



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. A. v Canada Employment Insurance Commission*, 2018 SST 1354

Tribunal File Number: GE-18-934

BETWEEN:

**A. A.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Melanie Petrunia

HEARD ON: July 16, 2018

DATE OF DECISION: August 29, 2018

## **DECISION**

[1] The appeal is dismissed. The Appellant failed to prove that he voluntarily left his employment with just cause.

## **OVERVIEW**

[2] The Appellant was working as a bosun's chair operator, cleaning windows on high rise buildings. Based on the previous year and the nature of the industry, the Appellant expected the season for his employment to run from approximately April to end of October or early November. The Appellant applied for benefits believing that the employer did not have work for him due to the weather. The employer had expected the Appellant to continue working at a new job site and considered the Appellant to have abandoned his position. The Respondent determined that the Appellant voluntarily left his employment without just cause because there were reasonable alternatives to leaving.

## **PRELIMINARY MATTERS**

[3] The Appellant filed the following documents with the Tribunal post-hearing: phone records from his sister's phone showing a call to the employer on January 18, 2018; a portion of the employer's company policy; a screen shot from the Appellant's brother's phone showing a call received from the employer on November 21, 2017; and, a screen shot from the Appellant's brother's phone of a text message from the employer. The hearing was conducted by video conference and the Appellant brought these documents with him to the hearing. He addressed the documents in his testimony and the Tribunal accepted the filing of the documents post-hearing.

## **ISSUES**

[4] The Tribunal must answer the following:

(a) Did the Appellant voluntarily leave his employment?

(b) If so, did the Appellant have just cause to voluntarily leave 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* provides that a claimant is disqualified from receiving any employment insurance benefits if they voluntarily left any employment without just cause.

[7] The burden of proof is on the Respondent to show that the Appellant left voluntarily. The burden then shifts to the Appellant to show that he had just cause for leaving (*Canada (Attorney General) v. White*, 2011 FCA 190).

### **Issue 1: Did the Appellant voluntarily leave his employment?**

[8] The Tribunal finds that the Appellant voluntarily left his employment. The question is whether the employee had a choice whether to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56).

[9] The Appellant disputes that he voluntarily left his employment on the basis that the weather had become too cold for the work that he performed. He indicated that the standard in his field is for the season to end in October or November due to the weather.

[10] The employer had provided print outs of text messages to the Respondent. At the hearing, the Appellant had the phones with him on which the alleged text messages were saved. The Appellant confirmed the content of those messages was the same as what had been submitted by the employer. The Tribunal heard evidence from both the Appellant and his brother, who was called as a witness by the Appellant and was employed by the same employer in the same position as the Appellant. The Appellant and his brother worked together as a team.

[11] One of the text messages was from the Appellant's brother, dated November 21, 2017, asking if he and the Appellant could go on employment insurance if there was no work available. The employer replied that there was work and provided the address of the new work site as well as stating that they would start at the new site as soon as their gear could be moved. The Appellant's brother replied to ask if the address provided was downtown and did not receive a reply.

[12] There does not appear to have been any further communication between the Appellant and the employer until three missed calls from the employer to the Appellant and his brother on December 5, 2018. These missed calls were followed by a text message from the employer stating that the Appellant's employment had been terminated and to return phones and other equipment to the office.

[13] The Appellant testified that he did not believe that there was any further work when the weather became too cold and the employer did not provide any further communication about the new work site. The Appellant testified that he did not make any attempts to contact the employer after his brother inquiring as to whether or not the new work site was downtown.

[14] The Tribunal finds that the Appellant voluntarily left his employment. The testimony from the Appellant and his brother is consistent with the representations made by the employer to the Respondent specifically that the Appellant asked if he could go on employment insurance and was told by the employer that there was more work. The Appellant was advised that there was more work and was provided with the address of the new work site. The Appellant chose not to attend the new work site, or make any further inquiries of the employer. The Tribunal finds that the Appellant had a choice whether to stay or leave his employment and that he voluntarily left his position.

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

[15] In order to determine whether a claimant had just cause for voluntarily leaving their employment, the Tribunal must consider whether the claimant had no reasonable alternative to leaving, considering all of the circumstances. The burden is on the Appellant to show, on a balance of probabilities, that he had no reasonable alternative to leaving (*Canada (Attorney General) v. White*, 2011 FCA 190).

[16] Considering all of the circumstances, the Tribunal finds that the Appellant did not have just cause for leaving his employment because there were reasonable alternatives available to him. Reasonable alternatives to leaving his employment would have been for the Appellant to contact the employer to confirm the location of the new work site. Another reasonable alternative

would have been to confirm with the employer whether or not he was being laid off due to the change in weather and the seasonal nature of the work.

[17] The testimony of the Appellant and his brother confirms that they both believed that the weather would have prevented any further work for the season. When the employer did not reply to his brother's text message, the Appellant believed that the season had ended and there was no further work available. The Tribunal finds that the Appellant and his brother believed that the weather had become too cold to perform the work expected of them. However, the Appellant's brother had texted the employer to ask if he and the Appellant could go on employment insurance if there was no more work available. The employer replied that there was work and provided the address of the new work location. The Appellant's brother asked if the new location was downtown and did not receive a reply. The Tribunal finds, on the basis of the testimony and text message records, that there was no further communication between the Appellant and the employer until December 5, 2017.

[18] One week after the exchange with the employer, on November 29, 2017, the Appellant applied for employment insurance benefits stating that he was no longer working due to a shortage of work. The Tribunal finds that the last communication from the employer contradicts this and specifically states that there was work for the Appellant. A reasonable alternative, in these circumstances, would have been to follow up with the employer to confirm the new work location or confirm whether the weather prevented any further work, as the Appellant believed.

[19] Although the Appellant may have felt he had good reason for leaving his employment due to the lack of communication from the employer and the weather conditions, a good reason is not necessarily sufficient to meet the test for "just cause" (*Canada (Attorney General) v. Laughland*, 2003 FCA 12). The words "just cause" are not synonymous with "reason" or "motive" (*Tanguay v. Canada (Unemployment Insurance Commission)*, A-1458-84).

[20] The Tribunal finds, having regard to all of the circumstances, the Appellant failed to prove that he had no reasonable alternatives to leaving his employment.

**CONCLUSION**

[21] The Tribunal concludes that the Appellant has failed to prove that, having regard to all of the circumstances, he had no reasonable alternative to leaving his employment. Therefore he has not proven just cause for voluntarily leaving his employment and is accordingly disqualified from receiving benefits in accordance with sections 29 and 30 of the Act.

[22] The appeal is dismissed.

Melanie Petrunia  
Member, General Division - Employment Insurance Section

HEARD ON:	July 16, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	A. A., 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.