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

Citation: *P. R. v Canada Employment Insurance Commission*, 2019 SST 285

Tribunal File Number: GE-19-110

BETWEEN:

P. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Alison Kennedy

HEARD ON: February 18, 2019

DATE OF DECISION: February 25, 2019

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant was employed as a funeral director. After his year-long contract finished, he declined a full-time position with his employer. He then applied for employment insurance benefits. The Canada Employment Insurance Commission (Commission) determined that the Appellant was disqualified from receiving benefits because he failed to prove that he had just cause for leaving his employment. The Appellant requested a reconsideration of the Commission's decision. The Commission maintained its initial decision. The Appellant is now appealing this decision to the Social Security Tribunal (Tribunal).

ISSUES

Issue 1: Did the Appellant leave his employment voluntarily?

Issue 2: If so, did the Appellant have just cause for leaving his employment voluntarily?

ANALYSIS

[3] An appellant who voluntarily leaves a job is disqualified from receiving employment insurance benefits unless they can prove that they had just cause for quitting (subsection 30(1) of the *Employment Insurance Act* (EI Act)). To prove they had just cause for quitting, an appellant must prove that they had no reasonable alternative but to quit, having regard to all the circumstances (section 29 of the EI Act).

Issue 1: Did the Appellant leave his employment voluntarily?

[4] To determine whether the Appellant voluntarily left his employment, the question to be answered is whether the employee had a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56).

[5] I find that the Appellant left his employment voluntarily.

[6] The Appellant stressed during the hearing that he did not quit his job. He alleges that the record of employment stating that he quit is in error. Rather, he alleges that he finished his one-year contract to completion.

[7] However, the Appellant agrees that he was offered a permanent job that was to start after the end of his one-year contract. He refused this employment. Paragraph 29 (b.1)(i) of that EI Act states that voluntarily leaving an employment includes "the refusal of employment offered as an alternative to an anticipated loss of employment..." I find that this is applicable to the case before me, as the Appellant was offered a permanent position as an alternative to the anticipated loss of employment after his one-year contract, but refused this employment. Consequently, I find that the Appellant voluntarily left his employment as he had a choice whether to stay or leave his employment, as per *Peace*, supra.

Issue 2: If so, did the Appellant have just cause for leaving his employment voluntarily?

[8] To establish that he had just cause for leaving, the Appellant must show that, having regard to all the circumstances, he had no reasonable alternative to leaving his employment, (*Canada (Attorney General) v. Imran*, 2008 FCA 17; *Canada (Attorney General) v. White*, 2011 FCA 190).

[9] I find that the Appellant has not shown just cause for leaving his employment.

Return to Toronto

[10] The initial explanation given by the Appellant for turning down the offer of permanent employment was that he decided that he did not want to remain in Kingston and wished to return to Toronto. While this may be a reasonable decision for the Appellant to make for personal reasons, unfortunately, having a good reason for leaving ones employment is not sufficient to establish just cause (*Imran*, supra).

[11] Rather, I find that the Appellant had a reasonable alternative he could have pursued, rather than quitting his job and asking contributors to the employment insurance scheme to bear the cost of his unemployment, such as accepting the job he was offered and continuing to look for work in Toronto while remaining employed.

Dissatisfaction with the job and job offer

[12] The Appellant states that he was not satisfied with his working conditions, and that some aspects of the job were different from what he was initially promised. For instance, the Appellant stated that his schedule changed from having to be available 1 in 3 weekends to having to be available 1 in 2 weekends. He also noted that the terms of his job changed, for instance, to include the duty of transfers. However, I do not find that the Appellant has demonstrated that his job changed such that it was a significant modification of terms and conditions of his employment as per subsection 29(c)(vii) of the EI Act.

[13] The Appellant also noted that he was not paid for overtime, and instead that he got time-in-lieu, but on an hour-for-hour basis, even when he worked statutory holiday. The Appellant stated that he spoke to his employer about labour law requiring that time-in-lieu for statutory holidays required more than simply paying back time on and hour-for-hour basis, and that his employer eventually came around on this issue. While it is reasonable that the Appellant felt frustrated about this issue, the Appellant solved this issue by discussing it with his employer who then adjusted his approach. As such, the Tribunal finds that this does not constitute just cause for leaving his employment.

[14] Lastly, the Appellant stated that part of the reason he refused the permanent job offer from his former employer was that he did not like the terms of the contract (for instance, it did not include any salary increase), and there did not seem to be any room for negotiating the terms of the offer. Rather, the Appellant stated that he was presented with a contract and asked to sign.

[15] The Respondent states that a reasonable alternative for the Appellant would have been to accept the position and then continue to search for a job that better suited his needs. The Appellant argued with this approach, stating that if he had accepted the job offer in Kingston on a permanent basis as he continued to look for work, he might then disadvantage himself if he found a job in Toronto with his same employer, as he would be paid at his Kingston salary level.

[16] While I am sympathetic to the Appellant's arguments in this case, I am mindful of the legal test I must consider, which is whether leaving his employment was the only reasonable

course of action open to the Appellant, having regard to all the circumstances (*Canada (Attorney General) v. Laughland*, 2003 FCA 12).

[17] I find that the Appellant had a reasonable alternative he could have pursued, rather than quitting his job and asking contributors to the employment insurance scheme to bear the cost of his unemployment. While the Appellant was frustrated with some aspects of his job, it would have been reasonable for him to accept the position he was offered and continue to work until he was able to find other employment. While the Appellant alleges that this might have negatively affected his ability to get a higher-paying job with the same company in Toronto, I do not find that this absolves the Appellant of his duties under the EI Act to exhaust all reasonable alternatives prior to leaving his employment. Indeed, case law hold that there is a burden on the Appellant not to transform what was only a risk of unemployment into a certainty (*Canada (Attorney General) v. Langlois*, 2008 FCA 18). Unfortunately, that is what happened in this case when the Appellant refused the permanent job he was offered.

[18] I find that the Appellant has failed to demonstrate that, having regard to all the circumstances, on a balance of probabilities, he had no reasonable alternative but to leave his employment when he did.

CONCLUSION

[19] The appeal is dismissed.

Alison Kennedy

Member, General Division - Employment Insurance Section

HEARD ON:	February 18, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. R., Appellant