



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. M. v Canada Employment Insurance Commission*, 2019 SST 457

Tribunal File Number: GE-19-917

BETWEEN:

D. M.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: March 19, 2019

DATE OF DECISION: April 1, 2019

DECISION

[1] The appeal is dismissed. The Claimant did not have just cause to voluntarily leave his employment because he failed to demonstrate he had no reasonable alternatives to leaving.

OVERVIEW

[2] The Claimant was employed at a call centre, who I will refer to as Employer 1. He left his employment within two weeks because he found the work environment unsuitable and he had spoken to another employer about an upcoming job which aligned with his career goals. The job with the prospective employer, who I will call Employer 2, was delayed by several months, but he eventually started the job and was laid off at the end of the project. He then made a initial claim for regular employment insurance benefits.

[3] The Canada Employment Insurance Commission, who I will call the Commission, determined the Claimant had voluntarily left his job with Employer 1 without having just cause and disqualified the Claimant from receiving benefits. The Claimant requested a reconsideration on the basis that he had a reasonable assurance of another job with Employer 2 before he quit. The Commission maintained its decision and the Claimant now appeals to the Social Security Tribunal.

ISSUES

[4] Did the Claimant voluntarily leave his employment?

[5] If so, did the Claimant have just cause to voluntarily leave his employment when he did?

ANALYSIS

[6] A claimant is disqualified from receiving regular employment insurance benefits if they voluntarily left any employment without just cause.¹

[7] The Commission has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Claimant to demonstrate he had just cause for leaving. The

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

term burden is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is more likely than not the events occurred as described.

Did the Claimant voluntarily leave his employment?

[8] When determining whether the Claimant voluntarily left his employment, the question to be answered is: did he have a choice to stay or leave?²

[9] The Claimant acknowledged on his application for benefits and in subsequent interviews with the Commission that he resigned from his job with Employer 1 on June 13, 2018. However, in the submissions provided to the Tribunal, the Claimant argues that he would not have had a choice to stay in that employment much longer, as he anticipated failing the necessary testing.

[10] In support of his argument, the Claimant told the Tribunal that he was engaged in a 10-week training period with Employer 1, which involved a weekly test. He stated at the hearing that if an employee failed the test, they were given one more opportunity to pass. If they failed the test again, he stated the employer would dismiss them from their employment.

[11] On June 13, 2018, the Claimant states he took the weekly test and failed. He stated he knew that he would be given the test again the following day and would be dismissed if he failed again. He said he did not feel confident that he would pass the test, as he still did not know the material, and so he decided to quit before re-taking the test.

[12] The record of employment issued by Employer 1 states the Claimant quit.

[13] I find the evidence supports the Claimant had a choice to stay in his employment at the time he left. The Claimant's submission that he may not have had a choice to stay in that employment if he failed the test on the following day is not relevant, as the Claimant initiated his own separation from employment before that occurred. Regardless of whether the Claimant would have been dismissed from his employment the next day, the evidence presented by both

² *Canada (Attorney General) v. Peace*, 2004 FCA 56.

parties indicates that he could have stayed in his position if he had not made the decision to leave on June 13, 2018.

[14] Based on the foregoing, I find the Claimant had a choice to stay in his employment and he chose to leave; therefore, he voluntarily left his employment.

Did the Claimant have just cause to voluntarily leave his employment?

[15] To establish he had just cause for leaving an employment the Claimant must show, having regard to all the circumstances, on a balance of probabilities, he had no reasonable alternative to leaving his employment.³

[16] The Claimant was employed at a call centre with Employer 1 from June 4, 2018 to June 13, 2018. He submits he left his employment because he did not like the working conditions and he had been offered another job which would let him pursue his career goals. The Claimant's representative submitted the Claimant wanted to obtain a specialized certificate to allow him to work in a competitive industry. The Claimant stated at the hearing that several of his family members work in this industry and put him in contact with Employer 2, who was hiring for an upcoming project.

[17] The Claimant testified that he spoke with Employer 2 on June 12, 2018, and they asked him to come into their office for a meeting on June 15, 2018, as there could be a position for him. He stated he was directed to bring in his information to be set up on Employer 2's payroll at that time. The Claimant resigned from his position at Employer 1 on June 13, 2018, following an unsuccessful round of testing, as detailed above.

