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

Citation: *J. M. v. Canada Employment Insurance Company*, 2018 SST 321

Tribunal File Number: GE-17-3141

BETWEEN:

J. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: March 15, 2018

DATE OF DECISION: March 28, 2018

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed. The Appellant has failed to prove she had just cause to voluntarily leave her employment.

OVERVIEW

[2] The Appellant worked as a prep cook under the previous ownership for a period of approximately three years. Three months after the ownership of the business changed the Appellant submitted her two weeks' notice, voluntarily left, and moved to another city to be closer to her grandson. The Appellant did not secure alternate employment prior to leaving and applied for employment insurance benefits. The Respondent determined the Appellant was disqualified from receiving benefits because she voluntarily left her employment without just cause.

ISSUE

[3] Has the Appellant proven she voluntarily left her employment with just cause?

ANALYSIS

[4] The Appellant is disqualified from receiving employment insurance benefits if she voluntarily left her employment without just cause, as provided by subsection 30(1) of the *Employment Insurance Act* (Act).

[5] The Respondent has the burden to prove the Appellant voluntarily left her employment. Then, the burden of proof shifts to the Appellant to demonstrate she had just cause for leaving (*Green v. Canada (Attorney General)*, 2012 FCA 313)

Voluntary Leaving

[6] To determine whether the Appellant has voluntarily left her employment, the following question is asked: did the Appellant have a choice to stay or to leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56)?

[7] The Appellant does not dispute the fact that she chose to voluntarily leave her employment. Rather, the Appellant readily admits that once she decided to leave her partner and move closer to her grandson she submitted two weeks' notice to her employer. She continued to work until the end of that two-week period. Therefore, because the Appellant admits that she voluntarily left her employment, the Respondent's burden is met.

Just Cause

[8] When determining whether just cause for voluntarily leaving an employment exists, the Tribunal must consider all the circumstances. The Tribunal must also consider whether the Appellant had no reasonable alternative to leaving, as stated in paragraph 29(c) of the *Employment Insurance Act* (Act).

[9] A non-exhaustive list of specific circumstances which is to be considered when determining whether there is just cause is listed in paragraph 29(c) of the Act. The mere presence of one of the circumstances listed in paragraph 29(c) does not automatically prove the Appellant had just cause to leave her employment. This is because the Appellant must still prove she had no reasonable alternative to leaving.

All Circumstances

[10] After consideration of all the circumstances, the Tribunal finds that the Appellant has not proven she had just cause, because leaving her employment was not the only reasonable alternative she had.

[11] The Appellant argued she had just cause to leave her employment due to the following circumstances.

a) The kitchen manager was antagonistic.

b) The new owner was reducing her hours of work.

c) She had to leave an abusive relationship

d) Once she moved she no longer had transportation to work.

a) Antagonistic Manager

[12] Antagonism with a supervisor is listed under subparagraph 29(c)(x) of the Act and may be considered as a circumstance for just cause when the Appellant is not primarily responsible for the antagonism.

[13] 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 her job (*Canada (Attorney General) v. White*, 2011 FCA 190).

[14] The Appellant argued that the kitchen manager spoke disrespectfully towards her by calling her names and swearing at her in front of other kitchen staff. She testified that she did not speak to the general manager about the kitchen manager's behaviour because she was fearful that the kitchen manager would retaliate.

[15] The Appellant provided contradictory evidence during her testimony when she stated that six months prior to quitting, she stood up to the kitchen manager and swore back at her. The Appellant stated that from that day forward the kitchen manager never spoke to her disrespectfully again.

[16] The Tribunal finds that the Appellant has not proven that she had to leave her employment due to the kitchen manager's behaviour. Rather, the Appellant readily admitted that the issue was resolved six months prior to her submitting notice to leave. Accordingly, the Appellant has failed to prove she had to leave her employment due to antagonism with her supervisor.

b) Reduction in Hours

[17] A significant modification of the terms and conditions respecting wages or salary is also a circumstance to be considered by the Tribunal, as listed under subparagraph 29(c)(vii) of the Act.

