



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. N. v Canada Employment Insurance Commission*, 2018 SST 1182

Tribunal File Number: GE-18-2163

BETWEEN:

**S. N.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Glen Johnson

HEARD ON: November 8, 2018

DATE OF DECISION: November 8, 2018

## **DECISION**

[1] The appeal is dismissed.

[2] The Tribunal finds that the Appellant is disqualified from receiving EI benefits because she voluntarily left her employment without just cause when she did not like her job duties and her workload became too heavy; she had reasonable alternatives to leaving when she did.

## **OVERVIEW**

[3] The Appellant applied for regular employment insurance (EI) benefits after leaving her job as a retail store coordinator. She claims that she left because her employer insisted that she clean public washrooms, which she says was not in her job description and because her work load became too heavy for her.

[4] The Respondent determined that the Appellant was disqualified from receiving EI benefits because she voluntarily left her employment without just cause when she had reasonable alternatives to leaving having regard to all the circumstances.

## **ISSUES**

[5] Issue 1: Did the Appellant voluntarily leave her employment?

[6] Issue 2: If so, did the Appellant have just cause to voluntarily leave employment because she was to clean public washrooms and because her work load became too heavy for her?

## **ANALYSIS**

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

[8] A claimant is disqualified from receiving any EI benefits if they voluntarily left any employment without just cause (subsection 30(1) of the *Employment Insurance Act (EI Act)*).

[9] The Respondent has the burden of proof to show that the Appellant left voluntarily. The burden then shifts to the Appellant, who must demonstrate that, having regard to all the circumstances, on a balance of probabilities, there were no reasonable alternative to leaving (*Canada (Attorney General) v. White*, 2011 FCA 190).

**Issue 1: Did the Appellant voluntarily leave her employment?**

[10] The Tribunal finds that the Appellant voluntarily left her employment.

[11] The Appellant admits she left voluntarily because her employer insisted that she clean public washrooms, which she says was not in her job description and because her work load became too heavy for her. Her employer completed a Record of Employment which says that the reason the Appellant left her employment was “quit”.

[12] When determining whether the Appellant voluntarily left his employment, the question to be answered is: did the employee have a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56)?

[13] The Tribunal finds that the Appellant initiated the departure from employment. The Appellant had a choice to stay or leave.

**Issue #2: Did the Appellant have just cause to voluntarily leave employment because she was to clean public washrooms and because her work load became too heavy for her?**

[14] The Tribunal finds that the Appellant did not have just cause to voluntarily leave her employment.

[15] In order to establish just cause, the Appellant must show that, having regard to all the circumstances, on a balance of probabilities, there were no reasonable alternatives to leaving employment (*White*).

[16] Significant changes in work duties is listed under the non-exhaustive list of circumstances to be considered when determining whether there is just cause (*EI Act*, subparagraph 29(c)(ix)).

[17] The Tribunal finds that the Appellant has not established that there was a significant change to the Appellant's work duties.

[18] The Appellant decided to leave her employment because she did not wish to clean public washrooms as part of her job and because she felt that her work load was becoming too heavy.

[19] The Appellant claims that cleaning bathrooms was not discussed in her job interview as part of her duties. However, she said that she did clean bathrooms during her job orientation period. She said that she did not expect to have to clean washrooms and did not like it.

[20] The Appellant's employer said that cleaning washrooms was listed as a duty in her job description, such duties are covered in the job orientation and it is a part of all associates and management duties. She testified that she saw co-workers in her position cleaning public washrooms, which the Tribunal finds supports the employer's position that it was part of the job description for the Appellant as well.

[21] The job description listing washroom cleaning and the fact that the Appellant did clean washrooms during orientation supports that having to clean washrooms was not a significant change in her work duties.

[22] The Appellant submits that she quit her employment because her employment was completely different than her previous job and her new job “*didn’t suit me*” and the work load was very heavy.

[23] However, the Tribunal finds that the Appellant took no steps to resolve her issues with the employer before deciding to quit as the Appellant acknowledged in testimony.

[24] The Tribunal finds that the Appellant made a personal choice to leave work that she did not like and she found difficult. Although a personal choice may constitute good cause, it is not the same as just cause for leaving employment and causing others to bear the burden of the Appellant’s unemployment (*Canada (White; Tanguay v. Canada (Unemployment Insurance Commission)*, A-1458-84).

[25] Just cause is not the same as a good reason. The question is not whether it was reasonable for the Appellant to leave employment, but rather whether leaving employment was the only reasonable course of action open to her, having regard to all the circumstances (*Canada (Attorney General) v. Imran* 2008 FCA 17; *Canada (Attorney General) v. Laughland*, 2003 FCA 12).

[26] The Appellant had reasonable alternatives to leaving when she did.

[27] The Appellant did not ask the employer for a change in work duties or a transfer to a different location. The Tribunal finds that the Appellant reasonably could have continued working until she found another job. Remaining in employment until a new job is secured is generally a reasonable alternative to taking a unilateral decision to quit a job (*Canada (Attorney General) v. Graham* 2011 FCA 311).

[28] The Appellant found that she did not like her job which was becoming too difficult for her, but she left work before getting reasonable assurances of another job in the immediate future (subsection 29(c)(vi) of the *EI Act*). As in most cases the Appellant has an obligation to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job (*White*).

**CONCLUSION**

[29] The appeal is dismissed. The Tribunal finds that the Appellant has not proven just cause for voluntarily leaving her employment when there were reasonable alternatives to leaving having regard to all the circumstances and she is accordingly disqualified from receiving any benefits in accordance with sections 29 and 30 of the *Act*.

Glen Johnson

Member, General Division - Employment Insurance Section

HEARD ON:	November 8, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. N., 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.