



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. M. v. Canada Employment Insurance Commission*, 2018 SST 308

Tribunal File Number: GE-17-2012

BETWEEN:

C. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Jude Samson

HEARD ON: February 20, 2018

DATE OF DECISION: March 2, 2018

METHOD OF PROCEEDING: Teleconference

APPEARANCES: No one

REASONS AND DECISION

DECISION

[1] The appeal is dismissed because the Appellant failed to prove he voluntarily left his employment with just cause. The reasons for this decision follow.

OVERVIEW

[2] The Appellant left his long-term employment after making the decision to attend training in a different city. After the Appellant was told by the Respondent that he was not entitled to receive benefits the Appellant changed the reasons why he left his employment. The Appellant now argues that he quit his employment due to his health, family, transportation, and personal issues.

PRELIMINARY ISSUES

[3] No one appeared at the teleconference hearing although both parties were duly notified. The Tribunal is satisfied the Appellant received the Notice of Hearing sent on January 4, 2018, because Canada Post's delivery receipt was signed by the Appellant on January 13, 2018. In addition, there is no indication that the Appellant requested an adjournment. Accordingly, the Tribunal proceeded to determine the merits of this appeal in absence of the parties, as provided by section 12(1) of the *Social Security Tribunal Regulations*.

ISSUES

[4] The Tribunal must determine the following issues:

- a) Has the Respondent proven the Appellant voluntarily left his employment?
- b) If so, has the Appellant proven he voluntarily left his employment with just cause?
- c) If just cause is not proven, has the Appellant accumulated enough hours of insurable employment to qualify for benefits since leaving his employment?

ANALYSIS

[5] In making these determinations the Tribunal considered the relevant legislative provisions which are reproduced in the Annex to this decision.

[6] The burden of proof is on the Respondent to show the Appellant voluntarily left his employment. Then, the burden of proof shifts to the Appellant to demonstrate he had just cause for leaving (*Green v. Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Patel*, 2010 FCA 95).

Voluntary Leaving

[7] The determination of whether an employee has voluntarily left his employment is a simple one. The question to be asked is as follows. Did the employee have a choice to stay or to leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56)?

[8] The Tribunal finds that the Appellant voluntarily left his employment because he had the choice to stay and continue working. The Appellant did not dispute the fact that the choice to stay in this position was his. The Appellant initially stated on his initial claim that he chose to leave his employment to move to another city and attend training. The fact the Appellant chose to leave is supported by the Record of Employment (ROE) which lists the reason for separation as being the Appellant left to relocate to another city for his children. As such, the Tribunal finds the Appellant voluntarily left his employment. Therefore, the Respondent's burden has been met.

Just Cause

[9] When determining whether just for voluntarily leaving an employment exists, the Tribunal must consider all the circumstances and whether the Appellant had no reasonable alternative to leaving, as stated in paragraph 29(c) of the *Employment Insurance Act (Act)*. This paragraph goes on to give a non-exhaustive list of specific circumstances to be considered when determining whether there is just cause.

[10] The mere presence of one of the circumstances listed in paragraph 29 of the Act does not automatically prove the Appellant had just cause to leave his employment. This is because the Appellant must still prove he had no reasonable alternative to leaving.

[11] Upon a review of all the circumstances in this matter, the Tribunal finds that on a balance of probabilities, the Appellant has failed to demonstrate that at the time he voluntarily left his employment he had no reasonable alternative but to leave. Thus, the Appellant has failed to prove he had just cause for leaving.

[12] In making the aforementioned finding the Tribunal has considered that apart from certain exceptions, it is the responsibility of insured persons, in exchange for their participation in the employment insurance scheme, not to provoke a risk or unemployment or transform what was only a risk of unemployment into a certainty. By quitting his long-term permanent employment, with no guarantee of continued employment elsewhere, the Appellant has caused his unemployment (*Canada (Attorney General) v. Marier*, 2013 FCA 39).

