



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. H. v Canada Employment Insurance Commission*, 2019 SST 252

Tribunal File Number: GE-19-246

BETWEEN:

**K. H.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: John Gillis

HEARD ON: February 7, 2019

DATE OF DECISION: February 19, 2019

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The employed Appellant applied for entrance into a university program and was told she was on the waitlist for the program. The Appellant met with a provincial employment counsellor about a possible referral to her program for the purposes of employment insurance benefits. As the Appellant had not yet been accepted into her program she did not submit a formal application for a referral to her program.

[3] On the very day the university program was to start, the Appellant was advised that she had been accepted into the program. The Appellant immediately quit her job to begin her studies. The Appellant then submitted a formal application for a referral to her program from her employment counsellor. Eventually, the Appellant was granted a referral to her program for the purposes of employment insurance benefits.

[4] The Appellant applied for benefits. The Canada Employment Insurance Commission (Commission) determined that the Appellant had reasonable alternatives to voluntarily leaving her employment and denied her benefits. The Appellant requested a reconsideration and the Commission maintained its initial decision. The Appellant appealed to the Tribunal.

[5] The Tribunal finds that the Appellant had reasonable alternatives to voluntarily leaving her employment and, as such, that she did not have just cause for voluntarily leaving her employment when she did.

## **ISSUES**

[6] The issues to be determined are:

Issue #1 – Did the Appellant voluntarily leave her employment?

Issue #2 – If so, having regard to all of the circumstances, did the Appellant have any reasonable alternative to leaving her employment?

## ANALYSIS

[7] A claimant can be disqualified from receiving employment insurance benefits if they voluntarily leave their job without just cause. It is important to keep in mind that the purpose of employment insurance benefits is to compensate workers who involuntarily lost their jobs and are unable to work (*Canada v. Gagnon* [1988] 2 SCR 29).

[8] A claimant who voluntarily leaves a job is disqualified from receiving employment insurance benefits unless they can prove they had just cause for leaving (subsection 30(1) of the *Employment Insurance Act* (Act)). Just cause means that, having regard to all the circumstances, the claimant had no reasonable alternative but to leave their employment (section 29 of the Act). While the Commission has the burden of proving that the claimant voluntarily left their job, the claimant must show that they had ‘just cause’ considering all of the circumstances (*Green v. Canada (A.G.)*, 2012 FCA 313).

### **Issue 1: Did the Appellant voluntarily leave her employment?**

[9] It is the Commission’s position that the Appellant voluntarily left her employment on September 4, 2018. The Appellant’s employer recorded that the Appellant quit on her Record of Employment (GD3-18). The employer advised the Commission that the Appellant quit to return to school (GD3-29). Although the Appellant’s application for benefits stated that she was no longer working because of a shortage of work (GD3-9), the Appellant’s Notice of Appeal states that she resigned to attend school (GD2-3), and the Appellant testified that she voluntarily left her employment. There is no evidence before the Tribunal to suggest that the Appellant did not have the choice to quit or remain working. Accordingly, the Tribunal finds that the Appellant voluntarily left her employment on September 4, 2018.

### **Issue 2: Having regard to all of the circumstances, did the Appellant have any reasonable alternative to leaving her employment?**

[10] The Act disqualifies a claimant from receiving benefits if he or she voluntarily left any employment without just cause. Just cause exists if the claimant had no reasonable alternative to leaving, having regard to all of the circumstances (sections 29 and 30 of the Act). Section 29(c) of the Act sets out a non-exhaustive list of circumstances for the Tribunal to consider when

determining whether the Appellant had no reasonable alternative to leaving. The Federal Court of Appeal has set out that to determine if just cause exists, it “requires an examination of ‘whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment’”. (*Canada (A.G.) v. White*, 2011 FCA 190, at paragraph 3).

[11] While an employee may have, in their eyes, good reasons for leaving their employment, the Federal Court of Appeal has confirmed that “good cause is not the same thing as just cause” (*Canada (A.G.) v. Laughlin*, 2003 FCA 129, at paragraph 9).

[12] The Tribunal finds that the Appellant has not proven that she had just cause for leaving her employment.

