



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. B. v Canada Employment Insurance Commission*, 2019 SST 567

Tribunal File Number: GE-19-1486

BETWEEN:

G. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: May 2, 2019

DATE OF DECISION: May 7, 2019

DECISION

[1] The appeal is dismissed. The Appellant G. B., whom I refer to as the Claimant, had reasonable alternatives to leaving his employment. Therefore, he voluntarily left his employment, without just cause. My reasons for this decision follow.

OVERVIEW

[2] After working for his employer for less than 2 weeks, the Claimant decided to end his employment on August 8, 2018, to relax and take his time to find new employment, while he lived on his savings. Four months later, the Claimant made an application for regular Employment Insurance benefits during apprenticeship training, stating he quit his previous employment with X because he was expecting to be offered another job.

[3] The Respondent, who is the Canada Employment Insurance Commission (Commission), determined the Claimant was not entitled to regular benefits during his apprenticeship training because he had voluntarily left his previous employment, without just cause, and he had not acquired enough hours of insurable employment since quitting, to establish a new claim (benefit period). Upon reconsideration, the Commission maintained their decision.

[4] The Claimant appeals to the Social Security Tribunal and argues that nowhere does it state that an apprentice requires insurable hours of employment to receive benefits during apprentice training.

ISSUES

[5] Did the Claimant voluntarily leave his employment?

[6] If so, what were the circumstances that caused the Claimant to leave his employment?

[7] Did the Claimant have reasonable alternatives to leaving his employment?

[8] If so, has the Claimant accumulated enough hours of insurable employment to qualify for benefits since quitting his previous employment?

ANALYSIS

[9] The burden of proof is on the Commission to show the Claimant voluntarily left his employment. Then, the burden of proof shifts to the Claimant to demonstrate he had just cause for leaving.¹

A) Voluntary Leaving

[10] The Claimant does not dispute the fact that he chose to voluntarily leave his employment with X on August 8, 2018. Accordingly, I find the Commission's burden is met.

B) Just Cause

[11] When determining whether just cause for voluntarily leaving an employment exists, I must consider all the circumstances and whether the Claimant had no reasonable alternative to leaving.²

i) All Circumstances

[12] A non-exhaustive list of specific circumstances that are to be considered when determining whether there is just cause is listed in paragraph 29(c) of the *Act*. The mere presence of one of the listed circumstances does not automatically prove the Claimant had just cause to leave his employment because the Claimant must still prove he had no reasonable alternative to leaving.

[13] When determining if the Claimant had just cause to leave his employment, the circumstances that must be considered are those, which existed at the time the Claimant resigned from his employment.³

[14] I recognize that the reasons the Claimant provided for why he quit his employment with X have continued to change. On December 31, 2018, the Claimant initially wrote on his application for benefits that he quit his employment because he wanted time off to relax and he

¹ *Green v. Canada (Attorney General)*, 2012 FCA 313

² Paragraph 29(c) of the *Employment Insurance Act (Act)*

³ *Canada (Attorney General) v. Lamonde*, 2006 FCA 44

had enough savings to take his time to find a new job. The Claimant confirmed these statements to the Commission on January 30, 2019, and stated that he had nothing further to add. When submitting his request for reconsideration to the Commission on February 13, 2019, the Claimant states he left his employment due to health reasons with his back and that there was no doctor's note available.

[15] I agree with the Commission that when a claimant is arguing they left their employment due to health issues, they must provide medical evidence, signed by a medical professional, indicating that they are unwell or are required to leave work due to a medical condition. The Claimant is also required to demonstrate the he attempted to reach an agreement with his employer to accommodate his health concerns and he must prove that he attempted to find alternative employment prior to leaving, which in this case the Claimant did not do.

[16] The Claimant confirmed that he did not speak to his employer about his health concerns and then conceded that he was not getting along with the other people who worked at X. He testified that the staff at X were not easy to get along with, they made fun of him, and they did not have any interests that were similar. He confirmed that he made no effort to discuss his issues with his employer and he made a personal choice to resign and relax for a while to sort out whether he wanted to remain working as a mechanic.

[17] The Claimant testified that his former employer actually contacted him on August 16, 2018, and again on August 27, 2018, requesting that he return to work for them. He stated that after a while he realized that he was not going to be able to find another job so he went in and saw his former employer on September 15, 2018, and return to work for them the next day. Therefore, I find the Claimant has failed to prove that he secured alternate employment prior to leaving his employment with X because the evidence is he secured alternate employment five weeks after his employment with X ended.