[13] While it is legitimate for the Appellant to want to change the nature of his work, this cannot be done at the expense of the employment insurance fund. Furthermore, having the desire to create a change does not constitute just cause for leaving employment (*Canada (Attorney General) v. Bell*, 2013 FCA 155; *Canada (Attorney General) v. Martel*, A-1691-92).

[14] The Appellant argued that he had just cause for voluntarily leaving his employment based on the following circumstances. A) He needed a change, so he made the choice to leave his long-term employment to attend training in a different city; B) he was dealing with transportation and family issues; and C) he had to leave his employment due to health reasons.

A) Appellant's Choice to Attend Training

[15] Although the Appellant stated on his initial claim that he left his employment to attend training, the Appellant later conceded that at the time he quit his employment on December 22, 2016, he had not registered for the training and he had not been pre-approved to attend the training. The Appellant readily admitted that the training was not scheduled to commence until April 2017 and that he did not move to the city to be closer to the training, as initially indicated. Rather, the Appellant later stated that he left his employment because he needed a change after working for the same employer for 23 years.

[16] The Tribunal commends the Appellant for wanting to attend training for the betterment of his family and himself. However, leaving one's employment to pursue training does not

constitute just cause under the Act (*Canada (Attorney General) v. Trochimchuk*, 2011 FCA 268; *Canada (Attorney General) v. Martel*, A-1691-92).

B) Transportation and Family Issues

[17] The Tribunal does not accept that the Appellant had no choice but to leave his employment due to family or transportation issues. This is because the Appellant made no mention of these issues until after he was told he would not be receiving benefits. Furthermore, the Appellant provided no evidence to support these reasons.

[18] There is no provision in the Act for an Appellant to prove just cause for leaving employment due to family or transportation issues. The Appellant's employer told the Respondent that they would have granted the Appellant a leave of absence if he had requested one. Therefore, if the Appellant was dealing with family and/or transportation issues he ought to have discussed these matters with his employer and requested a leave of absence if needed while he resolved his transportation or family issues.

[19] The Appellant stated that the decision to leave his long-term employment was based on a choice he had made; which perhaps was a good personal choice for him at that time. 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).

C) Health Issues

[20] The Appellant may have just cause to leave their employment if working conditions constitute a danger to his health and he explored all reasonable alternatives prior to leaving, as provided by subparagraph 29(c)(iv) of the Act. This being said, the Appellant is required to provide medical evidence demonstrating that the employment conditions were injurious to his health. The Appellant must also attempt to resolve the problem with his employer and must attempt to find other work prior to leaving.

[21] The Appellant provided no evidence to support that his employment was injurious to his health or that he sought assistance from his employer or his doctor, which are reasonable alternatives to quitting. Furthermore, there is no evidence to prove the Appellant sought other work prior to leaving his employment. Therefore, the Tribunal finds the Appellant has failed to prove he had just cause to leave his employment due to health reasons.

Reasonable Alternatives

[22] The Tribunal agrees with the Respondent that the Appellant failed to explore all reasonable alternatives prior to quitting his employment. Such alternatives include the following: (1) securing pre-approval to attend training prior to quitting; (2) requesting a leave of absence from his employer to deal with his medical, family and/or transportation issues; (3) seeking medical assistance; or (4) securing alternate employment prior to quitting.

[23] Based on the foregoing, the Tribunal finds that on a balance of probabilities the Appellant failed to prove he had no reasonable alternatives to voluntarily leaving his employment. Therefore, the Appellant has failed to prove he voluntarily left his employment with just cause in accordance with sections 29 and 30 of the Act.

Employment after Voluntarily Leaving

[24] There is no evidence to prove the Appellant has worked in insurable employment since he voluntarily left this employment. Therefore, the Appellant has failed to prove he qualifies to receive benefits as per section 30 of the Act.

CONCLUSION

[25] The appeal is dismissed. The Appellant has failed to prove he voluntarily left his employment with just cause.

Linda Bell
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.