Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *ND v Canada Employment Insurance Commission*, 2019 SST 1740

Tribunal File Number: GE-18-3256

BETWEEN:

N. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

HEARD ON: April 23, 2019

DATE OF DECISION: April 26, 2019

Canada

DECISION

[1] The appeal is dismissed. The Appellant (Claimant) voluntarily left his employment without just cause.

OVERVIEW

[2] The Claimant was working as a "fill-in guy" with a well-servicing company in the oil field. At the end of the summer, he returned to school. The Respondent, the Canada Employment Insurance Commission (Commission) retroactively disqualified the Claimant from receiving employment insurance (EI) benefits because it was determined that he voluntarily left his employment without just cause. Following a request for the Commission to reconsider its decision, the Claimant appealed to the Social Security Tribunal (Tribunal) stating he did not quit, but the employer just stopped calling him to work.

PRELIMINARY MATTERS

Appeal Division Decision

[3] The Claimant established a benefit period on August 28, 2016. On September 25, 2017, the Commission disqualified the Claimant from receiving EI benefits. He sought a request for reconsideration, and following an unfavourable decision, he submitted an appeal to the General Division of the Tribunal, which was dismissed.

[4] The Claimant appealed to the Appeal Division of the Tribunal, and on October 18, 2018, the Appeal Division allowed the appeal. The Appeal Division found the fact-finding was insufficient to render the decision the General Division should have rendered. The Appeal Division returned the appeal to the General Division.

ISSUES

1. Did the Claimant voluntarily leave his employment?
2. If so, has the Claimant proven just cause to voluntarily leave his employment?

ANALYSIS

[5] A Claimant is disqualified from receiving any EI benefits if they voluntarily left any employment without just cause under subsection 30(1) of the *Employment Insurance Act* (EI Act).

[6] The Commission has the burden of proving that the Claimant left his employment voluntarily. The burden then shifts to the Claimant to establish she had just cause for leaving (*Green v. Canada (Attorney General), 2012 FCA 313*).

1. Did the Claimant voluntarily leave his employment?

[7] When determining whether the Claimant voluntarily left his employment, the question to be answered is whether the Claimant had a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56).

[8] The Tribunal finds that the Commission has met its burden of proving that the Claimant left his employment voluntarily. In a case with similar circumstances, the Federal Court of Appeal stated that an employee who advises his employer that he is less available than previously is for all intents and purposes asking the employer to terminate the employment contract if the employer cannot accommodate the employees' reduced availability (*Canada (Attorney General) v. Côté*, 2006 FCA 219). The Tribunal is satisfied that the employer was aware the Claimant was returning to school and this reduced his availability; therefore, the Claimant is responsible for the separation of employment because it was his choice to return to school.

[9] The Claimant applied for EI benefits on September 12, 2016, stating he was no longer working due to a shortage of work, and his last day of work was August 25, 2016. He stated that he was returning to school, and he was not approved for this course or program but decided on his own to take it. The Claimant applied for EI benefits again on July 5, 2017. This time he indicated that he stopped working on August 25, 2016, because he quit to go to school. He explained the discrepancy by stating that he thought the ROE had to match the application, so when he applied the second time, he indicated quit to go to school as that is what it says on the ROE.

[10] The employer submitted a Record of Employment (ROE) dated August 29, 2016, indicating that the Claimant began working on June 20, 2016, and his last day worked was August 23, 2016. The reason for issuing the ROE was quit.

[11] The Claimant submitted that he did not quit and he was not let go. He explained that he was a "fill-in guy" meaning when others wanted a day off, he would cover. He stated that he never got many shifts until late July when a worker wanted to go home to work on the farm, so he worked full-time until the third week in August 2016, when the employer hired another worker and he went back to being the fill-in guy. He stated that after his last day of work, they just stopped calling and he thinks it is fair to consider that being laid off.

[12] The Claimant stated that he called the employer twice enquiring about work. He called once in late August or early September, to ask why they had not called. He called the second time after he received his ROE in late September. He stated that he stressed to the employer that he had not quit and was still available for work. His plan was always to work for this employer taking days off school to do so.

[13] The Claimant testified that when he was hired, they asked him what he was doing and he told them he was going to school, but he did not say he would be less available for work when school resumed. He placed no restrictions on his availability. He was hired as the fill-in guy and he was willing to pick up any shifts they had available. The conclusion that the employer drew that he quit to return to school is not accurate because they knew he was in school.

