



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: M. P. v Canada Employment Insurance Commission, 2018 SST 1315

Tribunal File Number: GE-18-1884

BETWEEN:

M. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Frenette

HEARD ON: November 7, 2018

DATE OF DECISION: November 15, 2018

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant worked in a bar and stopped working on September 9, 2017, because of his incarceration on September 13, 2017. The Appellant was released on November 23, 2017, under certain conditions, including that he not return to work for his employer before August 12, 2018.

[3] In the meantime, the Appellant found another job on December 4, 2017, but he stopped working on February 16, 2018, because of a shortage of work. On February 19, 2018, the Appellant filed an initial claim for regular Employment Insurance benefits. The Canada Employment Insurance Commission (Commission) denied the Appellant benefits because it considered that he had voluntarily taken a period of leave from his initial employment without just cause. The Tribunal must determine whether the Appellant is disentitled from receiving benefits, based on the terms of section 32 of the *Employment Insurance Act* (Act), for voluntarily taking a period of leave without just cause.

PRELIMINARY MATTERS

[4] The Appellant's accountant testified at the hearing.

ISSUES

[5] Have the conditions under sections 32(1)(a) and (b) of the Act regarding the employer's conduct been met?

[6] If so, did the Appellant? [*sic*]

ANALYSIS

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

[8] A claimant is disentitled from receiving benefits if they voluntarily take a period of leave without just cause. This period of leave must have been authorized by the employer, and the claimant and the employer must have agreed as to the day on which the claimant would return to work (section 32(1) of the Act).

Have the conditions under sections 32(1)(a) and (b) of the Act regarding the employer's conduct been met?

[9] The Tribunal is of the view that the Appellant took a period of leave under the conditions of sections 32(1)(a) and (b) of the Act regarding the employer's conduct.

[10] The evidence shows that the Appellant stopped working because of a sentence of incarceration that was scheduled to end on August 12, 2018. However, the Appellant was released on November 23, 2017, on the condition that he not return to his employment before the end of his sentence.

[11] The employer gave the Commission a letter to indicate that the Appellant was a good employee and that they intended to reinstate him to his job once his sentence of incarceration ended. Therefore, since the employer wanted to reinstate the Appellant to his job, they not only authorized the period of leave, but also agreed that the Appellant would return at the end of his incarceration.

[12] As a result, the Tribunal considers that two of the first disentitlement conditions for a period of leave without just cause have been met. These are the employer's authorization for the leave and an agreement on the day on which the claimant would resume employment (section 32 of the Act).

[13] The Tribunal will now examine whether the Appellant had just cause for voluntarily taking a period of leave.

If so, did the Appellant have just cause for voluntarily taking a period of leave?

[14] A person has just cause for taking a period of leave from their employment if they had no reasonable alternative to leaving, having regard to all the circumstances, including those listed in section 29(c) of the Act (*Green v Canada (Attorney General)*, 2012 FCA 313).

[15] The claimant has the burden of proving, based on the balance of probabilities, that they had just cause for leaving (*Chaoui v Canada (Attorney General)*, 2005 FCA 66; *Canada (Attorney General) v White*, 2011 FCA 190).

[16] The Tribunal must consider the appellant's conduct that led to their incarceration and to the loss of their employment to establish whether they had just cause to voluntarily leave or, in this case, to take leave (*Canada (Attorney General) v Djalabi*, 2013 FCA 213).

[17] Also, the conditions that are imposed for parole originate directly from the claimant's own actions (*Canada (Attorney General) v Lavallée*, 2003 FCA 255).

[18] The Appellant is of the view that his period of leave was the only reasonable alternative in his situation because, when he was released in November 2017, he wanted to return to his employer; yet, since the Appellant worked in a bar and the criminal charges that led to his incarceration were drug-related, his parole officer prohibited him from working in a bar before August 12, 2018.

[19] Furthermore, the Appellant's accountant argued that the situation was unfair for the Appellant because he was ready to return to his employer, but the parole officer prohibited him from doing so. The Appellant therefore did not have the choice of not returning to his employer.

[20] In the Commission's view, the Appellant's actions resulted in his temporary loss of employment because he was incarcerated and he could no longer meet an essential condition of his employment contract. In addition, the Commission is of the view that being incarcerated is not just cause for leaving one's employment under the Act.

[21] The Commission is of the view that the Appellant has not proven he had good cause for voluntarily taking a period of leave from his employment because he did not prove that he had exhausted all reasonable alternatives before leaving. After all, a reasonable alternative would have been not committing the offences that led to his incarceration.

[22] The Tribunal is of the view that the Appellant did not have just cause for taking a period of leave from his employment.

[23] The evidence shows that the Appellant could not be reinstated to his job because of the conditions of release resulting from his incarceration (*Djalabi, supra; Lavallée, supra*). Therefore, the Appellant took leave from his employer because of his own actions and not because of the parole officer's request.

[24] The Tribunal notes that the purpose of the Act is "to compensate persons whose employment has terminated involuntarily and who are without work" (*Canada (CEIC) v Gagnon*, [1988] 2 SCR 29). This is not the case in this appeal because the Appellant stopped working due to his conduct.

[25] In this way, the Appellant had a reasonable alternative: he could have not committed the acts that resulted in his incarceration and his not being able to resume his employment.

[26] The Appellant has not met his burden of proving that he had just cause to voluntarily take a period of leave (*Chaoui, supra; White, supra*). The disentitlement in section 32 of the Act therefore applies.

CONCLUSION

[27] The appeal is dismissed.

Catherine Frenette
Member, General Division – Employment Insurance Section

HEARD ON:	November 7, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. P., 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.

32 (1) A claimant who voluntarily takes a period of leave from their employment without just cause is not entitled to receive benefits if, before or after the beginning of the period of leave,

- (a) the period of leave was authorized by the employer; and
- (b) the claimant and the employer agreed as to the day on which the claimant would resume employment.

(2) The disentitlement lasts until the claimant

- (a) resumes the employment;
- (b) loses or voluntarily leaves the employment; or
- (c) after the beginning of the period of leave, accumulates with another employer the number of hours of insurable employment required by section 7 or 7.1 to qualify to receive benefits.