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

Citation: *S. R. v Canada Employment Insurance Commission*, 2019 SST 1562

Tribunal File Number: GE-19-3169

BETWEEN:

S. R.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: September 27, 2019

DATE OF DECISION: September 30, 2019

Canada

DECISION

[1] The appeal is allowed. The Commission has not met its burden of proving the Claimant voluntarily left her employment.

OVERVIEW

[2] The Claimant was employed in a contract position delivering part-time instruction in a commercial art enterprise. The contract ended and the Claimant applied for EI benefits. The Commission decided that because the Claimant had declined an offer of a further contract that she had voluntarily left her employment without just cause. This meant the Commission could not pay her regular employment insurance (EI) benefits. The Claimant says that there was no formal offer to extend her employment; that she did not feel it would be professional for her to accept an extension, in any event, if she had to leave the contract part-way through for other employment; and, having worked a similar contract previously, she knew it did not pay enough to meet her financial obligations and she wanted to look for full time work. The Commission upheld its decision on reconsideration. The Claimant appeals to the Social Security Tribunal.

ISSUE

[3] I must decide whether the Claimant is disqualified from being paid EI benefits because she voluntarily left her job without just cause. To do this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

ANALYSIS

[4] The purpose of the *Employment Insurance Act* is to compensate persons whose employment has terminated involuntarily and who are without work.[1]

[5] A claimant is disqualified from receiving any EI benefits if the claimant voluntarily left any employment without just cause.[2] Just cause for voluntarily leaving an employment exists if

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[1] *Canadian Pacific Ltd. V. Attorney General of Canada*, [1986] 1 S.C.R. 678. This is how I refer to the court cases containing principles the law requires me to apply to the circumstances of this appeal.
[2] *Employment Insurance Act*, section 30(1). This is how I refer to the sections of the legislation that apply to this appeal.

the claimant had no reasonable alternatives to leaving her employment, having regard to all the circumstances.[3]

[6] The Commission has the burden to prove the leaving was voluntary and, once that is proven, the burden shifts to the Claimant to demonstrate she had just cause for leaving. The burden of proof in this case is a balance of probabilities, which means it is "more likely than not" the events occurred as described.

Did the Claimant voluntarily leave her job?

[7] No, I find that the Claimant did not voluntarily leave her job.

[8] The law says to determine whether a claimant voluntarily left her employment the question to be answered is whether the claimant had a choice to stay in or to leave her job.[4]

[9] In her application for EI benefits the Claimant indicated that she was no longer working because there was a shortage of work. The Record of Employment (ROE) issued by the employer shows the reason for issuing as "E" which is the code letter for "Quit." The Claimant's employer told the Commission that it was not sure what to put on the ROE. It was an end of contract but they had offered in September to have her for the next class. The employer told the Commission the Claimant had said that she would not be available for the summer camp, but there was no shortage of work, and it would have been a pleasure to have the Claimant.

[10] The Claimant testified that she had taught for the employer over the March 2019 school break and then accepted a contract for the spring classes. The spring classes ran from April 1, 2019, to June 20, 2019. In April 2019, the employer told the Claimant how much she enjoyed the Claimant as an employee and how grateful they would be if she continued to work with them. The Claimant replied that she would have to think about it but it was likely that she would require more hours. The Claimant said that she had worked previously for the employer instructing in the summer camp. Based on her previous experience she said she had taught the summer camp for 15 hours a week for seven weeks at $15 an hour. She said in the conversation she had with the employer in April 2019 there was no discussion of a start or end date, the hours

[3] *Employment Insurance Act*, paragraph 29(c)
[4] *Canada (Attorney General) v. Peace*, 2004 FCA 56

to be worked or the hourly pay rate. The Claimant testified that in preparation for the various camps and sessions the employer would hold a one or two-day workshop with employees a few weeks before the sessions to lay out the objectives of the session and design the visual and structural elements to be taught each week to achieve those objectives. The Claimant said that in the case of the summer 2019 camp, once she told the employer that she would have to think about continuing to work because she would need more hours there was no further mention of the Claimant working during the summer months. She was not asked to participate in a workshop prior to the summer session.

[11] I cannot find that the Claimant had the choice to remain in or leave her employment because it was due to expire in any event on June 20, 2019.

[12] I find that the casual conversation between the Claimant and the employer was just that - a casual conversation about how the employer enjoyed her working with them and it would like for her to continue working with them. The Claimant indicated to her employer in that conversation that she would require more hours, as she knew from prior experience what the summer camp position entailed. The employer did not continue the conversation once the Claimant made that statement. In my opinion, the conversation does not constitute an offer of continued employment. The employer indicated to the Commission that it had work available. However, there is no evidence the employer made a formal offer or asked the Claimant to attend the workshop setting out the summer camp objectives preparatory to her instructing the summer camp. In light of the forgoing evidence, I find that, on a balance of probabilities, the employer did not make a formal offer of continued employment to the Claimant. As a result, I find that, because the Claimant she had no choice to remain her employment because her employment ended on June 20, 2019. Accordingly, I find that the Commission has not met its burden of proving the Claimant voluntarily left her employment.

[13] I note as well that the law does not compel a person to indefinitely renew her contractual employment. Thus, choosing to refuse an actual offer to renew contractual employment is not a choice to leave employment without just cause.[5]

[5] These conclusions come from Canadian Umpire Benefits 23828 and were specifically endorsed in *The Attorney General of Canada v. Cecconi,* A-49-94. The principles set out in these decisions combine to create an exception to

[14] I have to consider whether the Claimant had just cause for leaving her employment if the Claimant made that choice. I have found that the Commission did not prove the Claimant made a choice to leave her employment. In light of that finding, I do not need to consider whether the Claimant has established just cause for leaving her employment.

CONCLUSION

[15] The appeal is allowed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	September 27, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. R., Appellant

the principle in *Canada (Attorney General) v. Peace*, 2004 FCA 56 which I mentioned in footnote 4. The law requires me to apply the conclusions in *Cecconi* to the Claimant's appeal.