



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *V. C. v Canada Employment Insurance Commission*, 2019 SST 477

Tribunal File Number: GE-19-1243

BETWEEN:

V. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: April 9, 2019

DATE OF DECISION: April 22, 2019

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant worked part-time as a driver for a furniture company. Over time, his hours of work steadily declined. In the summer of 2018, he found another employment in the construction industry. This allowed him to get his competency card as a labourer from the Commission de la construction du Québec [Québec's construction commission] (CCQ). Eventually, in September 2018, he found employment as a labourer, which offered him a far more attractive salary. Because of that new employment, he left his employment with the furniture company.

[3] The Employment Insurance Commission (Commission) determined that the Appellant did not have just cause for leaving his employment within the meaning of the *Employment Insurance Act* (Act). It submits that the Appellant left permanent employment for a seasonal position, which means he did not have just cause for leaving.

ISSUES

[4] The Tribunal must decide the following issues:

1. Did the Appellant have reasonable assurance of another employment in the immediate future?
2. Was voluntarily leaving his employment the Appellant's only reasonable alternative in his circumstances?

ANALYSIS

[5] The overarching issue the Tribunal must analyze is whether the Appellant had just cause for leaving his employment according to the *Employment Insurance Act* (Act). The Appellant admitted on the record that he did leave his employment. Generally, a person who leaves their employment voluntarily is disqualified from receiving Employment Insurance benefits

(section 30 of the Act). However, the Tribunal acknowledges that sometimes a person may have just cause for voluntarily leaving their employment and be entitled to Employment Insurance benefits. The onus is on the person to establish this.

[6] Section 29(c) of the Act contains a non-exhaustive list of circumstances that may justify a person voluntarily leaving their employment. I have considered the Appellant's reasons for leaving in my analysis by addressing the following issues:

Issue 1: Did the Appellant have reasonable assurance of another employment in the immediate future?

[7] The circumstances that give a person just cause for leaving their employment include, in section 29(c)(vi) of the Act, a situation where a person leaves their employment when they have reasonable assurance of another employment in the immediate future.

[8] For the reasons that follow, I find that the Appellant met the conditions in section 29(c)(vi) and had reasonable assurance of another employment in the immediate future. I therefore find that he had just cause for leaving.

[9] The Appellant worked as a driver for the company X starting in October 2015. At first, he worked about 30 hours a week. After about a year on the job, the hours offered significantly declined, unfortunately. The Appellant indicated that he really liked his work and that he got on very well with his employer, who tried several times to find solutions to help him, such as offering him other tasks to compensate and even paying him salary advances. However, the Appellant sometimes had less than 20 hours of work a week, which financially put him in a very difficult position.

[10] The Appellant indicated that, in the summer of 2018, he met X, a general contractor in construction who hired him on a part-time basis so that he could accumulate the hours needed to get his competency card as a labourer in the construction industry. The Appellant said he was grateful for that opportunity X gave him and was hopeful that he would one day find employment in the construction industry with a better salary and better conditions. Because of this, he worked for X two days a week while he continued his employment with X. He worked 152 hours for X and accumulated the number of hours needed to get his competency card as a

labourer from the Commission de la construction du Québec (CCQ). The documentary evidence indicates that he got it on September 15, 2018.

[11] Shortly after, X laid the Appellant off because he had no more work for him and he was getting ready to retire. The Appellant continued to work for X while looking for employment in the construction industry since he had the necessary competency card. He found employment as a labourer for X, which he started on September 24, 2018. Shortly after, the Appellant left his other employment with X.

[12] The Appellant submits that he left his employment with X because of his new employment with X. The Commission submits that the Appellant did not have just cause to leave his part-time employment for another employment that was also part-time, but seasonal. It is of the view that the Appellant placed himself in a position of unemployment because the work season for his new employment was ending and he knew that he did not have any guaranteed hours.

[13] I do not agree with the Commission's reasoning. First, the Appellant waited to be officially employed by X before leaving his employment with X. As a result, I find that he acted diligently. Furthermore, neither his hours for X nor his hours for X were guaranteed. Therefore, it cannot be said that the Appellant placed himself in a situation that was more precarious with one employer than with the other. In my view, it is the contrary. At times, the Appellant had weeks reduced to less than 20 hours with X, while he was doing about the same number for X at a much higher salary.

[14] I note from the evidence that, even though he was not given any guarantee, the employer at X had told the Appellant that he would have work for him until the beginning of the following year and maybe even year-round. I find that the idea that the construction industry is seasonal is becoming more and more outdated. It appears that more and more workers in that industry work year-round without seasonal interruptions. The Appellant took the liberty of putting all his hopes on working more long-term for X, while continuing to look for other employment with his new competency card.

[15] Unfortunately, the work for X ended for the Appellant just before the holiday period (December 2018), but he still worked for about three months.

[16] I give significant weight to the Appellant's testimony where he coherently and logically explained his situation in detail. I also give significant weight to the fact that the Appellant was in a situation that was already precarious with his employment at X. To expect him to stay at that employment and turn down a much better opportunity is certainly not a reasonable alternative in his case.

[17] I note from the evidence that the Appellant did have assurance of another employment, which he held for several weeks. That new employment offered interesting and promising opportunities. If it were not permanent employment, then he also had no certainty that he would be unemployed during the winter. I find this is an important point. I am of the view that it is the responsibility of all those insured by Employment Insurance not to deliberately cause the risk of unemployment. In this case, I find that this is not at all the case for the Appellant. He was prudent in not leaving his employment with X before formally having employment with XI note from the evidence that he would never have left his employment with X without having another employment. Consequently, he satisfied his obligations as an insured person.

[18] I give significant weight also to the fact that the hours of employment with X were steadily declining. I find that, despite having permanent employment in theory, the Appellant did not have any guarantee that he would continue to be employed for much longer. In other words, the risk of unemployment was just as real at X as it was at X. Consequently, the Appellant cannot be penalized for leaving an employment that did not offer him any more of a guarantee than his much more lucrative new position.

[19] I find, on a balance of probabilities, that the Appellant met the requirements of section 29(c)(vi) of the Act and that he had just cause for voluntarily leaving.

Issue 2: Was voluntarily leaving his employment the Appellant's only reasonable alternative in his circumstances?

[20] Generally, for just cause for leaving employment to exist, a person must not only show that they left because of exceptions stated in section 29(c) of the Act, but they must also show

that, having regard to all the circumstances, they had no reasonable alternative to leaving (*Canada (Attorney General) v Patel*, 2010 FCA 95 (*Patel*); *Bell*, A-450-95; *Landry*, A-1210-92). In fact, Judge Létourneau noted in the *Hernandez* decision that, along with the exceptions cited in section 29 of the Act, a decision-maker must consider whether voluntarily leaving their employment was a person's only reasonable alternative and that failing to do so constitutes an error of law (*Hernandez*, 2007 FCA 320).

[21] However, I find that the notion of "only reasonable alternative" does not apply to a person who leaves their employment with reasonable assurance of another employment. The reason for this exception is simply because it is difficult, if not impossible, to contend or conclude that a person who voluntarily leaves employment to occupy different employment is doing so necessarily because leaving is the only reasonable alternative, which the Federal Court of Appeal acknowledged (*Marier*, 2013 FCA 39; *Langlois*, 2008 FCA 18; *Campeau*, 2006 FCA 376).

[22] Since I have found that the Appellant had reasonable assurance of another employment in the immediate future, I will not address the notion of "only reasonable alternative" any further.

CONCLUSION

[23] The appeal is allowed.

Lucie Leduc
Member, General Division – Employment Insurance Section

HEARD ON:	April 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. C., Appellant