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

Citation: *D. F. v. Canada Employment Insurance Commission*, 2018 SST 107

Tribunal File Number: GE-17-2784

BETWEEN:

D. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON February 22, 2018

DATE OF DECISION: March 9, 2018

Canada

DECISION AND REASONS

OVERVIEW

[1] The Appellant was initially employed as an office administrator at a marine service company, but was transferred to another position within a year, at her request. She worked as a detailer in the boatyard for almost four years and was enrolled in a marine technician apprenticeship program. The employer then informed the Appellant that she would be moved back to office duties permanently, as the office had gotten busier and they needed her help there. The Appellant chose to resign rather than accept the change in work duties. The Tribunal must decide whether the Appellant had just cause to leave her employment.

DECISION

[2] The appeal is dismissed. The Tribunal finds the Appellant voluntarily left her employment without just cause because she did not demonstrate she had no reasonable alternatives to leaving.

PRELIMINARY MATTERS

[3] Neither party to the appeal attended the teleconference hearing at the scheduled time, though they were duly notified. The Tribunal is satisfied that the Appellant received the Notice of Hearing sent on January 4, 2018, as Canada Post's delivery receipt was signed by the Appellant on January 10, 2018. An amended Notice of Hearing was sent on January 30, 2018, which the Appellant received on February 2, 2018, according to another Canada Post delivery receipt signed by the Appellant.

[4] Based on the above, The Tribunal proceeded with the hearing in the absence of the parties, pursuant to section 12(1) of the *Social Security Tribunal Regulations.*

ISSUES

[5] Issue 1: Did the Appellant voluntarily leave her employment?

[6] Issue 2: If so, did the Appellant have just cause to voluntarily leave her employment?

ANALYSIS

[7] Subsection 30(1) of the *Employment Insurance Act* (EI Act) provides that a claimant is disqualified from receiving any employment insurance (EI) benefits if they voluntarily left any employment without just cause.

[8] The Respondent has the burden of proof to show that the Appellant left voluntarily. The burden then shifts to the Appellant to establish she had just cause for doing so, by demonstrating that, having regard to all the circumstances, on a balance of probabilities, she had no reasonable alternative to leaving (*Canada (Attorney General) v. White*, 2011 FCA 190).

Issue 1: Did the Appellant voluntarily leave her employment?

[9] The Tribunal finds that the Appellant voluntarily left her employment. The Record of Employment filed by her former employer states the Appellant quit and the Appellant agrees that she resigned from her position.

[10] When determining whether the Appellant voluntarily left her employment, the question to be answered is: did the employee have a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56)?

[11] The Appellant agrees that the employer offered her continued employment in the office, but she did not want to accept the change in her work duties and chose to resign her employment. Accordingly, the Appellant had a choice to stay or leave.

Issue 2: Did the Appellant have just cause to voluntarily leave her employment?

[12] The Tribunal finds that the Appellant did not have just cause, as she has not shown that, having regard to all of the circumstances, she had no reasonable alternative to leaving.

[13] The test for just cause is whether the Appellant, having regards to all the circumstances, on a balance of probabilities, had no reasonable alternative to leaving her employment. A non-exhaustive list of circumstances to be considered when determining whether there is just cause is set out in paragraph 29(c) of the EI Act. One of those listed circumstances is significant change in work duties (subparagraph 29(c)(ix)).

[14] The Tribunal first considers the question of whether there was a significant change in the Appellant's work duties.

[15] As a detailer in the boatyard, the Appellant's duties included detailing and painting boats, yard work, and assisting the mechanics. She submits that her employer informed her that she was needed in the office and that her position was being changed back to office administrator. As office administrator she would be answering telephones, talking with customers, making service orders, and booking launches and haul-outs of boats. It is plain to the Tribunal that there is a substantial difference in the duties between the two roles, such that changing from one role to the other would constitute a significant change in duties.

[16] The Respondent argued that because the Appellant was initially hired as an office administrator, changing her position back to office work did not constitute a significant change of her work duties. Further, both positions had the same wages and hours of work. The Tribunal accepts that there was no modification of her wages or hours of work, but finds that the nature of the office duties were not as the employer and Appellant had agreed for the past four years as she held the position of detailer. Additionally, the employer's enrolment of the Appellant in a four-year apprenticeship program supports the Appellant's argument that her understanding was that her move to the boatyard had been permanent. For these reasons, the Tribunal finds that the prospective change in her position constituted a significant change in her work duties.

[17] The existence of a significant change in work duties is not enough to give the Appellant just cause for leaving her employment. She must show that, having regard to all of the circumstances, including the change in work duties, she had no reasonable alternative to leaving her employment (*Tanguay v. Canada (Unemployment Insurance Commission),* A-1458-84).

[18] The Tribunal now turns to the question of whether the Appellant had reasonable alternatives to leaving her employment.

[19] There is an obligation on the Appellant to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job (*Canada (Attorney General) v. White*, 2011 FCA 190).

[20] The question is not whether it was reasonable for the Appellant to leave her employment, but rather whether leaving the employment was the only reasonable course of action open to her (*Canada (Attorney General) v. Laughland,* 2003 FCA 12).

[21] The Appellant agrees that she resigned quickly after she was informed of the change in her work duties. She states that she was given the option to either work in the office or quit and she did not want to work in the office. The Tribunal is not convinced that submitting her resignation was the only reasonable course of action open to the Appellant.

[22] Though she found the office duties undesirable, there is no indication that she could not perform these duties until she was able to secure other employment. Leaving her employment was not the Appellant's only reasonable alternative; she could have accepted the change in position and performed her new duties while she secured alternate employment.

[23] The Appellant made a personal choice to resign from her position. Although a personal choice may constitute good cause it is not synonymous with the requirements to prove just cause for leaving employment and causing others to bear the burden of the Appellant's unemployment (*Canada (Attorney General v. White,* 2011 FCA 190, *Tanguay v. Canada (Unemployment Insurance Commission),* A-1458-84).

[24] CONCLUSION

[25] The Tribunal finds that the Appellant has not met her burden of showing that, having regard to all the circumstances, she had no reasonable alternative to leaving her employment when she did. It would have been reasonable for her to have searched for other employment while performing her new duties. Accordingly, the Appellant did not have just cause for voluntarily leaving her employment when she did.

[26] The appeal is dismissed.

Catherine Shaw

Member, General Division – Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference

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.