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

Citation: *G. D. v. Canada Employment Insurance Commission*, 2018 SST 349

Tribunal File Number: GE-17-3750

BETWEEN:

G. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: April 12, 2018

DATE OF DECISION: April 19, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Appellant left his job in April 2017 to move to another province with his partner. The Appellant found a job in his new province but experienced a mental health crisis several months later and was unable to continue his employment. The Appellant established a benefit period for Employment Insurance (EI) sickness benefits. After he had been paid the maximum number of weeks of sickness benefits, the Appellant requested to convert his claim to regular benefits. The Respondent determined that he was disqualified from receiving regular benefits as he had voluntarily left his employment in April 2017 without just cause. The Appellant requested reconsideration based on his history of mental health challenges. The Respondent upheld its original decision. The Tribunal must decide whether the Appellant voluntarily left his employment without just cause.

ISSUES

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

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

[5] Issue 3: Since leaving his employment in April 2017, has the Appellant accumulated sufficient insurable hours to qualify to receive benefits??

ANALYSIS

[6] A claimant is disqualified from receiving any EI benefits if he voluntarily left any employment without just cause (subsection 30(1) of the Employment Insurance Act (Act)).

[7] The Respondent has the burden of proving the Appellant left 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] It is undisputed that the Appellant voluntarily left his employment. The Appellant agrees that he resigned his position in order to relocate to another province to take up residence with his partner. In addition, the Record of Employment issued by his employer states that he quit. Accordingly, the Tribunal finds the Appellant had a choice to stay employed and he chose to resign; therefore, he voluntarily left his employment.

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

[10] In order to establish that he had just cause for leaving his employment, the Appellant must show that, having regard to all the circumstances, on a balance of probabilities, he had no reasonable alternative to leaving his employment. Subsection 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.

[11] The Appellant submits that the primary reason he left his position was to move to another province with his partner. He testified that his partner had flown to his province in April 2017 and they made the sudden decision to move back to the province of her residence together. The Appellant testified that he told his employer of his intention to leave and gave one week's notice. After he stopped working, he and his partner drove back to her province to take up residence together.

Did the Appellant have an obligation to accompany his common-law partner?

[12] The obligation to accompany a spouse or common-law partner to a new residence is one of the listed circumstances to consider when determining whether the Appellant had just cause to leave his employment (paragraph 29(c)(ii) of the Act). The Appellant testified that he had cohabited with his partner for a period of approximately six months in the fall of 2016 and they had cohabited again in 2017 after he moved back to her province. The Act requires the Appellant to have cohabited with his partner for a period of at least one year for it to be considered a common-law relationship (subsection 2(1)). Accordingly, the Tribunal finds the Appellant and his partner did not have a common-law relationship at the time that he resigned and, therefore, he did not have an obligation to follow his common-law partner to new residence. The Tribunal therefore finds that the circumstance listed at paragraph 29(c)(ii) of the Act does not apply to the Appellant.

Did the Appellant have an obligation to accompany his pregnant partner?

[13] The obligation to accompany a person with whom he had been cohabiting in a conjugal relationship for a period of less than a year and where they were expecting a child during that time is one of the prescribed circumstances from paragraph 29(c)(xiv) of the Act enumerated in subparagraph 51.1(a)(ii) of the *Employment Insurance Regulations* (Regulations).

[14] The Appellant made an initial claim for benefits on July 31, 2017 and on the application, he wrote that he left his part-time job in April 2017 to "begin a new life with his recently pregnant girlfriend". The Appellant testified that his partner had become pregnant during her visit to his province in April 2017, or shortly thereafter, and gave birth in February 2018. He further stated that at the time he submitted his resignation, he was not aware that his partner was pregnant. The reasons why the Appellant left his employment can only be those that he was aware of because they are the reasons that prompted him to leave. So, even if she was in fact pregnant at that time, if he did not know then it could not have been a circumstance that lead to his decision to leave (*Canada (Attorney General) v. Lamonde*, 2006 FCA 44). The Tribunal finds that, as the Appellant was not aware that his partner was pregnant at the time that he voluntarily left his employment, his obligation to accompany another person with whom he was expecting a child is not a circumstance that applies to the Appellant.

