



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RA v Canada Employment Insurance Commission*, 2019 SST 1746

Tribunal File Number: GE-19-1219

BETWEEN:

R. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: May 14, 2019

DATE OF DECISION: May 15, 2019

DECISION

[1] The appeal is allowed. The Appellant R. A., whom I refer to as the Claimant, has proven she voluntarily left her employment on November 10, 2017, with just cause. My reasons for this decision follow.

OVERVIEW

[2] The Claimant was working as an apprentice cook and when she attended her second year of apprenticeship training, she had to travel to another city and arrange temporary accommodations. While attending her training, the Claimant began networking to try to secure alternate employment in the same city as her training, to eliminate having to move every year.

[3] Upon completion of her apprenticeship training on October 20, 2017, the Claimant returned to her employment with X, located in the city where she permanently resided. A few weeks later, while on her days off, the Claimant returned to the city and after meeting with the head chef at X, she thought she had secured alternate employment. The Claimant returned home, handed in her notice at X's, and moved to the city. The Claimant states that when she arrived in the city, she contacted X again and when they failed to return her calls or provide her a start date, she sought other employment. Thirteen days after she left her employment with X and moved to the city, the Claimant secured employment at a different restaurant. Four months later, the Claimant submitted an application for regular Employment Insurance benefits for the period she attended her third year apprenticeship training.

[4] The Respondent, who is the Canada Employment Insurance Commission (Commission), conducted a post audit review and determined the Claimant had voluntarily left her employment with X, without just cause. They also determined that the Claimant was not entitled to the regular benefits she was paid during her third year of apprenticeship training. Further, the Commission determined the Claimant had not acquired enough hours of insurable employment since quitting X to establish a new claim (benefit period).

[5] Upon reconsideration, the Commission maintained their decision. The Claimant appealed to the Social Security Tribunal (Tribunal) and argued that she left her employment with X, to live and work in the city so she could attend training and advance her career.

[6] The Claimant's appeal was initially heard by the Tribunal's General Division on November 19, 2018; by way of written question and answers. A decision was rendered on November 19, 2018, which the Appellant appealed to the Appeal Division stating she did not receive the Tribunal Member's questions. The Appeal Division granted the appeal and returned the matter to the General Division to be reheard.

ISSUES

[7] Did the Claimant voluntarily leave her employment with X?

[8] If so, what were the circumstances that led the Claimant to leave this employment?

[9] Did the Claimant explore all reasonable alternatives to leaving this employment?

ANALYSIS

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

a) Voluntary Leaving

[11] The Claimant does not dispute the fact that she chose to voluntarily leave her employment with X, as of November 10, 2017. Accordingly, I find the Commission's burden is met.

b) Just Cause

[12] 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

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

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

i) All Circumstances

[13] 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*, and includes reasonable assurance of another employment in the immediate future.³ The mere presence of one of the listed circumstances does not automatically prove the Claimant had just cause to leave her employment because the Claimant must still prove she had no reasonable alternative to leaving.

[14] When determining if the Claimant had just cause to leave her employment, the circumstances that must be considered are those, which existed at the time the Claimant resigned from her employment.⁴

[15] When a claimant argues that they left their employment to work elsewhere, 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.⁵

[16] In this case, I found the Claimant's evidence, that she thought she had secured alternate employment with X before quitting X, to be credible because it was consistent and probable. The Claimant testified before me that at the time she handed in her notice to quit her employment with X, she was of the opinion that she had secured alternate employment with "X", a restaurant in the city where several of her co-students had worked.

[17] The Claimant provided detailed testimony how, prior to quitting her employment with X, she had traveled to the city and met with the head chef at X. She stated, in part, that she spoke with the head chef for a while, he asked for her resume, and told her, "I would love to hire you. Give us a call when you get into town"; which she interpreted to mean she had been offered employment.

³ Subparagraph 29(c)(vi) of the *Act*

⁴ *Canada (Attorney General) v. Lamonde*, 2006 FCA 44

⁵ *Canada (Attorney General) v. Shaw*, 2002 FCA 325

[18] The Claimant stated that she attempted to contact X as soon as she arrived in the city. When they failed to return her calls, she sought work elsewhere and secured employment 13 days after she quit her employment at X.

[19] The Claimant's representative argued that employers do not make formal offers of employment at this level of employment, which is second year apprentice cooks. I find this argument to be probable given the circumstances presented. I also accept the representative's argument that wages are not usually negotiated at this level of employment because employers only pay minimum wage.

[20] Further, I accept the representative's assertion that the Claimant had no malicious intent when she failed to disclose on her May 1, 2018, application, that her employment with X had ended. Rather, she was of the opinion that she did not need to list her employment with X again, as this employer was previously listed on her initial application.

[21] I do not accept the representative's argument that the options provided under the "Other Employers" section on the Claimant's application were not relevant to her situation. This is because the Claimant readily admits that she quit this employment on November 10, 2017, to move to the city, and "You quit" is the first answer available to the question: "Since last filing for benefits, have you worked for another employer and stopped working for one of the following reasons?" This being said, I accept that the Claimant may have thought that X would not be considered "another employer" and that she truly believed she had another job in place with X, prior to leaving X and moving to the city.

[22] Based on the evidence as set out above, I find the Claimant has proven that she had "reasonable" assurance of other employment with X, at the time she quit her employment with X. Further, I am not convinced that this Claimant was so irresponsible to have quit her employment and move to another city, without having some assurance of alternate employment, because when that employment opportunity failed to materialize, she secured alternate employment X, within 13 days and did not attempt to collect benefits during that time.

ii) Reasonable Alternative

[23] Upon a review of all the circumstances in this matter, I find the Claimant demonstrated that, at the time she voluntarily left her employment she took all reasonable alternatives by securing alternate employment, in a fashion that was customary in her field of employment. Even if the Claimant's interpretation of whether she had secured employment with X was a miscalculation, she cannot be penalized for making such an "honest and reasonable miscalculation".⁶

[24] Further, I accept that when the Claimant realized her employment with X was not going to materialize, she took all reasonable actions and secured employment with X, within thirteen days of leaving X; as supported by the ROE submitted in evidence. The Claimant did not rely upon the Employment Insurance fund during this 13-day period; rather, she waited almost four months before submitting an application for benefits during the period she attended her third year of apprenticeship training.

[25] Based on the totality of the evidence before me, I find the Claimant has met the test to prove she voluntarily left her employment with X on November 10, 2017, with just cause. Accordingly, the Claimant is not subject to a disqualification.⁷

CONCLUSION

[26] The appeal is allowed.

Linda Bell
Member, General Division - Employment Insurance Section

⁶ CUB 14702A

⁷ Section 30 of the *Act*

HEARD ON:	April 24, 2019, and May 14, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	
April 24, 2019	R. A., Appellant (Claimant) D. A., Representative for the Appellant
May 14, 2019	R. A., Appellant (Claimant) D. A., Representative for the Appellant