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

Citation: *H. H. v. Canada Employment Insurance Commission*, 2018 SST 332

Tribunal File Number: GE-17-3469

BETWEEN:

H. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: April 4, 2018

DATE OF DECISION: April 9, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed. The Tribunal finds the Appellant voluntarily left his employment without just cause because he did not demonstrate he had no reasonable alternatives to leaving.

OVERVIEW

[2] The Appellant was employed concurrently in two part-time positions. He resigned from one employment due to the high stress he was experiencing in the position and he was later laid off from his other employment, as the position is seasonal. The Respondent determined he was disqualified from receiving Employment Insurance (EI) benefits as it decided the Appellant voluntarily left his employment without just cause. The Appellant requested reconsideration as he felt he needed to leave the position for health reasons. The Respondent upheld its decision. The Tribunal must decide whether the Appellant had just cause to leave his employment.

ISSUES

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

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

[5] Issue 3: Should the Appellant's disqualification apply to the hours accumulated under both positions?

ANALYSIS

[6] 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.

[7] The Respondent has the burden of proving that the Appellant left his employment voluntarily. The burden then shifts to the Appellant to establish he had just cause for doing so, by demonstrating that, having regard to all the circumstances, on a balance of probabilities, he 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 his 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 does not dispute that he voluntarily left his employment. The employer provided the Respondent with the Appellant's letter of resignation which the Appellant confirms he submitted to his employer in March 2017. Based on the evidence, the Appellant had the choice to stay in his employment and chose to resign. Accordingly, the Tribunal finds the Appellant voluntarily left his employment.

Issue 2: If the Appellant voluntarily left his employment, did he have just cause for doing so?

[10] No. The Tribunal finds the Appellant did not have just cause for voluntarily leaving his employment as he has not shown that, having regard to all of the circumstances, he had no reasonable alternative to leaving.

[11] The test for just cause is whether the Appellant, having regards to all the circumstances, on a balance of probabilities, had no reasonable alternative to leaving his employment (*White, supra*)

Did the Appellant's working conditions constitute a danger to health and safety?

[12] A non-exhaustive list of circumstances to be considered when determining whether there is just cause is set out in paragraph 29(c) of the Act. One of those listed circumstances is working conditions that constitute a danger to health or safety (subparagraph 29(c)(iv)).

[13] The Appellant testified that his primary reason for resigning from his position was due to his diagnosis of high blood pressure in April or May of 2016. He argues that it was caused by the

increase in the workload in his position with the employment agency. The Appellant testified that the number of contracts and programs that the agency administered had gradually increased since he started in this position five years ago. He states that in the last year of his employment the workload reached a level that he could not manage during his part-time schedule. He testified that he was feeling overwhelmed and highly stressed with the amount of work.

[14] The Appellant provided a copy of a prescription receipt for medication in support of his argument that he resigned for medical reasons. The Tribunal gives no weight to this receipt as evidence of the Appellant's health concerns, as it does not attest to the medical reason for the prescription and is not signed by a medical doctor. The Appellant declined the Respondent's request for him to provide a medical note in support of his reason for resigning from his position, as he conceded that his doctor did not advise him to quit his employment.

[15] The employer stated in interviews with the Respondent that the Appellant had not discussed concerns regarding his workload prior to submitting his resignation and that the workload at the agency had decreased over the past year with the non-renewal of two prior contracts. The Appellant agrees that he did not discuss his concerns with his employer because he believed there was nothing that the agency could have done to assist him. He argues that the agency's contracts and programs fluctuate throughout the year, and there was no indication that the non-renewal of two contracts would alleviate his workload in any significant way.

[16] It is the responsibility of the Appellant to discuss his working conditions with his employer and to explore the possibility that the nature or the conditions of his employment can be altered to mitigate his concerns (*Canada (Attorney General) v. Hernandez*, 2007 FCA 320). Based on the Appellant's testimony and the employer's statements, the Appellant took no steps to inform his employer that he had concerns about his workload and the effect he believed it was having on his health.

