



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. L. v Canada Employment Insurance Commission*, 2019 SST 247

Tribunal File Number: GE-18-3584

BETWEEN:

D. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: February 14, 2019

DATE OF DECISION: February 14, 2019

DECISION

[1] The appeal is dismissed.

[2] The Tribunal finds that the Appellant is disqualified from receiving EI benefits because she voluntarily left her employment without just cause when requests for more job responsibilities and salary were not accepted by her employer; she had reasonable alternatives to leaving when she did.

OVERVIEW

[3] The Appellant applied for regular employment insurance (EI) benefits after separating from her employment as an assistant case manager at a law office. She claims that she was hired with the expectation of being given increasing levels of responsibility and increased salary and after a couple months that did not happen despite her request of the employer to do so.

[4] The Appellant claims that she did not voluntarily leave her employment and instead it was the employer who ended her employment.

[5] The employer claims that the Appellant requested increasing levels of responsibility and increased salary and when they told her that they were not prepared to accede to her request, she said "*I can't stay here*".

[6] The Respondent determined that the Appellant was disqualified from receiving EI benefits because she voluntarily left her employment without just cause when she had reasonable alternatives to leaving having regard to all the circumstances.

ISSUES

[7] Issue 1: Did the Appellant voluntarily leave her employment?

[8] Issue 2: If so, did the Appellant have just cause to voluntarily leave employment because her expectation of increased job responsibilities and salary was not met?

ANALYSIS

[9] 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)*).

[10] 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 her employment?

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

[12] 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)?

[13] The Appellant initially admitted in her EI application that she left voluntarily because she was hired with the expectation of being given increasing levels of responsibility and increased salary and after a couple months that did not happen despite her request of the employer to do so; however, she later told the Respondent that since the employer did not accept her demands for increased responsibilities and salary or her request for part-time work they “*let me go*” and she did not quit her employment.

[14] The Appellant’s law office employer said that “*She wanted a big raise that I couldn’t match. She said I have to get more money or I can’t stay*”.

[15] The Tribunal is skeptical of the Appellant's credibility. She has provided contradictory statements, and responses that are not plausible, to the Respondent and to the Tribunal.

[16] In her application for EI benefits, the Appellant said that she quit her employment since her request for increasing levels of responsibility and increased salary was not met. However, she changed her claim when speaking with the Respondent that her "*employer didn't give me an option to stay*". The Tribunal does not accept her testimony as plausible that she indicated "*quit*" in her application because she was confused.

[17] The Tribunal finds that the Appellant could have continued with her employment if her demand for increasing levels of responsibility and increased salary had not been raised with her employer.

[18] The Tribunal finds that she gave contradictory responses in her testimony when asked whether she could have continued with her employment if her request for increasing levels of responsibility and increased salary had not been raised with her employer. She first said that her employment could have continued at the responsibility level and salary below her expectations; later she testified that she did not know if her employment could have continued.

[19] The Tribunal finds that the Appellant's testimony and filed information does not support or corroborate her claim that she did not voluntarily leave her employment.

[20] The Tribunal finds that her testimony that she did not know that she was entitled to notice of termination or pay in lieu of notice is not plausible.

[21] In testimony the Appellant admits that she did not receive notice of termination from her employment or pay in lieu of notice. She said that she did not request either from her employer nor was she aware of a possible entitlement to either, despite working at a law office as assistant case manager.

[22] The Appellant claims that there was an email from the employer in regard to her departure from employment, however there is no filed documentary information from her employer to her to support that her employer discussed the circumstances of her departure, such as a letter of termination.

[23] The Record of Employment (ROE) completed by the employer indicates the reason for issuing the ROE was “*other*” and “*cannot match salary expectations*”. It does not say “*dismissed*”, “*laid-off*” or “*shortage of work*”.

[24] The Tribunal finds that the Appellant initiated the departure from employment. The Appellant had a choice to stay or leave (*Peace*). Her employment would have continued if she had not demanded increasing levels of responsibility and increased salary.

Issue 2: If so, did the Appellant have just cause to voluntarily leave employment because her expectation of increased job responsibilities and salary was not met?

[25] The Tribunal finds that the Appellant did not have just cause to voluntarily leave her employment.

[26] 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*).

[27] Significant changes in work duties is listed under the non-exhaustive list of circumstances to be considered when determining whether there is just cause (*EI Act*, subparagraph 29(c)(ix)).

[28] The Tribunal finds that the Appellant has not established that there was a significant change to her work duties.

[29] The Appellant claims that she was promised increasing responsibilities and salary would occur not long after being hired, however, there is no documentary information to

support her claim, such as an employment contract or emails between her and her employer.

[30] The Appellant decided to leave her employment because she was hired with the expectation of being given increasing levels of responsibility and increased salary and after a couple months that did not happen despite her request of the employer to do so and as a consequence she made the decision to leave her employment.

[31] The employer said that the Appellant left her employment after she stated to them that she had to get more money, approximately \$20,000 per year more, or she could not stay working there.

[32] The Tribunal finds that the Appellant had reasonable alternatives to leaving her employment when she did.

[33] The Tribunal finds that the Appellant made a personal choice to leave work that he was no longer comfortable at. 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).

[34] 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).

[35] In testimony the Appellant admits that she did not secure alternate employment before departing from her employment. The Tribunal finds that the Appellant reasonably could have continued working until she found another job. Remaining in employment

until a new job is secured is generally a reasonable alternative to taking a unilateral decision to quit a job (*Canada (Attorney General) v. Graham 2011 FCA 311*).

[36] The Appellant found that her expectation of being given increasing levels of responsibility and increased salary were not met after a couple months of employment. When she was not successful despite her request of the employer to do so she decided to voluntarily leave work, but she left work before getting reasonable assurances of another job in the immediate future (subsection 29(c)(vi) of the *EI Act*). As in most cases the Appellant has an obligation to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job (*White*).

CONCLUSION

[37] The appeal is dismissed. The Tribunal finds that the Appellant has not proven just cause for voluntarily leaving her employment when there were reasonable alternatives to leaving having regard to all the circumstances and she is accordingly disqualified from receiving any benefits in accordance with sections 29 and 30 of the *Act*.

Glen Johnson

Member, General Division - Employment Insurance Section

HEARD ON:	February 14, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. L., Appellant