[13] The Appellant submits that she had just cause for voluntarily leaving her employment because she was referred to a program of instruction by an authority designated by the Commission.

[14] The Appellant testified that she applied for admission to a X and was advised by the university that she was on the waitlist for the program. The Appellant testified that in the summer of 2018 she met with a New Brunswick Department of Post-Secondary Education, Training and Labour employment counsellor. The purpose of the meeting was to discuss if the Appellant was eligible for a referral to her university program for the purposes of employment insurance benefits. The employment counsellor advised the Appellant that she would need to apply for benefits and complete a referral application form. The Appellant testified that the counsellor also advised the Appellant that the decision to refer the Appellant to her program would be based on the referral application form. The Appellant testified that she did not complete an application for employment insurance benefits or the referral application form at that time as she was still employed and not yet accepted into her university program.

[15] The Appellant testified that she was advised by the university that she was accepted into the X program on September 4, 2018, the very day the program started. The Appellant testified that she immediately informed her employer that she was resigning to return to school and left

the province to commence her studies the next day. The Appellant testified that her university courses are full-time from Monday to Friday.

[16] The Appellant applied for employment insurance benefits on September 16, 2018 (GD3-15). The Appellant testified that her referral application form was dated September 4, 2018 but that she did not submit the completed form until sometime later as she was required to attach a confirmation of university enrollment form. The Appellant testified that she was advised on October 3, 2018 that she was authorized to be referred to her university program. This was despite the fact that the Appellant quit her employment on September 4, 2018. It is apparent to the Tribunal that the Appellant expected to be referred to her program but, unfortunately, the application for a referral and the referral itself were not received until after the Appellant had already voluntarily left her employment. An anticipated referral is not sufficient to relieve a claimant from having just cause for voluntarily leaving their employment.

[17] The Appellant repeatedly stated that she left her employment to pursue a university degree. Returning to school is not an enumerated factor in paragraph 29(c) of the Act, and the Federal Court of Appeal has consistently held that voluntarily leaving one's job to attend a course that is not authorized by the Commission does not constitute just cause within the meaning of the Act (*Canada (A.G.) v. Shaw*, 2002 FCA 325, *Canada (A.G.) v. Tourangeau*, A-30-00).

[18] Based on all the evidence before it, the Tribunal concludes that the Appellant left her employment to go to school. It is well established in the courts that leaving employment to pursue studies not authorized by the Commission does not constitute just cause within the meaning of the Act (*Canada (A.G.) v. Côté*, 2006 FCA 219, *Shaw, supra*).

[19] The Appellant's decision to go back to school was a commendable personal choice, and although a personal choice may constitute good cause it is not synonymous with the requirements to prove just cause for leaving employment and causing others to bear the burden of the Appellant's unemployment (*White, supra*).

[20] The Commission submits that the Appellant had reasonable alternatives to leaving her employment. In particular, the Commission states that the Appellant could have continued to

work or could have confirmed her entitlement to a referral before quitting. The Appellant submits that continuing to work would have been a personal setback to her as she had recently upgraded her university courses with a view to attending the X program. The Appellant also submits that she did meet with a provincial government employment counsellor before quitting. Unfortunately for the Appellant, due to her being on the university waitlist, she could not complete the required application form until after the program started and she has already quit.

[21] Considering all of the evidence, the Appellant did have reasonable alternatives to leaving her employment. The Appellant did not have to accept the offered university position and could have reapplied the following year after she had obtained a referral to the program if she so desired. The Appellant could have continued to work. Her decision to quit and return to university was her personal choice. The Tribunal finds that the Appellant had reasonable alternatives to voluntarily leaving her employment.

[22] On a balance of probabilities, the Appellant had reasonable alternatives to voluntarily leaving her employment and thus did not have just cause for voluntarily leaving her employment. The Tribunal finds that the Appellant has not proven that she had just cause for voluntarily leaving her employment.

[23] Based on the evidence before it, the Tribunal finds that the Appellant voluntarily left her employment without just cause and is disqualified from receiving benefits in accordance with sections 29 and 30 of the Act.

## CONCLUSION

[24] The appeal is dismissed.

John Gillis

Member, General Division - Employment Insurance Section

HEARD ON:	February 7, 2019
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METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. H., Appellant