



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. L. v Canada Employment Insurance Commission*, 2019 SST 266

Tribunal File Number: GE-19-869

BETWEEN:

A. L.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: February 27, 2019

DATE OF DECISION: February 28, 2019

DECISION

[1] The appeal is allowed. The Claimant has proven she had just cause for voluntarily leaving her employment.

OVERVIEW

[2] The Claimant is a university student, who worked two concurrent jobs during the summer of 2018. The Claimant quit one of the jobs because she could not do both while in school. The Claimant also received a referral to training from New Brunswick's Employment Insurance (EI) Connect program. The Canada Employment Insurance Commission (Commission) disqualified the Claimant from receiving EI benefits because it determined she voluntarily left her employment without just cause. The Commission upheld the decision on reconsideration. The Claimant appeals the decision to the Social Security Tribunal (Tribunal), arguing that she had just cause to leave her employment because she had the reasonable assurance of the second job continuing to be available to her.

ISSUES

[3] **Issue #1:** Did the Claimant voluntarily leave her employment?

[4] **Issue #2:** If so, did the Claimant have just cause to voluntarily leave her employment?

ANALYSIS

[5] The purpose of the *Employment Insurance Act* (Act) is to compensate persons whose employment has terminated involuntarily and who are without work.¹

[6] A claimant is disqualified from receiving EI benefits if the claimant voluntarily left any employment without just cause.² Just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances.³

¹ *Canadian Pacific Ltd. v. Attorney General of Canada*, [1986] 1 S.C.R. 678

² *Employment Insurance Act* (Act), subsection 30(1)

³ Act, paragraph 29(c)

[7] The Commission has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Claimant to demonstrate she had just cause for leaving. The burden of proof in this case is a balance of probabilities, meaning it is “more likely than not” the events occurred as described.

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

[8] The legal test to determine whether a claimant voluntarily left an employment is whether she had a choice to stay or to leave.⁴

[9] The Claimant testified that she quit her job as a clerk at a pharmacy in favour of working in a doctor’s office. The Claimant explained, as she did during the reconsideration process, that she worked two jobs at once and knew she could not maintain both while in school. The doctor’s office offered to keep her on staff at the end of her summer work term, so she quit her job with the pharmacy to work with the doctor’s office. Unfortunately, the job did not materialize and the Claimant was left unemployed.

[10] I find the Claimant voluntarily left her employment with the pharmacy because she admitted that she chose to leave a job which remained available to her.

Issue # 2 – Did the Claimant have just cause for voluntarily leaving her employment?

[11] A claimant has just cause for leaving her employment if, considering all of the circumstances, I find it more probable than not that she had no reasonable alternative to leaving.⁵

[12] Just cause is not the same as a good reason. The question is not whether it was reasonable for the Claimant to leave her employment, but whether leaving her employment was the only reasonable course of action open to her, having regard to all the circumstances.⁶

[13] The Commission submits the Claimant had reasonable alternatives to quitting her pharmacy employment, such as choosing to continue working at the pharmacy while in school, to secure employment from the doctor’s office before quitting at the pharmacy, or obtaining a referral

⁴ *Canada (Attorney General) v. Peace*, 2004 FCA 56

⁵ *Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Imran*, 2008 FCA 17

⁶ *Imran, supra*; *Canada (Attorney General) v. Laughland*, 2003 FCA 12

to training and authorization to quit her employment before she quit. The Claimant submitted she had no reasonable alternative to leaving her employment at the pharmacy because she could not work two jobs while in school, she had the reasonable belief the job with the doctor's office would continue, and because she was referred to the training by a designated authority.

[14] The Claimant made a claim for regular EI benefits on September 16, 2018, effective September 2, 2018. She worked for a pharmacy as a clerk from September 27, 2016, until August 27, 2018, when she quit. On the initial claim, the Claimant stated she quit to go to school, and when she spoke with a Commission agent on October 29, 2018, she stated she quit "pour aller à l'école," meaning to go to school. The Claimant stated on the request for reconsideration that she had a second job at a doctor's office concurrently while at the pharmacy, and the second job offered to keep her employed after the summer work term was over and to give her the same number of hours as the pharmacy. The Claimant testified that she spoke with the doctor who managed the office while she worked in the summer term, and was told the office would like to keep her on while she was in school. She reiterated that the doctor said she would offer the same number of hours the Claimant would have received in her other job, and said the doctor's office would provide better experience for the Claimant's career goals. The Claimant testified that she told the doctor, her employer, that she would like to do that, and decided to leave the pharmacy clerk job to remain at the doctor's office.

[15] On the Notice of Appeal, the Claimant stated she repeatedly explained that her reason for quitting the pharmacy job was because she was offered the chance to keep working at the doctor's office. She added that she wanted to become a doctor, and chose the offer of remaining employed at the doctor's office over the pharmacy because it was more direct experience. She stated she could not do both jobs while in school, and was told she would be offered the same number of hours as those she received at the pharmacy, so she quit the pharmacy job to keep the other employment. The Claimant stated her intentions were never to be without employment, though she did end up unemployed because the doctor's office did not offer her any hours after the summer term ended and she was laid off a few days after she quit working at the pharmacy.

