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

[TRANSLATION]

Citation: *O. C. v. Canada Employment Insurance Commission*, 2018 SST 1058

Tribunal File Number: GE-18-236

BETWEEN:

O. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Catherine Frenette

HEARD ON: September 19, 2018

DATE OF DECISION: September 20, 2018

Canada

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] On August 25, 2017, the Appellant left his employment to move to another region with his partner. At that time, the Appellant was working for a non-profit organization whose primary mission was to facilitate the social and occupational integration of people with physical and intellectual challenges. The Appellant filed a claim for regular benefits on September 27, 2017. The Canada Employment Insurance Commission (Commission) denied the Appellant benefits because he had voluntarily left his employment without just cause. Since the Appellant does not dispute that he voluntarily left his employment, the Tribunal must determine whether he should be disqualified because he voluntarily left his employment without just cause.

ISSUES

[3] Did the Appellant need to accompany his spouse or common-law partner to another residence?

[4] Are there other circumstances to consider when determining whether the Appellant had just cause for leaving his employment?

[5] Did the Appellant have no reasonable alternative to leaving?

ANALYSIS

[6] The relevant statutory provisions are appended to this decision.

[7] A person has just cause for leaving their employment if, having regard to all the circumstances, including those listed in section 29(c) of the *Employment Insurance Act* (Act), there were no reasonable alternatives to leaving (*Green v Canada (Attorney General)*, 2012 FCA 313). Therefore, the claimant must not have [translation] "[...] other reasonable alternatives to leaving their employment" (*Astronomo v Canada (Attorney General)*, A-141-97) [*sic*].

[8] The claimant is responsible for proving, based on the balance of probabilities, that they had just cause for leaving (*Chaoui v Canada (Attorney General)*, 2005 FCA 66; *Canada (Attorney General) v White*, 2011 FCA 190).

[9] The Appellant stated that he had just cause for leaving his employment because he needed to follow his partner (section 29(c)(ii) of the Act).

Issue 1: Did the Appellant need to accompany his spouse or common-law partner to another residence?

[10] To benefit from section 29(c)(ii) of the Act, the Appellant must prove two things: 1) the person he followed must have been his spouse or common-law partner, and 2) the need to follow that person.

[11] The Tribunal finds that the circumstance in this sub-paragraph cannot apply to this case because the Appellant and his partner were neither spouses nor common-law partners at the time of the move.

[12] First, it is not in dispute that the Appellant was not married to his partner at the time of the move. As a result, they were not spouses.

[13] Next, a "common-law partner" is "a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year" (section 2(1) of the Act). Since the Appellant and his partner were not living together when the Appellant left his employment, he did not meet the condition for a common-law partnership.

[14] In light of the Tribunal's finding that the Appellant's relationship with his partner did not fulfil the definition of a "common-law partner," section 29(c)(ii) of the Act does not apply. As a result, the Tribunal does not need to determine whether the Appellant needed to leave his employment.

Issue 2: Are there other circumstances to consider when determining whether the Appellant had just cause for leaving his employment?

[15] The Tribunal is of the view that none of the circumstances listed in section 29(c) of the Act correspond to the Appellant's specific situation. However, this list is not exhaustive, as

shown by the use of the word “including” in the same paragraph. As a result, the Tribunal must determine whether other circumstances may apply to the Appellant’s case.

[16] The Appellant’s representative submitted that the Commission had not considered that the Appellant is a person with a disability: he has mixed dysphasia, a neurological language and speech limitation.

[17] The Tribunal is of the view that it must take into account the fact that the Appellant has mixed dysphasia.

[18] The Appellant’s representative explained to the Tribunal that this neurological limitation affected the Appellant’s work. The Appellant’s brain does not decode what he hears. In addition, the Appellant has difficulty receiving instructions and expressing himself. Furthermore, space, time, and measurements are not clear concepts for the Appellant. As a result, he may take longer than a regular employee to perform certain tasks.

[19] More specifically in terms of work, the Appellant needs repetition to learn a task. He also needs routine and stability. For example, the Appellant could not work in a restaurant because of unforeseen situations.

[20] The Tribunal has taken the Appellant’s neurological limitation into account to determine whether he had no reasonable alternative to leaving.

Issue 3: Did the Appellant have no reasonable alternative to leaving?

[21] The Tribunal is of the view that the Appellant had no reasonable alternative to leaving based on the specific circumstances of his file.

