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

Citation: *S. M. v Canada Employment Insurance Commission*, 2019 SST 241

Tribunal File Number: GE-18-3842

BETWEEN:

S. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: February 7, 2019

DATE OF DECISION: February 7, 2019

DECISION

[1] The appeal is allowed. The Tribunal finds that the Appellant is not disqualified from receiving employment insurance (EI) benefits. She voluntarily left her employment, but with just cause. Her employer unilaterally and significantly changed her work duties by changing her work hours from a flexible schedule to set work hours schedule and she had no reasonable alternative to leaving when she did.

OVERVIEW

[2] The Appellant applied for regular EI benefits. The Respondent determined that she is disqualified from receiving EI benefits because she voluntarily left her employment as a X without just cause when she had reasonable alternatives to leaving in the circumstances or she was dismissed for misconduct in failing to adhere to her employer's new work hours' schedule.

[3] The Appellant claims that she separated from employment due to her employer unilaterally and significantly changing her work duties by changing her work hours from a flexible schedule to a set work hours' schedule which she was unable to agree to given child care issues. She claims that the imposition of a new work hours schedule placed undue pressure upon her to leave her employment.

[4] The Appellant's employer claims that she was given several months' notice of an impending change to a set work hour schedule, yet she would not agree to adhere to the new schedule and they were forced to dismiss her from employment.

ISSUES

[5] Issue 1: Did the Appellant voluntarily leave employment when the employer changed her work duties by changing her work hours from a flexible schedule to a set work hour's schedule?

[6] Issue 2: If so, did the Appellant have just cause to voluntarily leave her employment?

ANALYSIS

[7] A claimant is disqualified from receiving any EI benefits if they voluntarily left any employment without just cause (subsection 30(1) of the *Employment Insurance Act* (*EI Act*)).

[8] The Respondent has the burden of proof to show that the Appellant left voluntarily. The burden then shifts to the Appellant, who must demonstrate that, having regard to all the circumstances, on a balance of probabilities, there were no reasonable alternative to leaving (*Canada (Attorney General) v. White*, 2011 FCA 190).

Issue 1: Did the Appellant voluntarily leave employment when the employer the employer changed her work duties by changing her work hours from a flexible schedule to a set work hour's schedule?

[9] The Tribunal finds that the Appellant voluntarily left employment.

[10] 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)?

[11] The Tribunal finds that the Appellant initiated the departure from employment because of her employer's unilaterally change to her work duties by changing her work hours from a flexible schedule to a set work hour's schedule. She refused to adhere to the work schedule change which resulted in her employer giving her a 2 week notice termination letter. She had a choice to stay or leave (*Peace*).

Issue 2: If so, did the Appellant have just cause to voluntarily leave her employment?

[12] The Tribunal finds the Appellant had just cause to voluntarily leave employment because her employer unilaterally and significantly changing her work duties by changing her work hours from a flexible schedule to a set work hours' schedule.

[13] In order to establish just cause, the Appellant must show that, having regard to all the circumstances, on a balance of probabilities, there were no reasonable alternatives to leaving employment (*White).*

[14] Significant changes pressure by an employer on the claimant to leave their employment and significant changes in work duties are listed under the non-exhaustive list of circumstances to be considered when determining whether there is just cause (*EI Act*, subparagraph 29(c)(xiii) and (ix)).

[15] The Appellant was hired on a flexible work hour basis in March 2016, where she would send the then CEO of the employer a proposed schedule of work hours for the following month amounting to about 24 hours per week. However, with the hiring of a new CEO in early 2018, the employer discussed with the Appellant an impending unilateral change. The Appellant testified that there was only a casual discussion of future intentions to have a set work hour schedule for her without any documents to confirm any details.

[16] The Tribunal finds that the Appellant had just cause to voluntarily leave employment. The employer unilaterally and significantly changed her work duties by changing her work hours from a flexible schedule to a set work hours' schedule in September 2018. The conduct of the employer amounts to undue pressure on the Appellant by her employer to leave employment (subparagraph 29(c)(ix) and (xiii) of the *EI Act*).

[17] The Respondent submits that the unilateral change to the Appellant's work schedule was not significant and the employer was enforcing the same terms and conditions that had been set upon other employees and the Appellant could have made alternate child care arrangements because she was given several months' notice of the impending work schedule change.

[18] However, the Tribunal finds that the employer did make a significant and unilateral change to the work schedule upon which she accepted the employment in 2016. The new work schedule conflicted significantly with the Appellant's child care schedule. The employer did not give the Appellant specific notice and details of work schedule changes

several months in advance. The employer had casual discussions with the Appellant in March 2018 before imposing the sudden changes to her work schedule.

[19] The Tribunal finds that the Appellant made a personal choice to leave work because the new work hours schedule was not workable for her due to child care issues so she failed to adhere to the new schedule. She testified that she needed more time to make satisfactory arrangements for childcare, but her employer denied her the time.

[20] Although a personal choice may constitute good cause, it is not the same as just cause for leaving employment and causing others to bear the burden of the Appellant's unemployment (Canada (*White*; *Tanguay v. Canada (Unemployment Insurance Commission)*, A-1458- 84).

[21] Just cause is not the same as a good reason. The question is not whether it was reasonable for the Appellant to leave employment, but rather whether leaving employment was the only reasonable course of action open to her, having regard to all the circumstances (*Canada (Attorney General) v. Imran* 2008 FCA 17; *Canada (Attorney General) v. Laughland*, 2003 FCA 12).

[22] The Appellant did not have reasonable alternatives to leaving when she did, having regard to all the circumstances.

[23] The Tribunal finds that it is not a reasonable alternative for the Appellant to be expected to take on a significant modification in work duties in order to stay in her employment when the employer was well aware of the restrictions she had due to child care issues.

CONCLUSION

[24] The appeal is allowed. The Tribunal finds that the Appellant has proven just cause for voluntarily leaving her employment when there were no reasonable alternatives to leaving having regard to all the circumstances and she is accordingly not disqualified from receiving EI benefits in accordance with sections 29 and 30 of the *EI Act.*

Glen Johnson

Member, General Division - Employment Insurance Section

HEARD ON:	February 7, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. M., Appellant