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

Citation: *R. S. v. Canada Employment Insurance Commission*, 2018 SST 1108

Tribunal File Number: GE-18-2423

BETWEEN:

R. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: John Gillis

HEARD ON: October 9, 2018

DATE OF DECISION: October 16, 2018

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant began her employment at a call centre on May 22, 2017. She struggled through her training because of vision problems and difficulty in grasping the material. Overwhelmed, the Appellant quit on June 23, 2017. The Canada Employment Insurance Commission (Commission) determined that the Appellant did have reasonable alternatives to quitting her job when she did and so disqualified her from receiving benefits. The Appellant requested a reconsideration and the Commission maintained its initial decision. The Appellant appealed to the Tribunal.

[3] The Tribunal finds that the Appellant had reasonable alternatives to leaving her employment and, as such, that she did not have just cause for voluntarily leaving her employment.

ISSUES

[4] The issues to be determined are:

Issue #1 – Did the Appellant voluntarily leave her employment?

Issue #2 – If so, having regard to all of the circumstances, did the Appellant have any reasonable alternative to leaving her employment?

ANALYSIS

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

[6] A claimant who voluntarily leaves or quits a job is disqualified from receiving employment insurance benefits unless they can prove they had just cause for quitting (subsection 30(1) of the *Employment Insurance Act*). Just cause means that, having regard to all the circumstances, the claimant had no reasonable alternative but to quit (section 29 of the *Employment Insurance Act*). While the Commission bears the burden of proving that the

claimant voluntarily left their job, the claimant must show that they had ‘just cause’ considering all of the circumstances (*Green v. Canada (A.G.)*, 2012 FCA 313).

Issue 1: Did the Appellant voluntarily leave her employment?

[7] The Appellant submits that she quit her job on June 23, 2017. The Tribunal accepts the Appellant’s submission. There is no evidence before the Tribunal that would suggest that the Appellant did not quit on June 23, 2017. The Appellant states that, prior to her scheduled shift on June 23, 2017, she approached the receptionist and advised that she quit. Based on the evidence, the Tribunal finds that the Appellant quit on June 23, 2017. As a result, whether the Appellant is disqualified from receiving employment insurance benefits depends on if she had just cause for leaving her employment when she did.

Issue 2: Having regard to all of the circumstances, did the Appellant have any reasonable alternative to leaving her employment when she did?

[8] The *Employment Insurance Act* disqualifies a claimant from receiving any benefits if he or she voluntarily left any employment without just cause; just cause exists if the claimant had no reasonable alternative to leaving, having regard to all of the circumstances (section 29 and 30). The Federal Court of Appeal has set out that to determine if just cause exists “requires an examination of ‘whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment’”. (*Canada (A.G.) v. White*, 2011 FCA 190, at paragraph 3).

[9] While an employee may have, in their eyes, good reasons for leaving their employment, the Federal Court of Appeal has confirmed that “good cause is not the same thing as just cause” (*Canada (A.G.) v. Laughlin*, 2003 FCA 129, at paragraph 9).

[10] The Tribunal finds that the Appellant has not proven that she had just cause for leaving her employment.

[11] The Appellant submits that she had no reasonable alternative to quitting her job on June 23, 2017. She states that she was forced into that position because of vision problems and the difficulty she was having understanding her training.

Appellant's Vision Problems

[12] The Appellant states that she experienced vision problems immediately upon starting her job. Although she had previously worked in an environment that required her to use computer screens, the Appellant states that she had visual difficulty with the screen setup with her new employer. The Appellant states that she wears bifocal glasses. In order to see the wording on her screens, the Appellant states that she would have to tilt her head back which caused her neck strain. Further, the Appellant had to ask on a daily basis to have the words on her screens resized to make them more readable. Finally, the Appellant found one particular screen extremely difficult to read due to it being a particularly bright yellow color.

[13] Upon experiencing her vision troubles at her employment, the Appellant states that she went to see her eye doctor. Her eye doctor suggested that if she were to obtain trifocal glasses it would likely help here focus on her computer screen. The Appellant states that the cost of the recommended glasses was approximately $800. The Appellant states that she could not afford the glasses.