[17] The Appellant stated in interviews with the Respondent that he discussed lifestyle changes with his doctor, but he did not specifically address his workplace concerns and his doctor did not advise him to quit his employment. The Appellant argues that the stress he was experiencing was the cause of his high blood pressure; however, the Tribunal considers that the Appellant made that determination himself and has not provided medical evidence to support

that assertion. The Tribunal considers that seeking medical advice or assistance to address his stress were reasonable steps that he could have taken before leaving his employment.

[18] Based on the evidence provided, the Tribunal finds that the Appellant has not proven he had just cause to voluntarily leave his employment because he did not prove the stress he was experiencing constituted a danger to his health and safety.

Did the Appellant have reasonable alternatives to leaving his employment?

[19] The employer stated in interviews with the Respondent that a leave of absence for medical reasons with a wage loss insurance benefit plan would have been approved for the Appellant if he had advised the employer that he needed time away from work for health reasons. The Appellant submits that he was unaware of the program at the time that he submitted his resignation and that he did not inquire about a medical leave of absence because he did not believe it would be approved as he was only a part-time employee and there were no other employees trained to replace him.

[20] The Appellant submits that he made the decision to resign from his position in January 2017 and then delayed submitting his resignation until March 2017 to wait until his employer returned from an extended vacation. The Appellant testified that he decided to resign to avoid the increase in work that surrounds the end of the fiscal year. The Appellant stated in interviews with the Respondent that he did not apply for other employment until after he had submitted his resignation. The Appellant argues that due to his other part-time job, it was very difficult to find another part-time job to fit into his available schedule of two days per week and that there was no option to increase his hours with his other employer.

[21] The Appellant has an obligation, in most cases, to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job (*White, supra).* The Tribunal finds that the Appellant's delay in submitting his resignation supports that there was no urgency for him to leave his position. The Tribunal considers that it is generally reasonable to continue working until a new job is found and the Appellant could have searched for alternate employment after making his decision to leave.

[22] The question is not whether it was reasonable for the Appellant to leave his employment, but rather whether leaving the employment was the only reasonable course of action open to him (*Canada (Attorney General) v. Laughland*, 2003 FCA 129).

[23] The Tribunal finds that rather than leaving his employment, the Appellant had other courses of action open to him. The Appellant could have discussed accommodation of his health concerns with his employer and requested assistance or a reduction in his workload. The Appellant could also have remained in his position until he had secured other employment. As a result, the Tribunal finds that the Appellant has not demonstrated just cause for voluntarily leaving his employment, having regard to all the circumstances, as he had reasonable alternatives available to him.

Issue 3: Should the Appellant's disqualification apply to the hours accumulated under both positions?

[24] The Appellant argues that, since he was employed in two part-time positions concurrently, his resignation from one employment should not affect his claim, as he had accumulated sufficient hours to qualify for benefits based on his other part-time position. The Respondent submits that since the Appellant voluntarily left one of his concurrent employments he is disqualified from receiving benefits unless, since losing the employment, he has been employed in insurable employment for the number of hours required to receive benefits, according to paragraph 30(1)(a) of the Act.

[25] Subsection 30(5) of the Act clearly states that when a claimant voluntarily leaves their employment, the insurable hours of employment accumulated from **any** employment prior to the date of loss of the employment are excluded from the calculation of the hours required to qualify for benefits (*Canada (Attorney General) v. Trochimchuk*, 2011 FCA 268).

[26] The Appellant left his position at the employment agency on April 20, 2017 but had continued to work in his other part-time position until June 2, 2017. The Appellant accumulated 135 hours of insurable employment between April 20, 2017 and June 2, 2017. The Respondent did not provide the number of insurable hours required for the Appellant to qualify based on the EI Economic Region Unemployment Rate and Benefit table for the period of the Appellant's

claim; however, 135 insurable hours is insufficient to qualify for regular EI benefits in every EI economic region for the applicable time period.

[27] The Tribunal finds there is no provision in the Act to allow the Appellant to use the hours accumulated in his other position before April 20, 2017. The Tribunal sympathizes with the Appellant; however, it is not within the Tribunal's jurisdiction or discretion to ignore or change the legislation as it is presently written.

CONCLUSION

[28] The appeal is dismissed.

Catherine Shaw
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	H. H., 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