



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. M. v Canada Employment Insurance Commission*, 2019 SST 846

Tribunal File Number: GE-19-1957

BETWEEN:

G. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: John Gillis

HEARD ON: May 27, 2019

DATE OF DECISION: June 9, 2019

DECISION

[1] G. M.'s appeal is dismissed. I find that G. M. (who I shall call the Claimant) had reasonable alternatives to quitting her job. She therefore did not show just cause for voluntarily leaving her employment. As a result, she cannot receive regular benefits.

OVERVIEW

[2] The Claimant left her job as a legal assistant and applied for regular employment insurance benefits. The Canada Employment Insurance Commission (who I shall call the Commission) denied the Claimant's application. The Claimant alleges that she left her job to care for her husband at their new home. I find that the Claimant had reasonable alternatives to quitting her job.

ISSUES

[3] Issue 1: Did the Claimant leave her job voluntarily?

Issue 2: If so, did the Claimant have just cause for leaving?

ANALYSIS

[4] When claimants leave their employment voluntarily, they are not automatically entitled to employment insurance benefits. They cannot receive benefits unless they can show just cause for leaving.¹

[5] A claimant can demonstrate just cause if, on a balance of probabilities and considering all the circumstances, he/she had no reasonable alternative to leaving his/her job.² There is a clear distinction between a good reason and just cause. Someone may have good reasons to leave a job based on personal choices, but this is not the same as just cause.³

¹ They are "disqualified" under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

² *Attorney General of Canada v Imran*, 2008 FCA 17. The term "balance of probabilities" means it is more likely than not that events occurred as described.

³ *Attorney General of Canada v Laughland*, 2003 FCA 129.

[6] The Commission has the burden of proof to show that leaving the job was voluntary.⁴ Once the Commission has shown that the departure was voluntary, the burden shifts to the Claimant to show just cause for leaving.⁵

Issue 1: Did the Claimant leave her job voluntarily?

[7] Yes. I find that the Claimant voluntarily left her employment since she had the choice to stay at her job. The Claimant had the choice to remain employed but elected to retire. The legal test to determine whether claimants left voluntarily is whether they had a choice.⁶ The Commission submitted that the Claimant voluntarily left her job. The Claimant elected to quit her job so that she could spend more time with her husband and permanently move to their lake cottage. On the Claimant's application for benefits, she selected that she quit her job because of a voluntary retirement and not due to health reasons. The Claimant testified that she voluntarily left her employment. Based on the Claimant's application for benefits and her admission, I find that the Claimant voluntarily left her job.

Issue 2: Did the Claimant have just cause for leaving?

[8] No. I find that the Claimant did not show just cause, because she had reasonable alternatives to leaving her employment. She has not met her burden of proof to show that she tried these reasonable alternatives before quitting. As a result, she did not meet the legal test to show just cause.

[11] To determine just cause, I must consider all the relevant circumstances. The legislation lists several situations that may show just cause but this list does not exclude other circumstances that can also be relevant.⁷

[12] I have considered all the Claimant's circumstances based on the evidence before me. The Claimant submitted that she had to leave because her husband's medical condition required her to be available to assist him and that they had to move to a more accessible home.

⁴ The term "burden" describes which party must provide sufficient evidence of its position to prove its case.

⁵ *Attorney General of Canada v White*, 2011 FCA 190.

⁶ *Attorney General of Canada v Peace*, 2004 FCA 56.

⁷ Section 29(c) of the EI Act.

[13] The legislation specifically provides that the obligation to care for a member of a claimant's immediate family is a circumstance that the Tribunal must consider in determining if the claimant had just cause for voluntarily leaving their employment.⁸ The legislation's use of the word 'obligation' indicates that the requirement to care for an immediate family member must be more than a desire of the claimant. Rather, the claimant must be obliged to care for their family member.