Other circumstances

[15] The Appellant submitted on his initial claim for benefits that the reason he left his employment in April 2017 was to start a life with his newly pregnant girlfriend in another province. On the request for reconsideration, he stated that he left his employment in April 2017 for medical reasons as he had suffered a mental health crisis in late 2016 and had been hospitalized. He provided the Respondent with medical certificates dated from September 2017 in support of his request for reconsideration. During the hearing, the Appellant clarified that he had been confused about the timeline of the Respondent's decision and provided those documents to support his inability to work during the period following his hospitalization. As the medical documents are dated five months after the Appellant voluntarily left his employment, they are not relevant to the matter before the Tribunal.

[16] The Appellant testified that he suffers from a serious medical condition and that his symptoms worsen during periods of high stress. He submits that the position he left in April 2017 was causing him stress due to the employer's continuous threats of dismissal and his fear that any mistake would lead to termination. He describes one instance where his employer scheduled him for a special contract that was outside of the Appellant's normal work duties. The Appellant did not show up for work that day and the employer fired him but telephoned him a few days later to say that he had changed his mind and wanted him back at work. The Appellant testified that, in hindsight, he believes that he was experiencing an episode of mental illness during that period due to the high stress and that influenced his decision to leave. The Appellant states he did not seek medical attention at the time, as he was not accustomed to recognizing the signals of his mental health condition back then. Based on the Appellant's testimony, The Tribunal finds that he made the decision to quit his employment, in part, to escape the stress he was experiencing in the position.

The requirements of just cause

[17] The Appellant's evidence demonstrates that he made the decision to quit his employment in April 2017 to move to another province with his partner and to escape the stress he was experiencing in his position. The Tribunal finds that, although the Appellant's decision to leave his employment might have been a good personal choice for the Appellant in that context, it is

unfortunately insufficient to establish just cause within the meaning of section 29 of the Act (*Canada (Attorney General) v. Graham*, 2011 FCA 311).

[18] Just cause is not the same as a good reason. The question is not whether it was reasonable for the Appellant to leave his employment, but rather whether leaving his employment was the only reasonable course of action open to him, having regard to all the circumstances (*Canada (Attorney General) v. Imran 2008 FCA 17*; *Canada (Attorney General) v. Laughland*, 2003 FCA 12).

[19] The Tribunal sympathizes with the health challenges that the Appellant has faced but relies on case law that states it is not sufficient for the Appellant to prove he was reasonable in leaving his employment but rather the Appellant must prove that after considering all the circumstances, he had no reasonable alternative but to leave his employment.

[20] The Tribunal finds the Appellant had reasonable alternatives available to him prior to quitting his job such discussing with his doctor to determine whether the doctor felt it was necessary for him to take sick leave or quit his job. He could also have discussed with his employer to determine whether accommodations could be made with respect to his work schedule to reduce his stress. Furthermore, the Appellant could have searched for other suitable work prior to quitting. The Appellant has not shown that he had no reasonable alternative but to leave his employment when he did. He therefore did not have just cause to voluntarily leave.

Issue 3: Since leaving his employment in April 2017, has the Appellant accumulated sufficient insurable hours to qualify to receive benefits?

[21] The Appellant is not disqualified from receiving benefits if the Appellant, since leaving his employment, has been employed in insurable employment for the number of hours required to qualify for benefits (paragraph 30(1)(a) of the Act).

[22] The Appellant left his employment on April 20, 2017. He found new employment after moving to his new province and accumulated 316 hours of insurable employment from April 20, 2017 to September 16, 2017. The Respondent submitted that the Appellant required 630 insurable hours based on the EI Economic Region Unemployment Rate and Benefit table for the period of the Appellant's claim. The Appellant therefore has insufficient hours to qualify for

benefits under section 7 of the Act and does not meet the exception to disqualification at paragraph 30(1)(a).

CONCLUSION

[23] The appeal is dismissed. The Tribunal finds that the Appellant failed to demonstrate that he had no reasonable alternatives to leaving his employment when he did. Additionally, he has not accumulated sufficient insurable hours since leaving his employment to qualify for benefits, and is therefore disqualified from receiving benefits.

Catherine Shaw
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. D., 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.