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

[TRANSLATION]

Citation: R. N. v Canada Employment Insurance Commission, 2019 SST 239

Tribunal File Number: GE-18-3464

BETWEEN:

R. N.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: December 20, 2018

DATE OF DECISION: February 6, 2019

Canada

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant is an early childhood educator. She lived in Montréal and was employed by X. One day, her common-law partner of many years retired, and the couple decided to move to Sainte-Marie de Beauce to be closer to their family. They planned the following months accordingly and moved in late June 2018, after the school year. The Appellant was temporarily laid off as she was every year, and she went on vacation. After her vacation, she handed in her resignation to X on August 9, 2018. She had an interview the following week and obtained an early childhood educator position at X where she has worked ever since.

[3] The Employment Insurance Commission (Commission) found that the Appellant did not have just cause for voluntarily leaving her position at X because she had reasonable alternatives to leaving.

[4] The Appellant, in turn, submits that she had to leave her employment to follow her partner who wanted to be closer to his family. She also submits that she would not have left her position if she were not convinced that she would have employment for the next school year.

ISSUES

[5] The Tribunal must decide the following issues:

1. Did the Appellant have reasonable assurance of another employment in the immediate future?

2. Was the Appellant's voluntary leaving the only reasonable alternative in her circumstances?

ANALYSIS

[6] The overarching issue the Tribunal must analyze is whether the Appellant had just cause for leaving her employment according to the *Employment Insurance Act* (Act). Generally, a person who leaves their employment voluntarily is disqualified from Employment Insurance benefits (section 30 of the EI Act). The Tribunal acknowledges that sometimes a person may have just cause for voluntarily leaving their employment and be entitled to Employment Insurance benefits. The onus is on the person to establish this.

[7] Section 29(c) of the Act contains a non-exhaustive list of circumstances that may justify a person voluntarily leaving their employment. I considered the Appellant's reasons for leaving in my analysis by answering the following questions:

Issue 1: Did the Appellant have reasonable assurance of another employment in the immediate future?

[8] The circumstances that give a person just cause for leaving their employment include, in section 29(c)(vi) of the Act, a situation where a person leaves their employment when they have reasonable assurance of another employment in the immediate future.

[9] For the reasons that follow, I find that the Appellant satisfied the conditions in section 29(c)(vi) and had reasonable assurance of another employment in the immediate future. I therefore find that her leaving was justified.

[10] At first, the Appellant told the Commission that she had left her employment to follow her partner of many years, who wanted to move to be closer to his grandchildren. The Appellant has always maintained that version of the facts. She and her partner have lived together for 14 years and have 3 children. Her partner retired and, during the 2017 holidays while the couple was living in Montréal, the family decided that the couple would move closer to the rest of the family, including the Appellant's mother, her grandchildren, and her partner's sisters, who all lived in Sainte-Marie en Beauce.

[11] I note that the Act states in section 29(c)(ii) that a person may have just cause for leaving their employment because of an "obligation to accompany a spouse, common-law partner or

dependent child to another residence." According to the evidence in this case, I find however that this provision does not apply to the Appellant. Hers was not a case of obligation. Instead, I find based on the evidence that the decision to move was a personal decision that the couple made together for their own personal reasons. However, the Employment Insurance program cannot support the costs of appellants' personal choices, as admirable as they may be (*Gagnon*, A-1059-84; *Astronomo*, A-141-97; *Martel*, A-1691-92; *Campeau*, 2006 FCA 376).

[12] Regardless, I find based on the evidence that the Appellant diligently took precautions and did not deliberately cause the risk of unemployment. The X as an early childhood educator. For the last three years, she held a regular, but not permanent, position. The Appellant finished the school year and found herself laid off as she was each year for the school break. The Appellant and her partner moved in late June, but the Appellant did not hand in her resignation to CSDM at that time. The employer issued her Record of Employment as it did each year, without recording that she had left. I accept the Appellant's testimony explaining that she had stated that she had resigned in her claim for benefits because she believed she was entitled as a result of following her partner but that her resignation actually occurred on August 9, 2018, and not at the end of the school year in June. Instead, the Appellant made sustained efforts to find employment before handing in her resignation. Furthermore, she indicated that, at the beginning of the summer, she had signed to keep her position at X for the 2018–2019 school year because she did not want to find herself unemployed and would have made every effort to begin the school year in Montréal, if it had proved necessary, while waiting to find employment in Beauce.