[14] The Claimant testified that her husband was in a car accident in 2010. Her husband suffered injuries and was only able to work periodically for approximately 4 years. The Claimant testified that her husband eventually applied for a disability pension when he was no longer able to work. Her husband's life changed and he was no longer able to play golf or hockey. He found climbing stairs and driving long distances painful and would sometimes need to lay down and take pain medication. The Claimant testified that her husband suffers from other medical issues including diabetes, high blood pressure, and high cholesterol.

[15] The Claimant submits that she has to be available to assist her husband. The Claimant did continue to work following her husband's injury. As an example of her being needed by her husband, the Claimant testified that she previously received a telephone call from her husband asking for assistance while she was at work. In that instance, the Claimant's work was 20 minutes away. By the time that the Claimant arrived home, her husband was already in an ambulance. The Claimant testified that on some days her husband is not mobile. The Claimant rubs pain ointment on her husband's back several times a day. Her husband is able to drive and assists with meal preparation. The Claimant testified that her husband does receive routine injections that significantly reduce his pain for a period. With respect to hiring a caregiver, the Claimant submits that she does not know if she could find one available.

[16] Based on the evidence before me, particularly that the Claimant was able to continue working for at least 4 years despite her husband's injury and the limited requirements of assisting him, I find that the Claimant was not obligated to provide care to her husband. To rise to the level of obligation, the care required needs be frequent and time-intensive. The Claimant's husband's need to take pain medication, lay down when his pain is too severe, and have ointment

⁸ Section 29(c)(v) of the EI Act.

rubbed on his back several times a day do not give rise to an obligation on the part of his wife to care for him such that she cannot be employed.

[17] Another circumstance that the Tribunal must consider in determining if the claimant voluntarily left their job is if the claimant had an obligation to accompany a spouse to another residence.⁹ The legislation again uses the word ‘obligation’, indicating more than a mere desire on the part of the claimant.

[18] The Claimant submits that her husband’s injury was such that he finds it painful to climb stairs. The Claimant testified that prior to her quitting her job, her and her husband’s residence had multiple flights of stairs. After quitting her job, the Claimant and her husband moved to their lake cottage as it did not have any stairs. The Claimant testified that, despite moving, her husband still has pain. There is no evidence that the Claimant was unable to locate a suitable residence closer to her job.

[19] The Claimant testified that her lake cottage is approximately an hour’s drive from her previous employment. This commute is longer than her previous one of only 20 minutes. Based on the limited length of the potential commute and the lack of evidence that the Claimant’s lake cottage was the only suitable residence for her husband, I find that the Claimant was not obligated to relocate herself to her lake cottage or that such a relocation necessitated her quitting her job.

[20] The Commission submitted that the Claimant had reasonable alternatives to leaving her job. The Commission submitted that the Claimant did have reasonable alternatives, including but not limited to commuting from her lake cottage to her job. The Claimant must show that there were no reasonable alternatives to her leaving her job.

[21] Based on the evidence and on the balance of probabilities, I find that the Claimant had reasonable alternatives to leaving her job. She could have hired a caregiver to care for her husband while she was at work. She could have commuted from her new residence to her job. She could have found a residence closer to her job that did not have stairs.

⁹ Section 29(c)(ii) of the EI Act.

[22] A claimant has a responsibility to not risk unemployment.¹⁰ EI benefits support claimants who lose their employment through no action of their own, such as in a situation of lay-off, not those who leave voluntarily because of personal preferences.

[23] Based on the evidence and the submissions of both parties, I find that the Claimant failed to meet her burden of proof to show that she had no reasonable alternative to leaving her job.

CONCLUSION

[24] The appeal is dismissed. I find that the Claimant had reasonable alternatives to quitting her job. She therefore did not show just cause for voluntarily leaving her employment. As a result, she cannot receive regular benefits.

John Gillis

Member, General Division - Employment Insurance Section

HEARD ON:	May 27, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. M., Appellant

¹⁰*Attorney General of Canada v Langlois*, 2008 FCA 18.