



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. N. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 116

Tribunal File Number: GE-16-4601

BETWEEN:

K. N.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: June 27, 2017

DATE OF DECISION: July 19, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

K. N. (the Appellant)

INTRODUCTION

[1] The Appellant established an initial claim for Employment Insurance benefits (EI benefits) on August 14, 2016. The Appellant worked for “Valcom Manufacturing” until August 11, 2016, and left his employment. The Canada Employment Insurance Commission (Commission) determined the Appellant voluntarily left his employment without just cause and imposed an indefinite disqualification. The Appellant requested a reconsideration of the Commission’s decision, which was denied, and the Appellant appealed to the Social Security Tribunal (Tribunal).

[2] The hearing was held by in-person for the following reasons: The fact that the credibility may be a prevailing issue; the information in the file, including the need for additional information; and there was no availability of videoconference in the area where the Appellant resides.

ISSUE

[3] The issue is whether the Appellant had just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

EVIDENCE

Documentary Evidence

[4] The Appellant applied for EI benefits on August 24, 2016, and established a claim on August 14, 2016.

[5] The Appellant indicated he worked for “Valcom Manufacturing” from August 27, 2001, to August 11, 2016, and left his employment. The Appellant explained that he left his employment to re-locate with his spouse to be closer to family members. The Appellant indicated there was

no location to transfer to with the employer and the distance was too far to commute from his new location. He indicated that he moved to the new location on August 16, 2016, and finished moving on August 17, 2016.

[6] On September 20, 2006, the Appellant spoke to the Commission and explained that he quit his job in order to re-locate from X (Ontario) to X (Ontario). He indicated that the reason for the move was to be closer to his family as he was tired of living away from them. He said the move was intended to be permanent and as such a leave of absence would not be applicable. He explained that his presence with family was not medically required, but rather it was a personal decision for him to move and be closer to his family. He said he looked for work in the new location for about a week before moving. He indicated that his spouse moved with him and she was also unable to find work in X before moving. He explained that it was necessary to move when he did (without work) since his son was starting a new school year, and he did not want his son to have to change schools midway through the year. He indicated that he inquired about a transfer with his employer, but there was not another location available for him to transfer. He said that he and his wife were financially dependent and unable to live apart.

[7] On September 22, 2016, the Commission notified the Appellant they were unable to pay him EI benefits, because he voluntarily left his employment on August 12, 2016, without just cause.

[8] In a request for reconsideration (dated October 4, 2016) the Appellant explained that he left his employment as he needed to be closer to his parents in order to be able to assist them as they grew older. He explained that his father resided in X and his mother in X and moving to X put him in the middle of their residences. He further wrote that over the last few years he was recommended by his physiotherapist and family doctor to change jobs due to recurring work related injuries such as tennis elbow and pulled muscles. He indicated that his employer was unable to accommodate a less physically demanding and repetitive position. He wrote that he was on light duties through a Workplace Safety and Insurance Board (WSIB) claim for several months accompanied by physiotherapy multiple times a week and the injuries continued to re-surface.

[9] On November 14, 2016, the Appellant spoke to the Commission and indicated there were no medical requirements to be near his family and it was a personal decision to move. He said he looked for work one-week prior to moving and that it was necessary to move when he did as his child was starting school and he did not want to change schools mid-year. He explained that the decision to move was made in June 2016 shortly after his step-father's death. He indicated that he began looking for work right away in June (2016), but most of the employers in X wanted to hire locally. He explained that he needed to sell his home in X to re-locate and wished to be in X for when his child started school in September. He explained that he sustained an injury in 2014 which had been aggravated by his workplace position. He indicated the doctor advised him to change careers before his injury became worst. He said he looked into other jobs, but many of them required additional training which he could not complete while working. He indicated he spoke to his employer about changing positions, but the employer could not offer any other jobs that would alleviate the aggravation to his injury. He explained that he was receiving WSIB benefits on and off for physiotherapy while he continued working. He indicated that that the last time his injury had become progressively worst and he decided that it was time to stop working at a job that was not good for him.

[10] On November 16, 2016, the employer (Ms. T. L. and Mr. T. C./the Appellant's supervisor) spoke to the Commission. Ms. T. L. explained that the Appellant left his job, because he was re-locating. She indicated that she was aware the Appellant had an injury, but he continuously worked. She said the Appellant was never off work because of the injury and never spoke to her about his injury. Mr. T. C. then spoke to the Commission and indicated the Appellant was constantly moved around and never did the same job. He explained that the Appellant was selling his home and moving to X. He indicated the Appellant's spouse had lost her job and by moving to X the Appellant (and his wife) would become mortgage free. He explained that the Appellant quit his job, because he was moving.

