



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. D. v. Canada Employment Insurance Commission*, 2018 SST 1059

Tribunal File Number: GE-18-1819

BETWEEN:

K. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Rodney Antonichuk

HEARD ON: July 19, 2018

DATE OF DECISION: August 15, 2018

DECISION

[1] The appeal is dismissed. The Appellant failed to prove, on a balance of probabilities, that she had just cause to voluntarily leave her employment when she did.

OVERVIEW

[2] The Appellant quit her employment because she could no longer afford to hire someone to driver her to work and she does not own a vehicle. The worksite is 600 Km away from her home and the employer does not give travel allowances to its employees. The Canada Employment Insurance Commission (the Respondent) determined that the Appellant did not have just cause for leaving her employment which disqualified her from EI benefits. The Appellant requested reconsideration of this decision and the Commission upheld its decision. The Appellant appeals to the Social Security Tribunal (the Tribunal) to overturn the Commission's decision.

ISSUES

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

[4] **Issue 2:** If so, did the Appellant have just cause for leaving her employment when she did?

ANALYSIS

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

[6] An Appellant is disqualified from receiving EI benefits if the Appellant voluntarily left any employment without just cause (*Employment Insurance Act* (Act), subsection 30(1)). Just cause for voluntarily leaving an employment exists if the Appellant had no reasonable alternative to leaving, having regard to all the circumstances (Act, paragraph 29(c); *Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Imran*, 2008 FCA 17).

Issue 1: Did the Appellant voluntarily leave her employment?

[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 that the Appellant voluntarily left her employment. The Appellant in her application for benefits stated that she quit her employment. As well the record of employment (ROE) states quit (E) and the Appellant stated that she quit her employment due to not being able to find a ride and not having a vehicle and it was costing her half of her wages to pay someone to take her and get her from the worksite every two weeks. There was no indication that the job was coming to an end when she quit.

[9] The Tribunal finds that the Appellant had work available but chose to quit. She voluntarily quit.

Issue 2: Did the Appellant have just cause for leaving her employment when she did?

[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 Appellant had no reasonable alternative to leaving when she did (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 must weigh all of the circumstances to determine whether there is just cause. The EI Act at paragraph 29(c) provides just cause exists if the Appellant had no reasonable alternative to leaving, or taking leave, having regard to all of the circumstances. The Tribunal must also consider the non-exhaustive list set out in the paragraph when determining just cause (*White, Supra; Canada (Attorney General) v. Lessard*, 2002 FCA 469).

[13] The Tribunal finds that the Appellant has not demonstrated she had just cause for leaving her employment.

[14] The Appellant told the Commission that she left her employment due to the fact that she could no longer find transportation to work. She stated that she did not speak to her employer about her troubles because when she was hired she was informed that it was her responsibility to find a way to work. When the Commission spoke with the employer it was confirmed that there were no travel allowances given to employees but the employer did indicate that the Appellant could have requested a leave of absence and it would have been granted had they been able to find a replacement for the Appellant. The Appellant stated that she did not request a leave because when her husband was diagnosed with cancer her supervisor told her that the employer would not give her time off.

[15] During the reconsideration process the Appellant argued that she did not have any way of getting to the worksite. She stated that her husband was no longer able to drive her. She has no vehicle and because she had to pay someone \$300 each way for a ride it did not make economic sense since after paying all her bills she would not have anything left over. She also stated that it was difficult for her to obtain rides even when she paid someone.

[16] The Appellant stated that she wants to work but that the commute was unreasonable. She also stated that she lived in a community that has the highest national socio-economic indicator and so there were very few jobs in her community even though she had looked for work before quitting. Jurisprudence states that remaining in employment until a new job is secured is, without more, generally a reasonable alternative to taking a unilateral decision to quit a job: (*Canada (Attorney General) v. Murugaiah*, 2008 FCA 10; *Canada (Attorney General) v. Campeau*, 2006 FCA 376).

[17] The Tribunal finds that the Appellant was able to commute to her place of employment even after her husband was unable to drive her. The Appellant indicated that it had become more difficult to find transportation to and from the work site when her husband became sick but she stated that she had been able to make it to work and back most times. For those times that she was unable to secure transportation she was forced to miss the work rotation.

[18] The Tribunal notes that the Commission stated several pieces of law that supported the jurisprudence that transportation issues do not constitute as just cause for leaving employment. The Appellant was aware that the employer did not offer a transportation allowance and she did

accept the job knowing the distance that she would have to commute. The Appellant was able to navigate this long commute with the help of her husband and it was not until he became sick that transportation became an issue. While the Tribunal is sympathetic with the Appellant the jurisprudence clearly points out that difficulty in obtaining transportation to and from work does not constitute just cause. And while the Appellant did indicate that she had difficulties sometimes securing transportation the Appellant has shown that she was able to obtain transportation most time. It was her issue with the cost that led her to quitting, not the transportation issues.

[19] The Tribunal does not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Appellant. (*Canada (Attorney General) v. Levesque*, 2001 FCA 304)

[20] The Tribunal relies on *Canada (Attorney General) v. Knee* 2011 FCA 301_ which states:

However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

[21] The Tribunal has considered all of the evidence on file and the statements made by the Appellant at the hearing and finds that the Appellant failed to exhaust the reasonable alternatives available to her. She could have continued to remain employed until she found a paid job closer to her home while continuing to pay individuals to transport her to and from her employment. The Tribunal is guided by the jurisprudence and while sympathetic to the Appellant's situation is unable to find that she had just cause for leaving her employment.

CONCLUSION

[22] The appeal is dismissed. The Tribunal finds that the Appellant did not have just cause within the meaning of the Act to voluntarily leave her employment when she did.

Rodney Antonichuk
Member, General Division - Employment Insurance Section

HEARD ON:	July 19, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. D., Appellant Buckley Belanger, Representative for the 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.