[16] The Commission submits that the Claimant is "now" arguing that she was offered continuing employment with the doctor's office, but it is of the opinion that the Claimant's first

statements made spontaneously and consistently throughout the application process are more credible. The Commission submits the Claimant repeatedly stated she left the employment to go to school, and that she confirmed during the reconsideration process that she was never told she was going to be kept on as an employee at the doctor's office, only that she was "hopeful" of continuing to be employed there although she knew it was a summer position. The Commission submits that the law states that more weight must be given to initial statements rather than subsequent statements following an unfavourable decision to the Claimant.⁷

[17] I find the Commission has mischaracterized the law in *Bellefleur*. The case does not stand for the proposition submitted by the Commission, but for the principle that where there is contradictory evidence the Tribunal must decide which contradictory evidence it prefers and must provide reasons why it prefers certain evidence.⁸

[18] I note that on the initial claim for EI benefits form, the Claimant stated she preferred service in English, when written, but in French when spoken. The hearing was conducted in English, and while the Claimant is highly capable in the language, she did require the repetition or explanation of some of the questions I asked. The Claimant testified that a misunderstanding must have occurred between herself and the Commission, because she was offered continued employment by the doctor's office, which is the reason she quit the pharmacy job. I reviewed the file and noted that in the Commission's early telephone conversations, the agent and Claimant spoke in French. In the conversation on January 9, 2019, the agent and Claimant spoke in English. This is relevant because the Claimant expressed at the hearing that a miscommunication must have occurred, and the communication on this date was not in her preferred language.

[19] In the January 9, 2019, telephone call, the Commission's notes state the Claimant said she left her pharmacy employment because she was going to school, and that she worked two jobs during the summer and knew she would "never be able to work two part-time positions while going to school." The notes state the Claimant stated that with the second position, the doctor's office, she was "hopeful that it would last longer but that didn't work out for her and she was laid off" a few days after quitting at the pharmacy. The Commission's notes state the Claimant said

⁷ *Bellefleur v. Attorney General of Canada*, 2008 FCA 13

⁸ *Bellefleur*, paragraph 3

she was never told she was going to be kept on at her doctor's office position, and knew it was only a summer position. The Commission's notes also state the Claimant said she did not want to continue with the pharmacy job because her schooling was more important and this position was not related to her field of study.

[20] I find on a balance of probabilities that a miscommunication occurred between the Claimant and the Commission relative to whether or not she was offered continuing employment from the doctor's office. Whether or not due to language, the Claimant was misunderstood. The Claimant stated to the Commission in the January 19, 2019, call that she would not be able to work two jobs while in school, so it is clear her concern was in having two positions while also in an educational program. I find on a balance of probabilities that the Claimant intended to continue working for the doctor's office, and was offered continuing employment by the employer. I prefer the Claimant's evidence on these points because it was given to me directly, in testimony, and is not recounted through the lens of a Commission agent.

[21] While I agree with the Commission that the Claimant stated in multiple places that she left her pharmacy employment to go to school, I find that she left the employment because she could only maintain one employment while in school and preferred the doctor's office. The Claimant did quit the pharmacy job because she was going to school, but also because she had another job available to her and chose to continue in that position. Since the Claimant had every reason to believe the employment with the doctor's office would continue, she had just cause for leaving the other employment.⁹

[22] While the Claimant was referred to training, the issue in this case is whether she had just cause to voluntarily leave her pharmacy employment. At the time the Claimant gave notice that she would be leaving her pharmacy employment, approximately August 13, 2018, as she gave two weeks' notice and her final day of employment was August 27, 2018, she did not know that she was referred to training. The Claimant testified that she received notice that she was accepted into the EI connect program and referred to training on August 24, 2018, after she quit the pharmacy employment. While the Claimant described the reason she quit the pharmacy as leaving to go to school, I find she actually left because she had the reasonable assurance of another employment in

⁹*Attorney General of Canada v. Marier*, 2013 FCA 39

the immediate future, being her concurrent employment at the doctor's office that was supposed to continue. The Claimant quit her pharmacy job because she could not maintain two jobs, not because she chose to put herself into a position of unemployment.

[23] The Act lists circumstances which I must consider when assessing if the Claimant has proven just cause for leaving her employment; however, just cause is not limited to those listed circumstances. What the Claimant must prove is that her circumstances, whether listed or not, show it is more probable than not that she had just cause. Even when a listed circumstance exists, the Claimant must still prove she had no reasonable alternative to leaving her employment.

[24] The Claimant testified that she quit her job at the pharmacy because she was offered the same number of hours with the doctor's office, and felt the doctor's office was a better fit for her long term goals. The Claimant stated she could not work two part-time jobs while in school, but planned to maintain one. After the Claimant quit her pharmacy job, the job with the doctor's office fell through. I find that at the time the Claimant quit the pharmacy job, she had the reasonable assurance of another employment in the immediate future as her job with the doctor's office was promised by the doctor to continue.

[25] The Claimant has proven, on a balance of probabilities, that she left her employment because she had the reasonable assurance of another employment in the immediate future.¹⁰ Considering all the circumstances, the Claimant had no reasonable alternative but to leave her employment. There is nothing in the Act which requires the Claimant to maintain multiple employments, and the Claimant has proven that at the time she quit the pharmacy job, she believed her employment with the doctor's office would continue.

¹⁰ Act, paragraph 29(c)(vi)

CONCLUSION

[26] The appeal is allowed. I find the Claimant had no reasonable alternatives to leaving her employment.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	February 27, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. L., Appellant Lisanne Leclerc, Representative for the Appellant