Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *M. R. v. Canada Employment Insurance Commission and X*, 2018 SST 1339

Tribunal File Number: GE-18-1503

BETWEEN:

M. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Leanne Bourassa

HEARD ON: July 5, 2018

DATE OF DECISION: July 16, 2018

Canada

DECISION

[1] The appeal is dismissed. The Appellant did not demonstrate that he had just cause for voluntarily leaving his employment as having regard to all the circumstances, there were reasonable alternatives to leaving available to him.

OVERVIEW

[2] After a restructuring in the management of the company he worked for, the Appellant found his workload significantly increased and his relationship with his direct supervisor to be difficult. Following a meeting where he received a written warning about his performance, the Appellant determined that he could not continue in the toxic environment and resigned from his job. The Respondent found that the Appellant could not receive Employment Insurance (EI) benefits as he had voluntarily left his job without just cause. The Appellant explained that the employer denied his vacation time and would not respect an “entente de traitements” that the parties had signed allowing him to work only 4 days per week, but the Respondent maintained its refusal. The Tribunal must now consider if the Appellant had just cause for leaving his employment.

ISSUES

[3] Issue 1: Did the Appellant leave his employment voluntarily?

[4] Issue 2: Did the Appellant have just cause for leaving his employment?

ANALYSIS

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

[6] Subsection 30(1) of the *Employment Insurance Act* (Act) states that a claimant is disqualified from receiving any EI benefits if they voluntarily leave any employment without just cause.

[7] The Respondent has the burden of proving that the Appellant left voluntarily. Then, the burden shifts to the Appellant to establish that he had just cause for leaving voluntarily by

demonstrating that having regard to all the circumstances, on a balance of probabilities, he had not 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 meet the legal test. The burden of proof in this case a on the balance of probabilities, which means it is "more likely than not" the events occurred as described.

Issue 1: Did the Appellant leave his employment voluntarily?

[8] Yes. The parties do not disagree that it was the Appellant's choice to sever the employment relationship.

[9] When determining whether the Appellant voluntarily left his employment, the question to be answered is: did the employee have a choice to stay or to leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56)?

[10] The Appellant submitted a letter of resignation to the Added Party (Employer) on November 10, 2017. The Employer acknowledged and accepted the resignation, in writing, that same day. The Record of Employment (ROE) number S15175260 indicates that the Appellant "quit" his job and the last day he worked was November 10, 2017. The Appellant testified that all this is accurate and he chose to leave because he could not take working in that environment any more.

[11] I find that the Respondent has met its burden of proving that the Appellant voluntarily left his employment.

Issue 2: Did the Appellant have just cause for leaving his employment?

[12] No. I find that the Appellant has not demonstrated that in the circumstances, leaving his employment was the only reasonable alternative available to him.

[13] The test for just cause is whether the Appellant, having regards to all the circumstances, on a balance of probabilities, had no reasonable alternative to leaving his employment. Section 29 of the Act sets out a non-exhaustive list of circumstances for the Tribunal to consider when determining whether the Appellant had just cause for leaving his employment. The burden of demonstrating just cause rests with the Appellant. (*White*, supra.)

[14] The Appellant had argued that he was working in a toxic environment where his relationship with his supervisor was antagonistic and where his work load had become untenable.

[15] Subparagraph 29(c)(x) of the Act states that the Appellant has just cause for voluntarily leaving an employment if he had no reasonable alternative to leaving, having regard to all the circumstances, including antagonism with a supervisor if the Appellant is not primarily responsible for the antagonism. Just cause may also be found under subsection 29 if a claimant is facing significant modifications of the terms and conditions respecting wages or salary (subparagraph (vii)) or significant changes in work duties (subparagraph (ix)).

[16] The Employer testified that it was accurate that the demands on the Appellant and all employees had increased since 2015 and explained that the company was facing pressure from the Ministry of Education to improve its productivity or lose its funding.

[17] On October 5, 2017, the Appellant attended a meeting with his supervisor and the general director during which his performance was evaluated and he was given a written warning with respect to the management and progress of his files and his behavior. This warning stated that there were issues with his conception and production of projects, direction to suppliers and his work plan and projects were deficient and were not adapted to publication deadlines related to the new calendar for the pedagogical renewal. This was creating costs and delays for the company and these issues had been brought to the Appellant's attention by his previous supervisor in the spring of 2016. The warning also addressed the Appellant's stubborn and un-collaborative attitude towards his immediate supervisor. Finally, the letter invites the Appellant to modify his work schedule to work 35 hours a week until the situation returns to an acceptable level and indicates that a follow up meeting would be organised in 4 weeks.

[18] From this letter and the copy of the performance evaluations provided by the Employer, I note that the issues that the Appellant was facing were related directly to his productivity and his failure to meet project delivery timelines, as well as his attitude towards his immediate supervisor.

