



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. B. v. Canada Employment Insurance Commission*, 2018 SST 360

Tribunal File Number: GE-17-3817

BETWEEN:

**M. B.**

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 25, 2018

DATE OF DECISION: April 30, 2018

## **DECISION**

[1] The appeal is dismissed. I find the claimant voluntarily left her employment without just cause because she did not demonstrate that she had no reasonable alternatives to leaving.

## **OVERVIEW**

[2] The claimant, M. B., was employed in X, Alberta when she was evacuated due to the wild fires in the region. After she returned she became increasingly worried about the environmental and emotional impact of the wild fires and felt that staying there would have negative long-term health effects. She made plans to return to her home province and, when she was not able to secure work from a distance, she resigned her employment and moved back to Nova Scotia. The Canada Employment Insurance Commission (Commission) determined that she voluntarily left her employment without just cause. The claimant requested reconsideration and argued that she had no choice but to leave the region for health and safety reasons. The Commission upheld its initial decision.

## **ISSUES**

[3] Issue 1: Did the claimant voluntarily leave her employment?

[4] Issue 2: If so, did she have just cause to voluntarily leave her employment?

## **ANALYSIS**

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

[6] The Commission has the burden of proving that the Appellant left voluntarily. The burden then shifts to the claimant to establish that 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 claimant voluntarily leave her employment?**

[7] 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)?

[8] I find that the Appellant voluntarily left her employment as she had a choice to stay in her employment and chose to resign. The claimant confirms that she resigned from her position. Additionally, the Record of Employment issued by her employer states the claimant quit.

**Issue 2: Did the claimant have just cause to voluntarily leave her employment?**

[9] In order to establish that she had just cause, the claimant must show that, having regards to all the circumstances, on a balance of probabilities, she had no reasonable alternative to leaving her employment. Section 29 of the Act sets out a non-exhaustive list of circumstances for the Tribunal to consider when determining whether the claimant had just cause for leaving her employment. Working conditions that constitute a danger to health and safety is one of the listed circumstances (subparagraph 29(c)(iv)).

[10] The claimant argues that she felt her health and safety were being compromised by staying in X. She submitted to the Commission several news articles that stated that the long-term health effects of the contamination caused by the wild fires were not yet known. The claimant worked for a branch of social services and was accustomed to helping others and providing support. She testified that after the wild fires, everyone came together to rebuild the community and help the people that had been affected the most. After those efforts subsided, she realized that she felt traumatized by the events around the wild fire; she thought that she was going to die when the city made the late decision to evacuate the area. She lost trust in the city after that, and said she did not have confidence that their efforts to treat the municipal water supply were sufficient to protect her. As a result, she drank only bottled water from when she returned after the fires in June 2016 until she moved away in May 2017.

[11] The claimant confirms that she did not seek medical advice regarding her health concerns and did not discuss her health concerns with her employer prior to leaving. She testified that she did not have safety concerns about her workplace, stating that the building where she worked had been cleaned and sanitized prior to her return and that it was safe.

[12] A claimant has just cause to leave her employment if the circumstances of employment created a medical situation of sufficient gravity to justify her voluntarily terminating her employment. A claimant has a responsibility to discuss her working conditions with her employer and to explore the possibility that the nature or the conditions of her employment can be altered to mitigate her concerns (*Canada (Attorney General) v. Hernandez*, 2007 FCA 320).

[13] The claimant's argument is that the environment conditions in the region in which she resided were a danger to her physical and mental health. The claimant is not arguing that her working conditions had an adverse effect on her health; therefore, I find that the circumstance listed at paragraph 29(c)(iv) of the Act does not apply to the claimant.

### ***Reasonable alternatives***

[14] 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).

[15] The claimant has an obligation, in most cases, to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job (*White*, supra).

[16] The claimant testified that she made the decision to move back to Nova Scotia in March 2017. The claimant stated in interviews with the Commission that she applied for two positions in early April 2017; she then left her employment on April 24, 2017 and moved to Nova Scotia on May 9, 2017. The Commission submits that applying for only two positions does not support that she made serious and ongoing efforts to secure employment prior to leaving her position.

[17] The Commission submits that there was no urgency for the claimant to leave her position in April 2017, before she was able to secure other employment. The claimant testified that the

one-year anniversary of the wild fire was approaching and she made a personal decision to move before that, as she felt it would be too much of a trigger for her mental health. She testified that she understood the Commission's position but asked for special consideration because of the wild fires and the serious toll it took on her emotionally.

[18] I sympathize with the challenges that the claimant has faced but rely on case law that states it is not sufficient for the claimant to prove she was reasonable in leaving her employment but rather the claimant must prove that after considering all the circumstances, she had no reasonable alternative but to leave her employment. The claimant's decision to move away from her region of residence was a 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 (*Tanguay v. Canada (Unemployment Insurance Commission)*, A-1458-84).

[19] I find the claimant had reasonable alternatives available to her prior to quitting her job, such as discussing her health concerns with her doctor or employer prior to making plans to leave. The claimant could also have remained in her position until she had secured other employment in Nova Scotia. Accordingly, I find the claimant has not demonstrated just cause for voluntarily leaving her employment, having regard to all the circumstances, as she did not prove there was no reasonable alternative to leaving when she did. Therefore, the claimant is disqualified from receiving any benefits in accordance with sections 29 and 30 of the Act.

## CONCLUSION

[20] The appeal is dismissed.

Catherine Shaw  
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. B., 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.