[14] The employer was contacted by the Commission and the office administrator stated that the Claimant quit because he was going back to school. She stated that there were still hours available and the crews continued working after the Claimant left. She explained that the Claimant was hired for the summer and they knew from the beginning that he was going back to school for his last year. She remembered that he was going to school to become a teacher and the university he was attending required that he relocate. She does not remember him calling her after his last day of work. The employer stated that if the Claimant had not gone back to school, she would have kept him on.

[15] Since the employer stated that there was work available and they would have kept the Claimant employed if he were not returning to school, it cannot be said that the Claimant was no longer employed because of a shortage of work.

[16] Further, the Tribunal is not persuaded by the Claimant's argument that he did not quit his employment because he expected he would continue to be offered shifts as the fill-in guy after he returned school. The Claimant admits that the employer knew he was returning to school and hired a new person to replace him before his last day of work. Further, the Claimant returned to school. It is reasonable for the employer to conclude that the Claimant would not be as available as he was previously, and he needed to be replaced. Since the Claimant was less available because he chose to return to school, the Tribunal finds that the Claimant voluntarily left his job.

[17] While the Claimant argued that he did not reduce his availability, the Tribunal does not find it credible that the Claimant would take days off of school to return to work if the employer called. The Claimant confirmed he was in his last year of school, he was required to relocate to attend university, he spent 25 or more hours per week on his studies, and he was required to complete a practicum. The Claimant was asked how he would deal with working for this employer while attending classes and his practicum; he responded that he would have to miss the occasional day of classes or his practicum. When asked if he was needed at work for more than the occasional day like he had been in August 2016; he responded that if they offered him a full-time job, he would have to take it because he had a full year of school left and he was struggling financially.

[18] However, the Claimant also argued that he is 36 years old, and for the employer to say they hired him on as a full-time roughneck is not believable because that is a young man's job. While he made this argument to the Commission to show he was hired as a "fill-in" guy, this statement contradicts his argument that he would work for more than the occasional day if they offered him a full-time job. The Claimant was working full-time hours when the employer hired a replacement. The employer clearly understood that the Claimant was leaving his employment because they issued the ROE six days after his last day of work and before he started his classes. While the Claimant may disagree that he reduced his availability, it is up to the employer to determine the requirements of their business. The Tribunal does not find it credible that the

Claimant would willingly leave his last year of university if he were required to "fill in" for several weeks to cover for another employee doing a job he described as "the worst job in the oil patch".

[19] Therefore, the Tribunal finds that the Claimant initiated the separation from employment when he informed the employer that he would be returning to school at the end of the summer. The Claimant had a choice to stay, but he chose to leave to attend university. The Claimant voluntarily left his employment.

2. Has the Claimant proven just cause to voluntarily leave his employment?

[20] The issue of voluntarily leaving employment to attend school has been dealt with many times by the Federal Court of Appeal. It has consistently determined that leaving one's employment to pursue studies not authorized by the Commission does not constitute just cause within the meaning of the EI Act (*Canada (Attorney General) v. Côté*, 2006 FCA 219).

[21] The Tribunal finds that the Claimant has not proven just cause for voluntarily leaving his employment in order to complete his final year at university. The Claimant admits he was not authorized by the Commission to attend classes.

[22] The test for determining whether a Claimant had "just cause" under section 29 of the EI Act is whether, having regard to all of the circumstances, on a balance of probabilities, the Claimant had no reasonable alternative to leaving the employment when he did. It is not whether it was reasonable for the Claimant to leave his employment, but whether it was the Claimant's only reasonable alternative to leave the employment (*Canada (Attorney General) v. Laughland*, 2003 FCA 129). The Tribunal finds that the Claimant had a reasonable alternative of not returning to school and remaining employed.

[23] Choosing to leave a job to attend school is commendable; however, it is considered a personal reason to voluntarily leave employment. There is a consistent line of authority that leaving employment for purely personal reasons does not constitute just cause within the meaning of the EI Act (*Tanguay v. Canada (Canada Employment and Immigration Commission)*, A-1458-84).

[24] Furthermore, the EI system was put in place to assist workers who, for reasons beyond their control, find themselves unemployed. The reasons provided by the Claimant for leaving his employment were not beyond his control. Since he had other reasonable alternatives available to him other than to leave his employment, he has not proven just cause.

CONCLUSION

[25] The Tribunal concludes that, on a balance of probabilities, the Claimant has not proven just cause for voluntarily leaving his employment on August 23, 2016, under subsection 29(c) of the EI Act. The Commission has appropriately imposed an indefinite disqualification to EI benefits under subsection 30(1) of the EI Act.

[26] The appeal is dismissed.

K. Wallocha

Member, General Division - Employment Insurance Section

HEARD ON:	January 29, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. D., Appellant