[18] Even though the Claimant clarified his statements regarding when he was given a verbal offer of employment to return to his former employer, I must consider that, where there is only a conditional offer of employment, the test of reasonable assurance of another job has not been

met.⁴ Therefore, based on the evidence as set out above, the Claimant has failed to prove that he had reasonable assurance of other employment at the time he quit his employment with X.

[19] I am not convinced that there was any urgency for the Claimant to have to leave his employment with X on August 8, 2018, because by his own admission, he was able to provide his employer with 1 week's notice. Further, the Claimant conceded that he had made a personal choice to live off his savings while he took a few weeks off to consider his career options. Although the Claimant's choice to leave his employment with X may constitute good cause, it is not synonymous with the requirements to prove just cause for leaving employment.⁵

ii) No Reasonable Alternative

[20] Upon a review of all the circumstances in this matter, I find that the Claimant failed to demonstrate that, at the time he voluntarily left his employment he had no reasonable alternative but to leave.

[21] I agree with the Commission that the Claimant had reasonable alternatives that included seeking medical assistance for his back issues; speaking with his employer to attempt to reach an agreement to accommodate his health concerns; and secure alternate employment "prior" to voluntarily leaving.

[22] Remaining in employment until a new job is secured, without more, is generally a reasonable alternative to taking a unilateral decision to quit a job.⁶ Accordingly, as the Claimant failed to seek all reasonable alternatives prior to quitting, he is subject to an indefinite disqualification effective August 8, 2018.⁷

[23] Where a claimant leaves an employment without just cause, the hours of insurable employment accumulated in that and any previous employment cannot be used to qualify him for benefits.⁸

⁴ *Canada (Attorney General) v. Shaw*, 2002 FCA 325

⁵ *Tanguay v. Canada (Unemployment Insurance Commission)*, A-1458-84

⁶ *Canada (Attorney General) v. Murugaiah*, 2008 FCA 10

⁷ Section 30 of the *Act*

⁸ Section 30 of the *Act* and *Canada (Attorney General) v. Trochimchuk*, 2011 FCA 268

C) Does the Claimant have enough hours since the disqualifying event?

[24] No. The Claimant does not gain relief from the disqualification unless, since losing or leaving his employment, he has accumulated the required number of hours of insurable employment required to qualify for benefits.⁹

[25] As explained during the hearing, benefits are payable to an insured person who qualifies to receive them. An insured person qualifies for benefits if that person has had an interruption of earnings from employment; and has, in their qualifying period starting after the date of disqualification, the required number of hours of insurable employment in relation to the regional rate of unemployment that applies.¹⁰

[26] An unpaid educational leave of absence constitutes an interruption of earnings.¹¹ Although I am not bound by CUB 23855, I agree that a claimant must still meet the entitlement requirements to qualify for benefits, even in cases where the claimant is seeking benefits during a period of approved leave to attend training, such as apprenticeship training.

[27] The Claimant does not dispute that, at the time he filed his application for benefits in December 2018, he resided in an area, which based on the regional rate of unemployment of 6.6%, he requires 665 hours of insurable employment, to qualify for benefits.¹² The Claimant did not dispute that he acquired only 587 hours of insurable employment from his two jobs, since leaving his employment with X on August 8, 2018, and he has no other employment since leaving X. Therefore, he does not qualify for benefits as of December 16, 2018, because he only has 587 of the required 665 hours of insurable employment.

[28] The Employment Insurance system is a contributory scheme that provides social insurance for Canadians who meet the entitlement requirements set out in the *Act*.¹³ I sympathize with the Claimant given the circumstances he presented; however, there are no exceptions and no

⁹ Section 30 and 7 of the *Act*

¹⁰ Section 7 of the *Act*

¹¹ CUB 23855

¹² Subsection 7.1(1) of the *Act*

¹³ *Canada (Attorney General) v. Lesiuk*, 2003 FCA 3

room for discretion. I cannot interpret or rewrite the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.¹⁴

CONCLUSION

[29] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	May 2, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. B., Appellant (Claimant)

¹⁴ *Canada (Attorney General) v. Knee*, 2011 FCA 301