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

[TRANSLATION]

Citation: *X v Canada Employment Insurance Commission and J. D.*, 2018 SST 1165

Tribunal File Number: GE-18-605

BETWEEN:

X

Appellant

and

Canada Employment Insurance Commission

Respondent

and

J. D.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Manon Sauvé

HEARD ON: July 18, 2018

DATE OF DECISION: August 21, 2018

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Added Party is 68 years old and worked for the Appellant for 16 years as a legal assistant for two lawyers. On May 26, 2017, she left her employment.

[3] The Added Party applied for Employment Insurance benefits. She submits that she left her employment because she could no longer tolerate the behaviour of one of the lawyers.

[4] After obtaining additional information from the parties, the Commission decided to pay the Employment Insurance benefits. In the Commission's view, the Added Party had just cause for voluntarily leaving her employment.

[5] The Appellant asked the Commission to reconsider its decision. In the Appellant's view, the Added Party left her employment voluntarily because she retired. Retiring does not constitute just cause within the meaning of the *Employment Insurance Act* (Act); rather, it is a personal choice for which she cannot force all insureds to take responsibility.

[6] The Commission investigated as part of the reconsideration and is still of the opinion that the Added Party had just cause for voluntarily leaving her employment.

[7] In the Appellant's view, the Commission made an error by finding that, based on the balance of probabilities, the Added Party had shown that she had just cause for voluntarily leaving her employment. The Added Party decided to retire without any pressure from the Appellant. It was a personal choice.

[8] **ISSUES**

1) Did the Added Party leave her employment voluntarily?

2) If so, did the Added Party have just cause for leaving her employment?

ANALYSIS

[9] The relevant statutory provisions appear in the annex of this decision.

[10] The Tribunal must determine whether the Added Party should be disqualified from receiving benefits under sections 29 and 30 of the Act on the basis that she voluntarily left her employment without just cause.

Did the Added Party leave her employment voluntarily?

[11] First, the Tribunal must decide whether the Added Party left her employment voluntarily. It is up to the Commission to establish that the Added Party left her employment voluntarily (*Green v Canada (Attorney General)*, 2012 FCA 313).

[12] The Tribunal notes the evidence on file and the Added Party's testimony that she admits having left her employment voluntarily.

[13] In this context, the Commission showed, on a balance of probabilities, that the Added Party left her employment voluntarily.

Did the Added Party have just cause for leaving her employment?

[14] When the Commission established that the Added Party had left her employment voluntarily, the Added Party became responsible for showing that she had just cause for leaving her employment and that leaving was the only reasonable alternative in her case, having regard to all the circumstances (*Green v Canada (Attorney General)*, 2012 FCA 313).

[15] In this case, the Commission decided that the Added Party had just cause for leaving her employment and that it was the only reasonable alternative in her case.

[16] The Tribunal notes that the Added Party worked as a legal assistant for the employer for 16 years. She worked closely with lawyers.

[17] About seven years ago, she was assigned a new lawyer. In the first weeks, she informed her superiors that she wanted to change lawyers. According to the Added Party, the lawyer

showed her a lack of respect and could call her home after work hours. Over the years, she asked for a transfer to another department multiple times but without success.

[18] In 2016, the Added Party was on sick leave. According to the Added Party, this was because of her difficult professional relationship with the lawyer and her sister's death.

[19] When she returned to work, she intended to resign because her health no longer enabled her to work with a demanding lawyer who showed her disrespect.

[20] However, the lawyer had health problems. He was on leave for nine months. She decided to postpone her decision.

[21] Rumours began to circulate about the lawyer's probable return. The Added Party found out about working four-day weeks because she was unable to change lawyers.

[22] According to the Added Party, the employer delayed giving her a response, so she handed in her resignation letter on March 26, 2017, and she left her employment on May 27, 2017.

[23] The Tribunal notes that the Added Party handed in her resignation letter. In this letter, there is no mention of retirement.

[24] In the Appellant's view, the Added Party left her employment to retire. It was a personal choice, and insureds should not have to bear the responsibility for this choice. The purpose of the Employment Insurance program is to enable an insured to receive benefits, if they involuntarily lose their employment (*Canada v Gagnon*, [1988] 2 SCR 29).