[13] Moreover, the Appellant indicated that she made efforts starting in July 2018 to find employment with school boards closer to Beauce. She sent her resumé to two school boards and attended an information session in Lévis on July 3, 2018, to find out about positions that would be available. The Appellant explained in her testimony that early childhood educator positions are allocated according to a gradual process starting at the end of classes in June; that she was familiar with the process; and that, in July, she could have a very good idea about employment opportunities in her field by talking to the right people and going to the right place. At the meeting in Lévis on July 3, she met a daycare worker who told her that they still needed an educator. She also contacted the human resources departments of two school boards to which she

sent her resumé, which both told her they were still looking for early childhood educators. With summer passing, the Appellant knew that the deadlines by which educators must accept or turn down their positions was approaching and that would help her to know more concretely where the available positions were. Gradually, she also saw on the school boards' websites that positions were available.

[14] The Appellant handed in her resignation on August 9, 2018. She submits that she did so after her vacation to free up her position for someone else out of courtesy. She had an interview scheduled for August 16 with X and submits that she was certain she would find employment after all her discussions and efforts. After her interview, the Appellant did indeed have a position and started working on August 21, 2018, as an early childhood educator. I accept the Appellant's statement that she would not have let her position go if she had doubts about her chances of working in the short term.

[15] The Federal Court of Appeal has reiterated the principle that persons insured by the Employment Insurance program must not cause the risk or certainty of unemployment. I acknowledge that "a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur" (*Tanguay*, A-1458-84). I find that the Appellant's conduct shows that she acted in accordance with the Act by satisfying her obligations and not placing herself deliberately in an unemployment situation after her move. I note from the evidence that the Appellant instead took precautions by looking for another position while keeping her position in Montréal specifically so that she would not find herself unemployed. I give significant weight to the fact that the Appellant resigned in August instead of in June, and I find that this shows her respect for her obligations.

[16] The Commission submits that the Appellant had no promise of employment when she handed in her resignation to CSDM and that she therefore did not have just cause for handing in her resignation on August 9, 2018. I note that the Appellant admitted that she did not have a firm promise of employment on August 9, 2018. However, the question here is not whether the Appellant had a promise of employment but whether she had reasonable assurance of another employment in the immediate future.

[17] I find that not having a formal promise did not prevent the Appellant from having reasonable assurance of another employment in the immediate future. I give significant weight to the Appellant's testimony, which was logical, clear, and coherent during the hearing. Her detailed explanations of the position-allocation system in her field of early childhood education adds to the Appellant's credibility and were convincing for determining that she had every reason to believe that she would obtain a position for the beginning of the school year in late August 2018. The facts following her resignation confirm her reasonable assurance. She did indeed have an educator position and started working in early childhood education a few days after her resignation, on August 21, 2018. The Appellant works for X to this day, sometimes even overtime.

[18] I am of the view that an overly strict interpretation of section 29(c)(vi) of the Act would be an error. I find that if Parliament's intention had been for a person to have a formal promise of employment, it would have written the provision differently. I find that the reasonable assurance of another employment in the immediate future categorically corresponds to the Appellant's situation.

[19] I accept the Appellant's testimony that she had enough verbal confirmations from credible sources to reasonably believe that she was assured employment. Consequently, I find that the Appellant met the requirements of section 29(c)(vi) of the Act and that her voluntary leaving was justified.

Issue 2: Was the Appellant's voluntary leaving the only reasonable alternative in her circumstances?

[20] Generally, for just cause for leaving employment to exist, a person must not only show that they left because of exceptions stated in section 29(c) of the Act, but they must also show that, having regard to all the circumstances, they had no reasonable alternative to leaving (*Patel*, 2010 CAF 95 (*Patel*); *Bell*, A-450-95; *Landry*, A-1210-92). In fact, Judge Letourneau noted in the *Hernandez* decision that, along with the exceptions cited in section 29 of the Act, a decision-maker must consider whether voluntarily leaving their employment was a person's only reasonable alternative and that failing to do so constitutes an error of law (*Hernandez*, 2007 FCA 320).

[21] However, I find that the notion of "only reasonable alternative" does not apply to a person who leaves their employment with reasonable assurance of another employment. The reason for this exception is simply because it is difficult, if not impossible, to contend or conclude that a person who voluntarily leaves employment to occupy different employment is doing so necessarily because leaving is the only reasonable alternative in their case, which the Federal Court of Appeal acknowledged (*Marier*, 2013 FCA 39; *Langlois*, 2008 FCA 18; *Campeau*, 2006 FCA 376).

[22] Since I have found that the Appellant had reasonable assurance of another employment in the immediate future, I will not address the notion of "only reasonable alternative."

CONCLUSION

[23] The appeal is allowed.

Lucie Leduc
Member, General Division – Employment Insurance Section

HEARD ON:	December 20, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. N., Appellant