[14] The Appellant states that she did tell one of her trainers about her vision problems but does not recall specifically mentioning her need for specialized glasses. The Respondent submits that the employer would have performed a workplace assessment if they were aware of the Appellant's visual difficulties. The Appellant states that she did not think that was an option and that her employer did not tell her that such an assessment was a possibility. The Appellant states that if she was aware of a possible workplace assessment to remedy her visual problems she would have definitely tried it.

Appellant's Difficulty in Training

[15] The Appellant states that she had great difficulty in following the training required by her employer. Her training started on May 22, 2017 and continued until the Appellant quit on June 23, 2017. Although her previous employment was computer based, the Appellant states that she had difficulty mastering the programs used by her employer. She states that she would have to routinely ask her coworkers or trainers for instructions and found this upsetting. The Appellant states that she repeatedly advised her trainers that she did not understand all of the material. The

Appellant states that her trainers did go over the material again in a group setting but that she would have preferred one-on-one training.

[16] The Appellant states that several days prior to her quitting, she met with one of her trainers and a supervisor more senior than her trainer. During that meeting, the Appellant states that she was informed that she was not progressing well through her training. The Appellant states that she was told that she would not be progressing to the next step in the scheduled training. Rather, the Appellant was told that she would continue at her present level of training. The Appellant states that this upset her but she does not recall advising either her trainer or the more senior supervisor at the meeting that she was feeling overwhelmed by the material or that she was having visual difficulties.

[17] The Respondent's documentary evidence includes the summary of a June 20, 2018 telephone conversation between the Respondent and the Appellant's employer. During that telephone conversation the Appellant's employer stated that they intended to provide the Appellant with additional training as she was, in their opinion, not ready to move to the next training module.

[18] Despite the planned additional training, on June 23, 2017, the Appellant states that she attended work and advised the receptionist that she quit. The Appellant did not speak with either her trainers or other supervisors on that day.

[19] The Respondent submits that the Appellant had several reasonable alternatives aside from voluntarily leaving her employment. These suggested reasonable alternatives include:

a) asking for a leave of absence,

b) asking for a transfer to a different position,

c) asking for an accommodation for her vision problems, or

d) asking for additional training.

[20] The Appellant states that on June 23, 2017, she was feeling overwhelmed and decided to quit. She states that she did not ask for any accommodations because she did not think of it at

the time. This is despite the fact that the Appellant had previously requested some accommodation for some of her visual problems and accommodation efforts were made by the employer. This is evidenced by the Appellant's testimony that one of her trainers would attempt to resize her screens on a daily basis. The Tribunal finds that the Appellant's decision to quit was hastily made and without regard to possible reasonable alternatives.

[21] Considering all the circumstances, the Appellant did have other reasonable alternatives aside from leaving her employment. The Appellant did not advise her employer that she was so overwhelmed as to even ask for a leave of absence or ask if she could be transferred to a different position that she would not find as challenging. While the Appellant did advise her employer of some of her vision problems and the difficulty she was having in mastering the job tasks, she did not escalate these complaints beyond her immediate co-workers or trainers. She did not raise her issues during a face-to-face meeting with a supervisor in the days prior to her quitting. She did not accept her employer's offer to provide her with additional training. Finally, she did not look for any other employment before quitting. Considering the Appellant's vision issues and training concerns individually as well as cumulatively, the Tribunal finds that the Appellant had reasonable alternatives to quitting her job.

[22] On a balance of probabilities, the Appellant had the reasonable alternatives to quitting set out above and thus did not have just cause for leaving her employment. The Tribunal finds that the Appellant did not explore these alternatives due to an unsubstantiated belief that no accommodations could be made to assist her.

[23] Based on all of the evidence before it, the Tribunal concludes that the Appellant left her employment without just cause.

CONCLUSION

[24] The appeal is dismissed.

John Gillis

Member, General Division - Employment Insurance Section

HEARD ON:	October 9, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. S., 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.