



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. L. v Canada Employment Insurance Commission*, 2018 SST 1184

Tribunal File Number: GE-18-2803

BETWEEN:

D. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christopher Pike

HEARD ON: November 1, 2018

DATE OF DECISION: November 8, 2018

DECISION

[1] The Appellant has established just cause for voluntarily leaving her employment. The appeal is allowed.

OVERVIEW

[2] The Appellant is a native of Newfoundland and Labrador who resided in Alberta. She held casual employment as a X in a X setting in Alberta. She lived with her daughter. Differences arose between them and her daughter asked her to move out. While the Appellant's daughter did not set a deadline for her to leave, the Appellant felt her daughter expected her to leave as soon as possible.

[3] During this time, the Appellant was trying to reconcile with her common-law partner. They had been separated for two years. He was about to retire and return to Newfoundland and Labrador. The Appellant left her employment and returned to Newfoundland and Labrador with her common-law partner.

[4] The Commission determined that the Appellant had not established just cause for voluntarily leaving her employment.

ISSUE(S)

[5] I must determine whether the Appellant had just cause under the *Employment Insurance Act* (Act) to leave her employment in Alberta. I must therefore consider:

- a) whether the Appellant voluntarily left her employment,
- b) and if so, whether the circumstances relating to the Appellant's reconciliation with her common-law partner and their return to Newfoundland and Labrador show just cause to voluntarily leave her employment.

ANALYSIS

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

[7] The purpose of the Act is to provide benefits to individuals involuntarily separated from employment and who are without work.

[8] The Act disqualifies the Appellant from receiving employment insurance benefits if she voluntarily left her employment without just cause (Act, subsection 30(1)). The Commission must prove that the Appellant left her employment voluntarily. If it does so, the Appellant must then establish that she had just cause for leaving her employment by showing that it is more probable than not that she had no reasonable alternative to leaving having regard to all the circumstances (*Canada (Attorney General) v. White*, 2011 FCA 190).

Did the Appellant voluntarily leave her employment?

[9] The Appellant voluntarily left her employment if she had a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56). I must determine whether the Appellant chose to sever her employment relationship. The Commission must prove that the Appellant voluntarily left her employment (*Green v. Canada (Attorney General)*, 2012 FCA 313).

[10] The Appellant did not dispute that she chose to leave her employment in Alberta. I find that the Appellant made a choice to voluntarily leave her employment as set out in the Act and explained in *Peace*.

Did the Appellant have just cause to voluntarily leave her employment?

[11] The Appellant will establish just cause for voluntarily leaving her employment if she satisfies me that it is more probable than not, having regard to all of her circumstances, she had no reasonable alternative but to leave her employment when she did (*Astronomo v. The Attorney General of Canada*, A-141-97).

[12] Just cause is not established by showing a good reason for leaving one's employment. The question is not whether it was reasonable for the Appellant to leave her employment, but rather whether leaving her 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).

[13] The Act lists circumstances for me to consider when determining whether the Appellant had just cause (paragraph 29(c)). The list is not closed, so I must weigh all of the Appellant's

circumstances to determine whether she has established just cause (*Canada (Attorney General) v. White*, 2011 FCA 190).

[14] The Commission asserted that the Appellant left her employment without just cause. Specifically, it said that she had reasonable alternatives to returning to Newfoundland and Labrador after her daughter told her that she was no longer willing to share her home with the Appellant. The Commission also asserted that the Appellant and her common-law partner did not fit the definition of “common-law partner” set out in the Act (subsection 2(1)) and that she could therefore not avail of paragraph 29(c)(ii) of the Act.

[15] The first question I must consider is whether the Appellant and her partner are “common-law partners” as defined under subsection 2(1) of the Act. The definition has three elements:

- cohabitation
- in conjugal relationship
- for a period of at least one year.

[16] The Appellant and her partner are common-law partners as defined under subsection 2(1) of the Act.

[17] The Appellant testified that she and her partner started their relationship in 1980. They have two children. The Appellant also testified that she and her partner separated in 2016. She testified that her partner had a long-standing desire to reconcile with her. She also testified that she needed some time to heal from the events which caused their separation before she would consider reconciling. She testified that she agreed to reconcile with her common-law partner in May 2018 and to relocate to Newfoundland and Labrador with him in June 2018.

[18] This evidence shows that neither the Appellant nor her partner considered that their relationship ended when they agreed to separate in 2016. As long as neither of them considered their relationship ended, they may be considered as cohabiting, even if they did not live under the same roof (*Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65).

[19] This evidence also shows that the Appellant and her partner were in a conjugal relationship, because they had children from their union. A conjugal relationship is one “suitable

or appropriate to the married state or to married persons” (*Sanford v. The Queen*, [2001] 1 CTC 2272).

[20] As well, this evidence also shows that the Appellant and her partner’s relationship had existed for 38 years when she left her employment to return to Newfoundland and Labrador with him.

[21] I find that this evidence establishes that the Appellant and her partner are common-law partners as defined under subsection 2(1) of the Act.

[22] The Appellant must show that, having regard to all of her circumstances, including her obligation to follow her partner, she had no reasonable alternative to leaving her employment (*Tanguay v. Canada (Unemployment Insurance Commission)*, A-1458-84). I cannot, therefore, limit my assessment of her appeal to her obligation to relocate with her partner. In assessing her circumstances, I may only consider the Appellant’s circumstances at the time she left her employment (*Attorney General of Canada v. Lamonde*, A-566-04).

[23] The Appellant had just cause for voluntarily leaving her employment in Alberta.

[24] The Appellant testified that differences had arisen between her and her daughter during the spring of 2018 and her daughter was pressuring the Appellant to move out of her home. The Appellant testified that she searched for suitable alternative living arrangements but was unable to find an affordable option. Up to the time she and her partner made their decision to reconcile, she made some enquiries about employment in Newfoundland and Labrador but had made no applications for employment there. As well, she has investigated employment opportunities in Alberta which would accommodate her ulcerative colitis, but not found anything suitable. The Appellant suspended her efforts to find suitable accommodations or new employment in Alberta once she and her partner agreed to reconcile and relocate.

[25] Subparagraph 29(c)(ii) of the Act formally recognizes the importance of preserving the family unit between domestic partners when determining if the Appellant has just cause for leaving her employment (*Attorney General of Canada v. Kuntz*, A-1485-92). The Act does not require that the Appellant to have obtained employment in her intended new location before following her partner (*Attorney General (Canada) v. Mullin*, A-466-95).

[26] Considering these circumstances and considering that the Appellant was in a common-law relationship, I find that she was obliged to her to follow her common-law partner when he decided to retire and relocate to Newfoundland and Labrador. I therefore find that the Appellant had no reasonable alternative to leaving her employment on May 31, 2018.

CONCLUSION

[27] The appeal is allowed.

Christopher Pike
Member, General Division - Employment Insurance Section

HEARD ON:	November 1, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. L., Appellant

ANNEX

THE LAW

Employment Insurance Act

2(1) “common-law partner”, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

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.