



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. E. v Canada Employment Insurance Commission*, 2019 SST 276

Tribunal File Number: GE-19-153

BETWEEN:

D. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: February 11, 2019

DATE OF DECISION: March 11, 2019

DECISION

[1] The appeal is allowed. The Claimant (the Appellant in this case) showed just cause for voluntarily leaving her employment to take care of her son in another province after his father became disabled. She is therefore entitled to receive benefits.

OVERVIEW

[2] The Claimant quit her job in New Brunswick to move to Saskatchewan to look after her son and his father, with whom the child had lived from birth. The Commission (the Respondent in this case) found that she did not show just cause for voluntarily leaving her job since she had no spousal relationship with her son's father, and she did not find a job in her new location before she moved. After she requested a reconsideration, it maintained its decision.

[3] The Claimant appealed the reconsideration decision, arguing that her son's father had become disabled and could no longer look after their child. She also argued that she could not find other work before moving since it was a small town where scarce job vacancies were only advertised locally. I must decide whether she was able to show just cause by demonstrating that she had no reasonable alternative to quitting so that she could relocate to look after her son.

ISSUES

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

[5] **Issue 2: If so, did the Claimant show just cause for leaving?**

ANALYSIS

[6] When claimants leave a job, they are not automatically entitled to employment insurance benefits. They cannot receive benefits if they voluntarily leave their employment without just cause.¹ They can show just cause if, on a balance of probabilities and considering all the circumstances, they had no reasonable alternative to leaving.²

¹ They are "disqualified" under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

² *Attorney General of Canada v Imran*, 2008 FCA 17.

[7] The Commission has the burden of proof to show that leaving the job was voluntary. The term “burden” describes which party must provide sufficient evidence of its position to prove its case. Once the Commission has proved that the departure was voluntary, the burden shifts to the claimant to show just cause for leaving.³

Issue 1: Did the Claimant leave her employment voluntarily?

[8] Yes. The Claimant does not dispute that she quit; she could have stayed on at the convenience store where she worked if she had not moved away from New Brunswick. The legal test to determine whether claimants left voluntarily is whether they had this choice.⁴ I therefore find that the Commission met its burden to show that she left voluntarily.

Issue 2: Did the Claimant show just cause for leaving?

[9] Yes. Considering all the circumstances of her unusual family situation, I find that the Claimant had just cause for voluntarily leaving her employment in order to take care of her son as he entered his last year of high school. I find that she showed just cause because she had no reasonable alternative to relocating once he was left without an able-bodied adult caregiver.

[10] The Claimant submitted that when she became pregnant after a brief relationship with her son’s father eighteen years earlier, they decided that the baby would live with him and his family in Saskatchewan. She moved from New Brunswick to take care of them when she became concerned about her son’s welfare. His father had become progressively disabled and could no longer manage routine household tasks. Her son’s half-sister had already left home to enter a Social Services program for teenagers whose family supports have broken down. The Claimant was therefore worried that her son might also end up having to leave home. As a survivor of the foster care system, she was determined that he should be able to stay in his family home.

[11] The Claimant also submitted that there were few job opportunities in her new location. Her son’s father had asked around locally for her since in their small community of 1,500 residents, job vacancies were advertised by word of mouth or posted locally. She reported that the nearest bigger towns were close to an hour-and-a-half’s drive away and she did not have her

³ *Attorney General of Canada v White*, 2011 FCA 190.

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

own car. There was no Tim Horton's nearby. The local convenience store was a family-run business.

[12] The Claimant reported that the local hotel the Commission suggested as a viable job opportunity was a small business with no employees; the owners took care of it themselves. The Commission's suggestion of a vacancy at a different hotel further away would have required her to live onsite rather than be together with her son. She argued that the positions the Commission identified were all at a significant distance from her new home.

[13] The Commission first submitted that the Claimant was not married or engaged to her son's father, nor his common-law spouse, and she therefore had no recognized obligation under the EI Act to accompany him to another residence.⁵ It was merely a personal decision, which does not show just cause. The Commission also submitted that she had the reasonable alternative of finding work in her new location before she quit. It argued that it was able to find positions meeting her skills and employment background through an online job search.

[14] I find that I cannot rely on this argument since the Commission provided no job search results showing that there had been work available in the weeks before the Claimant moved within a reasonable commute of where her son lived. The issue of availability after she arrived is not part of this appeal.

[15] I note that it was the Claimant who had the burden of proof to show just cause. She therefore had to demonstrate that delaying her move to look after her son until after she found a job nearby was not a reasonable alternative. I find that she met this burden of proof.

[16] First, I find credible her testimony that her son's father made job enquiries locally for her before she arrived. Her answers to my questions at the hearing were mostly consistent with what she had previously told the Commission and she was open and direct in her answers.

[17] I also accept her argument that jobs would be scarce in a small town and would generally be advertised by word of mouth or signs posted locally, rather than through online job search engines. I find it unlikely that the Claimant could have found a job in such a limited job market

⁵ Section 29(c)(ii) of the EI Act.

in the few weeks between deciding she needed to relocate and her cross-country move. Moreover, I find that delaying her relocation would not have been a reasonable alternative given her responsibility to start taking care of her son as soon as possible.

[18] To sum up, I find that the Claimant had no reasonable alternative to leaving her job in New Brunswick to take care of her son in Saskatchewan. I am aware that claimants have a responsibility not to risk unemployment.⁶ That is why remaining employed is generally a reasonable alternative to quitting.⁷ However, although the Claimant had no spousal relationship with her child's father, her son was still a dependent child requiring the care and attention of an adult which his father could no longer provide. After considering all her circumstances, I therefore find that she showed just cause for voluntarily leaving her employment.

CONCLUSION

[19] The appeal is allowed. The Claimant showed just cause for voluntarily leaving her employment to take care of her son in another province after the child's father became disabled. She is therefore entitled to receive benefits.

Lilian Klein

Member, General Division - Employment Insurance Section

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| HEARD ON: | February 11, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | D. E., Claimant Dan Taylor, Representative for the Claimant |

⁶ *Attorney General of Canada v Langlois*, 2008 FCA 18.

⁷ *Attorney General of Canada v Murugaiah*, 2008 FCA 10.