



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. O. v. Canada Employment Insurance Commission*, 2018 SST 102

Tribunal File Number: GE-17-3574

BETWEEN:

B. O.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON February 28, 2018

DATE OF DECISION: March 8, 2018

DECISION AND REASONS

OVERVIEW

[1] The Appellant left her employment in order to move in with her partner, with whom she had been in a long-distance relationship for one year. Her partner lived over 250 kilometres away in a small town where he was self-employed. The Appellant believed it would be easier for her to relocate and find a new job than it would be for her partner to move his business. The Tribunal must decide if the Appellant had just cause to voluntarily leave her employment.

DECISION

[2] The appeal is dismissed. The Tribunal finds the Appellant voluntarily left her employment without just cause because she failed to demonstrate she had no reasonable alternatives to leaving.

ISSUES

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

[4] Issue 2: Did the Appellant have just cause to voluntarily leave her employment when she moved in with her partner?

ANALYSIS

[5] 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.

[6] The Respondent has the burden of proof to show that the Appellant left voluntarily. The burden then shifts to the Appellant, who must demonstrate 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?

[7] Yes. Based on the evidence before it, including the Appellant's testimony and written evidence, 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 confirms she resigned from her position.

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

[8] No. The Tribunal finds the Appellant did not have just cause, as her decision to leave was not the only reasonable alternative she had.

[9] In order to establish that she had just cause, the Appellant must show that, having regard to all the circumstances, on a balance of probabilities, she had no reasonable alternative to leaving her employment (*Canada (Attorney General) v. White*, 2011 FCA 190).

[10] The Appellant argues that she had an obligation to accompany her spouse to another residence. The obligation to accompany a spouse or common-law partner to another residence is under the non-exhaustive list of circumstances to be considered when determining whether there is just cause (EI Act, subparagraph 29(c)(ii)).

[11] The Appellant must have cohabited with her partner for a period of at least one year for her partner to be considered a common-law partner under subsection 2(1) of the EI Act. The Appellant states that her one-year relationship with her partner was long-distance and that they have maintained separate residences for the entire length of their relationship. Since the Appellant and her partner did not cohabit prior to her move to his residence on July 22, 2017, her partner was not a common-law partner under the EI Act when she resigned. Accordingly, the Tribunal finds the Appellant did not have an obligation to follow a spouse or common-law partner to another residence when she voluntarily left her employment.

[12] The Appellant stated that she and her partner had made the decision to move in together in July 2017. She was living with her mother, and he was living with his parents. She submitted her resignation with two weeks' notice on July 5, 2017, and she and her partner began looking

for a house to purchase together. The Appellant became unemployed on July 19, 2017, and moved in with her partner on July 22, 2017, into his parents' house. The Appellant and her partner finalized the purchase of a house on August 25, 2017.

[13] The Appellant submits that she had no choice to leave her position because her new residence was too distant and the commute was unreasonable. At the time the Appellant submitted her resignation, she only had plans to move to her partner's town and cohabitate with him; she did not move until after she became unemployed on July 19, 2017. The Tribunal must consider only the facts that existed at the time the Appellant left her employment when determining if the leave was justified (*Canada (Attorney General) v. Lamonde*, 2006 FCA 44). The Appellant's long commute from her new residence was not a circumstance that existed at the time that she left her employment, and cannot be considered.

[14] The Appellant made a personal choice to leave her employment in order to move to her partner's residence. 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).

[15] Just cause is not the same as a good reason. The question is not whether it was reasonable for the Appellant to leave her employment, but rather whether leaving her employment was the only reasonable course of action open to her, having regard to all the circumstances (*Canada (Attorney General) v. Imran* 2008 FCA 17; *Canada (Attorney General) v. Laughland*, 2003 FCA 12).

[16] The Appellant states that she did not begin searching for alternative employment until after she became unemployed and had moved to her new residence. The Appellant has an obligation, in most cases, to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job (*Canada (Attorney General) v. White*, 2011 FCA 190).

[17] The Appellant is responsible for proving just cause and she must show that she had no reasonable alternative but to leave her employment when she did. Considering all the

circumstances, the Appellant had the reasonable alternative to wait until she had secured employment near her planned place of residence before leaving her employment.

CONCLUSION

[18] The appeal is dismissed. The Tribunal finds that the Appellant has not proven just cause to have voluntarily left her employment.

Catherine Shaw
Member, General Division – Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. O., Appellant

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.