



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. S. v Canada Employment Insurance Commission*, 2019 SST 225

Tribunal File Number: GE-18-3691

BETWEEN:

P. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: December 27, 2018

DATE OF DECISION: January 22, 2019

DECISION

[1] The appeal is dismissed. The Appellant has not proven that he had just cause for taking a leave of absence from his employment.

OVERVIEW

[2] The Appellant worked for X as a casual employee when he was laid off on August 10, 2018. The Appellant also worked part-time with X (“X” or “Employer”). On August 22, 2018, the Appellant took a leave of absence from his position with X in X to start his studies at the University of X in X.

[3] The Appellant made a request for regular employment insurance benefits with the Canada Employment Insurance Commission (“Commission” or “Respondent”). The Commission disqualified him from receiving benefits because it decided that the Appellant had voluntarily left his employment with X without just cause. Following a request for reconsideration, the Commission upheld its original decision. The Appellant has appealed this decision to the Tribunal.

PRELIMINARY MATTERS

[4] The Commission conceded the appeal regarding the Appellant’s *disqualification* that would have resulted from the Appellant voluntary leaving his employment without just cause, in accordance with section 30 of the *Employment Insurance Act* (“Act”). However, the Commission provided written arguments to support the position that the Appellant is *disentitled* from receiving benefits pursuant to section 32 of the Act for having voluntarily taken a leave of absence from his employment without just cause.

[5] Given that the Commission has conceded the reconsideration decision, the Tribunal will not make a determination on the reconsideration decision. The Tribunal, in accordance with its powers under section 54 (1) of the *Department of Employment and Social Development Act*, will give the decision that the Commission should have rendered.

ISSUES

[6] The Tribunal must determine the following questions:

- a) Did the Appellant voluntarily take a leave of absence from his employment with X?
- b) If yes, did the Appellant have just cause for voluntarily taking a leave of absence because he had no reasonable alternative having regard to all of the circumstances?

ANALYSIS

[7] The Act provides for situations where claimants will be *disqualified* from receiving benefits and other situations where claimants will be *disentitled* from receive benefits.

[8] If the claimant voluntarily leaves any employment during a qualifying period, without just cause, the claimant will be *disqualified* from receiving benefits (sections 29 and 30 of the Act). In these situations, claimants are precluded from receiving benefits as all insurable hours prior to the voluntary departure are not considered for employment insurance purposes.

[9] However, if a claimant voluntarily takes a leave of absence without just cause from his employment, the claimant will only be temporarily *disentitled* to receive benefits (section 32 of the Act), as opposed to being more permanently *disqualified*. Subsection 32(2) of the Act states that, depending on the case, the disentitlement lasts until the claimant resumes the employment; loses or voluntarily leaves the employment; or, after the beginning of the period of leave, if the claimant accumulates with another employer the number of hours of insurable employment required to file a new claim. A leave of absence under the Act exists when the period of leave was authorized by the employer and there is an agreement upon the day on which the claimant would resume employment.

[10] As such, determining the circumstances surrounding the Appellant's departure from employment is an essential starting point to the analysis of this matter.

Issue 1: Did the Appellant voluntarily take a leave of absence from his employment with X?

[11] The Tribunal finds that the Appellant voluntarily took a leave of absence from his employment with X.

[12] The Appellant testified that when he was laid off from Service New Brunswick, he worked additional hours at his part-time job at X until he left to start his Bachelor's degree at the X. The Appellant testified that he did not voluntarily leave his employment with X, but rather took a leave of absence. The Employer confirmed that the Appellant was on an approved leave of absence so that he could attend school in X.

[13] The record shows that the Employer and the Appellant had originally anticipated that the Appellant would return to work over the Christmas holidays. The Appellant informed the Tribunal that he did not return to X in December because X did not have hours available for him to work. The Appellant testified that he and the manager at X then agreed that he would return to work at X upon the completion of his first year of studies which is anticipated to be at the end of April 2019.

[14] The Tribunal finds that the Appellant voluntarily took a leave of absence from his employment at X. There is an agreement between X and the Appellant, whereby the Appellant is away from the workplace on an authorized leave. This arrangement is uncontested. Although the specific date when the Appellant will resume employment has not yet been established, the Appellant and the Employer have agreed on when the Appellant will resume employment – the end of April 2019. Given the context of the agreement between the Employer and the Appellant, the Tribunal does not find that the absence of a specific return to work date to be a fatal to the application of section 32 of the Act.

[15] Consequently, the Tribunal finds that the Commission has established, on the balance of probabilities, that the Appellant voluntarily took a leave of absence from his employment with X.