[25] An insured cannot provoke the risk and make all insureds assume responsibility (*Canada (Attorney General) v Lamonde*, 2006 FCA 44). Furthermore, they may not transform the risk into the certainty of unemployment (*Tanguay v Canada (Attorney General)*, A-1458-84).

[26] In the Appellant's view, the Added Part remained on the job for a number of years before deciding to leave her employment because of her difficult relationship with the lawyer.

[27] The Tribunal disagrees. The fact that the situation was not critical or urgent does not mean that the Added Party did not have just cause for leaving her employment (*Bell v Canada (Attorney General)*, A-450-95).

[28] The Appellant submitted email exchanges between the Added Party and certain staff members and family to show that the Added Party left her employment to retire.

[29] The Tribunal is of the opinion that this argument is not relevant to determining whether the Added Party had just cause for voluntarily leaving her employment.

[30] The Tribunal finds that the Added Party had just cause for leaving her employment or retiring to preserve her health and that, having regard to all the circumstances, it was the only reasonable alternative in her case (*Canada (Attorney General) v Hong*, 2017 FCA 46).

[31] In reaching this conclusion, the Tribunal relies on the evidence on file and the Added Party's testimony.

[32] Furthermore, the supervisor of the legal assistants confirmed that the Added Party asked several times to be transferred so that she would not work with the lawyer anymore. The supervisor acknowledged that the lawyer was very demanding and that he had a tendency to give orders and want to control everything.

[33] The Added Party mentioned that the lawyer could call her home after work hours and that he could be disrespectful to her when she made mistakes.

[34] The Tribunal notes that the Added Party informed the supervisor of the situation. She did not want to speak to the lawyer about it, because she was afraid.

[35] The Appellant acknowledged that field of labour law is very demanding and stressful. The lawyer is a litigator and is under a lot of pressure.

[36] The Tribunal is of the opinion that the Added Party had health issues caused by a number of factors, including her difficult relationship with the lawyer. When she returned to work, she

planned to resign to preserve her health. Since the lawyer was himself absent because of health issues, she decided to remain in her position.

[37] However, when she became aware that he was returning to work, she asked to work fewer hours to preserve her health. The Tribunal understands from the Added Party's situation that the transfer was still impossible. Lacking a response, she handed in her resignation.

[38] The Tribunal is of the opinion that, having regard to all the circumstances, resigning was the only reasonable alternative in the Added Party's case. The Added Party returned to work after her sick leave. She asked to work fewer hours per week, but the company's policy did not allow it at the time. The Added Party could not transfer, and she planned to leave her employment. On September 5, 2016, the lawyer had to take a leave of absence for nine months because of health issues. The Added Party remained in her position because she did not have to work with him.

[39] The Tribunal notes that the Added Party asked once again to work fewer hours per week when she found out that the lawyer was returning to work. She was asked to wait for a definitive answer. Since the company's policy had changed, she needed approval from the department and the lawyer.

[40] The Added Party handed in her resignation letter on April 27, 2017, and she left her employment on May 26, 2017.

[41] In this context, the Tribunal finds that the Added Party had just cause for leaving her employment and that, having regard to all the circumstances, it was the only reasonable alternative in her case. The Added Party asked several times to switch departments. She also asked to work fewer hours per week so that she could remain at work. Finally, when she did not receive a response to her last request, she left her employment to preserve her health and to no longer have any contact with the lawyer.

[42] The Appellant submits that the Added Party should have waited for the answer before leaving her employment. How much longer should she have waited? The Tribunal finds that the Added Party had had enough of making requests and waiting for answers, which, admittedly, had

been negative in the past. Having regard to all the circumstances, the Added Party had just cause for leaving her employment, and leaving was the only reasonable alternative.

[43] After considering the evidence on file, the Added Party's testimony, and the parties' submissions, the Tribunal is of the view that the Added Party shows, on a balance of probabilities, that voluntarily leaving was the only reasonable alternative in her case, having regard to all the circumstances.

CONCLUSION

[44] The Tribunal finds that the Added Party should not be disqualified from receiving benefits because she had just cause for voluntarily leaving her employment on May 27, 2017, and, having regard to all the circumstances, leaving was the only reasonable alternative in her case.

[45] The appeal is dismissed.

Manon Sauvé
Member, General Division – Employment Insurance Section

HEARD ON:	July 18, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Christian Létourneau (counsel), Appellant J. D, 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.