



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. M. v. Canada Employment Insurance Commission*, 2018 SST 348

Tribunal File Number: GE-17-3432

BETWEEN:

B. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace Salmon

HEARD ON: March 21, 2018

DATE OF DECISION: April 17, 2018

DECISION

[1] The appeal is dismissed because the Appellant has failed to prove he had just cause for voluntarily leaving his employment.

OVERVIEW

[2] The Appellant worked at a fast food restaurant. After waiting several months for a specific educational program to be available in his local area, the program became available in August 2017 and the Appellant was offered a spot in the class. The Appellant quit his job to attend school, and on application to the Canada Employment Insurance Commission (Respondent) he was disqualified from receiving Employment Insurance (EI) benefits because he voluntarily left his employment without just cause. The Appellant believed he could quit his job and get EI because the educational program was partially funded by the government. The Appellant appealed to the Tribunal to reverse the decision that he voluntarily left his employment without just cause, so that he could be paid EI benefits while he was in school.

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?

PRELIMINARY ISSUE

[5] The Appellant was represented by his mother, who also gave a solemn affirmation as a witness and gave testimony prior to making submissions on behalf of the Appellant.

ANALYSIS

[6] 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)).

[7] The Respondent has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Appellant to demonstrate he had just cause for leaving. To establish he had just cause, the Appellant must demonstrate he 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 his employment?

[8] 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).

[9] The Tribunal finds the Appellant voluntarily left his employment. The Initial Application for Benefits form states the last day worked as August 4, 2017 and the reason for separation from employment as “Shortage of Work.” This was completed by the Appellant, who also confirmed on the application form that he intended to take a training program from August 8, 2017-October 20, 2017, and that he completed the form on his own. The Record of Employment (ROE) states the reason for issuing the document as code “E,” which correlates with the reason “quit/return to school.”

[10] The Appellant later clarified to the Respondent that the employer refused his request for a layoff to return to school, so he quit to attend the training program and did not obtain authorization from the Respondent or a designated authority to quit prior to leaving. The employer also confirmed the Appellant quit to return to school.

[11] While the referral to training by a designated authority will be addressed in further detail when considering whether the Appellant had just cause, the Tribunal finds that because the Appellant chose to quit his employment, he voluntarily left. The first part of the test is satisfied.

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

[12] The Tribunal finds the Appellant did not have just cause to voluntarily leave his employment.

[13] 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*).

[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 (*Imran, supra*; *Canada (Attorney General) v. Laughland*, 2003 FCA 12). The list of circumstances enumerated as “just cause” in paragraph 29(c) is neither restrictive nor exhaustive, but delineates the type of circumstances that must be considered (*Canada (Attorney General) v. Campeau*, 2006 FCA 376; *Canada (Attorney General) v. Lessard*, 2002 FCA 469).

[15] At the hearing, the Appellant confirmed he quit his employment to attend a training program and that he did not remember if he asked for a leave of absence before quitting. His employer stated that he did not request a leave of absence. Both the Appellant and his witness, his mother, confirmed neither of them had researched what a person needed to do to be eligible for EI benefits.

[16] The Appellant initially told the Respondent he was referred to a training program and would contact his training coordinator to get an authorization to quit. The Appellant later stated that he did not seek or obtain a referral to the training program from a designated authority. The director of the educational program clarified, to the Respondent, that the Appellant was referred through a government program but that the Appellant would not have known that he was referred because the director liaised with the government department on the Appellant’s behalf. The Appellant stated that he did not deal directly with the government department as the school did that for him, so he did not know he was expected to have an authorization to quit his employment. The Respondent’s position is that a claimant must contact the referral authority to

obtain authorization to quit prior to quitting and that it cannot be accepted retroactively; however, this is a policy requirement and does not reflect the requirements under the Act.

[17] The Appellant stated at the hearing that prior to quitting his job he visited a government office with questions about obtaining funding for training. He stated the agent told him he was not able to quit his job without permission, but he did not understand who was able to give the permission. The Appellant's representative submitted that the Appellant spoke to his employer and advised he was going to quit, but asked that she wait to finalize any paperwork as he was not sure when he could be approved for training. Once the provincial government approved the training and agreed to pay part of the tuition the Appellant quit his job, believing this meant he was approved to do so. There is no evidence the Appellant was ever told that he could or should quit his job.

