



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. E. v. Canada Employment Insurance Commission*, 2018 SST 330

Tribunal File Number: GE-17-3851

BETWEEN:

R. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: March 26, 2018

DATE OF DECISION: April 5, 2018

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. The Appellant did not accumulate sufficient hours of insurable employment since voluntarily leaving her employment without just cause to qualify for benefits.

OVERVIEW

[2] The Appellant was employed as a continuing care assistant at a nursing home when she left her position to attend university in August 2016. The following year 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 in August 2016 and had not worked sufficient insurable hours since that time to be eligible to receive benefits. 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 the Appellant voluntarily left her employment without just cause and if so, whether she worked sufficient insurable hours since that time to be eligible to receive benefits.

PRELIMINARY MATTERS

[3] The Appellant requested to proceed with a hearing by written questions and answers. This form of hearing respects the requirements of the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit. Accordingly, the hearing was conducted by written questions and answers.

[4] Notice of hearing by question and answer was provided to the parties in a letter dated February 26, 2018. The Tribunal is satisfied the Appellant received this Notice of Hearing as Canada Post's delivery receipt was signed by the Appellant on March 7, 2018.

[5] Neither party submitted responses or additional evidence in response to the Tribunal's correspondence dated February 26, 2018. As a result, the determination of this appeal was based on the existing evidence and submissions.

ISSUES

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

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

[8] Issue 3: If the Appellant did not have just cause for voluntarily leaving her employment, has she, since leaving the employment, been employed in insurable employment for the number of hours required to qualify for benefits?

ANALYSIS

[9] Paragraph 30(1)(a) 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 unless the claimant has, since 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.

[10] 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?

[11] Yes. Based on the evidence before it, the Tribunal finds 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.

[12] 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)?

[13] It is not in dispute that the Appellant left her employment to attend university. Accordingly, the Tribunal finds that 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?

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

[15] 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 (*White, supra*)

[16] The Appellant argues that she had no choice but to leave her employment because she had made plans to attend university.

[17] 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.

[18] 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 EI benefits. She was approved for the program on July 27, 2017. The Respondent submitted interviews with the Appellant in which she stated that she would have requested authorization to quit in August 2016 but she had no knowledge of the provincial program at that time. The Appellant agrees that she became aware of the program the following year and submitted her application to the program at that time.

[19] 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 was disqualified for voluntarily leaving her employment without just cause.

[20] The Respondent submitted e-mails from the provincial program administrator, in which the administrator clarified that the Appellant was approved for the program in July 2017, but as she was not enrolled in the program in August 2016, she could not receive an authorization to quit her employment at that time.

[21] The Appellant left her employment on August 28, 2016 and she submits that she first heard about this program in May 2017, eight months after she quit her employment and was later approved in July 2017. At the time the Appellant left her employment in August 2016, she had not heard of this program; as such, the Tribunal finds that her enrolment in this program could not have influenced the Appellant's decision to leave her employment.

[22] 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*).

[23] 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 (*White, supra; Tanguay v. Canada (Unemployment Insurance Commission), A-1458-84*).

[24] 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. Laughland, 2003 FCA 12*).

[25] The Appellant is responsible for proving that she had just cause for voluntarily leaving her employment 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 alternatives to obtain the necessary approval to both leave her employment and attend her course, to delay her training until such time as approval could be granted, and not to make a personal choice to leave her employment to attend school on her own initiative.

Issue 3: If the Appellant did not have just cause for voluntarily leaving her employment, has she, since leaving the employment, been employed in insurable employment for the number of hours required to qualify for benefits?

[26] Whether a person qualifies for benefits is determined, in part, by section 7 of the Act. To receive benefits a person must have accumulated, in his or her qualifying period, a minimum number of hours of insurable employment.

[27] Subsection 7(2) of the Act sets the number of hours of insurable employment required in a qualifying period to establish the benefit period. The minimum number of hours is based on the area where the person lives and the regional rate of unemployment for that area.

[28] In order for the Appellant to receive regular benefits, she must have worked for the required minimum number of insurable hours since voluntarily leaving her employment without just cause. The Appellant made her initial claim for benefits on May 21, 2017. The Respondent imposed an indefinite disqualification due to her voluntarily leaving her employment without just cause on August 28, 2016. She then obtained approval through the provincial program for her training starting September 10, 2017 and although she was authorized to quit her employment on August 24, 2017, she could not be authorized to quit her employment in August 28, 2016. The Appellant submitted two additional renewal claims for benefits on June 22, 2017 and on September 10, 2017, where she stated that she had worked since she had completed her last application for EI benefits.

[29] The Respondent submits that the Appellant required 420 hours of insurable employment to establish a claim. The Record of Employment submitted by the employer states the Appellant had 211 hours of insurable employment from when she worked in 2017 and accordingly does not qualify for benefits.

CONCLUSION

[30] 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.

[31] The Appellant did not accumulate sufficient insurable hours since voluntarily leaving her employment without just cause to qualify for benefits in accordance with section 7 of the Act.

[32] The appeal is dismissed.

Catherine Shaw
Member, General Division - Employment Insurance Section

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| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | R. E., 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.