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

Citation: *K. B. v Canada Employment Insurance Commission*, 2019 SST 232

Tribunal File Number: GE-18-3499

BETWEEN:

K. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: January 10, 2019

DATE OF DECISION: January 30, 2019

DECISION

[1] The appeal is dismissed. The Claimant has not proven there were no reasonable alternatives to leaving her employment when she did.

OVERVIEW

[2] The Appellant (Claimant) held a permanent part-time job in a retail store when she quit to take up a temporary job prior to attending university. The Respondent, the Canada Employment Insurance Commission (Commission), disqualified the Claimant from receiving employment insurance (EI) benefits because it determined she voluntarily left her employment with the retail store without just cause. The Claimant requested a reconsideration of that decision and the Commission upheld its original decision. The Claimant appeals to the Social Security Tribunal (Tribunal).

PRELIMINARY MATTERS

[3] The Claimant requested a written questions and answers hearing as the method of proceeding to hear her appeal. The Tribunal determined that a teleconference hearing was the appropriate method of proceeding because of the complexity of the issues under appeal, the information in the file, including the need for additional information, the form of hearing respected the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit, and, it was the best method to clarify and receive evidence on the issues under appeal.

[4] Neither party to the appeal attended the teleconference hearing at the scheduled time, though they were duly notified. The Claimant notified the Tribunal on January 3, 2019, that she wished to cancel the hearing. The Tribunal staff requested clarification of her intent. The Claimant responded that she would not attend the hearing but still wished to receive a decision from the Tribunal.

[5] Based on the above, the Tribunal proceeded with the hearing in the absence of the parties, as allowed by subsection 12(1) of the *Social Security Tribunal Regulations*.

ISSUES

Issue 1: Did the Claimant voluntarily leave her employment with the retail store?

Issue 2: If so, did the Claimant have just cause to voluntarily leave her employment with the retail store when she did?

ANALYSIS

[6] The *Employment Insurance Act* (Act) provides that a claimant is disqualified from receiving any EI benefits if the claimant voluntarily left any employment without just cause (section 30(1)).

[7] The Commission has the burden to prove the leaving was voluntary, and once established, the burden shifts to the Claimant to demonstrate she had just cause for leaving. 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. The party with the burden must provide sufficient proof to satisfy the legal test.

Issue 1: Did the Claimant voluntarily leave her employment with the retail store?

[8] The Tribunal finds that the Claimant voluntarily left her employment. To determine whether the claimant voluntarily left employment the question to be answered is whether the claimant had a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56)?

[9] The Claimant told the Commission that she quit her employment with the retail store to take another employment. A representative of the retail store told the Commission the Claimant left that employment to take another job. The Record of Employment for the Claimant's retail store employment shows E – which is the code letter for Quit. As a result, the Tribunal finds that the Claimant had the choice to stay in or leave her employment and chose to leave her employment when she quit her employment with the retail store. Accordingly, the Tribunal finds the Claimant voluntarily left her employment.

Issue 2: Did the Claimant have just cause to voluntarily leave her employment with the retail store when she did?

[10] No, the Tribunal finds the Claimant did not have just cause to voluntarily leave her employment.

[11] To establish she had just cause to leave her employment, the claimant must demonstrate, on a balance of probabilities, she had no reasonable alternative to leaving her employment, having regard to all of the circumstances (*Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Imran*, 2008 FCA 17).

[12] 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 section 29(c) is not required to show that her situation falls within one of the circumstances expressly listed in that paragraph. A claimant can present evidence that "having regard to all the circumstances" she "has no reasonable alternative to leaving" (*Canada (Attorney General)* v. *Lessard* 2002 FCA 469).

Reasonable assurance of another employment in the immediate future

[13] Subparagraph 29(c)(vi) of the Act sets out, as a circumstance to be considered, "reasonable assurance of another employment in the immediate future."

