



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. T. v Canada Employment Insurance Commission*, 2019 SST 948

Tribunal File Number: GE-19-2626

BETWEEN:

P. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: August 27, 2019

DATE OF DECISION: August 30, 2019

DECISION

[1] The appeal is allowed. The Canada Employment Insurance Commission (Commission) has not proven that P. T. (the Claimant) voluntarily left his employment.

OVERVIEW

[2] The Claimant worked as a X in a restaurant and catering business called X. He asked his employer for time off to move. His employer gave him a few days off. While he was away, the Claimant wrote to his manager and informed the manager that he would need more time off because he had many issues with his new home. His employer did not respond to his email. The Claimant heard through a friend that his employer had hired someone to work in the kitchen and that the Claimant was no longer employed. The evening before the Claimant was scheduled to return to work, the Claimant wrote an email to his manager and told the manager that he would need even more time off so that he could leave on vacation. The manager responded that they had already hired someone else to work in the kitchen and wished him a good vacation.

[3] After the Claimant returned from vacation, he requested employment insurance benefits. The Commission disqualified the Claimant from receiving benefits because the Claimant voluntarily left his employment without just cause. The Claimant appealed this decision before the Social Security Tribunal. He argued that he did not voluntarily leave his employment but rather the employer informed him that his services were not needed because they had hired someone else to help in the kitchen.

PRELIMINARY ISSUES

[4] After the hearing, the Claimant sent an email reiterating the arguments he presented during the hearing. I accepted these post-hearing written arguments as they relate to the issues in dispute.

ISSUES

Issue 1: Did the Claimant voluntarily leave his employment with X?

Issue 2: If yes, did the Claimant have just cause for voluntarily leaving his employment?

ANALYSIS

[5] I must decide whether the Claimant is disqualified from being paid benefits because he voluntarily left his job without just cause.¹ To do this, I must first address the Claimant's voluntary leaving. If I find that the Claimant voluntarily left his job, I then have to decide whether the Claimant had just cause for leaving.²

[6] The Commission has the burden to prove that the leaving was voluntary.³ Then, the burden shifts to the claimant who must prove that he had just cause for leaving.⁴ The burden of proof for both the claimant and the Commission is a balance of probabilities, which means that it is "more likely than not" that the events occurred as described.

Issue 1: Did the Claimant voluntarily leave his employment with X?

[7] To prove that a claimant left work voluntarily, the Commission must demonstrate on the balance of probabilities that the claimant took the initiative to sever the employer-employee relationship.⁵

[8] I find that the Claimant did not voluntarily leave his employment.

[9] The Commission relied upon the employer's statements and the record of employment to argue that the Claimant voluntarily left his employment.

[10] The employer stated that the Claimant was granted a week off to move. During the week, the Claimant asked for some more time off because he was having problems with his new apartment. The employer stated that they authorized the extra time off. The employer stated that the Claimant was then supposed to return to work but he did not. The employer stated that after that, the Claimant contacted his employer to ask for additional time off because he received a trip as a present from his partner and would be away until the end of January 2019. The employer

¹ Section 30 of the *Employment Insurance Act*

² Section 29 of the *Act*

³ *Canada (Attorney General) v. Peace*, 2004, FCA 56.

⁴ *Green v Canada (Attorney General)*, 2012 FCA 313.

⁵ *Coté v Canada (Attorney General)*, 2006 FCA 219.

said that it was busy because it was the Christmas season and therefore the employer had no choice but to replace the Claimant.

[11] The Commission argued that the Claimant voluntarily left his employment because he was expected to come back to work after his approved leave. He did not return to work but rather went on an extended trip with his partner during a busy period for his employer. The Commission therefore argued that the Claimant voluntarily left his employment because he decided not to go back to work.

[12] The Claimant has consistently maintained that he did not voluntarily leave. He argued that the employer ended the employment relationship and that he did not quit.

[13] The Claimant testified that he received permission to be off from work from November 27, 2018, until December 6, 2018, inclusively. He testified that his move was very difficult because he and his partner had many belongings and the apartment where he moved was almost uninhabitable. The Claimant testified that on December 2, 2018, he wrote to his employer to say that he needed more time off. He did not know how much time he would need to resolve all of the problems with his new apartment and complete his move. He told the employer that he would be in contact with them the following week.

