



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. D. v. Canada Employment Insurance Commission*, 2018 SST 334

Tribunal File Number: GE-17-3506

BETWEEN:

S. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: March 20, 2018

DATE OF DECISION: April 11, 2018

DECISION

[1] The appeal is dismissed. The Appellant voluntarily left her employment without just cause.

OVERVIEW

[2] The Appellant worked as a commissioned sales person at a cosmetics counter. The employer was a company in financial difficulty, which entered bankruptcy proceedings while the Appellant was employed and has since closed. Before the employer's store closed, the Appellant quit her job. The Appellant made an initial claim for Employment Insurance benefits, and the Canada Employment Insurance Commission (Respondent) disallowed the claim on the grounds that she voluntarily left her employment without just cause. The Appellant believes she had just cause for leaving and appeals to the Tribunal to overturn the decision.

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?

ANALYSIS

[5] 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)).

[6] 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 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?

[7] 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).

[8] The Tribunal finds the Appellant voluntarily left her employment. The Initial Application for Benefits form indicates the Appellant quit her job, and the Appellant confirmed this at the hearing. The Appellant’s Record of Employment (ROE) states the reason for issuing the document as code “E,” which correlates with the reason “quit.” The Appellant stated she chose to leave her job for a variety of reasons, but principally because the customers became aggressive and verbally abusive.

[9] 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?

[10] 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 (Act, s. 29; *White, supra*).

[11] 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 (*Imran, supra*; *Canada (Attorney General) v. Laughland*, 2003 FCA 12).

[12] For the following reasons, the Tribunal finds the Appellant did not have just cause for leaving her employment on July 15, 2017.

[13] The Tribunal must consider a non-exhaustive list of circumstances to determine whether the Appellant had just cause for leaving her employment (Act, s. 29 (c)). This list is not closed.

The Tribunal must weigh all of the circumstances to determine whether the Appellant has “just cause” (*White, supra; Canada (Attorney General) v. Lessard*, 2002 FCA 469).

[14] Working conditions which constitute a danger to health or safety may be just cause for leaving an employment, having regard to all the circumstances (Act, s. 29(c)(iv)). The Appellant quit her employment approximately three weeks after the employer announced impending bankruptcy. The Appellant stated that the store was short staffed and shoppers were verbally aggressive and often yelled at her. She testified that she found this a stressful situation and an intolerable working environment, though there is no evidence that the Appellant saw a physician to confirm whether she had a medical reason to leave her employment. The Appellant confirmed at the hearing that she did not seek medical advice or obtain a medical certificate for time off. The Appellant also testified that she did apply for other jobs before quitting her employment, but the stress was too high and she could not wait to obtain a new job before leaving. The Appellant’s self-assessment that the stress level was high and she needed to leave is not supported by any medical evidence finding her unable to work due to medical reasons. Further, there is no evidence to find the Appellant’s health and safety were at risk in her working environment. The Appellant did not prove health and safety considerations existed to satisfy the test for just cause.

[15] Significant modifications to the terms and conditions respecting wages or salary are also a consideration in determining whether an Appellant has just cause for leaving an employment (Act, s. 29(c)(vii)). The Appellant was a commissioned sales person and generally made a 3% commission on sales of cosmetic products. She stated that the cosmetic products she generally sold and made commission on were not available after the bankruptcy announcement: she stated that her compensation changed as she went from selling principally one type of item on commission and occasionally ringing in other purchases, to ringing in other purchases all day in a long lineup with no commission. When the employer’s bankruptcy status became public knowledge, the store became busy and the Appellant spent her days ringing in regular, non-commissioned merchandise: she described it as being like “boxing day every day.” The Appellant also stated that cosmetics suppliers stopped sending products and she did not have the opportunity to make commission on these sales, so her wage conditions had changed as her income would be less.

[16] The employer stated that the immediate rush of shoppers lasted only a few weeks after the bankruptcy announcement, and admitted it was a difficult period with high stress levels. The Employer also initially agreed with the Appellant's statement that she was unable to make the same commissions because the store wasn't receiving cosmetics stock, but the Appellant's manager later clarified that there was still stock remaining to sell at the time the Appellant quit. The Employer also stated that the stock was not so low that it would have affected the Appellant's commission at the time she quit. The employer stated the Appellant's commission in May 2017 was \$80 on one biweekly pay period, and for the week of June 9, 2017 it was \$60. For the pay period of June 23, 2017, it was \$77. The pay period of July 7, 2017 saw a \$51 commission, and the pay period ending July 21, 2017 had a \$46 commission, though the Appellant stopped working on July 15, 2017 and would not have earned commission over the entire pay period. The Appellant did not have high commissions, and she admitted that at the time she left her employment, her income had not actually been affected by the lack of product, but she expected that would occur. The Tribunal finds the Appellant's income was not significantly affected at the time she quit her employment as she has admitted this fact, and further admitted she "expected" and "knew" her commissions would be smaller but they had not yet been impacted at the time she quit her job. The Tribunal finds insufficient evidence exists to find just cause for voluntarily leaving based on subparagraph 29(c)(vii) of the Act.

[17] Significant changes in work duties are another consideration in determining whether an Appellant has just cause for leaving an employment (Act, s. 29(c)(ix)). The Appellant stated her job duties changed because she usually rang in cosmetics at a sales counter and occasionally took other items if a customer requested it. After the bankruptcy announcement, she felt that her job became that of a cashier instead of a commissioned sales person. The employer's evidence states it was always part of the Appellant's job to ring in other customers from different departments if requested. The Appellant agreed; however, she added that this was an irregular occurrence and after the bankruptcy announcement it became constant. She submitted the difference was the volume of shoppers expecting her to ring their non-cosmetic purchases through at the cosmetics counter. The Appellant confirmed that she did stay in the cosmetics area and was not a general cashier at the front of the store, and that she did continue to sell whatever cosmetics were left in stock.

[18] The Tribunal finds the Appellant's job duties did not significantly change: while the volume of shoppers did increase for a period and may have been stressful for the Appellant, she was always required to ring in sales for shoppers buying products outside of her department. The volume of shoppers does not change that job duty.

[19] Considering all of the circumstances, the Appellant had other reasonable alternatives to leaving her employment when she did. The Appellant did not seek a leave of absence from her employer, and did not wait until she found another job before leaving her employment. She also failed to consult a physician regarding the stressful environment and the possibility of taking time off. The Appellant may have had a good reason to leave her employment based on the challenges of her employment situation, but a good reason is not synonymous with just cause. On a balance of probabilities, the claimant had reasonable alternatives to leaving the employment when she did and thus did not have just cause for leaving her employment.

CONCLUSION

[20] The appeal is dismissed. While the Appellant may have found the working environment intolerable and it is not disputed that it was a stressful time, the Appellant did not have just cause within the meaning of the Act to voluntarily leave her employment when she did. Having regard to all of the circumstances, 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.

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

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. D., Appellant

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