[14] In her appeal to the Tribunal the Claimant wrote that she had a good reason for leaving her employment with the retail store. She had been offered a position with a municipal government as a X Camp Coordinator (Coordinator) that would give her experience in her future field of study which is Business Administration. The Coordinator position was guaranteed for 35 hours a week whereas she had been working an average of 10 to 15 hours a week with the retail store. She knew she was going to university at the end of the summer and needed the higher amount of guaranteed hours. She also wanted to save more money. The Claimant stated in her request for reconsideration that she knew the Coordinator position was to last until she left for university. The Claimant told the Commission the position was funded by the Student Employment Experience Development (SEED) program which provided a voucher to employers

to employ a person for 9 weeks. She worked at her retail employment during the first week that she worked in the Coordinator position while the retail store found her replacement.

[15] The Tribunal finds the Claimant did have a reasonable assurance of another employment in the immediate future. The words "reasonable assurance" in context and in their natural meaning imply some measureable form of guarantee. The use of the word "reasonable" has softened the more stringent meaning otherwise associated with the word "assurance": something short of a formal assurance may qualify as "reasonable assurance" (*Canada (Attorney General) v. Sacrey*, 2003 FCA 377). The Tribunal finds that the Claimant's employment as a Coordinator, overlapping as it did with her employment at the retail store, was a reasonable assurance of another employment in the immediate future.

[16] The question is not whether it was reasonable for the claimant to leave her employment, but rather whether leaving the employment was the only reasonable course of action open to her (*Canada (Attorney General) v. Laughland,* 2003 FCA 12).

[17] The Commission submitted that the Claimant did not have just cause for leaving her employment in the retail store because she failed to exhaust all reasonable alternatives prior to leaving. Considering all of the evidence, a reasonable alternative to leaving would have been to remain working until she had another full time permanent job to go to, she could have worked both jobs as the full time job was short term, or she could have asked for a leave of absence from her permanent job to go to work at the full time short term job. Consequently, the claimant failed to prove that she left her employment with just cause within the meaning of the Act.

[18] The circumstance of reasonable assurance of other employment in the immediate future is a circumstance that comes into being through the will of the claimant (*Canada (Attorney General) v. Langlois*, 2008 FCA 18). A claimant has the responsibility not to provoke a risk of unemployment or to transform what was only a risk of unemployment into a certainty (*Langlois, supra*). However, nothing in the legislation qualifies or restricts "another employment." In *Langlois* the Court suggested that the time when a claimant leaves permanent employment and the remaining duration of the seasonal employment are the most important factors to consider in determining whether leaving permanent employment was a reasonable alternative, and, accordingly, whether there was just cause for leaving. The Court said that just cause does not

exist if it is obvious the claimant will not accrue sufficient hours to qualify for EI benefits within the period of time expected to be worked in the seasonal job.

[19] The Claimant indicated to the Commission that the position was funded by a voucher for 9 weeks. A representative of the municipality that employed the Claimant as a Coordinator told the Commission that there was no expectation the Claimant's employment would continue beyond the 9 week voucher period. She could expect consistently 35 hours of work a week. As a result, the Tribunal finds the Claimant was aware that the Coordinator position would not continue beyond a 9 week period. Accordingly, the Tribunal finds that by accepting employment that was due to end in 9 weeks she guaranteed her employment at the end of the nine week period.

[20] To receive regular benefits a claimant must work the required minimum number of hours of insurable employment after voluntarily leaving an employment. The employer's representative for the Coordinator position told the Commission that the Claimant could expect to be employed for 35 hours a week for 9weeks, a maximum of 315 hours. However, 315 insurable hours, the maximum the Claimant could expect to work in the Coordinator position, is insufficient to qualify for regular EI benefits in every EI economic region for the applicable time period. As a result, the Tribunal finds that the duration of the Claimant's employment in the temporary Coordinator position would not result in her earning sufficient hours of insurable employment to establish a claim for employment insurance (EI) benefits. Accordingly, the Tribunal finds that leaving her permanent employment with the retail store was not the only reasonable alternative available to the Claimant. Consequently, the Tribunal finds the Claimant did not have just cause for leaving her employment with the retail store when she did.

