



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. R. v Canada Employment Insurance Commission*, 2019 SST 1313

Tribunal File Number: GE-19-3234

BETWEEN:

A. R.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: October 1, 2019

DATE OF DECISION: October 7, 2019

DECISION

[1] The appeal is dismissed. The Claimant has not shown just cause because he had reasonable alternatives to leaving his job when he did. He has not acquired enough hours of insurable employment since quitting, so this means he is disqualified from receiving regular Employment Insurance (EI) benefits.

OVERVIEW

[2] The Claimant decided to retire and quit his full-time job to accept a position driving school bus. When the school year ended in June 2019, he made an application for regular EI benefits. The Commission considered the Claimant's reasons for leaving his full-time job and decided that he voluntarily left without just cause, so he is disqualified from regular EI benefits.

[3] I must decide whether the Claimant has proven that he had no reasonable alternatives for leaving his full-time job. The Commission says that the Claimant had several reasonable alternatives to leaving his employment. The Claimant disagrees and states that he could not remain employed due to lower back pain, stress, and exhaustion, so he decided to retire and accept the position with the school board. Although the Claimant presented several factors that influenced his decision, I agree that he had reasonable alternatives to quitting, when he did.

ISSUES

[4] I must decide whether the Claimant is disqualified from receiving regular EI benefits because he voluntarily left his 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. If just cause is not proven, I then have to determine whether the Claimant has acquired enough hours of insurable employment since quitting.

ANALYSIS

There is no dispute that the Claimant voluntarily left his job.

[5] I accept that the Claimant voluntarily left his job. The Claimant agrees that he made the choice to retire effective March 31, 2019, and I see no evidence to contradict this. The Claimant initiated his separation from his full-time employment, so he voluntarily left.

The parties dispute that the Claimant had just cause for voluntarily leaving.

[6] The parties do not agree that the Claimant had just cause for voluntarily leaving his job when he did.

[7] The law says that you are disqualified from receiving regular benefits if you left your job voluntarily and you did not have just cause.¹ Having a good reason for leaving a job is not enough to prove just cause.

[8] The law says that you have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.² It is up to the Claimant to prove this.³ The Claimant has to show that it is more likely than not that he had no reasonable alternatives but to leave when he did. When I decide this question, I have to look at all of the circumstances that existed at the time the Claimant quit.

[9] The *Act* lists some circumstances that I have to consider when assessing if a claimant has proven just cause for leaving his employment, including reasonable assurance of another job in the near future.⁴ The mere presence of one of these circumstances does not prove just cause, because the Claimant must still prove he had no reasonable alternative but to quit his employment when he did.

[10] The law says that while it is legitimate for a worker to want to change the nature of their work, this cannot be done at the expense of the EI fund and does not constitute just cause for leaving employment.⁵ In the case of leaving permanent full-time employment to accept seasonal employment, just cause cannot be found.⁶

[11] The Claimant argued that he decided to retire and leave his full-time job as a city bus driver because he found it too stressful and exhausting having to deal with the traffic and customers. He said that for the past 8 to 10 years he was also suffering from some lower back pain, as supported by his medical note. He explained that he was required to drive around a large area, on the highway, downtown, and “everywhere”, during heavy traffic, which he said was

¹ This is set out at s 30 of the *Employment Insurance Act (EI Act)*.

² *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Act*.

³ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

⁴ Subparagraph 29(c)(vi) of the *EI Act*.

⁵ *Canada (Attorney General) v. Bell*, 2013 FCA 155.

⁶ *Canada (Attorney General) v. Langlois*, 2008 FCA 18

very stressful. He stated that he did this job for 17 years and had taken some time off in the past, for sick leave when prescribed pain medication for his lower back pain.

[12] The Claimant testified that his decision to retire and quit his full-time job was “very well planned”. He said he started working as a school bus driver in a casual position in 2017, and continued to work both driving jobs until he secured a permanent job as a school bus driver.

[13] The Claimant explained that at his full-time job, he selected his shift schedule as a city bus driver several times a year, based on his seniority. He stated that his last couple of shift rotations were split shifts where he would drive for 3 to 4 hours in the early morning rush hour, have a few hours break, and then drive for another 3 to 4 more hours in the afternoon rush hour. He argued that, although the school bus driving was also for a few hours during the morning and afternoon rush hours, he found this work less stressful because he was driving children, throughout only one municipality, and not on the highway.

[14] Although the Claimant argued that he had to leave his full-time job due to lower back pain, I am not convinced that the Claimant had to quit his full-time employment due to health reasons. Rather, I find the evidence supports he made a personal choice to retire and work in seasonal employment. Based on the Claimant’s explanation of each job, he was required to drive bus for approximately the same amount of time each morning and afternoon and he presented no evidence why driving school bus would have less of an effect on his lower back pain than his full-time job.

[15] Further, the Claimant readily admitted that he would have continued working in his full-time job as a city bus driver, if he did not secure the permanent job driving school bus. He explained that when he quit, his full-time employer wanted him to stay working with them and when he told them about his stress and back problems, they offered for him to take some time off work and return, but he chose not to return. He argued that he is happy now because he no longer has to deal with the stress of the customers and traffic at his full-time job, which perhaps was a good reason and personal choice for the Claimant. However, as set out above, having a good reason for leaving a job is not enough to prove just cause.

[16] I find the Claimant did not have just cause, because he had reasonable alternatives to quitting when he did. Specifically, the Claimant could have continued to seek treatment from his physician to remedy his lower back pain, take another period of leave as offered by his full-time

employer, or continue working until he secured alternate full-time employment. The Claimant could also have requested to change his full-time employment to a casual position so he could continue working as a city bus driver during the school break periods, such as during the summer months, and not have to rely on the EI fund.

[17] Although the Claimant presented several reasons why he decided to quit this employment, after consideration of the totality of these circumstances and the reasonable alternatives to quitting that remained despite all of those circumstances, I find that the Claimant did not have just cause for leaving his employment within the meaning of the *Act*. This means the Claimant is disqualified from receiving regular benefits.

Hours of insurable employment since the disqualification.

[18] The law states that a claimant is disqualified until they have accumulated the required number of insurable hours to qualify for benefits, since quitting their job.⁷ The number of hours of insurable employment required for benefits is not discretionary.⁸

[19] The parties do not dispute the fact that the Claimant has not accumulated enough hours of insurable employment to qualify for regular benefits since quitting his full-time employment. At the time the Claimant submitted his application, he was residing in an economic region with a regional rate of unemployment of 4.3%. This requires that the Claimant have 700 hours of insurable employment to be entitled to the payment of regular benefits and he has only acquired 536 hours of insurable employment since quitting his full-time job. Therefore, he is not entitled to regular EI benefits.

CONCLUSION

[20] The appeal is dismissed.

Linda Bell
Member, General Division - Employment Insurance Section

⁷ Subparagraph 30(1)(a) of the *EI Act*.

⁸ Subsection 7(2) of the *EI Act*.

HEARD ON:	October 1, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. R., Appellant (Claimant)