Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *S. G. v Canada Employment Insurance Commission*, 2019 SST 825

Tribunal File Number: GE-19-2217

BETWEEN:

S. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: July 10, 2019

DATE OF DECISION: July 16, 2019

Canada

DECISION

[1] The Appellant is not eligible for Employment Insurance benefits, because she voluntarily left her employment without just cause. The appeal is dismissed.

OVERVIEW

[2] The Appellant, S. G., worked for X for two days. She left her employment on September 4, 2018.

[3] A few months after this employment ended, the Canada Employment Insurance Commission carried out a reconsideration of the Appellant's claim for benefits. It found that the Appellant did not have just cause for leaving her employment, because leaving was not the only reasonable alternative. Therefore, the Appellant was disqualified from receiving Employment Insurance benefits, which resulted in a significant overpayment.

[4] The Appellant now disputes the Commission's decision to the Tribunal. She submits that she left her employment to go work for another employer. Furthermore, she argues that she was already exhausted when she began her employment at X and that it was unpleasant and difficult work.

ISSUES

[5] Did the Appellant voluntarily leave her employment at X?

[6] If so, did she have just cause for leaving her employment? In other words, was leaving the Appellant's only reasonable alternative?

ANALYSIS

[7] A claimant cannot receive Employment Insurance benefits if they voluntarily leave their employment without just cause. A claimant has just cause for voluntarily leaving their

employment if they demonstrate that, having regard to all the circumstances, leaving is the only reasonable alternative.[1]

Did the Appellant voluntarily leave her employment at X?

[8] I find that the Appellant left her employment voluntarily because she openly acknowledges that she resigned.

Did the Appellant have just cause for leaving her employment? In other words, was leaving the Appellant's only reasonable alternative?

[9] I find that the Appellant did not have just cause for leaving for the reasons that follow.

[10] At the beginning of September 2018, the Appellant, who was already an Employment Insurance claimant, began working at a X. This employment was short-lived because the Appellant left after only two days of work. The Appellant submits that she left this employment to go work for another employer—potato producer X. She also argues that the employment at X was difficult and that she was already exhausted when she began working there because she had worked during the lobster season a few months earlier.

Reasonable assurance of another employment in the immediate future

[11] A claimant has just cause for leaving their employment if they have reasonable assurance of another employment in the immediate future.[2]

[12] The Appellant left her employment at X on September 4, 2018, and began working for X on September 30, 2018, nearly a month later.

[13] The Appellant explains that she had given her name to an employment agency several months earlier in order to be hired for the potato harvest. She considers that she had "assurance"

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[1] Sections 29(c) and 30 of the *Employment Insurance Act*. See also *Green v Canada (Attorney General)*, 2012 FCA 313. This decision confirms that the onus is on the Commission to prove that the leaving was voluntary, and on the Appellant to prove that she had just cause for leaving her employment.
[2] Section 29(c)(vi) of the Act.

of another employment at one of the potato producers in the region as soon as the harvest season began (early fall) because those who put their names forward are all eventually hired.

[14] However, even if the Appellant was confident she would be hired for the potato harvest after she left X, she had not received confirmation of her hiring by a potato producer or her start date. This information was sent to her only two weeks before she began her employment at X, when she had already left X.

[15] Case law has established that the notion of "reasonable assurance of another employment" requires the claimant to have, at the very least, some specific information about their future employment situation at the time of leaving their current employment. For example, the claimant should know whether they will actually have another employment, what that employment will be, who the employer will be, and at what point in the future the new employment will begin.[3]

[16] Therefore, I am not convinced that the Appellant had reasonable assurance of another employment when she left. I acknowledge that she had a very good chance of being hired by a potato producer in the region for the harvest season, but the Appellant had no details about this potential employment or her start date when she decided to leave X.

[17] What is more, I do not find that the timeline in this file can be qualified as "immediate future." Indeed, nearly a month passed between her termination of employment in the fisheries and the beginning of her employment in potatoes. As case law has established, the word "immediate" means "occurring or done at once or without delay/nearest in time or space."[4]

[18] Therefore, there should be little or no delay between leaving the former employment and beginning the new employment. In my view, this refers to a period of a few days or, at most, one or two weeks. I find that the delay in this case is too long to meet this condition.

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[3] *Canada (Attorney General) v Bordage*, 2005 FCA 155; see also *Canada (Attorney General) v Sacrey*, 2003 FCA 377 and *Canada (Attorney General) v Shaw*, 2002 FCA 325.
[4] *Canada (Attorney General) v Lessard*, 2002 FCA 469; *Canada (Attorney General) v Traynor*, A-492-94; *The Canadian Oxford Dictionary*, 2001.

Fatigue and difficult conditions

[19] The Appellant also submits that she was exhausted when she began her employment with X because she had worked hard during the lobster season a few months earlier. When she began this employment, she was quickly reminded that working conditions in herring processing plants were difficult and that she was too tired to carry out her duties.

[20] I do not doubt that the lobster season is a particularly demanding time for those working in this industry. However, the Appellant had been laid off by her previous employer on June 31, 2018.[5] She had therefore been able to enjoy a two-month break before she began her employment with X.

[21] Furthermore, the Appellant was well aware of the working conditions in the herring processing industry because she had worked in it in the past. The Appellant's level of fatigue and her willingness to carry out certain tasks were things she should have discussed with the employer before hiring. Once employment begins, it is often too late.

[22] I have no trouble believing that the working conditions in a herring processing plant are difficult. However, I find that the Appellant failed to show that she was in a situation where leaving her employment after only two days of work was the only reasonable alternative.

Other reasonable alternatives

[23] I find that the Appellant had reasonable alternatives to leaving her employment. For example, she could have stayed in her employment until she began her job at X.[6]

[24] If the Appellant was exhausted to the point of not being able to perform her duties at the X, even after a two-month break, she would have benefitted from consulting a doctor before leaving. She could also have attempted to talk to her employer about obtaining leave or accommodation.

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[5] GD3-7.

[6] See *Canada (Attorney General) v White*, 2011 FCA 190. This decision confirms that claimants are generally required to show they have made efforts to work things out with their employer or to seek alternative employment before taking a unilateral decision to leave their employment.

[25] The Appellant may have had good reasons for leaving her employment. Unfortunately, it is not enough to show that leaving an employment was reasonable. The Appellant had to show that leaving her employment was the only reasonable alternative. I find that she failed to do this.[7]

[26] At the end of the hearing, the Appellant informed me that the debt owed to the Commission is causing her significant financial problems because she must care for her two children and she does not have the ability to repay it. She has asked me to reduce or cancel the overpayment.

[27] I sympathize with the Appellant, but unfortunately, I do not have the authority to reduce or cancel a debt established in accordance with the Act.[8] Only the Commission has this power. The Appellant must therefore address the Respondent directly on this matter.

CONCLUSION

[28] The Appellant did not have just cause to voluntarily leave her employment with X. The appeal is dismissed.

Yoan Marier
Member, General Division – Employment Insurance Section

HEARD ON:	July 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. G., Appellant

[7] *Canada (Attorney General) v Laughland*, 2003 FCA 129.
[8] Section 112.1 of the Act.