



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. S. v. Canada Employment Insurance Commission*, 2018 SST 1071

Tribunal File Number: GE-18-1013

BETWEEN:

C. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Kimber Johnston

HEARD ON: July 3, 2018

DATE OF DECISION: August 3, 2018

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant left her employment after thirteen years working in a restaurant because of an unhealthy work environment, bounced paycheques and, a desire to return to school. The employer responded responsibly and in a timely manner to the one incident of unsanitary conditions in the workplace and to the two incidents of returned paycheques for insufficient funds. Voluntarily leaving one's job to attend educational training that is not authorized by the Commission does not constitute just cause. I find the Appellant is disqualified from receiving employment insurance benefits as she voluntarily left her employment without just cause pursuant to sections 29 and 30 of the Act.

ISSUES

1. Did the Appellant voluntarily leave her employment? If so, then:
2. Did the Appellant have just cause for voluntarily leaving her employment?

ANALYSIS

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

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

[5] The Commission bears the burden of proof to show the Appellant left voluntarily. The burden then shifts to the Appellant to prove he had just cause for so leaving. (*Green v. Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v. White*, 2011 FCA 190).

Issue 1: Did the Appellant voluntarily leave her employment?

[6] This issue is not in dispute. The Appellant's last day of work was September 30, 2017. The Appellant's Record of Employment dated October 18, 2017 indicates the Appellant quit to

return to school. The Appellant stated to the Commission she quit her job and she testified at the hearing that she left her employment on her own initiative. Based upon this evidence, I find the Appellant voluntarily left her employment.

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

[7] To prove just cause, the Appellant must show that, having regard to all the circumstances, on a balance of probabilities, she had no reasonable alternative but to leave the employment. (*Canada (Attorney General) v. White*, 2011 FCA 190). The circumstances relating to the Appellant leaving her employment are as follows.

[8] The Appellant had been employed in a restaurant for thirteen years and three months when she left on September 30, 2017. She provided several reasons for leaving in her Notice of Appeal, namely: an unhealthy work environment; two pay cheques that bounced, and; her intention to return to school.

[9] With respect to the unhealthy work environment, the Appellant testified that she worked in the kitchen of the restaurant where there were two floor drains that would occasionally overflow with water. While the water overflow did not pose a health concern to the Appellant, on one occasion in mid-September 2017, the drains backed up with sewage. The Appellant testified that when this happened the employer was called and he responded immediately by pumping out the drainage into a holding tank and bleaching the kitchen floor. She also testified that health and safety officials visited the restaurant regularly and they came the following week to inspect the premises, but she hadn't raised the sewage matter herself with the health officials. She further testified that she raised with her employer that something needed to be done about the septic system to prevent sewage from coming up again, but as she left her employment a few weeks later, she couldn't say if the sewer had been fixed or not. The Appellant confirmed in her testimony that this was the only occasion the sewer had backed up in her over thirteen year employment history with the restaurant.

[10] With respect to her pay, the Appellant indicated that two of her pay cheques, both dated April 24, 2017 were returned uncashed due to insufficient funds. When asked if she had raised her concerns about the bounced cheques with her employer, she testified that wasn't necessary as

her employer held a staff meeting to acknowledge the problem and to indicate it would be rectified. The Appellant confirmed in her testimony that the amounts owing were paid by her employer on May 16, 2017. When asked if this was the only occasion the Appellant had experienced pay issues with her employer, she testified that in 2015 one of her pay cheques was written on a bank account that was no longer valid so couldn't be processed; however, she received another cheque from her employer the following day written on another account and the payment went through.

[11] The Appellant also testified that she left her employment because she wished to go back to school to upgrade her credentials as an educational assistant, and that this was the reason she provided to her employer for leaving. The Appellant testified that she did not look for other employment prior to leaving her job as she expected she would go directly to school; however, she did not enter school as intended because the colleges went on strike in the fall of 2017.

[12] In his statements to the Commission, the employer confirmed the pay issues and repayments, as well as the sewer incident and clean-up and indicated the Appellant never raised the drainage as an issue. He further stated to the Commission that the Appellant left her employment at the restaurant on good terms indicating she was leaving to go to college.

[13] I now turn to whether the Appellant had just cause for voluntarily leaving her employment.

