



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *J. E. v Canada Employment Insurance Commission*, 2019 SST 460

Tribunal File Number: GE-19-1035

BETWEEN:

**J. E.**

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: Lucie Leduc

HEARD ON: March 26, 2019

DATE OF DECISION: April 8, 2019

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The Appellant worked as a X and X at a secondary school. One day, he decided to retire from his position as a X. He left just before the 2018 holiday period. He was laid off from his employment as a X because of a shortage of work during the school holidays. He applied for Employment Insurance benefits as he does every year.

[3] However, since he had left his employment as a X, the Employment Insurance Commission determined that the Appellant had voluntarily left without just cause under the *Employment Insurance Act* (Act). Therefore, it imposed a disqualification from receiving benefits on the Appellant starting from when he left his position as a X (December 23, 2018).

## **ISSUE**

[4] The Tribunal must determine whether the Appellant had no reasonable alternative to leaving his employment when he did.

## **ANALYSIS**

[5] I must determine whether the Appellant had just cause for leaving his employment according to the provisions of section 29 of the Act. Generally, a person who leaves their employment voluntarily is disqualified from receiving Employment Insurance benefits (section 30 of the Act). However, the Act states that, under exceptional circumstances, sometimes a person may have just cause for voluntarily leaving their employment and be eligible for Employment Insurance benefits. Section 29(c) provides a non-exhaustive list of circumstances that may establish just cause for voluntarily leaving an employment. It is up to the claimant to show that they have met the conditions to establish just cause for leaving.

**Issue 1: Did the Appellant have any reasonable alternative to voluntarily leaving when he did?**

[6] The Federal Court of Appeal has stated on many occasions that, to determine whether a person had just cause for leaving their employment, the person must show that, having regard to all the circumstances, they had no reasonable alternative but to leave (*Canada (Attorney General) v Patel*, 2010 FCA 95 (*Patel*); *Bell*, A-450-95; *Landry*, A-1210-92; *Hernandez*, 2007 FCA 320).

[7] For the following reasons, I find that the Appellant failed to show that he had no reasonable alternative to leaving given his circumstances.

[8] In this case, the Appellant was a X in a secondary school. He did this work for several years along with his main employment as a X for the school board X. He stated that one day he received a letter informing him that he was eligible for a small Government and Public Employees Retirement Plan (RREGOP) pension. He was given different options, such as cashing out his pension or receiving a small amount each month after retirement. The Appellant explained that he thought about all of this. He decided to leave his position as a X, cash out his entire retirement pension to add it to his RRSP, and continue with his employment as a X.

[9] The Appellant stated quite honestly that he was not forced to leave for any reason whatsoever. I note from the evidence that the Appellant's decision to leave was a personal one. However, the Employment Insurance program cannot support the costs of appellants' personal choices, as admirable as they may be.

[10] I am not questioning the Appellant's decision to leave his employment as a X. Being 66 years old and wanting to continue his employment as a X and cash out the small amount he was entitled to with the RREGOP seems reasonable enough to me. However, the issue is not whether it was reasonable for the Appellant to leave his employment, but rather whether it was the only reasonable alternative open to him, having regard to all the circumstances (*Laughland*, 2003 FCA 129; *Canada (Attorney General) v White*, 2011 FCA 190). In this case, continuing to work in the X position would have also been a reasonable option.

[11] When a person cannot show that voluntary leaving was their only reasonable alternative, the Act requires that a disqualification be imposed. This is what must be applied in this case.

[12] The Appellant indicated that he understood and accepted that his hours of insurable employment from his employment as a X were excluded. He argues that he finds it unfair that all his hours of insurable employment, including those from his X work, are excluded. He argues that he never left his employment as a X, that he still works there for that matter, and that the hours from this employment should remain.

[13] As the Commission noted, section 30(1)(a) of the Act governs the Appellant's disqualification. That section of the Act clearly provides that, to be entitled to Employment Insurance benefits, the Appellant must accumulate the required number of hours **again** once he leaves his employment. This necessarily implies that all the hours accumulated before leaving are excluded, regardless of the employment, including the one he did not leave. I understand that the Appellant may find that not having his hours of employment as a X recognized is unfair. I recognize that he never left his employment as a X and that these hours were rightly accumulated. The Act does not seem to account for situations where a person has more than one employment. But Parliament drafted the Act this way, and I cannot deviate from it. Even though I have great empathy for the Appellant's situation, my discretionary power is limited, and I cannot give a decision that goes against the current Act or change the Act. The Appellant may contact legislative bodies and elected federal officials to express his frustration and desire to have the Act changed for his type of situation.

**CONCLUSION**

[14] The appeal is dismissed.

Lucie Leduc  
Member, General Division – Employment Insurance Section

HEARD ON:	March 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. E., Appellant