[11] In a Notice of Appeal (received by the Tribunal on December 12, 2016) the Appellant wrote that due to medical reasons (and a re-occurring injury) he was recommended by doctors over the last two-years to change his career. He explained that he had been to a doctor in November 2014 about "tennis elbow" and was put on light duties and physiotherapy for several months. He wrote that he and his employer agreed that he would self-monitor. He indicated that

there were big orders forthcoming in his workplace. He explained that with no room for movement to a less repetitive job (and no plan in place for someone to take over his heavier repetitive duties) he feared continuing would have resulted in a more permanent injury. The Appellant further submitted a medical note (dated November 7, 2016) which advised him to switch careers to avoid further damage to his elbow.

Oral Evidence from the Hearing

[12] The Appellant testified that he left his employment for personal family reasons. He said this was not the main reason he left his employment, but one reason. He confirmed he moved from X (near X) to X. He explained that his father had been through surgery. He further indicated that his step-father had died before he moved.

[13] The Appellant explained that his wife had taken a buyout from her employer before they moved. He indicated he provided a letter of resignation to his employer and gave a six-week notice. He confirmed that he did not ask for a leave of absence from the employer. He indicated that he looked for employment in X, but most employers were only hiring local people. He said Ottawa was the closest location he could transfer to with the employer, but there was no manufacturing at the employer's Ottawa location. He further explained that it would not have been financially feasible to keep a residence near his employer until he secured alternate employment.

[14] The Appellant further testified that at the time he left his employer he was doing some regular work and some light work. He explained that he had returned to being the "main guy" for his job.

[15] The Appellant confirmed that he left his employment, because he was moving. He indicated that his father was in X and his mother was in X. He further testified that health was another reason he left his employment. He said that his body was starting to hurt every day. He indicated that he might have had two-years of work left in him. He indicated there was no office or training work he could have done for the employer.

[16] The Appellant indicated that he did not discuss a medical leave with the employer, because he was "afraid to poke the bear." He said he had concerns about taking a medical leave. He

further explained that he was not going to be able to do the work for “Valcom” physically and was worried about becoming crippled. He said he was taking Advil and Tylenol twice a day. He indicated he had problems with his elbow, lower back, and upper back. He explained that he was tired of being the main guy for the employer “while others set on their butts.”

SUBMISSIONS

[17] The Appellant submitted that:

- a) He left his employment for personal family reasons.
- b) The city of Ottawa was the closest location he could transfer to with the employer, but there was no manufacturing at the employer’s Ottawa location.
- c) He could not keep a residence near his previous employer until he secured alternate employment, because it would not have been financially feasible.
- d) He left his employment due to health reasons.
- e) He had concerns about taking a medical leave.
- f) There was no room for movement to a less repetitive job with the employer and he feared continuing with the employer would have resulted in a more permanent injury.
- g) Over the last two-years doctors had recommended to change his career.

[18] The Respondent submitted that:

- a) There was documentation from the Appellant’s doctor that he had work related injury, but this did not automatically prove just cause for voluntarily leaving an employment. The Appellant did not seek a medical leave of absence and admitted he had not been advised immediately prior to quitting that he should leave his position. Furthermore: The Appellant did not attempt to resolve his issues with his employer.
- b) The Appellant stated that he had made plans to quit and re-locate. The evidence pointed to the real reason the Appellant voluntarily left his employer was due to his

personal choice to re-locate. In this case, Appellant did not have just cause for leaving his employment on August 12, 2016, because he failed to exhaust all reasonable alternatives prior to leaving. Considering all of the evidence, a reasonable alternative to leaving would have been for the Appellant to request a leave of absence and to have secured new employment in his new location or not to have made the personal choice to re-locate.

ANALYSIS

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

[20] The Tribunal must decide whether the Appellant had just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of EI Act.

Background circumstances

[21] The Appellant established an initial claim for regular EI benefits on August 14, 2016.

[22] The Tribunal finds the Appellant worked in manufacturing for “Valcom Manufacturing” from August 27, 2001, to August 11, 2016, and voluntarily left his employment to re-locate. The Tribunal recognizes the Appellant’s employer was located in X (Ontario). The Tribunal finds the Appellant moved from X (near X) to X on August 16, 2016.

[23] On September 22, 2016, the Commission notified the Appellant they were unable to pay him EI benefits, because he voluntarily left his employment on August 12, 2016, without just cause.

