Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *K. L. v Canada Employment Insurance Commission*, 2019 SST 191

Tribunal File Number: GE-18-3617

BETWEEN:

K. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: John Gillis

HEARD ON: January 2, 2019

DATE OF DECISION: January 5, 2019

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant took a leave of absence from his job as a X on August 30, 2018. The purpose of his leave of absence was to take a full-time college program to become a X. The Appellant applied for benefits. The Canada Employment Insurance Commission (Commission) determined that the Appellant had reasonable alternatives to taking a leave of absence and so disentitled him from receiving benefits. The Appellant requested a reconsideration and the Commission maintained its initial decision. The Appellant appealed to the Tribunal.

[3] The Tribunal finds that the Appellant had reasonable alternatives to taking a leave of absence from his employment and, as such, that he did not have just cause for voluntarily taking a leave of absence.

ISSUES

[4] The issues to be determined are:

Issue #1 – Did the Appellant voluntarily take a leave from his employment?

Issue #2 – If so, having regard to all of the circumstances, did the Appellant have any reasonable alternative to leaving his employment?

ANALYSIS

[5] A claimant can be disentitled from receiving employment insurance benefits if they voluntarily take a period of leave from their job without just cause. It is important to keep in mind that the purpose of employment insurance benefits is to compensate workers who involuntarily lost their jobs and are unable to find work (*Canada v. Gagnon* [1988] 2 SCR 29).

[6] A claimant who voluntarily takes a leave from their employment is not entitled to receive employment insurance benefits unless they can prove they had just cause for taking their leave (section 32(1) of the *Employment Insurance Act* (Act)). Just cause means, having regard to all

the circumstances, that the claimant had no reasonable alternative but to take their leave (section 29 of the Act). While the Commission bears the burden of proving that the claimant voluntarily took a leave from their job, the claimant must show that they had 'just cause' considering all of the circumstances (*Green v. Canada (A.G.)*, 2012 FCA 313).

Issue 1: Did the Appellant voluntarily take a leave from his employment?

[7] It is the Commission's position that the Appellant voluntarily took a leave from his employment on August 30, 2018. On the Appellant's August 31, 2018 application for employment insurance benefits he admitted that he was no longer working because he was taking a leave of absence (GD3-7). The Appellant's employer recorded on the Appellant's Record of Employment (GD3-15) that he was taking a leave of absence. The Appellant admitted to the Commission in his October 19, 2018 letter (GD3-22) that he had taken a voluntary leave of absence. The Appellant also testified that he took his leave voluntarily and that his supervisors approved of his leave. Further, the Appellant testified that he continues to work for his employer on a part-time basis. There is no evidence before the Tribunal to suggest that the Appellant did not have a choice to take a period of leave or remain working. Accordingly, the Tribunal finds that the Appellant voluntarily took a leave from his employment on August 30, 2018.

Issue 2: If so, having regard to all of the circumstances, did the Appellant have any reasonable alternative to leaving his employment?

[8] The Act disentitles a claimant from receiving benefits if he or she voluntarily took a period of leave from their employment without just cause. Just cause exists if the claimant had no reasonable alternative to leaving, having regard to all of the circumstances (sections 29 of the Act). Section 29(c) of the Act sets out a non-exhaustive list of circumstances for the Tribunal to consider when determining whether the Appellant had no reasonable alternative to taking a leave. The Federal Court of Appeal has set out that to determine if just cause exists, it "requires an examination of 'whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative'". (*Canada (A.G.) v. White*, 2011 FCA 190, at paragraph 3).

[9] While an employee may have, in their eyes, good reasons for taking leave from their employment, the Federal Court of Appeal has confirmed that "good cause is not the same thing as just cause" (*Canada (A.G.) v. Laughlin*, 2003 FCA 129, at paragraph 9).

[10] The Federal Court of Appeal has repeatedly said that leaving a job to pursue training is not just cause within the meaning of sections 29 of the Act (*Lakic v. Canada (A.G.)*, 2013 FCA 4).

[11] The Appellant testified that his supervisor's supervisor previously recommend that the Appellant return to college to train to become a X. He testified that he applied for entrance into the course and was place on the entrance wait list. The Appellant testified that in 2018 he was granted entrance into the college program. The full-time program, including class time and practical experience, is two and a half years long. The Appellant testified that upon learning of his acceptance to the program, he went to Service Canada and spoke with a Service Canada employee. The Appellant testified that the employee told him how to apply for employment insurance benefits and told him that he could now apply while he was working.

[12] The Appellant testified that in August of 2018, the Appellant returned to Service Canada and spoke with the same Service Canada employee. The Appellant testified that the employee suggested that the Appellant apply to a provincial financial assistance program. The Appellant testified that the employee advised him that he should be able to get employment insurance benefits without much trouble and that the Appellant's situation happens regularly. This coincides with the Appellant's previous statement to the Commission that he "was told that it was likely" that he would be entitled to benefits. The Appellant testified that he did not advise the employee that he may not be eligible for the provincial financial assistance program.

[13] The Appellant testified that, further to the recommendation of the Service Canada employee, he attended a seminar about the provincial financial assistance program. He testified that following the seminar he met with a provincial employment counselor who advised him that he would not be eligible for the program due to the length of his course and that he had previously been enrolled in a similar program. The Appellant testified that the provincial employment counselor told him that his ineligibility for the provincial financial assistance program should not hinder his changes at being entitled to employment insurance benefits.

[14] It is the Appellant's position that, as a result of his conversations with a Service Canada employee, he was lead to believe that he was likely to be entitled to benefits while he took his period of leave. In light of the Appellant's testimony, the Tribunal finds that the Appellant was not guaranteed that he would receive benefits at any time before he applied for benefits (and was subsequently denied). There is no evidence before the Tribunal that the Appellant was referred by the Commission or a designated authority to his course.

[15] The Appellant argues that the benefit of his obtaining a higher paying job that is in demand is of benefit to the government of Canada and should be considered by the Tribunal. The Supreme Court of Canada, in *Canada v. Gagnon* [1988] 2 SCR 29, set out the purpose of the employment insurance system. That purpose is to compensate workers who involuntarily lost their jobs. Considering the individual employee specific purpose of the system and the individual employee specific nature of the enumerated circumstances that must be considered pursuant to section 29(c) of the Act, the potential benefit to the government of Canada is not a relevant consideration in the Appellant's appeal.

[16] The Appellant's desire to upgrade his skills and increase his chances of securing a higher paying job is commendable. That said, the employment insurance program is not designed to contribute to such journeys of self-improvement. The Appellant's decision to take a leave of absence to seek additional education was a personal decision. Considering all of the circumstances, the Appellant did have reasonable alternatives to taking a leave of absence. The Appellant could have continued working as a X or could have sought the confirmation of the Commission's referral to the course before taking his leave. Considering the Appellant's personal decision to take a leave of absence from his job to go to a full-time course, the Tribunal finds that the Appellant had reasonable alternatives to taking a leave.

[17] Based on the evidence before it, the Tribunal finds that the Appellant voluntarily took a period of leave from his employment without just cause and is accordingly disentitled from receiving benefits in accordance with section 32 of the Act.

CONCLUSION

[18] The appeal is dismissed.

John Gillis

Member, General Division - Employment Insurance Section

HEARD ON:	January 2, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	K. L., Appellant E. A., Representative for the Appellant