



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. P. v Canada Employment Insurance Commission*, 2019 SST 1303

Tribunal File Number: GE-19-2144

BETWEEN:

M. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: September 23, 2019

DATE OF DECISION: October 4, 2019

DECISION

[1] The Appellant had just cause for leaving his employment since he had reasonable assurance of another employment in the immediate future. The appeal is allowed.

OVERVIEW

[2] The Appellant, M. P., worked as a truck driver for the company X for a few months. He left his employment on July 6, 2018, and applied for Employment Insurance benefits.

[3] The Canada Employment Insurance Commission reviewed that claim and found that the Appellant had voluntarily left his employment without just cause. The Appellant was therefore denied access to benefits.

[4] The Appellant now disputes the Commission's decision to the Tribunal. He submits that he had reasonable assurance of another employment in the immediate future when he left.

PRELIMINARY MATTERS

[5] The Appellant did not attend the hearing. Just a few hours before the hearing scheduled for September 23 at 1:00 p.m., the Appellant asked for a one-month adjournment to obtain a document from a witness.

[6] Because of the short notice and the fact that the hearing was to be held in person, I was not aware of the adjournment request before arriving at the hearing location.

[7] Just before the hearing was to begin, I reviewed the representative's adjournment request. I decided to refuse the request and hold the hearing as scheduled for the following reasons:

- a) This file has been before the Tribunal since May 2019, and it was the fourth adjournment request the Appellant filed. Each time, the Appellant cited the need to obtain additional evidence.
- b) At the time of the last adjournment request, the Tribunal informed the Appellant that no other adjournment would be granted for this file, except under exceptional

circumstances. The grounds advanced by the Appellant did not constitute exceptional circumstances.

- c) The Tribunal has a duty to ensure that the hearing is conducted quickly and informally. To adjourn for a fourth time, for essentially the same reasons as the other times, goes against this principle. Furthermore, the Appellant had plenty of time to prepare for the hearing.
- d) The Appellant and his representative received the notice of hearing by mail. That notice clearly informed them that the hearing would be held as scheduled, unless prior confirmation of an adjournment was received. This was repeated during a conversation between the representative and a registry officer the morning of the hearing.¹

[8] To give the Appellant the opportunity to present his point of view, I allowed him to file written submissions after the hearing stating his position on the issue. The Appellant's submissions were received a few days after the hearing, and the Commission did not wish to respond.²

ISSUES

[9] Did the Appellant voluntarily leave his employment at X?

[10] If so, did the Appellant have just cause for voluntarily leaving his employment? In other words, was leaving the Appellant's only reasonable alternative?

ANALYSIS

[11] A claimant cannot receive Employment Insurance benefits if they voluntarily leave their employment without just cause. A claimant is considered to have just cause for voluntarily

¹ See GD9 and the conversation with the registry on September 23 at 9:26 a.m.

² GD12.

leaving their employment if they show that leaving was the only reasonable alternative, having regard to all the circumstances.³

Did the Appellant voluntarily leave his employment at X?

[12] I find that the Appellant voluntarily left his employment since he openly acknowledges that he resigned from his position.⁴

Did the Appellant have just cause for voluntarily leaving his employment? In other words, was leaving the Appellant's only reasonable alternative?

[13] Under the Act, a claimant has just cause for leaving their employment if they have, at the time of leaving, reasonable assurance of another employment in the immediate future.⁵

[14] The Appellant argues that he had reasonable assurance of another employment when he made the decision to leave, since he had received confirmation that he had been hired at X Human Resources firm.

[15] In support of his version of the facts, the Appellant submitted a statement from G. L., a former recruiter for that company.⁶ In his statement, G. L. submits that the Appellant was contacted around July 1, 2018, to participate in a selection process within his company. The Appellant was then interviewed and successfully passed a road test as a truck driver. The Appellant was scheduled to work days but, just before he started, that offer had to be modified due to a change in the company's needs. According to G. L., the Appellant left his employment at X to make himself available for a position at X Human Resources.

[16] G. L.'s version of the facts essentially corresponds to that of the Appellant. The Appellant submits that he was in a process to start a day job with X Human Resources before he left. He was supposed to take two weeks of vacation before starting his new employment, but the

³ *Employment Insurance Act*, ss 29(c) and 30. See also *Green v Canada (Attorney General)*, 2012 FCA 313. This decision confirms that it is up to the Commission to prove that the leaving was voluntary, and up to the appellant to show that they had just cause for leaving their employment.

⁴ GD3-42.

⁵ Act, s 29(c)(vi).

⁶ GD12-4.

offer with X Human Resources had been modified at the last minute, forcing him to withdraw.⁷ The Appellant then began a new job search. He finally secured employment with X a few weeks later.

[17] In its conversations with the Appellant, the Commission emphasized the nearly six-week delay between the end of the employment at X and the beginning of the employment at X to find that the Appellant did not have assurance of another employment in the immediate future. However, the Commission paid little attention to the Appellant's claims that he had been on track to begin an employment with X Human Resources when he left. The Appellant repeated several times that he had another offer of employment when he left.⁸ During the reconsideration, the Commission rejected the Appellant's arguments and informed him that he had to provide proof of his offer of employment with X Human Resources for this information to be considered.⁹

[18] As decided by the Federal Court of Appeal, the Act does not require a claimant to have a firm offer of employment by a new employer to have just cause for leaving their employment. Rather, the claimant must have reasonable assurance that they will start a new employment immediately. To meet this level of assurance, the claimant must know some precise information about their future employment. For example, they must know the name of their future employer, what their tasks will be, and their start date.¹⁰

[19] It appears that the Appellant had all this information when he left. He knew he would be working for X Human Resources as a truck driver and he knew he would start his employment after his two weeks of summer vacation.

⁷ GD3-51, 53.

⁸ GD3-40, 42, 51, 53.

⁹ GD3-53.

¹⁰ *Canada (Attorney General) v Bordage*, 2005 FCA 155; see also *Canada (Attorney General) v Sacrey*, 2003 FCA 377 and *Canada (Attorney General) v Shaw*, 2002 FCA 325.

[20] Furthermore, the two-week delay that was anticipated before the new employment started is not unreasonable in this context and meets, in my opinion, the definition of “immediate future.”¹¹

[21] In the end, the employment did not materialize because the Appellant refused the change in schedule requested by X Human Resources. However, given that this refusal occurred after the end of the employment with X, I cannot consider it for the purposes of these reasons.

[22] In summary, I find the Appellant’s version of the facts and G. L.’s written statement sufficiently credible to find that the balance of probabilities leans slightly in the Appellant’s favour in this case.

[23] Therefore, I find that, when he left X, the Appellant had reasonable assurance of obtaining employment at X Human Resources in the immediate future. The Appellant therefore had just cause for voluntarily leaving his employment.

CONCLUSION

[24] The appeal is allowed.

Yoan Marier
Member, General Division – Employment Insurance Section

HEARD ON:	September 23, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	Hearing held in the parties’ absence

¹¹ *Canada (Attorney General) v Lessard*, 2002 FCA 469; *Canada (Attorney General) v Traynor*, A-492-94; *Le Grand Robert de la langue française*, 2001.