



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. D. v. Canada Employment Insurance Commission*, 2018 SST 1006

Tribunal File Number: GE-18-90

BETWEEN:

N. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Rodney Antonichuk

HEARD ON: May 30, 2018

DATE OF DECISION: June 28, 2018

DECISION

[1] The appeal is dismissed. The Tribunal finds the Appellant voluntarily left his employment without just cause because he had returned to school and was not available for work.

OVERVIEW

[2] The Appellant was attending school. During the summer break from school he found a job working as a roughneck. He wanted to work full-time but was placed as a fill in on the service rigs. When summer came to an end he returned to school but wished to remain as a fill in and was willing to work when called. The employer sent a record of employment indicating that the Appellant had quit. The Appellant disagreed. The Commission determined that the Appellant had voluntarily left his employment without just cause. The Tribunal must determine if the Appellant left his employment to attend school.

ISSUES

[3] Issue 1: Did the Appellant voluntarily leave his employment or did his employer stop calling him into work?

[4] Issue 2: Did the Appellant have just cause in leaving his employment to attend school or could he have continued working while attending school?

ANALYSIS

[5] The relevant legislative provisions are reproduced in the Annex to this decision.

[6] In the *Employment Insurance Act* (EI Act), section 30 states that a claimant is disqualified from receiving any benefits if the claimant voluntarily left any employment without just cause. The burden of proof is on the Commission to show that the leaving was voluntary. Then, the burden of proof shifts to the Appellant to demonstrate just cause for leaving (*Green v. Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v. White* 2011 FCA 190; *Canada (Attorney General) v. Patel* 2010 FCA 95).

Issue 1: Did the Appellant voluntarily leave his employment or did his employer stop calling him into work?

[7] The Tribunal finds that the Appellant did leave his employment voluntarily as the Commission has shown that the Appellant quit his employment so that he could return to school.

[8] The Commission stated that the Appellant left his employment to attend school. The Commission bases this on the fact that the Appellant stated in his application for an initial claim for benefits that he quit to attend school. The Commission also relies upon the fact that the Appellant's record of employment indicated that the reason for his leaving was quit. The employer also told the Commission that the Appellant had told them that he was leaving his employment in order to return to school. Both the office administrator and the scheduling manager indicated that the Appellant had told both of them that the Appellant was very clear about his returning to school

[9] The Appellant contends that he did not quit. He stated that he was only working as a fill in and that he would work one or two days every six days. He confirmed that he did return to school. He told his employer that he was available for shifts and that his school schedule allowed him to take time off and return to work during the school year. He continued to insist that he did not quit.

[10] The statement from the employer regarding the Appellant's leaving was that he had told them that he was returning to school. Based on this belief the employer hired another employee to take over from the Appellant once he returned to school. While the Appellant stated that he fully expected to be available to work once he returned to school it appears that the employer was preparing for the Appellant's leaving by hiring a new employee to take his place. The fact that the Appellant listed laid off when he renewed his claim on September 12, 2016 indicates to the Tribunal that the Appellant felt that he had been laid off and that he had not quit.

[11] The Tribunal finds that there was a communication problem between the Appellant and the employer. The Appellant felt that he had communicated with his employer that while he would be returning to school in the fall his schedule allowed him to make time to continue to be a fill in on the service rig. The employer appears to have thought that once school began the

Appellant would no longer be available to work and thus began to make plans to staff for the loss of the Appellant. Once the Appellant called his employer twice to inquire as to the availability of work during the school year and he was told that he was still on the list but was not called it was natural to think that the Appellant believed that he had been laid off and as such report this on his application for benefits. The Commission contends that when the Appellant made an initial claim for benefits the following year he indicated that he had left his employment and this was in fact what happened. The Tribunal finds that the explanation given by the Appellant that he indicated on his initial application that he quit in order to be consistent with what the ROE had indicated is believable. The Tribunal finds that the initial explanation of laid off which the Appellant placed on his renewal application immediately after his employment ended is more believable than the quit explanation one year later.

[12] The Tribunal finds that the Appellant has not met the burden of showing that, having regards to all the circumstances, he had no reasonable alternative to leaving his employment when he did. The Appellant could have been clearer with the employer in indicating that he was available for work once school started. The Appellant also could have called the employer to ensure that they were aware of his ability to work during the year. Accordingly, the Appellant did not have just cause for voluntarily leaving his employment.

CONCLUSION

[13] The appeal is dismissed.

Rodney Antonichuk

Member, General Division - Employment Insurance Section

HEARD ON:	May 30, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. D., 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.