[18] The Claimant testified that he met with Employer 2 on June 15, 2018 and was informed he would be hired and that his employment would last approximately 8-10 weeks in total. He stated he was originally told the project would start within the next two weeks, but was later informed the start date had been pushed back. He was eventually employed with Employer 2 on September 25, 2018 to November 15, 2018.

³ *Canada (Attorney General) v. Imran*, 2008 FCA 17; *Canada (Attorney General) v. White*, 2011 FCA 190.

[19] The *Employment Insurance Act* lists circumstances which I have to consider when assessing if the Claimant has proven just cause for leaving his employment, including reasonable assurance of another employment in the immediate future.⁴ However, even when a listed circumstance exists, the Claimant must still prove he had no reasonable alternatives to leaving his employment, having regard to all the circumstances.⁵

[20] The Claimant's representative submits the Claimant had reasonable assurance of another employment in the immediate future at the time he left his job. In support of this argument, she submitted a letter from Employer 2 which states the Claimant was hired to work on a project in June 2018, but the start date of was pushed back and he began working in September 2018 instead. This letter is undated, but the representative stated it was obtained by the Claimant in February 2019, which the Claimant confirmed.

[21] Regardless of whether the start date of the Claimant's position with Employer 2 was delayed, at the time he quit his job with Employer 1, he believed this job would be starting in the immediate future. Therefore, based on the evidence on file, I find the Claimant did have a reasonable assurance of another employment when he spoke with Employer 2 on June 12, 2018, prior to leaving his job with Employer 1. However, to establish that he had just cause to leave his employment, he must still prove that he had no reasonable alternative to leaving.

[22] I recognize that the Claimant had reasonable assurance of another employment in the immediate future when he quit his job; however, that other employment was a temporary position lasting only 8-10 weeks. The question, therefore, is whether the Claimant had just cause to leave his employment for another, as he had a responsibility not to provoke a risk of unemployment or transform what was only a risk of unemployment into a certainty.⁶

[23] The most important factors to consider when determining if a claimant has just cause for leaving one employment to take a temporary position are the timing of the voluntary separation and the duration of the temporary employment. In *Langlois*, the Federal Court of Appeal

⁴ These circumstances are listed in subsection 29(c) of the *Employment Insurance Act*.

⁵ *Canada (Attorney General) v. Lessard*, 2002 FCA 469.

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

considers that it is relevant whether a claimant was able to accrue sufficient hours to qualify for employment insurance benefits within the period of the temporary employment.

[24] In this case, the Claimant was employed with Employer 2 from September 25, 2018 to November 15, 2018. The Claimant's record of employment states he accumulated 339 hours of insurable employment with Employer by the end of his nearly 8 week contract. Therefore, the Claimant's new job did not offer him sufficient hours of insurable employment to qualify for employment insurance benefits during the time he worked there.

[25] The Claimant acknowledged at the hearing that he was aware the position would only last 8-10 weeks. Further, the Claimant's statements that he has several family members that work in the same industry indicates he is familiar with the temporary nature of the employment. Therefore, I consider the Claimant left his job with Employer 1 for a temporary position, which effectively guaranteed his own unemployment by the end of the contract.

[26] Based on the Claimant's submissions, he chose to quit his job with Employer 1 to accept a temporary position. The Claimant offered personal reasons for his choice, which included the fact that the position would help him gain a specialized certification and establish a career. Regardless of those very good, personal reasons, the Claimant has not established that he had just cause for leaving his job with Employer 1.

[27] Considering all the circumstances presented by the Claimant, I find he had the reasonable alternative to remain employed with Employer 1. He could also have requested a leave of absence for the duration of his temporary position with Employer 2. Additionally, he could have continued his employment with Employer 1 while seeking other permanent employment, rather than leaving a permanent position for a temporary job.

[28] As a result, I find the Claimant did not have just cause to voluntarily leave his employment because he had reasonable alternatives to leaving when he did. Therefore, he is disqualified from receiving regular employment insurance benefits.

CONCLUSION

[29] The appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	March 19, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. M., Appellant/Claimant Sarah Fitzpatrick, Representative for the Appellant