



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. R. v. Canada Employment Insurance Commission*, 2018 SST 361

Tribunal File Number: GE-18-234

BETWEEN:

N. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD BY TELECONFERENCE ON: April 4, 2018

DATE OF DECISION: April 30, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed. The Appellant voluntarily left her employment without just cause and failed to demonstrate she had no reasonable alternatives to leaving. Given the decision on voluntary leaving, the Tribunal did not address the Respondent's determination that the Appellant was unavailable for work.

OVERVIEW

[2] The Appellant is a university student who worked two jobs over the summer in 2017. One job was full-time (FT), and the other part-time (PT). The Appellant's FT job was a summer contract position that ended in August 2017. The Appellant held the PT job for a few years, working when she was available. The Appellant left her PT job in August 2017, though she also worked over the December 2017 holiday period. The Respondent disallowed her application for employment insurance (EI) benefits as it determined the Appellant voluntarily left her PT employment without just cause. The Appellant appeals to the Tribunal requesting a reversal of this decision as she believes she had just cause for leaving her PT job or, alternatively, does not believe she quit the employment.

ISSUES

[3] **Issue 1:** Did the Appellant voluntarily leave her employment when she left her PT job to attend university?

[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 when she left her PT job to attend university?

[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. On the Initial Application for Benefits form, the Appellant stated she left her PT job due to a shortage of work. This is not supported by the Record of Employment (ROE), which states the Appellant was employed from November 27, 2016-August 10, 2017 and that she “quit/return to school.” The Appellant has a second ROE from the PT job, for the period from December 21, 2017-January 5, 2018, supporting her statement that she worked again over the 2017 holiday period. The second ROE also states the Appellant “quit/return to school.” The Respondent spoke to the employer, whose representative confirmed the Appellant quit.

[9] The Appellant was able to work at her part-time job, but chose to leave to pursue an educational opportunity. Regardless of whether the Appellant occasionally returned to her PT job at school breaks, the Tribunal finds she left her PT job to attend university. The action of specifically “quitting” an employment is not required for the Appellant to have left the employment. In this case, the Appellant left to attend school and returned on her holiday breaks and was rehired for the period she was available. As she had the choice to stay or leave, the Appellant voluntarily left her PT employment.

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] The Tribunal finds the Appellant did not have just cause for leaving her PT employment.

[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] The Appellant stated that she did not quit her PT job, as she advised the manager that she would be available on holiday breaks from university. The Appellant does appear to have returned to her PT job over a holiday period, but she was essentially re-hired and given a new ROE when she completed the short holiday period work. There is no evidence that the Appellant requested or was granted a leave of absence. The Appellant stated that she discussed a transfer to the employer’s store location in her university town, but she did not pursue this option.

[15] The Appellant also stated that she was approved for the EI Connect program in January 2018, which would allow her to receive EI benefits while in school. This program would address the Respondent’s finding that the Appellant was not available for work, but does not address the Appellant voluntarily leaving her PT job. The Appellant confirmed to the Respondent that she did not seek sponsorship for her educational program, and was not referred to the training.

[16] The Respondent submits the Appellant voluntarily left her PT employment to go to school, which does not meet the requirements of just cause under the Act.

[17] 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 pursue a transfer to another of the employer's locations. The Appellant may have had a good reason to leave her employment based on her desire to pursue a university education, 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.

[18] Based on all the evidence before it, the Tribunal concludes that the Appellant left her employment to go to school. 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; *Canada (Attorney General) v. Shaw*, 2002 FCA 325).

[19] The Appellant's decision to go back to school is a personal choice. Though 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 v. Canada (Unemployment Insurance Commission)*, A-1458-84).

CONCLUSION

[20] The appeal is dismissed. 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 proved just cause for voluntarily leaving her employment and is disqualified from receiving benefits in accordance with sections 29 and 30 of the Act. Given the decision on voluntary leaving, the Tribunal did not address the Respondent's determination that the Appellant was unavailable for work.

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

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. R., 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.

50 (1) A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

(2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

(3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.

(4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

(5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.

(6) The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.

(7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.

(8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.

(8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.

(9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.

(10) The Commission may waive or vary any of the conditions and requirements of this section

or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.