



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. F. v Canada Employment Insurance Commission*, 2019 SST 745

Tribunal File Number: GE-19-2218

BETWEEN:

**A. F.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Charlotte McQuade

HEARD ON: July 18, 2019

DATE OF DECISION: July 23, 2019

## **DECISION**

[1] The appeal is allowed. A. F. (who I will refer to as the Claimant) voluntarily left his employment. However, he had just cause for so doing because he had a reasonable assurance of re-employment with the same employer in the immediate future.

## **OVERVIEW**

[2] The Claimant worked as a manager at a coffee shop since September 24, 2018. In January 2019 he requested a leave of approximately three weeks to visit his elderly mother in India. The Claimant says the employer refused the vacation request but told him that he could resign and then rejoin the employer after he returned. He says he was told his job would be safe and the only thing that would change was the date he was considered to be hired. The employer told the Canada Employment Insurance Commission (whom I will refer to as the “Commission”) that the Claimant was denied his extended vacation request and was told he would have to resign if he wanted to go. The employer denies that the Claimant was assured that he would be rehired on his return.

[3] The Claimant went on his trip and upon his return, he asked for his shift schedule. The employer told him that he had resigned and because it was a slow time, they could not rehire him. The Claimant applied for Employment Insurance (EI) regular benefits on February 19, 2019. The Commission says the Claimant voluntarily left his employment. The Commission looked at the Claimant’s reasons for leaving and decided that he voluntarily left his employment without just cause on January 19, 2019, so it was unable to pay him benefits.

[4] I must decide whether the Commission has proven that the Claimant voluntarily left his employment on January 19, 2019 and if so, whether the Claimant has proven that he had no reasonable alternative to leaving his job. The Commission says that the Claimant voluntarily left his employment because the employer denied the Claimant’s vacation request but the Claimant went on the trip anyway and placed himself in an unemployment situation. The Commission says the Claimant did not have just cause for leaving his employment because he went on the trip for personal reasons. A reasonable alternative would have been for him not to go on the trip and to remain working. The Claimant disagrees and states that he only went on the trip as he was

assured that he would be able to return to his job immediately upon his return from the trip.

## ISSUES

[5] Issue 1: Did the Claimant voluntarily leave his employment at the coffee shop?

[6] Issue 2: If so, did the Claimant have just cause for leaving his employment at the coffee shop?

## ANALYSIS

[7] If a claimant voluntarily quits a job, the claimant is not automatically entitled to EI benefits. If a claimant quits, the claimant cannot get benefits unless they can show they had just cause for quitting. <sup>1</sup>To show just cause, the claimant must show, having regard to all the circumstances, that the claimant had no reasonable alternative to leaving. <sup>2</sup>

[8] The Commission has the burden of proof to show that the claimant left voluntarily. This means the Commission must show that it is more likely than not that the claimant voluntarily left his employment. Then the burden of proof shifts to the claimant to establish he had just cause for doing so, by demonstrating that, having regard to all the circumstances, it is more likely than not that he had no reasonable alternative to leaving. <sup>3</sup>

### **Issue 1: Did the Claimant voluntarily leave his employment at the coffee shop?**

[9] Yes. I find that the Claimant voluntarily left his employment at the coffee shop on January 19, 2019.

[10] The law says that the test that I must apply to determine whether a claimant voluntarily left an employment is whether the claimant had a choice to stay or to leave. <sup>4</sup>

[11] The Commission submits that the Claimant had a choice whether to stay or leave. He was aware his vacation request had been denied and was told by the employer if he wanted to go

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<sup>1</sup> Subsection 30(1) of the *Employment Insurance Act* (Act) provides for a disqualification if a claimant voluntarily leaves their employment without just cause

<sup>2</sup> Subsection 29(c) of the Act

<sup>3</sup> *Canada (Attorney General) v. White*, 2011 FCA 190

<sup>4</sup> *Attorney General of Canada v. Peace*, 2004 FCA 56

on the trip he would have to resign. The Claimant went on the trip anyway placing himself in a state of unemployment.