Relevant Legislation and Legal Test

[24] The Tribunal recognizes the Appellant submitted that he left his employment for personal family reasons. The Appellant further submitted that he left his job due to health reasons. The Tribunal will address the Appellant’s submissions in a moment, but will initially emphasize the legal test for voluntarily leaving an employment. First: Section 30 of the EI Act provides that a person who loses an employment because of their misconduct or voluntarily leaves their employment is disqualified from benefits unless they can establish “just cause” for leaving. Paragraph 29(c) states that just cause for voluntarily leaving an employment exists if the

claimant had no reasonable alternative to leaving, having regard to all the circumstances; the paragraph goes on to give a non-exhaustive list of specific circumstances which may constitute just cause.

[25] Second: The Federal Court of Appeal (FCA) has explained that 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 their employment. The FCA has affirmed that the burden is on the claimant to demonstrate there was no reasonable alternative to leaving their employment (*Patel v. Attorney General of Canada*, 2010 FCA 95; *White v. Attorney General of Canada*, 2011 FCA 190).

Did the Appellant have “just cause” for voluntarily leaving his employment?

[26] As cited above, the Tribunal recognizes the Appellant submitted that he left his employment for personal family reasons. Specifically, the Appellant explained that he moved from X to X as his father had been through surgery and his step-father had died before he moved. He indicated that moving to X would be more central as his father was in X and his mother was in X. Did the Appellant have “just cause” for voluntarily leaving his employment? In short: Did the Appellant have no reasonable alternative to leaving his employment having regard to all the circumstances? The Tribunal will now address this matter.

[27] The Tribunal recognizes the Appellant was forthright with the Commission when asked about the reasons for leaving his employment. The Appellant explained to the Commission that he wished to be closer to his family, but his presence was not medically required and it was a personal decision to be closer to his family (Exhibit GD3-17). During the hearing, the Appellant did not dispute his statement to the Commission (Exhibit GD3-17) and confirmed that one reason for leaving his employment was to be closer to his family. The Tribunal accepts the Appellant had good personal reasons for moving to X. Nevertheless, good personal reasons did not translate into “just cause” for leaving an employment. The Tribunal finds the Appellant had the reasonable alternative of waiting until he secured alternate employment in his new region before leaving his employment. Furthermore: The Appellant had the reasonable alternative of requesting a leave of absence from his employer while he looked for alternate employment in his new area.

[28] The Tribunal does realize the Appellant further submitted he left his employment due to health reasons. The Appellant also provided a note from his doctor (dated November 7, 2016) which advised the Appellant to switch careers to avoid further damage to his elbow. Nevertheless, the Tribunal finds the Appellant had reasonable alternatives to leaving his employment. First: The Appellant could have inquired about taking a medical leave from his employer. Second: The Appellant could have explored taking a leave of absence while he looked for alternate employment that was less physically demanding on him.

The Appellant's further submissions

[29] The Tribunal recognizes the Appellant further submitted that Ottawa was the closest location he could transfer to with the employer, but there was no manufacturing at the Ottawa location. The Appellant also explained that he looked for employment in X before moving, but most employers were only hiring local people. Nevertheless, the Tribunal finds the Appellant had the reasonable alternative of remaining employed with "Valcom" until he secured alternate employment in his new region.

[30] The Appellant also submitted that he had concerns about taking a medical leave. The Tribunal accepts the Appellant would have some concerns about requesting a medical leave. However, the Appellant was an employee of "Valcom" since 2001 and would have had the opportunity to request a medical leave. In short: The Tribunal finds that the Appellant could have requested a medical leave and this was a reasonable alternative to leaving his employment under the circumstances.

Case Law

[31] The Tribunal has examined all the evidence and submissions in making a decision. The Tribunal further relies for guidance on the Federal Court of Appeal (*Imran v. Attorney General*, 2008 FCA 17) which affirmed the principle that good cause is not the same as "just cause" for leaving an employment.

[32] The Tribunal certainly realizes the Appellant left his employment to be closer to his family. The Tribunal also realizes the Appellant had concerns about his health. Nevertheless, the Tribunal must apply the legal test for voluntarily leaving an employment to the evidence. In

short: The Tribunal cannot ignore, re-fashion, circumvent or re-write the EI Act even in the interest of compassion (*Knee v. Attorney General of Canada*, 2011 FCA 301).

Summary

[33] The Tribunal finds the Appellant has not established just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of EI Act.

CONCLUSION

[34] The appeal is dismissed.

Gerry McCarthy

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.