



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. W. v. Canada Employment Insurance Commission*, 2018 SST 1067

Tribunal File Number: GE-18-2071

BETWEEN:

B. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Paul Dusome

HEARD ON: August 23, 2018

DATE OF DECISION: September 5, 2018

DECISION

[1] The appeal is dismissed. The Appellant did not have just cause to quit, and had reasonable alternatives to quitting when she did quit.

OVERVIEW

[2] The Appellant was living with a spouse who owned the home they occupied in a small community in northern Ontario. The spouse told her that the relationship was over, and gave her two days' notice to leave his house. The Appellant had no family or friends in the community to help her. She quit her job, and moved in with her sister in Toronto, to look for work there. The Respondent denied her employment insurance (EI) benefits for quitting without just cause.

PRELIMINARY MATTERS

[3] No one attended the hearing. Under subsection 12(1) of the *Social Security Tribunal Regulations*, where a party does not attend the hearing, and the Tribunal is satisfied that the party received notice of the hearing, the Tribunal may proceed in the party's absence. The Tribunal is satisfied that the Appellant did receive notice of the hearing set for August 23, 2018, for the following reasons. The Tribunal sent the appeal docket, including the notice of hearing to the Appellant by priority post on July 16, 2018, to her address on file. Priority post involves tracking of the package from its departure from the sender, to delivery to the addressee, and if not delivered or picked up, to return to the sender. The Tribunal has not received that package back, but has received from the post office confirmation of delivery to the Appellant on July 20, 2018. There has been no contact with the Appellant since the delivery date. In these circumstances, the Tribunal is satisfied that the Appellant had notice of the August 23, 2018, hearing. In these circumstances, the Tribunal will proceed with the hearing in the Appellant's absence, and give its decision.

ISSUES

[4] 1. Did the Appellant voluntarily leave her job? 2. If yes, did the Appellant establish circumstances that could justify quitting? 3. Did the Appellant prove that in those circumstances she had no reasonable alternative to quitting?

ANALYSIS

[5] The relevant legislative provisions are reproduced in the Annex to this decision. Subsection 30(1) and paragraph 29(c) of the *Employment Insurance Act* (Act) are the most relevant in this case. The legislation uses the term ‘voluntarily leave’ to mean ‘quit’.

[6] The onus of proving on a balance of probabilities that the Appellant voluntarily left her employment rests on the Respondent; if the Respondent satisfies the Tribunal that the Appellant did voluntarily leave her employment, then the onus of proving, on a balance of probabilities, just cause for leaving rests on the Appellant (*Canada (A.G.) v. White*, 2011 FCA 190).

[7] The test for just cause is, on a balance of probabilities and having regard to all the circumstances, did the employee have no reasonable alternative to leaving the employment (*Canada (A.G.) v. White*, 2011 FCA 190).

[8] A non-exhaustive list of circumstances that may justify quitting is set out in paragraph 29(c) of the Act. Other circumstances not listed may also justify quitting.

[9] Only the facts that existed at the time the Appellant left the employment must be considered when assessing whether just cause has been proven (*Canada (A.G.) v. Lamonde*, 2006 FCA 44).

[10] While the Appellant may have left a job for good personal reasons, or for what she considers to be good cause, that is not the same as just cause under paragraph 29(c) of the Act (*Canada (A.G.) v. Imran*, 2008 FCA 17).

Issue 1: Did the Appellant voluntarily leave her job?

[11] The Respondent has the onus of proving that the Appellant did in fact voluntarily quit her job.

[12] The Appellant did voluntarily leave her job. The evidence in support of this conclusion is clear. She stated that she quit on her application for EI benefits on March 8, 2018, explaining that she had to relocate to Toronto due to unforeseen circumstances. She confirmed quitting in a later telephone conversation with the Respondent, and in her notice of appeal. The employer

confirmed that the Appellant had quit to relocate, but had given no reasons for relocating. There is no evidence that she did not quit.

Issue 2: If yes, did the Appellant establish circumstances that could justify quitting?

[13] A non-exhaustive list of circumstances that may justify quitting is set out in paragraph 29(c) of the Act. Other circumstances not listed may also justify quitting.

[14] The Appellant did not show circumstances that could justify quitting.

[15] Most of the circumstances listed in paragraph 29(c) of the Act relate to difficulties in the employer-employee relationship, and those are not applicable in this case. Only three, subparagraphs 29(c)(ii), (v) and (vi), relate to the personal circumstances of the employee, an obligation to accompany a spouse, common-law partner or dependent child to another residence, an obligation to care for a child or a member of the immediate family, and a reasonable assurance of another employment in the immediate future. None of those circumstances are applicable in this case.

[16] The circumstances outlined by the Appellant relate to the breakdown of her relationship with her spouse, his ultimatum that she leave the house within two days, and her need to find alternate accommodation within two days. She had no friends or relatives in X to help her get her life in order. She could not afford her own residence, and had nowhere else in the area to live. Her sister, who lived in Toronto, told her to come live with her to get herself back on her feet. She moved to Toronto to stay with her sister, as that was her only option. There was no job transfer available, and she did not have time to look for work because of the two-day deadline.

[17] These were good personal reasons for quitting and moving to Toronto. But good personal reasons are not the same as just cause (*Imran*).

Issue 3: Did the Appellant prove that in those circumstances she had no reasonable alternative to quitting?

[18] The rule is that, having regard to all the circumstances, did the employee have no reasonable alternative to leaving the employment?

[19] There were, at the time the Appellant quit, reasonable alternatives to leaving the employment that she did not explore.

[20] The Appellant worked for the Victorian Order of Nurses (VON) as a personal support worker. The VON is a large organization. The employer told the Respondent that the Appellant had not talked to them about her situation, and that if she had, they would have seen what they could do to assist her. When asked if a leave of absence could have been an option, the employer stated that they would hire the Appellant back in an instant. The Appellant only told the employer that she was relocating.

[21] The Appellant stated that a job transfer was not available, that she had no friends or relatives in the area and could not afford her own accommodation. From the employer's evidence, she did not talk to them about her situation. The employer was willing to see what they could do to assist the Appellant, and would hire her back in an instant. There were several reasonable alternatives to quitting available in this situation. The Appellant could have asked about a job transfer, to maintain her employment and avoid quitting. She could have asked for a leave of absence, to allow time to deal with her personal situation while keeping her job. She could have asked the employer if there were reasonably priced accommodations available locally that she could live in and continue working with the employer. Had the Appellant asked about these alternatives, and received negative answers prior to quitting, then she would have been in a position to show that there were no reasonable alternatives. But she did not do that. She simply quit and left town. That reaction is understandable in the Appellant's situation. But that situation and the reaction did not relieve the Appellant of her obligation to show that there was no reasonable alternative to quitting.

CONCLUSION

[22] The appeal is dismissed.

Paul Dusome
Member, General Division - Employment Insurance Section

HEARD ON:	August 23, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	The Appellant did not attend.

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.