



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. A. v. Canada Employment Insurance Commission*, 2018 SST 1068

Tribunal File Number: GE-18-1852

BETWEEN:

A. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: October 3, 2018

DATE OF DECISION: October 3, 2018

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant applied for regular Employment Insurance benefits (EI benefits) on March 20, 2018, and established an initial claim on March 18, 2018. The Appellant worked full-time for “X” until March 19, 2018, and was dismissed. The Appellant worked part-time as a care representative for “X” until March 18, 2018, and left her employment. The Respondent determined the Appellant voluntarily left her employment with “X” without just cause on March 18, 2018. The Appellant submitted that she left her part-time employment at “X” to be eligible for EI benefits. The Appellant explained that her mother had advised she would not be eligible for EI benefits if she was working. The Appellant further submitted that had she known she could receive EI benefits and work part-time she would not have left her employment with “X.” I find the Appellant did not have just cause for voluntarily leaving her employment with “X,” because she had a reasonable alternative to leaving having regard to all the circumstances.

ISSUES

[3] The Tribunal must decide the following issues:

Did the Appellant voluntarily leave her employment? If so, did the Appellant have just cause for voluntarily leaving her employment?

ANALYSIS

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

[5] There are numerous circumstances of just cause for voluntarily leaving an employment listed in section 29(c) of the *Employment Insurance Act* (EI Act). However, the Federal Court of Appeal has explained that the burden is on the claimant to show they had no reasonable alternative to leaving an employment having regard to all the circumstances (*Patel v. Attorney General of Canada*, 2010 FCA 95; *White v. Attorney General of Canada*, 2011 FCA 190).

Did the Appellant voluntarily leave her employment?

[6] I find the Appellant voluntarily left her employment, because the Appellant testified she verbally resigned from her employment at “X.”

Did the Appellant have just cause for voluntarily leaving her employment?

[7] I find the Appellant did not have just cause for leaving her employment, because she had the reasonable alternative of inquiring with Service Canada about whether she could receive EI benefits while working before she left her employment with “X.” I realize the Appellant explained she returned to work with “X” in mid-April 2018, after being disqualified from EI benefits by the Respondent. Nevertheless, I find that on a balance of probabilities the Appellant could have inquired with Service Canada about receiving EI benefits while working before she resigned from “X.”

[8] During the hearing, the Appellant testified that her mother had advised she would not be eligible for EI benefits if she was working. The Appellant submitted that had she known she could work part-time and receive EI benefits she would not have left her employment with “X.” I realize the Appellant’s circumstances were unfortunate. Nevertheless, the case law has consistently held that regardless of misunderstanding I cannot absolve the Appellant from the application of the EI Act (*Attorney General v. Tjong*, FCA A-672-95; *Attorney General v. Romero*, FCA A-815-96).

[9] I further realize the Appellant submitted that she was overwhelmed with the loss of her full-time job at “X” and made the decision to leave “X,” because she thought she could not work and receive EI benefits. As cited above, I recognize the Appellant’s circumstances were unfortunate. However, I must apply the EI legislation to the evidence. In short, I cannot ignore, re-fashion, circumvent or re-write the EI Act even in the interest of compassion (*Knee v. Attorney General of Canada*, 2011 FCA 301).

[10] Finally: I recognize the Appellant explained that before resigning her employment from “X” she inquired about working full-time hours with the employer. The Appellant indicated that the employer advised her that full-time hours were not available. Nevertheless, I find the

Appellant still had the reasonable alternative of inquiring with Service Canada about receiving EI benefits while working before she made the decision to resign from “X.”

[11] In summary: I find the Appellant did not have just cause for leaving her employment at “X” under section 29 and 30 of the EI Act.

CONCLUSION

[12] The appeal is dismissed.

Gerry McCarthy

Member, General Division - Employment Insurance Section

HEARD ON:	October 3, 2018
METHOD OF PROCEEDING:	Teleconference
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.