[22] First, the Appellant could not keep his employment while looking for other employment in the region to which he was moving.

[23] Usually, the Federal Court of Appeal considers it reasonable for a claimant to continue working until they find other employment (*Canada (Attorney General) v Murugaiah*, 2008 FCA 10; *Canada (Attorney General) v Graham*, 2011 FCA 311). However, the Tribunal is of the view

that, because of the Appellant's particular situation, it would be unreasonable to require him to keep his employment while he looked for new employment.

[24] The Appellant explained that, because of his neurological limitation, he uses the placement service X. This organization is connected with Emploi-Québec and facilitates the integration of people with disabilities into the workplace. X finds suitable employment for people based on their disabilities.

[25] In this case, X connected the Appellant with the employer though subsidized employment. The subsidy makes up for the fact that the Appellant may work slower than another employee.

[26] Furthermore, X handles regular follow-up while individuals are employed. Specifically in this case, the Appellant's X advisor speaks to his employer and can intervene if there are difficulties at work. The advisor helps the Appellant progress in his work without being rushed. According to the Appellant's representative, X was essential to the Appellant's finding employment and for his well-being while employed.

[27] The Appellant was not actually able to look for employment on his own.

[28] As a result, before leaving his employment, the Appellant asked for his file to be transferred from X Montmagny to X Mauricie. However, X's computer system cannot keep his file active in two different cities. To do the transfer, the Appellant had to resign from his employment in Montmagny to open a new file in Mauricie. As a result, to continue to receive X's services, the Appellant was forced to resign so he could find employment in his new area.

[29] In the Commission's view, the Appellant should have waited until he had assurance of other employment before leaving his employment. This presumption does not take into account the circumstances of this file, meaning the Appellant's neurological limitation and the X program. The Tribunal is of the view that the Commission's solution is unreasonable (section 29(c) of the Act).

[30] First, the Tribunal notes that the Appellant had to use X to find and maintain employment because of his neurological limitation and that X's computer system required his resignation. It was impossible for the Appellant to keep his employment while he was looking for new employment.

[31] Second, the Appellant could not move and keep his employment because the two areas were too far apart.

[32] Third, the Appellant mentioned that he did not ask his employer for a transfer because a transfer was impossible.

[33] Fourth, the Appellant could not ask his partner to move to his area so that he could keep his employment. The Appellant explained that his partner also has dysphasia, but she is less independent than he is. She needs to live close to her parents, who help her with her everyday life. The Tribunal notes that the Appellant's partner could not move to be with him because of her own dysphasia.

[34] Fifth, the Commission stated that the Appellant's move was a legitimate personal decision but that, since there was no need for him to move to be with his partner, the contributors to the Employment Insurance fund should not bear the cost of that decision. According to the Commission, a reasonable alternative would have been to not make this personal decision.

[35] The Tribunal considers the Commission's solution to be unreasonable, considering the Appellant's neurological limitation and his obligation to resign to find other employment. The Act does not automatically disqualify a claimant from benefits if they voluntarily leave their employment because of a personal decision. The Act sets out that a claimant may have just cause for leaving their employment if, based on all the circumstances, the claimant had no reasonable alternative to leaving (section 29(c) of the Act). Therefore, a person may have just cause to leave their employment based on a personal decision if all of the circumstances show that it was the only reasonable solution.

[36] In this file, the Commission limited its analysis to the fact that the Appellant did not need to move with his partner. The Commission did not consider the particular circumstances of this

case—that the Appellant has a neurological limitation, that he cannot find employment on his own, and that the organization helping him with his workplace integration required that he be unemployed.

[37] The Tribunal is of the view that the Appellant has discharged his burden of proof to show that he had no reasonable alternative to leaving and, as a result, that he had just cause to leave his employment (*Chaoui, supra*; *White, supra*). The Appellant had to leave his employment to get new employment (*Green, supra*; *Astronomo, supra*).

CONCLUSION

[38] The appeal is allowed. The Appellant should not be disqualified from benefits starting September 24, 2017, because he had just cause for leaving his employment.

Catherine Frenette
Member, General Division – Employment Insurance Section

HEARD ON:	September 19, 2018
METHOD OF PROCEEDING:	Teleconference
PERSONS IN ATTENDANCE:	O. C., Appellant Mariane Laprise, 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.