Issue 2: Did the Appellant have just cause for voluntarily taking a leave of absence because he had no reasonable alternative having regard to all of the circumstances?

[16] The Tribunal finds that the Appellant did not have just cause for voluntarily taking a leave of absence from his employment.

[17] To establish just cause for voluntarily taking a leave of absence from employment, a claimant must demonstrate, on the balance of probabilities, that he had no reasonable alternative to taking a leave of absence from his employment, having regard to all of the circumstances.

[18] A non-exhaustive list of circumstances for the Tribunal to consider when determining whether there is just cause is set out in paragraph 29(c) of the Act. However, a claimant who wishes to rely on paragraph 29(c) of the Act is not required to show that his situation falls within one of the circumstances expressly listed in the paragraph. A claimant can present evidence that having regard to all of the circumstances he had no reasonable alternative to taking a leave of absence from his employment (*Canada (Attorney General) v Lessard*, 2002 FCA 469).

[19] The Commission submitted that the Appellant did not have just cause for voluntarily taking a period of leave because he left his employment to attend school full-time without exploring other reasonable alternatives that were available to him.

[20] The Appellant testified that he had applied in the spring of 2018 to the University of X because he was aware that his full-time employment with X would end in the fall of 2018. The Appellant testified that he applied to the University to increase his chances of employment and to possibly return to X in a higher position within the Company.

[21] It is well established in the case law that leaving one's employment to undertake an education program does not constitute just cause, unless the individual has been referred to the training course by a designated authority of the Commission pursuant to section 25 of the Act (*Canada (Attorney General) v Côté*, 2006 FCA 219; *Canada (Attorney General) v Shaw*, 2002 FCA 325).

[22] The Appellant acknowledged that although his Employer provided him with the leave of absence from work, the leave was not authorized by the Commission or a designated authority.

[23] While the Tribunal commends the Appellant for returning to his studies and taking concrete steps towards self-improvement, this does not amount to just cause under the Act. As

such, the Tribunal finds the Appellant did not have just cause for taking a leave of absence from his employment.

[24] The Tribunal accepts that the Appellant genuinely felt that he was justified and had good reasons for arranging for a leave of absence. That said, there is a distinction between the concepts of “good reasons” and “just cause” for voluntarily taking a leave. The words “just cause” under the Act, are not synonymous with “reason” or “motive” (*Tanguay v Canada (Unemployment Insurance Commission)*, A- 1458-84). It is therefore not sufficient for the Appellant to demonstrate that he acted with good cause or for good reason when he took a leave of absence from the workplace. He must demonstrate that, after considering all of the circumstances, he had no reasonable alternative to leaving his employment (*McCarthy v. Canada (Unemployment Insurance Commission)*, A-600-93).

[25] The Appellant submitted that he had no alternative to taking the leave of absence because he had no choice but to relocate from X to X in order to attend school. However, the Appellant acknowledged that he did not search for alternate employment in X prior to moving because he did not feel that his schedule would allow him to work and study at the same time. The Appellant did not inquire about the possibility of transferring to a X store in X.

[26] The Tribunal finds that having regard to all of the circumstances, the Appellant has not proven, on a balance of probabilities, that he had just cause because he failed to exhaust all reasonable alternatives prior to taking the leave of absence. The Tribunal finds that it would have been reasonable for the Appellant to remain in his employment or to seek a transfer to another X location in X, rather than to place himself in a situation of unemployment.

[27] The Appellant’s decision to take a leave of absence amounts to a personal choice. It is contrary to the principles underlying the unemployment insurance regime for an employee to impose the economic burden of this personal choice on contributors to the fund (*Canada (Attorney General) v Beaulieu*, 2008 FCA 133; *Martel v (Canada (Attorney General)*, A-1691-92). In the present case, the Tribunal recognizes that the Appellant decided to return to school because he knew that he would be laid-off from his position with X in the fall of 2018. However, the Appellant’s departure on a leave of absence from his part-time employment with X triggered the disentitlement provisions in the Act and precludes him from receiving benefits during the

period of his leave because the Act requires that the Appellant show just cause of taking a leave of absence from any employment (even if that employment is part-time and the Appellant was previously laid off from his full time employment).

[28] Lastly, the Tribunal encourages the Appellant to contact his Employer to agree upon a definitive return to work date. Once this date has been determined, the Appellant is encouraged to inform the Commission, as soon as possible, of that date. This is important because the period of disentitlement lasts until one of the criteria in subsection 32(2) of the Act has been met, the date the Appellant resumes employment, being one of those criteria.

CONCLUSION

[29] The appeal is dismissed.

Christianna Scott
Member, General Division - Employment Insurance Section

HEARD ON:	December 27, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. S., Appellant