



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. E. v. Canada Employment Insurance Commission*, 2018 SST 318

Tribunal File Number: GE-17-3439

BETWEEN:

A. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace Salmon

HEARD ON: March 8, 2018

DATE OF DECISION: March 27, 2018

REASONS AND DECISION

DECISION

[1] The appeal is allowed. The Tribunal finds the Appellant has proven just cause for voluntarily leaving her employment.

OVERVIEW

[2] The Appellant worked in a remote community, with high levels of drug and alcohol abuse. After multiple incidents of intimidation and violence in the area, including a firearms offence across the street from her home, the Appellant's husband decided to take their two children and move to a different area. The Appellant left her employment to join her family in moving to the new community. The Appellant applied for Employment Insurance (EI) benefits, which were not allowed as the Canada Employment Insurance Commission (Respondent) determined she was disqualified from receiving EI benefits because she voluntarily left her employment without just cause. The Tribunal must determine if the Appellant voluntarily left her employment and, if yes, whether she had just cause for leaving.

ISSUE(S)

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

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

PRELIMINARY ISSUES

[5] The Appellant opted to have a representative assist her in making her submission to the Tribunal. The Appellant's representative explained that the Appellant had extreme anxiety regarding this case, and had not been forthcoming with information to the Respondent because she felt ashamed of her situation and the relevant facts were highly personal and traumatizing. Further, because of traumatizing and harassing phone calls in the past, the Appellant is sensitive to being called and asked questions, and stated she likely stumbled over her words and did not answer questions well.

[6] The Appellant explained her situation at the hearing, and the Tribunal finds her to be a reliable witness. Her evidence was credible, as it was consistent with and expanded upon the information already on record.

ANALYSIS

[7] A claimant is disqualified from receiving EI benefits if the claimant voluntarily left any employment without just cause (*Employment Insurance Act* (Act), subsection 30(1)). 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 (Act, paragraph 29(c)).

[8] The Respondent has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Appellant to demonstrate she had just cause for leaving. To establish she had just cause, the Appellant must demonstrate she had no reasonable alternative to leaving, having regard to all of the circumstances (*Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Imran*, 2008 FCA 17). The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

Issue 1: Did the Appellant voluntarily leave her employment?

[9] The legal test to determine voluntary leaving is whether the Appellant had a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56).

[10] The Tribunal finds that the Appellant voluntarily left her employment. The Initial Application for Benefits form states the Appellant quit her job. The Appellant confirmed at the hearing that she did quit her job to move to another community, and clarified that her husband made the choice to go and she had to accompany him to be with her children. The Appellant’s Record of Employment (ROE) states the reason for issuing the document as code “E,” which correlates with the reason “quit.”

[11] The Tribunal finds that because the Appellant chose to quit her employment, she voluntarily left. The first part of the test is satisfied.

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

[12] The legal test to determine just cause for leaving an employment is whether, having regard to all the circumstances and on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment (Act, s. 29; *Canada (Attorney General) v. White*, 2011 FCA 190).

[13] The Tribunal finds that the Appellant has proven just cause for leaving her employment based on the definition in the Act, because there were no reasonable alternatives to leaving the employment when she did.

[14] The Appellant explained that the reasons she quit her job were partially included in the file: the community was replete with drug, alcohol, and violent offences. Having two daughters and wanting a better life for them, the Appellant and her husband had discussed leaving for many years; however, the Appellant held a good job and did not want to leave it. The couple had tried to move to another area within the community, but it was not possible because no other housing was available.

[15] The Respondent argued that there was no urgency for the Appellant to move at the time she did; however, the Appellant disagreed. She submitted that a very real threat of violence from a neighbour made her husband decide to move to protect the children. The neighbour had become intoxicated and started shooting a gun indiscriminately, across the road from her home. The Appellant had to rush her children to the rear of the house and crouch on the floor to avoid the bullets, which she feared would hit the house. The Appellant's husband issued an ultimatum: he was leaving with the children, with or without her. The local area was too unsafe: the threat of violence became very real on that day. They both agreed the area was unsafe and the children needed to be protected

[16] The Appellant reiterated statements in the file that she "loved her job" and did not want to quit. She also stated that she spoke to her employer to see if they would allow her to work from its office in another community, but this request was refused. She did not ask for a leave of

absence because she knew she was not returning to the area, and her employer had already advised that she could not take her job with her. The Appellant also countered the Respondent's position that she did not look for work prior to quitting her job. The Appellant stated that when the Respondent asked about this she thought it meant actual applications for jobs, which she had not done. She had contacted friends and family in the community she was moving into before leaving her job and asked if there were any jobs available in her field. She made a number of these calls and the contacts said they would let her know when something became available, but at that time there was nothing, so she did not apply. The Appellant also said the situation was so urgent that her husband bought a house sight unseen, near the children's school. The house was also near several fast food restaurants and the Appellant and her husband hoped she could find employment at one of them. However, the Appellant does not have customer service work experience and she has not been successful in obtaining employment.

[17] While the Appellant made a number of other submissions, the fact that she left her employment to follow her husband and children is sufficient to find in her favour. Section 29 of the Act includes an obligation to accompany a spouse or dependent child to another residence as a circumstance where just cause for leaving employment exists (Act, s.29(c)(ii)). The courts have recognized that preservation of the family unit between spouses and dependent children is formally recognized by the Act (*The Attorney General (Canada) v. Kuntz*, A-1485-92). The inclusion of the obligation to follow a spouse at 29(c)(ii) is an exception to the policy on voluntary leaving, and it is not relevant that the Appellant's husband moved for a reason other than his own employment. Courts have found that claimants had just cause for voluntarily leaving their employment when following a spouse to a new location where neither of them had jobs in the new community, as the claimant was moving to be with a spouse and children and there was no reasonable alternative. The Act does not require that the spouse the claimant is accompanying have obtained employment in the new location (*Attorney General (Canada) v. Mullin*, A-466-95). Therefore, the fact that the Appellant's spouse was not required by his job to move is not detrimental to the appeal.

[18] The Tribunal finds that the Appellant has proven on a balance of probabilities that she had no reasonable alternative to leaving her job, considering all of the circumstances. 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 129). Given the Appellant moved to preserve the family unit, the Appellant should not be penalized for following her family and, relatedly, leaving her job.

CONCLUSION

[19] The appeal is allowed. While the Appellant did voluntarily leave her employment, having regard to all the circumstances, she had no reasonable alternative to leaving and thus meets the test for having just cause pursuant sections 29 and 30 of the Act.

Candace R. Salmon
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. E., Appellant Mary Snelgrove, Representative for the 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.