



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. L. v Canada Employment Insurance Commission*, 2019 SST 746

Tribunal File Number: GE-19-2189

BETWEEN:

T. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gary Conrad

HEARD ON: July 10, 2019

DATE OF DECISION: July 12, 2019

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Claimant was in receipt of Employment Insurance (EI) benefits and worked two shifts to help out a friend who was having family issues. The owner of the business asked if the Claimant would like to work another shift; the Claimant declined.

[3] The Canada Employment Insurance Commission (Commission) became aware the Claimant had worked two shifts and declined to work the other offered shift. The Commission disqualified the Claimant from benefits as they determined the Claimant had voluntarily left her employment and did not prove just cause for doing so.

ISSUES

1. Did the Claimant voluntarily leave her employment?
2. If so, did the Claimant prove just cause for her voluntary leaving?

ANALYSIS

[4] The Claimant is disqualified from receiving any benefits if she voluntarily left any employment without just cause according to subsection 30(1) of the *Employment Insurance Act* (Act). The burden of proof is initially on the Commission to show the Claimant voluntarily left her employment. Once shown that the leaving was voluntary, the burden of proof shifts to the Claimant to demonstrate just cause for voluntarily leaving her employment (*Green v. Canada (Attorney General)*, 2012 FCA 313).

1. Did the Claimant voluntarily leave her employment?

[5] No, the Claimant did not voluntarily leave her employment as she was not employed since it was not her employment it was her friend's; thus there was no employment to voluntarily leave.

[6] The Commission submits the Claimant left ongoing part-time employment when she quit, and that she could have kept working for the business.

[7] The Commission submits the business owner supports the Claimant left ongoing part-time employment and further submits the Claimant made a personal decision to quit her employment.

[8] The Commission submits the Claimant did not have just cause for leaving her employment and the disqualification imposed under section 30 of the Act should be upheld.

[9] The Claimant testified she had gone to visit her friend who worked at a business where she had once worked before. Her friend asked the Claimant if she could cover a couple of the friend's shifts as she was desperate since her father was not doing well.

[10] The Claimant testified she initially declined but then agreed to cover the shifts due to her friend's desperation and the declining health of her friend's father.

[11] The Claimant testified her friend spoke to the owner of the business and then called the Claimant and told her that everything had been okayed; the Claimant worked her friend's shifts on May 16, 2018, and May 23, 2018, for four hours each shift.

[12] The Claimant testified the owner of the business asked her to work one other shift, the Friday of next week. The Claimant said she would think about it and get back to the owner. The Claimant testified in the end she declined to work the shift as she had training coming up at the start of June and she did not like working at that business.

[13] The owner of the business the Claimant worked at to cover her friend's shifts, told the Commission they offered the Claimant another shift on May 25, 2018, but the Claimant declined the shift saying her husband would not allow her to come into work anymore. The owner of the business stated the Claimant could have worked more for them if she wanted to.

[14] I find the Claimant did not voluntarily leave her employment as it was not her employment; the position was her friend's, and she was simply covering those shifts for her friend. As it was not the Claimant's position she did not leave her employment.

[15] I find the Claimant being offered another shift, as per the statements of the business owner, does not demonstrate the Claimant was working as an employee. It is not clear the offer is anything more than the chance to work another shift in coverage or to assist the owner. I further find that while the Claimant was compensated by the business for her two shifts that does not make the position hers; her friend did not leave the position, nor is it ever clear the Claimant was considered to have taken her friend's position, or that she was offered her friend's position. No employment contract been produced for the Claimant to demonstrate she was working or offered a wholly separate position that was not her friend's.

[16] While the Commission has not argued as such, I have looked at section 29(b.1) of the Act to see if the Claimant's circumstances relate to that section.

[17] I find the Claimant's circumstances are not those of Section 29(b.1)(i) as she has not refused employment offered as an alternative to an anticipated loss of employment as she was simply covering her friend's shifts, not about to lose her own employment with the business. I further find section 29(b.1)(iii) does not reflect the Claimant's circumstances as the business in question was not being sold or transferred. I also find that section 29(b.1)(ii) does not reflect the Claimant's circumstances as there is insufficient evidence she was not being offered her job back, from when she quit previously, as instead she was offered another shift, which she declined.

[18] I note the Act does contemplate a scenario where a person has refused work that may be suitable, in section 27; however, the Commission has chosen to disqualify the Claimant under section 30 of the Act. The issue of a disqualification under section 27 is not before me, I make no finding on that issue, or whether it would apply to the Claimant's situation or whether the evidence even supports if she had the opportunity to accept employment or not. The Commission is free to chose which section of the Act they wish to use and they have chosen to apply section 30 to the Claimant's situation when they disqualified her.

[19] The burden of proof for proving the Claimant voluntarily left her employment is on the Commission. I find they have not met that burden. As such I find the Claimant did not voluntarily leave her employment and therefore should not be disqualified under section 30 of the Act.

2. Did the Claimant prove just cause for her voluntary leaving?

[20] Having found the Claimant did not voluntarily leave her employment I find it is not necessary to consider this issue.

CONCLUSION

[21] The appeal is allowed.

Gary Conrad

Member, General Division - Employment Insurance Section

HEARD ON:	July 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	T. L., Claimant