[12] The Claimant argues that he did not voluntarily leave his job. He argues he was told that he could quit and rejoin the employer with the only term changing in his employment was his date of hire so that meant his employment was being maintained.

[13] The Claimant told the Commission that he went to India from January 21, 2019 to February 14, 2019 to take his son to see his elderly mother who was not well. Two weeks before leaving, he asked the General Manager (“GM”) for a leave to go on this trip. She told him that she thought he would be entitled to one to two weeks holiday but she had to verify with the owner. He booked his trip at the same time as talking to her. A few days later, the GM told him that he was not entitled to any leave, that his time away would be unpaid and he could re-join the employer upon his return. The Claimant said that he was told his job would be safe. Before he left, he was told that he needed to fill out a formal leave application. He submitted that to the Human Resources (“HR”) on January 19, 2019. While in India, the HR person sent him a letter saying his leave was not permitted and they considered him to be voluntarily leaving. He did not call the employer when he got that email because he had already spoken to his employer about his leave and was told that he could re-join. When the Claimant returned, he sent a text to the GM asking about his shift on February 16, 2019. The GM did not respond and the company did not take him back. The Claimant denied that he quit and said he thought he was just on an unpaid leave. He felt the employer had cheated him.<sup>5</sup>

[14] The Claimant testified he had only begun working for this particular coffee shop on September 23, 2018 as a manager. However, he had worked for the chain in other coffee shops for 10 years. He said that his brother back home had called him and said that his mother was not well and she had not seen his son. He asked the Claimant if it was possible for him to come to see his mother. The Claimant explained that nothing had happened to his mother but she was 72, a diabetic and heart patient. He had heard some bad news about other older people and thought

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<sup>5</sup> GD3-28 to GD3-29 and GD3-41 to GD3-42

that you never know what can happen. On January 10, 2019, he told the GM that his mother was not well and he had to see her.

[15] The GM told him that he was not entitled to vacation but she would talk to the owner and she was sure he would be entitled to a week. The Claimant knew that he was not entitled to a vacation until he had worked for a year with the employer as that had been discussed at a staff meeting in December. A few days later, the GM told the Claimant that the owner did not approve the leave. She told him could quit and then rejoin the employer when he came back. The Claimant asked the GM whether he would have to then go through a three-month probation again. She told him no. The Claimant testified that he also asked about his review which was pending and whether the timing of that would change. He said the GM told him that he would be reviewed when he came back. She also told him that his joining date would be changed to when he came back, but everything else would remain the same. The Claimant explained that the review was of concern to him because he had been hired at \$40,000.00 and was told that once he completed three months he would be eligible for a raise. The Claimant agreed to quit and then rejoin as he thought all that would change was his date of hire.

[16] The Claimant testified further that on January 16, 2019 the owner gave a Christmas party to the managers. At the end of the party, the owner asked him whether he was sure he was coming back after three weeks. The Claimant told him he had a one and half year old son, a mortgage, and car insurance and was not able to quit. The Claimant told the owner that for sure he would rejoin after the trip. The owner said to him that he would not hire anyone new then. The Claimant testified that once the owner had confirmed that to him he thought there was no risk to leaving.

[17] On January 19, 2019, the last day before his trip, the Appellant testified, the HR person asked him for a quit letter. He did not give a quit letter as he thought he might not get his job back as promised if he said that. As such, he gave the HR person a leave application. He left on his trip on January 21, 2019. The next week he got an email from the HR person saying that they had not approved his vacation request and his request was being considered a resignation. The Claimant explained that he did not take this email seriously as both the GM and owner had told him he could rejoin. He thought this was just a formality about rejoining which he knew he had

to do. He did not, therefore, reply to the email. The Claimant returned from his trip on February 14, 2019. When he returned he sent a text to the GM asking for a shift and she did not reply. He called her and she did not respond. Then he got a call from the HR department and was told that as he did not respond to the email and as he was told, they were considering him to have resigned. They did not have work at that time and they would let him know if they needed him.