[14] The legal test for "just cause" is set out in subsection 29 (c) of the *Act*. The Tribunal must consider a non-exhaustive list of circumstances to determine whether the Appellant had no reasonable alternative to leaving when she did, including whether the Appellant's working conditions constituted a danger to her health and safety pursuant to subsection 29 (c) (iv) of the *Act*. The jurisprudence imposes an obligation on claimants, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment, before taking a unilateral decision to quit a job. (*Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Hernandez*, 2007 FCA 320; *Canada (Attorney General) v. Campeau*, 2006 FCA 376; *Canada (Attorney General) v. Murugaiah*, 2008 FCA 10).

[15] With respect to the alleged unhealthy work environment, I do not consider the one incident of sewage back up to constitute working conditions that were detrimental to the Appellants health and safety. The Appellant provided no evidence that her personal health was affected by this incident, she did not consult with outside health and safety officials about it and, when the sewage incident was brought to his attention, her employer responded swiftly and effectively to remove the sewage and sanitize the work environment. Accordingly, on the basis of this evidence, I find that the Appellant did not have just cause for leaving her employment on the basis health and safety concerns pursuant to subsection 29 (c) (iv) of the *Act*.

[16] With respect to her pay issues, the incidents of non-payment cited by the Appellant were very few over her substantial work history with her employer and further, the non-payments were immediately acknowledged by the employer and rectified within in a short time frame. I find that the bounced pay cheques do not constitute just cause for the Appellant to have voluntarily left her employment as, when they were brought to his attention, her employer resolved the matter by providing repayment in a timely manner.

[17] As noted above, the Appellant did not make efforts to seek alternative employment before leaving her job as it was her intention to go to school. This was the reason she provided to her employer for leaving. Further, in her Notice of Appeal, the Appellant questioned why she couldn't access employment insurance benefits to go to school after paying into the program for thirteen years.

[18] The case law has consistently made clear that quitting employment to pursue a course of studies is not just cause within the meaning of sections 29 and 30 of the *Act*. (*Lakic v. Canada (Attorney General)*, 2013 FCA 4). Further, just cause is not the same as a good reason. A decision to leave her employment in order to go to school may constitute a good personal choice for the Appellant, but it does not meet the requirements to prove just cause for leaving employment and causing others to bear the cost of the Appellant's unemployment. (*Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Langevin*, 2011 FCA 163; *Canada (Attorney General) v. Langlois*, 2008 FCA 18). Accordingly, in consideration of the evidence respecting the Appellant's intent to go to school together with the jurisprudence governing such circumstances, I

find the Appellant's intention to return to school does not constitute just cause for voluntarily leaving her employment.

[19] To reiterate, the legal test to be applied is whether, having regard to all the circumstances, the Appellant had a reasonable alternative to leaving her employment when she did. The Commission submits that a reasonable alternative to leaving would have been for the Appellant to remain employed in her job or, to make efforts to seek alternative employment prior to leaving. I agree. Based on all of the evidence before me and in consideration of all of the circumstances in this case, I find that the Appellant had the reasonable alternatives of remaining employed or attempting to seek alternative employment prior to quitting. (*Canada (Attorney General) v. White*, 2011 FCA 190)

[20] Before concluding, the Appellant also raised in her appeal before the Tribunal several other matters; namely, that her Record of Employment was completed illegally as the reason for issuance code should have read K as opposed to E, that the bounced cheque payments were not reflected in her earnings and, that the Commission took too long in processing her claim and coming to their decision. I agree with the Commission's submissions that these matters are not materially relevant to the issues under appeal before the Tribunal. In this case, the Commission concluded in its reconsideration of the Appellant's application for benefits that she was disqualified from receiving employment insurance benefits pursuant to subsection 30(1) of the *Act* as she voluntarily left her employment without just cause. It is this decision of the Commission that is under appeal before the Tribunal.

[21] Based upon all of the evidence presented before me, and in consideration of all of the circumstances in this case, I find the Appellant had the reasonable alternatives of remaining employed or, of making efforts to seek other employment prior to leaving her employment and accordingly, has not proven just cause for voluntarily leaving her employment pursuant to sections 29 and 30 of the *Act*.

CONCLUSION

[22] The appeal is dismissed.

Kimber Johnston

Member, General Division - Employment Insurance Section

HEARD ON:	July 3, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. S., 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.