] The Tribunal considered whether the Appellant falls within subparagraph 29(c)(ii) of the EI Act which provides that just cause for voluntarily leaving employment exists if the claimant has no reasonable alternative to leaving, having regard to all of the circumstances, including an obligation to accompany a common-law partner to another resident.

[33] Common law partner is defined as a person who is cohabiting with an individual in a conjugal relationship, having so cohabitated for a period of at least one year.

[34] Although the Appellant and L had a relationship for about two years, the Tribunal finds that their relationship does not meet the definition of common-law partner because they did not cohabitate for a period of at least one year before he left his employment. As such, subparagraph 29(c)(ii) of the EI Act does not apply.

### **Financial motivation**

[35] The Tribunal notes that leaving employment for financial reasons, while it may be a good reason, has not been found to be just cause. Justice Layden-Stevenson, speaking for the Federal Court of Appeal in *Canada (Attorney General) v. Graham*, 2011 FCA 311 writes:

[5] The question of “just cause” for leaving employment requires an examination of “whether having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment”: *MacNeil v. Canada (Employment Insurance Commission)*, 2009 FCA 306 (CanLII); *Canada (Attorney General) v. Imran*, 2008 FCA 17 (CanLII). The claimant bears the burden of establishing just cause: *Canada (Attorney General) v. Patel*, 2010 FCA 95 (CanLII).

[6] The jurisprudence of this Court states that remaining in employment until a new job is secured is, without more, generally a reasonable alternative to taking a unilateral decision to quit a job: *Canada (Attorney General) v. Murugaiyah*, 2008 FCA 10 (CanLII); *Canada (Attorney General) v. Campeau*, 2006 FCA 376 (CanLII). Further, a claimant’s desire to improve his or her financial situation may constitute good cause, but it does not constitute just cause: *Canada (Attorney General) v. Richard*, 2009 FCA 122 (CanLII); *Canada (Attorney General) v. Lapointe*, 2009 FCA 147 (CanLII).

[36] The Tribunal finds that in the present circumstances the Appellant’s financial motivations for leaving his employment do not amount to just cause. As stated above, there was no urgency in the Appellant’s leaving and therefore a reasonable alternative to taking a unilateral decision to quit his job would have been for him to remain employed until a new job was found.

[37] The Tribunal acknowledges the Appellant’s submission that EI is insurance that he has contributed to and should be able to receive now that he is not working. However, the purpose of the EI Act is to compensate those whose employment has been terminated *involuntarily* and who are without work (*Canada Employment and Immigration Commission v. Gagnon*, [1988] 2 S.C.R. 29). Further, the Federal Court of Appeal in *Canada (Attorney General) v. Campeau*, 2006 FCA 376, found that sincerity and inadequate income do not constitute just cause under

section 30 of the EI Act allowing claimants to leave their employment and making the EI system bear the cost of supporting them. As such, the Tribunal finds that the Appellant does not meet the requirements under EI Act. He voluntarily left his employment and although financial stress was a factor, as in *Campeau*, this is not just cause under section 30 of the EI Act.

## **CONCLUSION**

[38] On the totality of the evidence before it and for the reasons set out herein, the Tribunal finds that the Appellant has not demonstrated on a balance of probabilities that he had just cause for voluntarily leaving his employment with the Employer when he did because a reasonable alternative would have been for him to stay employed until he had secured other employment in New Brunswick.

[39] The appeal is dismissed.

Angela Ryan Bourgeois  
Member, General Division - Employment Insurance Section



## ANNEX

### THE LAW

#### *Employment Insurance Act*

**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.

**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

(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.