



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *N. L. v Canada Employment Insurance Commission*, 2018 SST 1311

Tribunal File Number: GE-18-58

BETWEEN:

N. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Bernadette Syverin

HEARD ON: September 25, 2018

DATE OF DECISION: October 18, 2018

DECISION

[1] The appeal is dismissed because the Appellant failed to establish that she had just cause for voluntarily leaving her employment. The reasons for the decision are set out below.

OVERVIEW

[2] The Appellant lost her first employment in October 2016 following a shortage of work. The Appellant then had other employment, which she left voluntarily in August 2017. She applied for Employment Insurance benefits in October 2017. The Canada Employment Insurance Commission (Commission) gave the following decisions on this claim for benefits:

- a) The Commission first decided that the Appellant could not receive benefits because she had not accumulated enough hours of insurable employment during her qualifying period to establish a benefit period. After a request for reconsideration, the Commission reconsidered its decision and determined that the Appellant had in fact accumulated enough insurable hours to establish a benefit period as of the date she lost her first employment in October 2016. However, since the Appellant had received severance pay in October 2016, that pay was allocated to her benefit weeks until November 2017, and her benefit period was extended to October 27, 2018 (GD3A-28). The Appellant filed a notice of appeal for that decision with the Tribunal, but she discontinued it during a pre-hearing conference where she argued that she intended to dispute another decision concerning her voluntary leaving in August 2017.
- b) After the pre-hearing conference, the Appellant asked the Commission to reconsider the decision concerning her voluntarily leaving her employment, and the Commission maintained its decision. The Commission argued that the Appellant voluntarily left her employment in August 2017 without just cause and should therefore be disqualified from receiving benefits. The Tribunal therefore asked the Commission to send it the file on the issue of the voluntary leaving without just cause so that the Tribunal could determine whether the voluntary leaving was justified.

[3] The Appellant admits that she voluntarily left her employment, but she maintains that this decision was justified by a bad work environment, by the fact that it was a part-time job, and by the fact that the employment was not suitable.

ISSUE

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

ANALYSIS

[5] The relevant statutory provisions appear in the annex of this decision.

[6] Claimants are disqualified from receiving benefits if they leave their employment voluntarily without just cause (section 30 of the Act). The test for just cause entails determining whether the Appellant had no reasonable alternative to leaving her employment.

[7] After working for the company X for a number of years, the Appellant lost her employment in October 2016 following a shortage of work. A few months later, the Appellant accepted part-time employment with Y. She voluntarily left that employment in August 2017. The Commission determined that the Appellant should be disqualified from receiving benefits because she left her employment with Y without just cause. The Appellant argues that she is not seeking payment of benefits in relation to her employment with Y and that, as a result, section 30 of the Act does not apply to her case. The Tribunal does not share this view.

[8] The Act defines “employment” as any employment of the claimant within their qualifying period or their benefit period (section 29(a) of the Act). In the Appellant’s case, she filed her initial claim for benefits on October 31, 2017. Her benefit period was retroactively established as starting on October 30, 2016, and remained valid until October 27, 2018. The Appellant voluntarily left her employment with Y on August 16, 2017. The Tribunal has therefore determined that the Appellant voluntarily left her employment during her benefit period. As a result, the Tribunal has determined that section 30 of the Act applies to the Appellant’s case because she voluntarily left her employment during her benefit period.

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

[9] The Appellant argued that her voluntary leaving was justified by the following circumstances: the employment with Y was not suitable, and the work environment was unpleasant. The Tribunal finds that the Appellant's voluntary leaving was not justified because the analysis of the circumstances reveals that she had reasonable alternatives to leaving her employment.

[10] The Appellant testified that, when she compares her employment with Y with her employment with X, the latter was better paid and full time and she had a managerial position, whereas she was a part-time teller at Y and was earning just \$15, the hourly rate. According to the Appellant, her employment with Y was not suitable employment within the meaning of the Act, and she had just cause to leave it. This argument cannot succeed because the Appellant accepted this part-time employment and could have kept it, but she instead decided to leave it voluntarily. Furthermore, the case law has established that the fact that, in the claimant's view, an employment is not sufficiently well paid cannot justify abandoning it (*Tanguay v Canada (Unemployment Insurance Commission)*, [1985] FCA).

[11] For the reasons mentioned above, the Tribunal finds that the Appellant had reasonable alternatives to voluntarily leaving her employment. The Appellant could very well have kept her employment while looking for new employment that suited her expectations better.

[12] The Appellant also argued that the work environment was unpleasant. She explained that she had no stimulation; her responsibilities were unclear; and there was no support, no encouragement, and no sharing of information about the challenges of the work. Furthermore, the managers who were working when she was hired were replaced a few days after she was hired. She added that she tried twice to schedule a meeting with a supervisor to discuss her professional development.

[13] The case law holds that claimants have an obligation to attempt to resolve workplace conflicts with an employer before taking a unilateral decision to quit a job (*White*, 2011 FCA 190; *Murugaiah*, 2008 FCA 10; *Hernandez*, 2007 FCA 320; *Campeau*, 2006 FCA 376). Furthermore, the Federal Court of Appeal holds that, to establish just cause, the claimant must

show that they had no reasonable alternative to leaving their employment when they did (*Landry*, A-1210-92). The Appellant testified that she voluntarily left her employment without taking certain steps to resolve her situation. Moreover, the Appellant worked at Y for seven weeks, therefore the Tribunal finds that the Appellant did not take enough time to integrate into her new work and her new tasks and did not discuss the situation with her employer. As a result, the Tribunal finds that the Appellant has not proven that her voluntary leaving was justified, having regard to the circumstances, because she had other reasonable alternatives at her disposal.