[18] The Claimant testified that he was shocked when this happened. He was a good performer. He says what the owner told the Commission is not true. The owner had asked him if he was coming back and when he told him yes, said he would not hire anyone new then. The Claimant thought, however, there was a reason the owner did not take him back as promised. The owner had opened a new coffee shop. When he was hired, the GM was taking care of the new coffee shop and the Claimant was handling her responsibilities at the old coffee shop. The Claimant suspects that once the new coffee shop was settled, they did not need him anymore as the GM was then again working at the old coffee shop.

[19] The Claimant testified that he was prepared to see his mother. However, if the employer had given him any kind of hint that his job was not safe, he would have done things differently. He would have postponed the trip and tried to find another job before going. He went because he thought his job was safe.

[20] The Claimant provided a copy of his leave request dated January 19, 2019 in which he formally requests a vacation leave due to his mother health issues back home (India). He asks for his vacation to be approved from January 22, 2019 to February 14, 2019 and says he will come back to work to report for work on February 16, 2019. He states that he has done all of his current responsibilities and that for urgent matters he can be reached at his cell or email which he will check everyday.<sup>6</sup>

[21] He also provided the email from the HR person dated January 22, 2019, which he received when away. This provides “this is not an approved vacation since you are not entitled to

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<sup>6</sup> GD2-6

vacation at this time. Hence, I am taking this as your resignation. Please contact me when you return from your trip.” This email was copied to the owner and the GM. <sup>7</sup>

[22] The Claimant provided a copy of his text to the GM dated February 16, 2019 in which he advises the GM that he landed yesterday evening and asks what time he should start tomorrow’s shift. <sup>8</sup>

[23] The owner of the employer told the Commission that the Claimant informed the GM and the HR person about one week prior to him resigning that he had booked his ticket to go home to see his mother. He wanted to introduce his son to his grandmother. The GM told him that the vacation had not been approved, as he had not worked there a year yet. The Claimant asked what else he could do and the GM told him that resignation was the only other option because they had only just hired him as a manager and the vacation request was denied. The owner said that when the Claimant was told his request for a three-week vacation was denied, he stated that his Mom was sick. The owner’s mother had just passed so he went up the Claimant to tell him he was sorry his mother was sick. The Claimant then told him that she was not actually sick. She was just old. He asked him why he would say that she was sick. The Claimant responded by stating that because the owner’s mother just recently passed, it made him think that his son had not yet met his grandmother. The owner said he told the Claimant that if he was going to take 3-weeks vacation, he was going to have to resign. The resignation was not in writing. The owner said that the manager job could not be held open for the Claimant and they hired another manager once he left. Leave of absences are available to employees but the Claimant would not have been approved for one because the reason for the trip was not an emergency. <sup>9</sup>

[24] I find that the Claimant had a choice whether to stay employed or whether to quit his employment and go on his trip. The evidence of both the employer and the Claimant is consistent that he was told that the leave request was not approved and if he wanted to go, he would have to resign. Where the employer and Claimant’s evidence differs is whether the Claimant was told he was to be re-hired after his return.

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<sup>7</sup> GD3-33

<sup>8</sup> GD2-7

<sup>9</sup> GD3-18 and GD3-30

[25] I disagree with the Claimant that quitting and rejoining the employer with the only change being his date of hire meant that his employment was being maintained. Otherwise, there really would have been no distinction between quitting and rejoining and an approved leave of absence. The Claimant had a choice whether or not to go on the trip, knowing his leave was not approved and knowing the consequence of that was an implicit resignation. The Claimant could have chosen to simply not go on the trip and remain employed. As such, I find he voluntarily left his employment.

**Issue 2: Did the Claimant have just cause for leaving his employment at the coffee shop?**

[26] Yes. I find the Claimant had just cause for leaving his employment because he had a reasonable assurance of employment in the immediate future. He was assured by both the GM and the owner that he would be rehired upon his return from the trip.

[27] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>10</sup> A good personal reason for quitting employment is not the same thing as “just cause” for quitting.<sup>11</sup>

[28] The law says that you have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.<sup>12</sup>

[29] It is up to the Claimant to prove this.<sup>13</sup> The Claimant has to show that it is more likely than not that he had no reasonable alternatives but to leave when he did.