[14] The Claimant testified that he did not receive a response to his email. The Claimant states that contrary to the employer's statement he was not provided with additional time off to deal with his move.

[15] The Claimant stated that he learned, through a friend, that his employer had hired another employee and that the Claimant was no longer working for the employer. The Claimant testified that upon learning this information he decided to write to his employer. On December 6, 2018, the Claimant wrote to his employer to ask for additional time off to go on vacation with his partner. He claims that he used this as a pretext to understand what his employment status was with his employer, because he and his partner had not yet purchased their plane tickets to leave. The Claimant stated that the employer confirmed to him in an email that they had hired additional help because they needed someone during the busy Christmas period.

[16] I prefer the Claimant's testimony of the events to the employer's statement because the Claimant's account is corroborated by emails. Moreover, there are several inconsistencies in the employer's statements.

[17] I accept the Claimant's testimony that he was given leave from November 27, 2018, until December 6, 2018, so that he could move. His statement is corroborated by the employer's work schedule that shows that the Claimant was off from work to move. This schedule shows that the Claimant was to return to work on December 7, 2018.

[18] I also accept the Claimant's testimony that he asked for extra time but did not receive a response from his employer. I do not accept the Commission's position that the Claimant was given an additional week off to deal with his apartment problems. The email exchanges between the Claimant and his manager show that the Claimant contacted his employer to explain that he was going to take more time off to deal with his move. The evidence shows that the employer did not respond to this email and therefore did not approve or deny the request.

[19] During the hearing, I pressed the Claimant on whether, in his email of December 2, 2018, the Claimant sought permission to have the time off or simply informed the employer that he was going to take the time off. The Claimant testified that he was explaining to his employer that he needed time off. He testified that if the employer had denied his request, he would have returned to work on December 7, 2018.

[20] I also accept the Claimant's testimony that on December 6, 2018, the employer informed him that he was no longer needed at work because the employer had already hired someone else. The Claimant's testimony is corroborated by the employer's email of December 6, 2018. In that email, the employer stated that they had no choice but to get someone else to help in the kitchen with Christmas parties and catering. Even though the employer stated that they had hired a X and not a X, the employer's statement to the Commission states that they had "no choice but to **replace** him [the Claimant]." (emphasis added)

[21] I conclude that sometime between December 2, 2018 (when the Claimant contacted the employer to say that he needed more time off) and the December 6, 2018 (when the employer informed the Claimant that they had to find someone else), the employer hired another person to

help. The Claimant learned that his services were no longer required when he contacted the employer on December 6, 2018, with the pretext of asking for even more time off to go on vacation.

[22] I therefore do not accept the Commission's argument that the Claimant voluntarily left his job because he failed to return to work on December 9 or 16, 2018, since he wanted even more time off to go on vacation with his partner.

[23] I find that on December 6, 2018, when the Claimant learned that he was no longer needed at work, the Claimant was still on an approved leave of absence from his employer. He had not received a response to his email seeking time off beyond December 7, 2018.

[24] In short, I find that the Claimant did not initiate the end of the employment relationship and did not have the choice to stay or leave his employment.⁶ He advised his employer that he needed extra time off but was still on an approved leave of absence when he learned that he was no longer required at work. Faced with the information that his employer had hired someone else, the Claimant understood that he was no longer needed at work. Consequently, the evidence does not support the Commission's contention that the Claimant did not report to work and that he left his position in order to go on a vacation.

[25] I therefore do not find that the Claimant quit his job. The ambiguity around the employment relationship stems from the employer's failure to respond to the Claimant's request for more time off to address his move and the employer's decision to hire another individual to replace the Claimant while he was on an approved leave.

[26] Consequently, I find that the Commission has not proven on the balance of probabilities that the Claimant voluntarily left his employment.

⁶ *White v Canada (Attorney General)*, 2011 FCA 190.

Issue 2: Did the Claimant have just cause for voluntarily leaving his employment?

[27] Given my finding that the Commission has proven that the Claimant voluntarily left his employment, it is not necessary to consider this issue.

CONCLUSION

[28] The appeal is allowed.

Christianna Scott

Member, General Division - Employment Insurance Section

HEARD ON:	August 27, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. T., Appellant