[14] The Appellant argues that she accumulated enough hours to be entitled to benefits because of her previous employment with X. As a result, the Appellant states that she is entitled to benefits. The Tribunal admits that the Appellant had accumulated about 2,093 hours of insurable employment during her employment with X. However, section 30(5) of the Act clearly states that, when a person voluntarily leaves their employment without just cause, the hours of insurable employment accumulated from any previous employment are excluded from the number of hours required to qualify for benefits.

[15] The Tribunal finds there is no provision in the Act that allows the Appellant to use the hours of insurable employment accumulated before she voluntarily left her employment. The Tribunal sympathizes with the Appellant. However, it is not within the Tribunal's jurisdiction or discretion to ignore the legislation as it is presently written or to change it.

CONCLUSION

[16] Considering the specific circumstances brought to its attention in this case, the Tribunal finds that the Appellant did not exhaust all reasonable alternatives before voluntarily leaving her employment. The Tribunal finds that the Appellant voluntarily left her employment without just cause, and her disqualification from receiving benefits is valid under section 30 of the Act.

[17] The appeal is dismissed.

Bernadette Syverin
Member, General Division – Employment Insurance Section

HEARD ON:	September 25, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. L., Appellant

ANNEX

THE LAW

Employment Insurance Act

7.1 (1) The number of hours that an insured person requires under section 7 to qualify for benefits is increased to the number set out in the following table in relation to the applicable regional rate of unemployment if the insured person accumulates one or more violations in the 260 weeks before making their initial claim for benefit.

TABLE / TABLEAU

Regional Rate of Unemployment / <i>Taux régional de chômage</i>	Violation			
	minor / <i>mineure</i>	serious / <i>grave</i>	very serious / <i>très grave</i>	subsequent / <i>subséquente</i>
6% and under / <i>6 % et moins</i>	875	1050	1225	1400
more than 6% but not more than 7% / <i>plus de 6 % mais au plus 7 %</i>	831	998	1164	1330
more than 7% but not more than 8% / <i>plus de 7 % mais au plus 8 %</i>	788	945	1103	1260
more than 8% but not more than 9% / <i>plus de 8 % mais au plus 9 %</i>	744	893	1041	1190
more than 9% but not more than 10% / <i>plus de 9 % mais au plus 10 %</i>	700	840	980	1120
more than 10% but not more than 11% / <i>plus de 10 % mais au plus 11 %</i>	656	788	919	1050
more than 11% but not more than 12% / <i>plus de 11 % mais au plus 12 %</i>	613	735	858	980
more than 12% but not more than 13% / <i>plus de 12 % mais au plus 13 %</i>	569	683	796	910
more than 13% / <i>plus de 13 %</i>	525	630	735	840

(2) [Repealed, 2016, c. 7, s. 210]

(2.1) A violation accumulated by an individual under section 152.07 is deemed to be a violation accumulated by the individual under this section on the day on which the notice of violation was given to the individual.

(3) A violation may not be taken into account under subsection (1) in more than two initial claims for benefits under this Act by an individual if the individual who accumulated the violation qualified for benefits in each of those two initial claims, taking into account subsection (1), subparagraph 152.07(1)(d)(ii) or regulations made under Part VIII, as the case may be.

(4) An insured person accumulates a violation if in any of the following circumstances the Commission issues a notice of violation to the person:

(a) one or more penalties are imposed on the person under section 38, 39, 41.1 or 65.1, as a result of acts or omissions mentioned in section 38, 39 or 65.1;

(b) the person is found guilty of one or more offences under section 135 or 136 as a result of acts or omissions mentioned in those sections; or

(c) the person is found guilty of one or more offences under the *Criminal Code* as a result of acts or omissions relating to the application of this Act.

(5) Except for violations for which a warning was imposed, each violation is classified as a minor, serious, very serious or subsequent violation as follows:

(a) if the value of the violation is

(i) less than \$1,000, it is a minor violation,

(ii) \$1,000 or more, but less than \$5,000, it is a serious violation, or

(iii) \$5,000 or more, it is a very serious violation; and

(b) if the notice of violation is issued within 260 weeks after the person accumulates another violation, it is a subsequent violation, even if the acts or omissions on which it is based occurred before the person accumulated the other violation.

(6) The value of a violation is the total of

(a) the amount of the overpayment of benefits resulting from the acts or omissions on which the violation is based, and

(b) if the claimant is disqualified or disentitled from receiving benefits, or the act or omission on which the violation is based relates to qualification requirements under section 7, the amount determined, subject to subsection (7), by multiplying the claimant's weekly rate of benefit by the average number of weeks of regular benefits, as determined under the regulations.

(7) The maximum amount to be determined under paragraph (6)(b) is the amount of benefits that could have been paid to the claimant if the claimant had not been disentitled or disqualified or had met the qualification requirements under section 7.

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.