[30] When I decide that question, I have to look at all of the circumstances that existed at the time that the Claimant quit. The *Employment Insurance Act* sets out some specific circumstances that might amount to “just cause”.<sup>14</sup> One of those circumstances is whether there was a reasonable assurance of another employment in the immediate future. The legal test for this

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<sup>10</sup> Subsection 30 of the Act

<sup>11</sup> *Canada (Attorney General) v. Côté*, 2006 FCA 219

<sup>12</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the Act

<sup>13</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3

<sup>14</sup> Subsection 29(c) of the Act



circumstance is whether the reasonable assurance existed. The words “reasonable assurance” imply some measurable form of guarantee.<sup>15</sup>

[31] The Claimant says that he was assured by both the GM and the owner that he would be rehired upon his return from his trip. The GM told him that his job was safe and the only change would be his joining date. The owner asked him on January 16, 2019 if he would be returning and when the Claimant told him he was, the owner said they would not hire another manager then.

[32] The employer denied that there was any promise of rehiring. The employer says the Appellant was told his vacation was denied and that if he wanted to go on the trip he would have to resign.

[33] The Commission says there is no evidence on file to indicate the Claimant had reasonable assurance of employment in the immediate future. The Commission submits that the Claimant had a reasonable alternative to leaving. He left his job for the personal reason of going on a trip to see his mother. The Claimant’s mother’s medical condition was insufficient to justify leaving employment on short notice to travel to another country. It would be reasonable for the Claimant to keep working with the employer to get a vacation leave request approved before booking his trip to India.

[34] I find that the circumstances of leaving were that the Claimant left his employment to go on a trip to India for personal reasons but he did so on the assurance from the GM and the owner that after he returned from the trip he would be rehired.

[35] In that regard, I found the Claimant’s testimony to be credible. His testimony was consistent with the information he provided the Respondent. He was direct and answered questions openly. I prefer the Claimant’s tested oral evidence over the untested hearsay evidence of the employer regarding whether or not he was told he could rejoin the company upon his return. I accept the Claimant’s testimony that he went on the trip to India on the understanding from both the GM and the owner that he would be rehired upon his return. This conclusion is supported by the Claimant’s text of February 16, 2019 in which the Claimant advises the GM

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<sup>15</sup> *Canada (Attorney General) v. Sacrey*, 2003 FCA 377 (CanLII)

that he landed yesterday evening and he asks what time he should start tomorrow's shift. This text suggests the Claimant understood that he could resume employment with the employer.

[36] I also accept the Claimant's credible explanation that he did not respond to the HR person's email of January 22, 2019 advising him that he was considered to have resigned because the Claimant thought this was just a formality in keeping with what he had been told that he had to resign and then rejoin and also because he was satisfied that his job was safe given that both the GM and owner had assured him of re-employment upon his return.

[37] I am satisfied that the circumstance in which the Claimant left his employment was that he had the reasonable assurance that he would be re-employed by his employer in the immediate future.<sup>16</sup> He was told he could rejoin the employer once he returned. He knew where he was to be working and in what position. His understanding was that the only thing that would change in the terms of his employment was his date of hire.

[38] Given the assurance from the employer that he had a job to rejoin upon his return, I find it was not a reasonable alternative for the Claimant to postpone his trip. While he had a personal reason for going on the trip, he was assured that he would be employed upon his return. He was not therefore creating a risk of unemployment.

[39] In accordance with the case law regarding reasonable assurance of employment in the immediate future, and having found the Claimant had such a reasonable assurance, I find the Claimant has shown he had no reasonable alternative to leaving. He has therefore proven he had just cause for voluntarily leaving his employment.<sup>17</sup>

## **CONCLUSION**

[40] The appeal is allowed.

Charlotte McQuade  
Member, General Division - Employment Insurance Section

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<sup>16</sup> Paragraph 29(c)(vi) of the Act

<sup>17</sup> *Canada (Attorney General) v. Marier*, A-65-12

HEARD ON:	July 18, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	A. F., Appellant