



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. P. v Canada Employment Insurance Commission*, 2018 SST 1362

Tribunal File Number: GE-18-2545

BETWEEN:

C. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: John Noonan

HEARD ON: November 2, 2018

DATE OF DECISION: November 15, 2018

[1] The Appellant, C. P., a former salesperson in NL, was upon reconsideration by the Commission, notified that having examined his claim, which became effective on April 15, 2018, they are unable to pay him Employment Insurance regular benefits starting April 15, 2018 because he voluntarily left his job with X on April 13, 2018 without just cause within the meaning of the Employment Insurance Act. The Commission is of the opinion that voluntarily leaving his job was not his only reasonable alternative. The Appellant asserts that he never quit this job but he was under an enormous pressure to accept the package offered him or risk layoff with no compensation when his employer was bought out by another company. The Tribunal must decide if the Appellant should be denied benefits due to his having voluntarily left his employment without just cause as per section 29 of the Act.

DECISION

[2] The appeal is allowed.

ISSUES

Issue # 1: Did the Appellant voluntarily leave his employment with X

Issue #2: If so, was there just cause?

ANALYSIS

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

[4] A claimant is disqualified from receiving EI benefits if the claimant voluntarily left any employment without just cause (Employment Insurance Act (Act), subsection 30(1)). 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 (Act, paragraph 29(c)).

[5] The Respondent has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Appellant to demonstrate he had just cause for leaving. To establish he

had just cause, the Appellant must demonstrate he had no reasonable alternative to leaving, having regard to all of the circumstances (**Canada (Attorney General) v. White, 2011 FCA 190; Canada (Attorney General) v. Imran, 2008 FCA 17**). The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

Issue #1: Did the Appellant voluntarily leave his employment X?

[6] Yes.

[7] When determining whether the Appellant voluntarily left her 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*)?

[8] Both parties agree the Appellant voluntarily left this employment with X on April 13, 2018.

[9] I find that the Appellant voluntarily left this employment.

Issue #2: If so, was there just cause?

[10] Yes.

[11] The Appellant here has expressed throughout his application and appeal process that he never intended to retire.

[12] Such indication on his ROE was an error, retirement was never discussed with his employer nor was it ever mentioned as an option for him to consider.

[13] Evidence in the file and offered at the hearing indicates that while the Appellant was on vacation, his employer sold the company to another firm. The former owner called the Appellant to inform him of the sale.

[14] When he, the Appellant, returned to work, the new employer, X, presented him with paperwork offering him severance pay if he opted to leave the company immediately. With the

merging of the two companies there were too many salespeople and managerial staff. The Appellant was told an immediate answer was expected (termination letter dated April 12, response required by April 13 – no mention of retirement in this document) or he could take his chances and face possible layoff in the very near future with no severance package.

[15] The Appellant was not given time to discuss the situation with his wife who was out of the country at the time.

[16] At his hearing he testified that feeling pressured he signed the documents and accepted the severance. Given that others were not made the same offer he could easily assume that when layoffs came, he would be one of the first to go therefore he accepted the chance for some degree of financial stability.

[17] The Appellant again stated that he was under a lot of pressure to sign and leave immediately.

[18] I find that the Appellant had no reasonable alternatives available to him other than leave his employment with X when he did. He was not given time to seek out other employment prior to his leaving nor was a leave of absence an option.

[19] The Appellant, at his hearing, described a situation that would have amounted to a coin toss, accept the severance offer immediately or take a chance of receiving nothing when facing a layoff in the near future.

[20] His leaving when he did meets (xiii) of the allowable reasons outlined in section 29 I of the Act.

[21] *"The claimant thus left his employment in the context of a workforce reduction scheme implemented by his employer designed to protect the jobs of other workers; this means that the claimant is entitled to Employment Insurance benefits because the incentive measure applied by the employer was intended to achieve a permanent reduction in the overall workforce."*

CUB 55173

[22] *The evidence shows that the claimant left voluntarily as part of a voluntary departure program, including separation pay, one of the objectives of which was to reduce the work force.*

The claimant's claim is upheld by the Board because his departure is covered by the conditions set out in sections 51(1) and 51(2) of the Regulations. The Commission felt that the claimant was not covered by these sections; they felt that the claimant created his own unemployment by deciding to retire because of the separation pay. The Umpire stated:

"In addition, an important factor in the application of the sections of the regulation in question was missing, e.g., we are not facing a work force reduction of which one of the consequences, confirmed by the employer, must be to protect another employee's position. According to the Commission, instead, we are looking at the case of a reduction in the number of employees by attrition." The evidence clearly shows that the Board was right in their decision. The appeal is dismissed. CUB 55778

CONCLUSION

[23] Having given careful consideration to all the circumstances, I find that the Appellant has proven on a balance of probabilities that he had no reasonable alternative to leaving his job, considering all of the circumstances. The question is not whether it was reasonable for the Appellant to leave his employment, but rather whether leaving the employment was the only reasonable course of action open to her (**Canada (Attorney General) v. Laughland, 2003 FCA 129**). Given the Appellant did voluntarily leave his employment, having regard to all the circumstances, I find he had no reasonable alternatives to leaving when he did and thus does meet the test for having just cause pursuant sections 29 and 30 of the Act. The appeal is allowed.

John Noonan

Member, General Division - Employment Insurance Section

HEARD ON:	November 2, 2018
METHOD OF PROCEEDING:	In person
APPEARANCES:	C. 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.

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.