



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. P. v. Canada Employment Insurance Commission*, 2018 SST 347

Tribunal File Number: GE-17-3704

BETWEEN:

**L. P.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Catherine Shaw

HEARD ON: April 11, 2018

DATE OF DECISION: April 16, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed. The Tribunal finds that 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 employment to attend college. The Respondent determined he was disqualified from receiving benefits because he had voluntarily left his employment without just cause. The Appellant requested reconsideration and the Respondent upheld its original decision. The Tribunal must decide whether he voluntarily left his employment and, if so, whether he did so with 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 to attend school?

### **ANALYSIS**

[5] Subsection 30(1) of the *Employment Insurance Act* (Act) provides that the Appellant is disqualified from receiving any employment insurance (EI) benefits if he 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 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” that the events occurred as described.

**Issue 1: Did the Appellant voluntarily leave his employment?**

[7] When determining whether the Appellant voluntarily left his employment, the question to be answered is: did he have a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56)?

[8] It is undisputed that the Appellant voluntarily left his employment. The Appellant agrees that he quit his job in August 2017 to attend classes starting in September 2017; in addition, the Record of Employment (ROE) issued by his employer states that he quit to attend school. Accordingly, the Tribunal finds the Appellant had a choice to stay and he chose to resign; therefore, he voluntarily left his employment.

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

[9] 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 (*White*, supra)

[10] The Appellant submits that he quit his position to attend school and advance his career. He was accepted into a college program with classes beginning in September 2017. The Appellant testified that he applied to the college program and was accepting three or four months prior to leaving his employment. The Appellant stated that he informed his employer that he was accepted into a college program and that he would be leaving at the end of summer. The Appellant's father, appearing as a witness, testified that the Appellant had applied to the Fast Forward Program with Employment Nova Scotia and was approved to attend his college program pending receiving a lay-off from his employment. The Appellant's father stated that the Appellant assumed the employer would lay him off at the end of summer, but the employer did not.

***Was the Appellant referred to his training program by a designated authority?***

[11] The Act provides for a claimant to receive EI benefits while he or she is attending a training program if he or she has been referred to the training program by the Respondent, or a designated authority (subsection 25(1) of the Act). Based on the oral testimony, the Appellant

did not receive approval from the Fast Forward program to attend his course. The Appellant could not be approved without being laid off from his employment, and the Appellant was not laid off, he voluntarily left his employment. As such, the Tribunal finds that the Appellant was not referred to his training course by the Respondent or a designated authority.

***The requirements of just cause***

[12] Based on the Appellant's testimony and submissions, the Tribunal concludes that the Appellant left his employment to go to school. It is well established in case law 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. Shaw*, 2002 FCA 325).

[13] The Appellant's decision to go back to school is personal choice, and although a personal choice may be based on a good reason or be a good personal decision, 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).

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

[15] The Appellant is responsible for proving just cause and he must show that he had no reasonable alternative but to leave his employment when he did. Considering all the circumstances, the Appellant had the reasonable alternative to stay in his position.

**CONCLUSION**

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

[17] The appeal is dismissed.

Catherine Shaw  
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. P., Appellant S. P., Witness for the 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.