[18] The Appellant testified that she could not afford to continue working after the new owners reduced her hours from 70 to 40 hours every two weeks. She submitted that her earnings were no longer high enough to pay her household bills. She also submitted that the reduced hours were not enough for her to pay rent on her own once she left her partner.

[19] The Respondent submitted that once they told the Appellant that her Record of Employment (ROE) indicates she was working an average of 65 hours every two weeks the Appellant stated that she left her employment because she wanted to be closer to her grandson. The Respondent argued that the Appellant provided several personal reasons why she had to leave her employment and that the reason that she suffered a reduction of hours was not supported by the evidence.

[20] The Tribunal finds that the Appellant has not proven she had to leave her employment due to a reduction in her hours of employment. Rather, the Tribunal agrees with the Respondent that the ROE evidence indicates that the Appellant had been working 61 to 65 hours biweekly prior to giving her notice to leave, which supports that there was no significant change in her wages or salary.

c) Personal Issues

[21] Just cause relates to the employment itself and not to the Appellant's personal circumstances. There is no provision in the Act where an Appellant can prove just cause for leaving employment due to personal relationship issues or a personal choice to move away from her employment to be closer to her grandson.

[22] The Appellant testified that she made a choice to leave her partner of 23 years because he was being abusive towards her. She argued that about 2 ½ years prior to her leaving her spouse lost his job, began drinking heavily, and became abusive. She confirmed that she did not seek assistance from an outside agency to deal with the abusive relationship, she did not discuss her situation with her employer, and she did not request a leave of absence. She argued that she could not request a leave of absence because she needed to work to pay her bills. She also submitted that she made the choice to quit her job so that she could move closer to her grandson.

[23] The Appellant confirmed that she did not secure alternate employment prior to moving. She stated that she was focusing on getting out of her abusive relationship and finding a place to reside where she could be close to her grandson and son. The Appellant submitted that she could not reside in the same city as her employment because she could not afford to pay the rent on her

own. She testified that she decided to rent a room from her son's friend who lives within walking distance of her son and grandson.

[24] The Tribunal empathizes with the Appellant given the circumstances she presented during the hearing. However, the Tribunal must apply the statutory requirements and cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (*Canada (Attorney General) v. Knee*, 2011 FCA 301).

[25] The evidence supports that the Appellant made a personal choice to leave her employment. 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).

d) Transportation Issues

[26] The Appellant submitted that she wanted to spend more time with her son and 4-month-old grandson, so she decided to move closer to them. The Appellant argued that once she moved she could not continue to work for the same employer because there was no public transportation to her work location on the weekends.

[27] When determining if the Appellant had just cause to leave her employment, the circumstances that must be considered under section 29(c) of the Act are those which existed, at the time the Appellant resigned from her employment (*Canada (Attorney General) v. Lamonde*, 2006 FCA 44). The Appellant's transportation issue cannot be considered when determining just cause because it is not a circumstance that existed at the time she left her employment.

Reasonable Alternatives

[28] When considering the circumstances presented by the Appellant the Tribunal finds she has failed to prove she had no reasonable alternative to quitting her employment. 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).

[29] The circumstances presented by the Appellant do not prove there was any urgency for the Appellant to leave her employment when she did. The Appellant confirmed that the kitchen manager's antagonistic behaviour had stopped, six months prior to her leaving, and she did not dispute the fact that the ROE evidence supports that her hours of employment were not significantly reduced. Although the Appellant may have been involved in an abusive relationship she admits that her partner had been abusive for over two years and that she remained living with him while she worked out her two weeks' notice period.

[30] The Tribunal is not convinced that leaving her employment was the only reasonable course of action open to the Appellant. Rather, it would have been reasonable for the Appellant to seek assistance through an outside agency such as her doctor or an agency that provides assistance to women in abusive relationships. Also, the Appellant could have requested a leave of absence from her employer or secured alternate employment prior to leaving and becoming unemployed.

CONCLUSION

[31] The Tribunal concludes that the Appellant has failed to prove that, having regard to all the circumstances, she had no reasonable alternative to leaving her employment. Therefore, she has not proven just cause for voluntarily leaving her employment.

[32] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	In-person
APPEARANCES:	J. M., 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.