



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *V. R. v Canada Employment Insurance Commission*, 2019 SST 963

Tribunal File Number: GE-19-2773

BETWEEN:

V. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: August 28, 2019

DATE OF DECISION: August 28, 2019

DECISION

[1] The appeal is allowed.

[2] The Tribunal finds that the Appellant is not disqualified from collecting employment insurance (EI) benefits for voluntarily leaving his employment. He had just cause to leave his employment when he learned that his employer and co-worker may be engaging in fraudulent practices contrary to law. He had no reasonable alternatives to leaving when he did.

OVERVIEW

[3] The Appellant applied for regular EI benefits. However, the Respondent decided that the Appellant was disqualified from receiving EI benefits because he voluntarily left his employment as an employee of a government-funded social services agency without just cause when he had reasonable alternatives to leaving having regard to all the circumstances, such as securing another job before deciding to leave his employment.

[4] The Appellant claims that he voluntarily left employment when he learned that his employer and co-worker may be engaging in fraudulent practices contrary to law when government funds went missing.

ISSUES

[5] Issue 1: Did the Appellant voluntarily leave employment?

[6] Issue 2: If so, did the Appellant have just cause to voluntarily leave his employment due to employer's practices that he alleges are practices contrary to law?

ANALYSIS

[7] A claimant is disqualified from receiving any EI benefits if they voluntarily left any employment without just cause (subsection 30(1) of the *Employment Insurance Act (EI Act)*).

[8] The Respondent has the burden of proof to show that the Appellant left voluntarily. The burden then shifts to the Appellant, who must demonstrate that, having regard to all the

circumstances, on a balance of probabilities, there were no reasonable alternative to leaving (*Canada (Attorney General) v. White*, 2011 FCA 190).

Issue 1: Did the Appellant voluntarily leave his employment?

[9] The Tribunal finds that the Appellant voluntarily left his employment.

[10] When determining whether the Appellant voluntarily left his employment, the question to be answered is: did the employee have a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56)?

[11] The Tribunal finds that the Appellant initiated the departure from employment when he learned that his employer and co-worker may be engaging in fraudulent practices contrary to law when government funds went missing.

[12] The Appellant had a choice to stay or leave (*Peace*). He acknowledges that he quit in his EI application and his employer's stated reason for his departure was "quit" on his Record of Employment.

Issue 2: If so, did the Appellant have just cause to voluntarily leave his employment due to employer's practices that he alleges are practices contrary to law?

[13] The Tribunal finds that the Appellant had just cause to voluntarily leave his employment.

[14] The Appellant had just cause to voluntarily leave his employment when he learned that his employer and co-worker may be engaging in fraudulent practices contrary to law when government funds went missing.

[15] Practices of an employer that are contrary to law is listed under the non-exhaustive list of circumstances to be considered when determining whether there is just cause (*EI Act*, subparagraph 29(c)(xi)).

[16] The Appellant became aware that the employer's bookkeeper and director seemed to be involved in illegal activity about government funding to the employer. He was worried about his reputation in the X field and he did not want to jeopardise his future employability so he decided to leave his employment.

[17] He said that he signed a non-disclosure agreement with his employer which prevents him from relating details about the illegal activity.

[18] He said that the atmosphere at his employment became more and more intolerable and he decided to disconnect himself from the employer with the intention of eventually becoming self-employed in the field. He said that his employer disrespected him by speaking poorly of him behind his back and he was left out of important meetings with his employer. However, he said that the main reason he left his employment was the allegation of illegal activities within the company.

[19] The Appellant said that there was an allegation that the bookkeeper stole a lot of money from the company over many years and he felt that the director of the company was involved, but he was not sure how. He said the environment at work was affecting his mental health and he was concerned about his reputation in the X field and his ability to become self-employed given that the theft allegations had become public. A lawsuit was filed against the bookkeeper in regard to the missing government funds given to the company.

[20] The Appellant said "*I do not/will not stand by a company that has allowed a theft to continue for this length of time*".

[21] The Tribunal finds that the public allegations of illegal activity against the bookkeeper and perhaps the director involving theft of government funding over many years is a practice by the employer that is contrary to criminal law (subparagraph 29(c)(xi), *EI Act*).

[22] The Tribunal finds that leaving employment was the only reasonable course of action open to him, having regard to all the circumstances (*Canada (Attorney General) v. Imran* 2008 FCA 17; *Canada (Attorney General) v. Laughland*, 2003 FCA 12). It is not a reasonable alternative for the Appellant to be expected to continue in his employment when public allegations of illegal activity at his employment jeopardized his reputation in the field and his health.

CONCLUSION

[23] The appeal is allowed. The Tribunal finds that the Appellant has proven just cause for voluntarily leaving his employment when there were no reasonable alternatives to leaving having regard to all the circumstances and he is accordingly not disqualified from receiving EI benefits in accordance with sections 29 and 30 of the *EI Act*.

Glen Johnson

Member, General Division - Employment Insurance Section

HEARD ON:	August 28, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. R., Appellant