



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. S. v Canada Employment Insurance Commission*, 2019 SST 902

Tribunal File Number: GE-19-2313

BETWEEN:

S. S.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: July 4, 2019

DATE OF DECISION: July 5, 2019

DECISION

[1] The appeal is allowed. The Canada Employment Insurance Commission (Commission) failed to prove the Claimant voluntarily left her employment.

OVERVIEW

[2] The Claimant was employed at a restaurant. Her hours were suddenly reduced from three or four shifts per week to one shift per week. After several weeks, she was removed from the work schedule altogether. When she asked to be scheduled for more shifts, she was told there were no hours for her. She found another job and moved to a nearby community for the new position. After nearly a year, she made a claim for employment insurance benefits.

[3] The Commission decided the Claimant had voluntarily left the job at the restaurant without having just cause. That meant she did not qualify for benefits, because the hours she worked in that employment could not be used in the calculation of her claim. The Claimant requested a reconsideration of the Commission's decision to exclude that period of employment. She said she had just cause to leave because her shifts had been reduced and she could not live on the wages. The Commission maintained its decision. The Claimant appeals to the Social Security Tribunal. She says she did not voluntarily leave her employment at all, rather she was removed from the schedule and did not have a choice to stay.

ISSUES

[4] Did the Claimant voluntarily leave her employment?

[5] If so, did she have just cause to voluntarily leave her employment when she did?

ANALYSIS

[6] A claimant is disqualified from receiving regular employment insurance benefits if they voluntarily left any employment without just cause.¹ The hours from any employment that a

¹ *Employment Insurance Act*, subsection 30(1)

claimant leaves without just cause may not be used to determine their maximum number of weeks of benefits or their rate of weekly benefits.²

[7] The Commission has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Claimant to demonstrate she had just cause for leaving. The term burden is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is more likely than not the events occurred as described.

Did the Claimant voluntarily leave her employment?

[8] When determining whether the Claimant voluntarily left her employment, the question to be answered is: did she have a choice to stay or leave.³

[9] The Claimant submits to the Tribunal that she did not quit her job. Rather, she was removed from the work schedule and had no choice but to find work elsewhere.

[10] The Claimant was employed as a cook at a restaurant from March 2, 2018 to June 1, 2018. The Claimant testified that she was initially scheduled to work four shifts per week. She said the hours could vary from week to week, but she was never scheduled for less than three shifts per week. Then in May 2018, her schedule was reduced to only one shift per week. She asked her manager why her hours had been reduced and asked for additional shifts, but the manager “just shrugged and walked away.”

[11] The Claimant said the work schedules were posted bi-weekly. She worked two weeks with only one shift per week. She mentioned to one of her co-workers that she could not continue to work only one shift per week and that, if this schedule continued, she would have to start looking for other work. The new schedule was posted and she was scheduled to work one shift the first week and no shifts on the second week. She asked her manager again if she could be scheduled for more hours and the manager told her there were no more hours for her because another cook was returning for the summer season.

² *Employment Insurance Act*, subsection 30(6)

³ *Canada (Attorney General) v. Peace*, 2004 FCA 56

[12] The Commission's evidence consists of the employer's statements. The employer told the Commission that the Claimant quit the job because she was moving. They confirmed to the Commission that the Claimant was only getting one or two shifts per week. They said she had asked for more shifts but they did not have any additional hours to give her.

[13] The Commission provided the Claimant's initial application for benefits. On the application she states that she quit her employment with the restaurant because she moved to a different town.

[14] The Commission also provided the record of employment (ROE) issued by the employer on June 10, 2018. It states the reason for issuing the ROE as "Other."

[15] The Claimant acknowledged that she stated she quit this employment on her initial claim for benefits on March 27, 2019. At the hearing, she explained that she had forgotten the exact circumstances around her separation from this employment due to the length of time that had passed. She stated that a friend of hers had reminded her of her removal from the restaurant's work schedule after she had received the Commission's reconsideration decision. She said she contacted the Commission with this information, but was informed the matter was out of their hands as a reconsideration decision had been issued.

[16] The Claimant also told the Tribunal that she did move, but it was not the reason she was no longer working at the employer. She began looking for work the week that she was separated from her employment and quickly found a job in a nearby town. She moved to the new town shortly before the job started.

[17] I consider that the Claimant was separated from her employment on June 1, 2018, nine months prior to her initial claim for benefits on March 27, 2019. I also consider that she gave her testimony in an open, straightforward manner and was able to give quick and direct answers to questions regarding her removal from the schedule. Based on the foregoing, I find that I have no reason to question the credibility of the Claimant's testimony regarding these events.

[18] Voluntary leaving can be seen as occurring when an employee initiates their own separation from employment. In the Claimant's case, I am not convinced she initiated her separation from the job at the restaurant. The employer confirmed that they had reduced the

Claimant's scheduled shifts and refused to give her additional hours. The Claimant testified that she requested more shifts after the reduction in her work schedule and was instead removed from the schedule altogether.

[19] While the employer told the Commission the Claimant had quit to move to another town, the Claimant testified that she only moved after finding work in that town, and that she only started seeking work after she was removed from the schedule at the restaurant. In this case, I put more weight on the Claimant's testimony, as it was given directly to the Tribunal and she was able to answer questions regarding the events.

[20] Given these circumstances, I find the Commission has failed to prove the Claimant had a choice to stay in her job; therefore, she did not voluntarily leave her employment.

Did the Claimant have just cause to voluntarily leave her employment when she did?

[21] As I have already found the Claimant did not voluntarily leave her employment, the question of whether she had just cause to leave does not need to be answered.

CONCLUSION

[22] The appeal is allowed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	July 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. S., Appellant/Claimant