



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *G. B. v Canada Employment Insurance Commission*, 2018 SST 1328

Tribunal File Number: GE-18-2721

BETWEEN:

G. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: November 5, 2018

DATE OF DECISION: November 5, 2018

DECISION

[1] The appeal is dismissed. The Tribunal finds the Appellant did not have just cause for voluntarily leaving his employment.

OVERVIEW

[2] The Appellant was a X at X, and he left his employment voluntarily on August 10, 2017. He stated that he did not like the work and that the employer was not offering him enough hours. He also indicated that he had obtained other employment with X. The Commission denied the Appellant's claim because it found that he did not have reasonable assurance of another employment when he left the employment he had and that he had reasonable alternatives to leaving his employment on June 10, 2017. The Tribunal must decide whether the Appellant had just cause for voluntarily leaving his employment.

ISSUES

[3] Did the Appellant have reasonable assurance of another employment in the immediate future when he left his employment on August 10, 2017?

[4] Did the Appellant have no reasonable alternative to leaving his employment?

ANALYSIS

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

Voluntary Leaving

[6] The Appellant admitted that he voluntarily left his employment at X on August 10, 2017. The Tribunal is of the view that the Commission met its burden of proof and finds that the Appellant voluntarily left his employment on August 10, 2017 (*Green*, 2012 FCA 313; *White*, 2011 FCA 190; *Patel*, 2010 FCA 95).

[7] Since the Commission has proven that the Appellant's leaving was voluntary, the Appellant must prove that he had good cause for voluntarily leaving his employment (*Green*, 2012 FCA 313; *White*, 2011 FCA 160; *Patel*, 2010 FCA 95).

Did the Appellant have reasonable assurance of another employment when he left his employment on August 10, 2017?

[8] The Appellant left his employment on August 10, 2017, and began his new employment on August 21, 2017. However, although the Appellant testified at the hearing that he had had contact with the employer, X, and an employee of that potential employer before August 10, 2017, the facts show that the Appellant obtained assurance of employment only after he had left his initial employment.

[9] The Commission maintains that not only was the Appellant not offered the employment before he left his initial employment, but also the employment he was offered would last three weeks. The employer, X, told the Commission that positions like X were rarely full time. It also told the Commission that it met with the Appellant the week before his employment began and that he was unemployed at that time. The Commission maintains that, for that reason, the Appellant knew that he was creating an unemployment situation by leaving his employment on August 10, 2017.

[10] At the hearing, the Appellant explained that he had left his employment during the morning of August 10, 2017, because he was not feeling well. He worked in a X centre, and the smell of the X bothered him. He explained that he did not like his work and that he wanted to improve his working conditions. He left his employment because he wanted to work in X, to improve his working conditions and find another employment with more hours.

[11] The Tribunal understands that the Appellant left employment that bothered him and which he did not like. However, the Tribunal must determine whether the Appellant had assurance of another employment in the immediate future when he left his employment on August 10, 2017. In that sense, the Tribunal clarifies that, even though the Appellant contacted the employer before August 10, 2017, and an employee informed him that a project was going to begin, the Appellant did not have assurance that he would obtain employment by this action. As

the employer X stated, it was only the week before his employment started, on August 21, 2017, that it met with the Appellant to offer him employment. It also confirmed for the Commission that the Appellant was already unemployed at that time.

[12] The Appellant left his employment during the morning of August 10, 2017, without warning the employer of his leaving, and he never returned to the employment. He left because the work was bothering him. Even though the Tribunal understands that the Appellant wanted to work and improve his conditions, it cannot find that he had reasonable assurance of another employment in the immediate future when he left his employment on August 10, 2017.

Did the Appellant have no reasonable alternative to leaving his employment?

[13] To receive Employment Insurance benefits, the Appellant has a responsibility to not create a situation of unemployment voluntarily and must show that he had no reasonable alternative to leaving his employment.

[14] The Appellant first told the Commission that he had left his employment because he did not like the work and the atmosphere. During the reconsideration of the decision, the Appellant stated that the employer was not offering him enough hours. During the hearing, he explained that he had on-call employment and that he worked two days a week on average. Admittedly, he left his employment because he wanted to improve his conditions, but he left his employment during the morning of August 10, 2017, because the smell of the X bothered him. The Appellant did not warn the employer that he was leaving that day or that he was leaving his employment.

[15] The employer, X, told the Commission that the Appellant had left his employment during the morning on August 10, 2017, that he informed no one of his leaving, and that he had not been heard from since. It also indicated that the Appellant might have been able to obtain a permanent position, given replacements and retirements of older co-workers.

[16] The Commission maintains that the Appellant had other alternatives to leaving his employment when he did. It maintains that the Appellant left the premises without informing the employer, although the employer still had work for him. Even though the Appellant stated that he did not feel well on the day that he left his employment, he did not speak to the employer

before or after leaving, although the employer would possibly have had a permanent position to offer him.

[17] The Tribunal finds that the Appellant had other alternatives before leaving his employment. He could have discussed the situation that was bothering him with the employer, and he could have asked the employer, X, for sick leave or a temporary leave.

[18] Furthermore, the Tribunal clarifies that claimants have, in most cases, an obligation to try to demonstrate efforts to seek alternative employment before taking a unilateral decision to leave their employment and, in that sense, the Appellant could have waited for reasonable assurance of another employment before leaving, especially since he hoped to obtain employment with X in the short term (*White*, [2011 FCA 190](#)).

[19] The Tribunal must apply the [Act](#) from the date the Appellant left his employment, on August 10, 2017. Even though the Tribunal understands that the Appellant found employment quickly after leaving the employment he had, he did not have assurance of another employment when he left. The Tribunal reiterates that insured persons must not provoke the risk of an unemployment situation or transform what was only a risk of unemployment into a certainty (*Langlois*, 2008 FCA 18 (CanLII); *Tanguay*, A-1458-84), and although it understands the Appellant's disappointment and the efforts he made to find employment, the Tribunal cannot exempt him from the [Act](#)'s application.

[20] Having regard to all the circumstances, the Tribunal finds that the Appellant did not have just cause for voluntarily leaving his employment on August 10, 2017, because deciding to leave his employment when he did was not the only reasonable alternative in this case (*Rena-Astronomo*, A-141-97; *Tanguay*, A-1458-84; *Peace*, [2004 FCA 56 \(CanLII\)](#); *Landry*, A-1210-92).

CONCLUSION

[21] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	November 5, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCE:	G. B., 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.