[21] The Claimant wrote in her appeal to the Tribunal that the Coordinator position required that she also perform duties associated outside regular working hours. She was also required to spend a five 24 hour days on a wilderness hike with the program's participants. The Claimant told the Commission that she did not did not want to work part time at the retail store while working full time in the Coordinator position. The Tribunal finds that, on a balance of probabilities, continuing to work in the retail position is not a reasonable alternative in light of the amount of additional after hours work required in the Coordinator position.

[22] The Claimant told the Commission she did not consider asking for a leave of absence from her position at the retail store to take the Coordinator position because she was leaving her home province at the end of the summer to attend university at the end of the summer. The Tribunal finds that it would have been reasonable for the Claimant to make some effort to discuss a leave of absence with her retail employer to see if she could work full time at the Coordinator position. By not exhausting this reasonable alternative, the Tribunal finds that the Claimant has not proven there were no reasonable alternatives to leaving her employment when she did. As a result, the Tribunal finds the Claimant did not have just cause to leave her permanent employment at the retail store for temporary employment as a Coordinator.

Referral to training

[23] It is settled case law that leaving employment to go back to school or to take a training course is not just cause within the meaning of the Act unless the claimant has been authorized to do so by the Commission (*Canada (Attorney General) v. Lessard, 2002 FCA 469*).

[24] The Claimant told the Commission that she had been accepted to university while she was in high school. The Claimant stated in her appeal that she was approved through the NB-EI Connect Program for the training period from September 2, 2018, to April 27, 2019. The Commission recognized the Claimant had been referred to training and asked the Claimant if she was approved to quit her retail employment.

[25] The Tribunal notes the legislation does not require that a person be "approved to quit" their employment to be considered as unemployed and capable of and available for work during a period when a person is attending a course to which an authority that the Commission designates has referred the person. The Commission may have a policy that requires a person to obtain permission to quit before attending a referred training program, but that policy does not have legislative authority and cannot disqualify the Claimant for benefits that are provided for by the legislation.

[26] The Tribunal can only consider the circumstances that existed at the time the Appellant left his employment when determining whether just cause existed (*Canada (Attorney General) v.*

Lamonde, 2006 FCA 44).

[27] The evidence establishes the Claimant left her employment at the retail store to take the Coordinator position which she anticipated would end prior to her attending university. As a result, the Tribunal finds that the Claimant has not established that she left her employment at the retail job to return to school. Accordingly, the Tribunal finds the Claimant has not proven that she had just cause for leaving her employment in accordance with the case law described above.

The requirement for just cause

[28] There is a distinction between the concepts of "good cause" and "just cause" for voluntarily leaving. It is not sufficient for a claimant to prove they were reasonable in leaving their employment; reasonableness may be good cause but it is not just cause. It must be shown that, after considering all of the circumstances, the claimant had no reasonable alternative to leaving their employment (*McCarthy* A-600-93). The words "just cause" are not synonymous with "reason" or "motive" (*Tanguay v. Canada (Unemployment Insurance Commission*), A-1458-84).

[29] Although the Claimant may have felt he had a good reason to voluntarily leave his employment, a good reason is not necessarily sufficient to meet the test for "just cause" (*Laughland, supra*).

[30] While the Claimant provided evidence of what she believed were good reasons for leaving her employment at the retail store, the Tribunal finds that she failed to prove that she had no reasonable alternatives to leaving her employment when she did. As a result, having regards to all the circumstances, the Tribunal finds that, on a balance of probabilities, the Claimant's decision to leave her employment does not meet the test of just cause to voluntarily leave employment as required by the Act and case law described above.

CONCLUSION

[31] The appeal is dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	January 10, 2019
METHOD OF PROCEEDING:	Teleconference