



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. W. v. Canada Employment Insurance Commission*, 2018 SST 366

Tribunal File Number: GE-17-3840

BETWEEN:

S. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: May 1, 2018

DATE OF DECISION: May 2, 2018

DECISION

[1] The appeal is allowed. I find that the claimant had just cause to voluntarily leave her employment when she did because, having regard to all the circumstances, she demonstrated that she had no reasonable alternatives to leaving.

OVERVIEW

[2] The claimant, S. W., took a leave of absence from her employment as a Primary Care Paramedic to attend a training program to become an Advanced Care Paramedic. The Canada Employment Insurance Commission (Commission) determined she was disqualified from receiving benefits because she had voluntarily left her employment without just cause. The claimant requested reconsideration because she was approved to attend the training by the Fast Forward program through Employment Nova Scotia. The Commission upheld its decision because the claimant had not received authorization to quit her employment prior to leaving her position. I must determine whether the claimant had just cause to voluntarily leave her employment.

ISSUES

[3] Issue 1: Did the claimant voluntarily leave her employment when she took a leave of absence?

[4] Issue 2: If so, did the claimant have just cause to voluntarily leave her employment to attend school?

ANALYSIS

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

[6] The Commission has the burden of proof to show that the claimant left voluntarily. The burden then shifts to the claimant to establish 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.

[7] A claimant is considered unemployed and capable and available for work during the period when the claimant is attending a training program to which she has been referred by the Commission of a designated authority (paragraph 25(1)(a) of the Act).

Issue 1: Did the claimant voluntarily leave her employment when she took a leave of absence?

[8] When determining whether the claimant 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 claimant took voluntarily leave from her employment, which is treated the same within section 29 of the Act as voluntarily leaving employment (subsection 29(c)). The claimant confirms that she chose to take a leave of absence from her employer and attend a training program to further her career. Her employer confirmed in interviews with the Commission that they approved her leave of absence to advance her training and that the claimant was encouraged to do so, but that her participation in the training was voluntary. Accordingly, I find that the claimant had a choice to stay and she chose to take a leave of absence while attending her training program; therefore, she voluntarily left her employment.

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

[10] In order to establish that she had just cause for leaving an employment under section 29 of the Act, the claimant must show that, having regard to all the circumstances, on a balance of probabilities, she had no reasonable alternative to leaving her employment (*White, supra*)

[11] The claimant argues that she had no choice but to leave her employment because she had made plans to attend training in another province. The Commission submits that the claimant

voluntarily left her employment to go to school, which does not meet the requirements of just cause within the Act.

[12] Based on the claimant's written submissions & testimony, I find that the claimant left her employment to go to school. It is well established in the courts that leaving employment to pursue studies not authorized by the Commission or a designated authority does not constitute just cause within the meaning of the Act (*Canada (Attorney General) v. Shaw*, 2002 FCA 325).

Was the claimant referred to her training program by a designated authority?

[13] The claimant submits that she received approval for her training from the Fast Forward program through the Employment Nova Scotia. She testified that she applied for the program after taking leave from her employment in August 2016 and received approval from a Fast Forward program officer by telephone in September 2016.

[14] The Commission advised the Tribunal that it had determined that the designated authority, Employment Nova Scotia, approved the claimant's attendance at her course of study.

[15] As both parties present the same position on this matter, I accept as fact that the claimant was referred to her training program by a designated authority.

The requirements of just cause

[16] The Commission submits that the claimant made a personal decision to attend a course, and that it is settled law that leaving employment to pursue further education not authorized by a designated authority does not constitute just cause. In the claimant's case; however, this was not simply a personal decision, she was referred to this program by a designated authority. Further, the Act considers that there are circumstances in which a claimant is in a full-time training program and is eligible for EI benefits if they have been referred to the training by the Commission or a designated authority (paragraph 25(1)(a) of the Act).

[17] The Commission submits that the claimant required permission from the designated authority to leave her employment by receiving an "authorization to quit". The claimant did not ask for an authorization to quit form prior to leaving her employment because she was unaware that she required one. I note that authorization to quit is not a concept that exists within the

legislation. The Commission may have a policy that requires the claimant to obtain an authorization to quit prior to attending a referred training program, but that policy does not have legislative authority and cannot disqualify the claimant for benefits that are provided for by the legislation.

[18] Just cause is not the same as a good reason. The question is not whether it was reasonable for the claimant 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. Imran* 2008 FCA 17; *Canada (Attorney General) v. Laughland*, 2003 FCA 12).

[19] The claimant is responsible for proving that she had just cause for voluntarily leaving her employment and she must show that she had no reasonable alternative but to leave her employment when she did. The claimant submits that she had to move from Nova Scotia to Prince Edward Island to attend her training program from September 2016 until December 2016, and then moved back to Nova Scotia where she completed the practical elements of the course from January 2017 until June 2017. She testified that her training program was full-time and she was therefore unable to continue her employment during this period but that she had an agreement with her employer to return to work for them after completion of her training in June 2017.

[20] Considering all the circumstances, I am satisfied that the claimant had no reasonable alternatives to leaving her employment when she did. She was unable to attend her referred training program while remaining in her employment due to her course schedule and her relocation to another province. As such, I find the claimant had just cause for voluntarily leaving her employment.

CONCLUSION

[21] The appeal is allowed. Having regard to all of the circumstances, the claimant has proven she had just cause for voluntarily leaving her employment.

Catherine Shaw
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. W., Appellant/Claimant

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.