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

Citation: *C. B. v. Canada Employment Insurance Commission*, 2018 SST 320

Tribunal File Number: GE-18-2

BETWEEN:

C. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: March 20, 2018

DATE OF DECISION: March 27, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Appellant worked at a fast food restaurant before she left her employment to move to another city and attend university. She applied to a provincial program that allowed people attending school full-time to receive Employment Insurance (EI) benefits, but the Respondent determined she was disqualified from receiving benefits because she had voluntarily left her employment without just cause. The Appellant requested a reconsideration of this decision based on her application to the provincial program. The Respondent upheld its initial decision. The Tribunal must decide whether she voluntarily left her employment without just cause.

ISSUES

[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?

ANALYSIS

[5] Subsection 30(1) of the *Employment Insurance Act* (Act) provides that a claimant is disqualified from receiving any EI benefits if she 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 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). 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?

[7] Yes. The Tribunal finds the Appellant voluntarily left her employment.

[8] 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)?

[9] The Appellant submits that she did not leave her employment, as she did not return her uniform and was "kept on the payroll" to return for short-term employment during holiday breaks from university. She testified that she met with the owner and manager of the restaurant in early August 2017 and informed them that she would require a Record of Employment (ROE) as she would be moving at the end of August to attend university in another city. She states that she made her employer aware of her intentions to be placed back on the schedule over the Christmas holiday, or during March break, and to possibly return to employment at that location in the Spring, after her university courses ended.

[10] The Respondent submits that the Appellant quit her job to go to school based on an interview it had with a representative of the employer. The Appellant argues that the employer's representative was not one of the parties the Appellant had met with in August, and that the representative was not aware of her plans to return to employment with the restaurant.

[11] The Tribunal finds that, regardless of whether the employer's representative was informed of the Appellant's plans, the Appellant left her employment to attend university. The Tribunal further finds the Appellant took the initiative to end her employment by meeting with her employer and informing them of her plans to attend university and request an ROE. Accordingly, the Tribunal concludes the Appellant had a choice to stay and that she voluntarily left her employment.

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

[12] No. The Tribunal finds the Appellant did not have just cause to voluntarily leave her employment.

[13] In order to establish that she had just cause for leaving an employment under section 29 of the Act, 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). Paragraph 29(c) of the Act sets out a non -exhaustive list of circumstances for the Tribunal to consider in determining whether the Appellant had just cause.

[14] The Appellant argues that she had no choice but to leave her employment because she had made plans to move to another city and attend university. She testified that she could have remained employed in that restaurant if she did not need to move to attend university, and that she could have requested a transfer to another location of the same restaurant chain in the city to where she was moving, but she knew that her course schedule at university would not allow her to work the hours that she would be required to undertake.

[15] The Respondent submits that the Appellant voluntarily left her employment to go to school, which does not meet the requirements of just cause within the Act.

[16] The Appellant argues that she should be eligible for EI benefits because she had applied to a provincial program that allowed people attending school full-time to receive Employment Insurance (EI) benefits. She was in touch with the program administrator during the summer of 2017 who gave her the program requirements and she attended an information session for the program on August 29, 2017. She testifies that she was told at the session that she would be eligible for the program as long as her employer issued her ROE with reason “K” with the comment “as requested by the employee”.

[17] The Respondent submits that this provincial program requires the applicant to be eligible for or currently receiving EI benefits, and that the Appellant was not eligible for benefits because she voluntarily left her employment without just cause. In an interview with the program administrator, the administrator clarified that approval for the program is contingent on the

applicant being approved for EI benefits. She further stated the program did not authorize the Appellant to quit her employment.

[18] The last day of the Appellant's employment occurred on August 23, 2017 and she attended the information session regarding the provincial program on August 29, 2017. Therefore, the Tribunal finds that the information given at this meeting could not have influenced the Appellant's decision to leave her employment. The Appellant testified that she had already made plans to attend university before she heard about this program.

[19] Based on all the evidence before it, the Tribunal concludes that the Appellant left her employment to go to school. It is well established in the courts that leaving employment to pursue studies not authorized by the Respondent does not constitute just cause within the meaning of the Act (*Canada (Attorney General) v. Côté, 2006 FCA 219*; *Canada (Attorney General) v. Shaw*, 2002 FCA 325*).*

[20] The Appellant's decision to go back to school is personal choice, and 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).

[21] 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).

[22] 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 stay in her position or take a similar position at another location of the same restaurant chain, or to look for another job before leaving employment.

CONCLUSION

[23] The appeal is dismissed. Having regard to all of the circumstances, the Tribunal finds that the Appellant has not proven just cause for voluntarily leaving her employment and is disqualified from receiving benefits in accordance with sections 29 and 30 of the Act.

Catherine Shaw
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. B., 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.

Employment Insurance Regulations