



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. H. v Canada Employment Insurance Commission*, 2019 SST 1614

Tribunal File Number: GE-19-2176

BETWEEN:

**J. H.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

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

---

DECISION BY: Takis Pappas

HEARD ON: June 20, 2019

DATE OF DECISION: July 19, 2019

## **DECISION**

[1] The appeal is dismissed. The result is that the Appellant does not qualify for benefits because she did not prove that she had just cause for choosing to leave her employment. These reasons explain why.

## **OVERVIEW**

[2] The Appellant was employed until February 3, 2019 at which time she voluntarily left her employment. The Respondent determined that the Appellant chose to leave her employment without just cause and disqualified her from receiving benefits as of March 24, 2019. The Respondent upheld this decision upon reconsideration. The Appellant appeals the decision to the Tribunal.

## **ISSUES**

[3] I have to decide

- a) if the Respondent proved that the Appellant chose to leave her employment;
- b) and if so, whether the Appellant proved that she had just cause for choosing to leave.

## **ANALYSIS**

[4] Employment insurance pays benefits to individuals involuntarily separated from employment, and are without work.<sup>1</sup> The Commission disqualifies claimants from receiving benefits if they are unable to show they had just cause for choosing to leave their employment.<sup>2</sup> In this appeal, the Appellant says that her decision to leave her job at Tim Hortons presented her with more opportunities at Canada Post, including the possibility of permanent employment within six months to one year. She explained that after accepting the job with Canada Post, she attempted to work at both places. After she found it difficult to maintain both jobs, she decided to leave her job with Tim Hortons.<sup>3</sup>

---

<sup>1</sup> *Canadian Pacific Ltd. v. Attorney General of Canada*, [1986] 1 S.C.R. 678 explains this principle.

<sup>2</sup> *Employment Insurance Act*, subsection 30(1) sets out this principle.

<sup>3</sup> (GD3-23)

**Did the Respondent prove that the Appellant chose to leave her employment?**

[5] The Respondent has to prove that the Appellant could have stayed in her job but chose to leave.<sup>4</sup> The Appellant did not dispute that she chose to leave her employment. I therefore find that the Appellant made the choice to leave her employment.

**Did the Appellant prove that he had just cause for choosing to leave his employment?**

[6] Having found that the Appellant chose to leave her employment, I have to decide if she has proven that she had just cause for choosing to leave.

[7] The *Employment Insurance Act* (the Act) lists circumstances that I have to consider when assessing if the Appellant has proven just cause for leaving her employment; but I am not limited to considering only those listed circumstances. What the Appellant has to prove is that all of her circumstances, whether listed or not, show it is more probable than not that she had had no reasonable alternative to leaving her employment.<sup>5</sup>

[8] The Appellant provided that she worked with Seth's Hospitality, operating as Tim Hortons, since 2013 and was only making minimum wages. She stated that the employment, although temporary, with Canada Post offered more than \$19 per hour. She stated, presently work with Canada Post was slow, but she will begin to pick-up more hours. When asked by the Respondent if she considered taking a leave of absence from Tim Hortons in order to try a new job with Canada Post, the Appellant stated that it was not likely that an employer will grant a leave to try another job. She stated that she did not always work 40 hours at Tim Horton's and therefore Canada Post job presented her with an opportunity to grow.<sup>6</sup>

---

<sup>4</sup> *Canada (Attorney General) v. Peace*, 2004 FCA 56 explains that if a claimant chooses to leave their employment when they could have stayed, they have voluntarily left their employment within the meaning of sections 29 and 30 of the *Employment Insurance Act*. *Green v. Canada (Attorney General)*, 2012 FCA 313 explains that the Commission must prove that the claimant voluntarily left their employment.

<sup>5</sup> Paragraph 29(c) of the *Employment Insurance Act* lists the circumstances. *Canada (Attorney General) v. White*, 2011 FCA 190 interprets paragraph 29(c) to require the claimants to prove their just cause. *Canada (Attorney General) v. Lessard*, 2002 FCA 469 discusses the requirement to consider all circumstances.

<sup>6</sup>(GD3-26 to GD3-28, GD3-29)

[9] The Appellant also submitted that her husband left under similar circumstances, and was approved for benefits. The Appellant therefore requests equal treatment by Service Canada with respect to her claim for benefits.<sup>7</sup>

[10] The Respondent stated that the Appellant left this position to accept a temporary, on-call position with Canada Post, from which she was subsequently laid-off. While it understood that the employment with Canada Post offered potential growth, the Appellant was well aware it was only a temporary and on-call basis position.

[11] Furthermore, in response to the Appellant's statement that her employment with Tim Hortons was not full-time guaranteed hours, the Respondent submits that facts on file clearly show that she held this employment for approximately six years without any interruptions initiated by her employer. As further demonstrated by her Record of Employment, the Appellant worked an average of 30 hours per week. She left this employment to pursue temporary on-call work, which guaranteed her no specific hours. It is reasonable to conclude that the Appellant should have foreseen the potential unemployment situation arising from leaving guaranteed employment. The Respondent could only conclude she fails to demonstrate just cause for leaving her position within the meaning of the Act.

[12] After considering the evidence submitted by both parties, I accept and assign more weight to the submissions of the Respondent. I find that the Appellant did not show just cause when she left her employment. The reason is that the Appellant had reasonable alternatives. Reasonable alternatives to leaving would have been to speak with her employer and try to get a leave of absence while working for the Post office and trying to become a permanent employee. I understand that the Appellant stated that it was not likely that an employer will grant a leave to try another job, but the fact is that she did not attempt to ask the employer. Another Reasonable alternative to leaving would have been to work reduced hours with Tim Hortons until she became a permanent employee with the Post office.

---

<sup>7</sup> (GD 2)

[13] In response to the Appellant's statement that her husband left his employment under similar circumstances, and was approved for benefits, I agree with the Respondent's submission that each case before the Respondent is strictly based on its own merits.

[14] For reasons I have explained above the Appellant did not prove that she qualified to receive benefits.

**CONCLUSION**

[15] The appeal is dismissed. The Appellant is disqualified from receiving benefits as of March 24, 2019.

Takis Pappas  
Member, General Division - Employment Insurance Section

HEARD ON:	June 20, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. H., Appellant