[19] The Appellant argues that the deadlines imposed were unreasonable and unacceptable, particularly given the volume of work he was required to perform after other employees had left

or retired and he was given their work. He also argues that in many cases, delays were caused by his immediate supervisor whose decisions would impede his progress or delay his projects. He also argued that his immediate supervisor was not friendly to him and he found her demeanor to be generally hostile.

[20] At the hearing, the Employer testified about the large scale changes that he had to implement since his hiring in 2015 in order to deal with pressure the company was facing from the Ministry of Education because of production delays and the risk that the subsidies from the Ministry would be cut because of the company's poor performance. He explained that in working with employees a strategy had been developed to make the company less reliant on government contracts and to be more in line with publishing industry standards. This meant that workloads would have to increase and delivery delays would have to be reduced, which the Appellant stated he was in agreement with. The Employer also testified that it was the Appellant's immediate supervisor's role to bring the employees in line with the new deadlines and production procedures and while he had been advised of some staff issues with her demeanor, she had heard and accepted the feedback and improved.

[21] The Appellant argues that since the change in management and the departure of other colleagues, he had been subjected to an unreasonable work load and his ability to deliver projects was directly affected by the actions of his supervisor. However, he also stated he was happy to take on the extra work.

[22] From the Appellant's testimony, I note that it is clear that the Appellant did not appreciate his immediate supervisor and the decisions she made. However, in light of the Employer's testimony and the Appellant's statements to the effect that he was able to work with his immediate supervisor to produce a questionnaire in the manner she required and to express his disagreement with her evaluation of deadlines, I do not conclude that he was facing any particular antagonism with her. While there were often disagreements with respect to how to proceed, these appear generally to be related to the Appellant's failure to adhere to new procedures or business requirements.

[23] With respect to the change in the Appellant's work schedule, I am not able to conclude that the change from a 4 to a 5 day schedule for what was anticipated to be a temporary period

until he resolved some of the delays in his production, was a significant change in the Appellant's salary terms and conditions or his work duties. The Employer was agreeing to compensate the Appellant for the extra day of work and his duties had not changed. Also, the Appellant had originally indicated to the Employer in writing that he was accepting this change and would work hard to change his behavior. I therefore find that the Appellant was not facing any circumstances that would provide him with just cause for leaving his employment.

Did the Appellant have reasonable alternatives to quitting his job?

[24] Yes. The Appellant did have reasonable alternatives to leaving his employment.

[25] First, the letter of warning given to the Appellant provided him with an opportunity to address the issues that were of concern to his Employer, in particular projects that were behind schedule and his attitude towards his immediate supervisor. While the Appellant originally accepted the opportunity to address these issues and stated he would work 35 hours a week and work to change his behavior, a few weeks later he changed his mind. A reasonable alternative to leaving his employment would have been to continue to work 5 days a week and to accept the opportunity to clear his backlog and work on his relationship with his supervisor.

[26] The Appellant testified that he began looking for new employment from the moment the supervisor with whom he was having difficulty was named as production coordinator. He explained he had conducted online job searches, had applied for jobs and had attended 2 interviews, but was not successful in securing new employment before quitting his job. As the Appellant was having some success in attracting other employment opportunities, a reasonable alternative to quitting would have been to continue working with his Employer until he secured other employment.

[27] While the Appellant testified that part of the reason that he resisted working 5 days a week was because he found it physically demanding and that it aggravated a pre-existing issue with his elbow, he also specified that this was not the primary reason for having agreed with the previous management to working for 4 days a week. Nonetheless, this physical limitation was causing him difficulty and prior to leaving his employment, it was open to him to seek medical advice which could have recommended that his 4 day work week be maintained. The same could

have been done for the mental health stress that the Appellant alleges he was facing in the workplace. A discussion of this situation with his Employer could have led to his Employer better understanding his needs and perhaps accommodating the limitation in a manner that could have allowed the Appellant to continue working. Alternatively, a doctor could have recommended a leave of absence for health reasons to allow the Appellant to recover from the stress he was facing.

[28] In his notice of Appeal, the Appellant stated that he spoke to his immediate supervisor about the situations that were causing his delays in attempts to address the situation, but that he did not have recourse to his supervisor's boss (the general director), who in fact issued him a letter of warning without having conducted an investigation beforehand. I note that following the issuing of the warning letter, the Appellant did reach out to the general director to confirm that he accepted to work 5 days a week to make up the delays and then again to refuse to continue. It was therefore possible for the Appellant to reach out to the general director to attempt to resolve his problems if he found his immediate supervisor unresponsive.

CONCLUSION

[29] The Appellant has not demonstrated that he had just cause for voluntarily leaving his employment. While the Appellant was facing increased pressure in his job and a difficult relationship with his immediate supervisor, other alternatives to quitting his job were available to him.

[30] The appeal is dismissed.

Leanne Bourassa

Member, General Division - Employment Insurance Section

HEARD ON:	July 5, 2018
METHOD OF PROCEEDING:	In person
APPEARANCES:	M. R., Appellant D. S., Added Party/Representative for the Added party

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.