[18] The Appellant repeatedly stated that he left his employment to pursue a training program. Returning to school is not an enumerated factor in paragraph 29(c) of the Act, and the Federal Court of Appeal has consistently held that voluntarily leaving one's job to attend a course that is not authorized by the Commission does not constitute just cause within the meaning of the Act (*Canada (Attorney General) v. Shaw*, 2002 FCA 325, *Canada (Attorney General) v. Tourangeau*, A-30-00.) There is, however, an exception: claimants who leave an employment to take a course to which they were referred by an authority designated by the Respondent, or the Respondent itself, are considered to have just cause for leaving that employment. The Appellant argues that he was referred to a training program and should be eligible for EI benefits; the Respondent submits the Appellant was not referred to a training program. The Tribunal finds the Appellant has not proven, on a balance of probabilities, that he was referred to training and thus had just cause for leaving his job. The Appellant stated that part of his tuition was paid by the provincial government, but there is no other evidence supporting his contention that he was referred. There is also no evidence that the provincial government advised the Appellant he could leave his job to attend a training program. The Tribunal finds the Appellant was not referred to training by a designated authority.

[19] The Respondent noted in telephone logs that the Appellant gave conflicting answers and could not explain certain information. The Respondent was uncertain whether the Appellant was

being intentionally evasive or not. The employer told the Respondent that the Appellant had a learning disability and was sometimes slow to learn and had difficulty understanding and explaining things at times. This was reiterated by the Appellant's representative, who submitted that he had always been accommodated in school and work, and while he did well with his limitations, he did have identified barriers in his ability to communicate and understand complex information. An employment office, specializing in assisting disabled persons seeking employment, had the Appellant tested in 2015 and a psychological assessment found his cognitive abilities fell in the extremely low range, with difficulties expressing his ideas in concise terms and a very low range of assessment related to verbal comprehension.

[20] The Tribunal recognizes the Appellant's identified limitations and is sympathetic to his position, but there is no legal basis to find just cause exists for quitting his employment due to his difficulties in navigating the application process and requirements. In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court of Appeal has found:

...rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning (*Canada (Attorney General) v. Knee*, 2011 FCA 301).

While the result may be harsh, the Tribunal must follow the law and render decisions based on the relevant Act, Regulations, and precedents set by the courts.

[21] Based on all the evidence before it, the Tribunal concludes that the Appellant left his 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; *Shaw, supra*).

[22] 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, supra*).

[23] Having regard to all the circumstances and on a balance of probabilities, the claimant had reasonable alternatives to leaving his employment when he did and thus did not have just cause for leaving his employment. The Appellant made a personal decision to leave his job and pursue a training program. The Appellant could have stayed at his job and requested shifts which would work around his school schedule, or he could have sought alternative employment which would allow flexibility in working hours prior to leaving his employment. The Appellant could also have contacted his training coordinator to obtain more information about the program and obtain a referral to training, or could have requested a leave of absence from his employment as the course was only approximately twelve weeks long. The Appellant met with a government agent to discuss training funding prior to leaving his job, and admitted he was told that he could not quit without permission, but when his training funding grant was approved, he did not confirm whether he was permitted to quit his job. The Appellant also testified that he did not research the requirements for obtaining EI benefits prior to quitting his job.

[24] To be successful in this appeal, the Appellant must prove he had just cause to leave his employment and must show he had no reasonable alternatives to leaving his job when he did. The Appellant had numerous alternatives to leaving his job when he did, including obtaining a referral for training, staying in his position, or looking for another job prior to leaving his employment. The Appellant's diminished cognitive abilities cannot supersede the Act and its requirements relative to voluntary leaving and disqualification. In this case, the Appellant has not proven he had just cause for leaving his employment.

CONCLUSION

[25] The appeal is dismissed. While the Appellant left his job to attend a program that was partially government funded with a goal of improving his employability, having regard to all the

circumstances the Tribunal finds he did not have just cause to voluntarily leave his employment when he did. The Appellant is disqualified from receiving EI benefits in accordance with sections 29 and 30 of the Act.

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

METHOD OF PROCEEDING:	In Person
APPEARANCES:	B. M., Appellant M. E., Representative 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.