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

Citation: *S. D. v Canada Employment Insurance Commission*, 2019 SST 1607

Tribunal File Number: GE-19-3374

BETWEEN:

S. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: John Noonan

HEARD ON: October 28, 2019

DATE OF DECISION: November 14, 2019

Canada

PRELIMINARY MATTERS

[1] A Pre-Hearing Conference had been scheduled but due to a clerical error in the notice sent it did not occur. The information was obtained at the hearing.

OVERVIEW

[2] The Appellant, S. D., a worker in NB, was upon reconsideration by the Commission, notified that it was unable to pay her Employment Insurance regular benefits starting June 23, 2019 because she voluntarily left her employment with X on March 7, 2019 without just cause within the meaning of the Employment Insurance Act. The Commission is of the opinion that voluntarily leaving her job was not her only reasonable alternative. The Appellant asserts that she had to leave her employment to take a better paying job with the School District.. The Tribunal must decide if the Appellant should be denied benefits due to her having voluntarily left her employment without just cause as per section 29 of the Act.

DECISION

[3] The appeal is allowed.

ISSUES

[4] Issue # 1: Did the Appellant voluntarily leave her employment with X on March 7, 2019?

[5] Issue #2: If so, was there just cause?

ANALYSIS

[6] The relevant legislative provisions are reproduced at GD4.

[7] A claimant is disqualified from receiving EI benefits if the claimant voluntarily left any employment without just cause (Employment Insurance Act (Act), subsection 30(1)). Just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances (Act, paragraph 29(c)).

[8] The Respondent has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Appellant to demonstrate he had just cause for leaving. To establish he had just cause, the Appellant must demonstrate he had no reasonable alternative to leaving, having regard to all of the circumstances (Canada (Attorney General) v. White, 2011 FCA 190; Canada (Attorney General) v. Imran, 2008 FCA 17). The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. 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.

[9] The test for determining whether a claimant had "just cause" under section 29 of the EI Act is whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment (White 2011 FCA 190; Macleod 2010 FCA 301; Imran 2008 FCA 17; Astronomo A-141-97). A claimant who leaves his/her employment must show that he/she had no other alternative but to do so. Tanguay (A-1458-84)

Issue #1: Did the Appellant voluntarily leave her employment with with X on March 7, 2019?

[10] Yes.

[11] For the leaving to be voluntary, it is the Appellant who must take the initiative in severing the employer-employee relationship.

[12] 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).

[13] Both parties agree the Appellant left this employment with X voluntarily effective March 7, 2019.

[14] I find that the Appellant voluntarily left this employment.

Issue #2: If so, was there just cause?

[15] Yes.

[16] The Appellant here has expressed a number of issues which she claims led to her quitting her employment. She quit because she planned on continuing her career in education as an Educational Assistant. She was still on probation at X in her part time employment therefore when the opportunity came to work full time as an EA she accepted the offer.

[17] Regarding the assertion that she left her job to accept full time work, it must also be considered that this full time work was for a limited period, March through to June, with no guarantee of further full time or, in fact, any future employment.

[18] The Appellant states that she is presently getting "lots" of hours of employment by accepting shifts with the School District 5 days a week. This situation will soon have her in a position to apply for and be eligible to obtain full time employment as an EA.

[19] The fact that she was still on probationary status with X indicates that she could have been let go from her employment without notice. There was at this point no guarantee her employment with X would continue after the probationary period.

[20] The Tribunal fully understands the Appellant's desire to increase her income and reduce her expenses, but while courts have ruled that leaving a job for one of short duration, or at a higher pay, is not just cause as per the Employment Insurance Act, however they have also ruled that each case must be considered on its own merits.

[21] In doing so, the Tribunal relies on the decisions given by the Umpires in CUBs 26694, 62603 and 68764 in coming to the conclusion that the Appellant here had, at the time she left her employment with X, no reasonable alternatives available to her.

[22] Failure to take into consideration the overall relevant facts in the file would constitute an error in law**. Bellefleur *v. Canada (A.G.)*, 2008 FCA 13**

[23] Everyone has the right to leave / quit an employment but that decision does not automatically qualify one to receive EI benefits. It is inevitable that a person who has the right to receive benefits will be called upon to come forward and prove that he or she satisfies the conditions of the Act.

[24] I find that the Appellant had no reasonable alternatives available to her other than leave her employment with X on March 7, 2019. She could not have remained employed until she acquired the number of hours as an EA to qualify for and get full time work in that field.

[25] I find that the Appellant , in fact, had reasonable assurance of another employment and has been working in that employment on a regular basis.

[26] Her leaving her employment when she did meets the allowable reasons outlined in section 29 (c) (vi)of the Act.

CONCLUSION

[27] Having given careful consideration to all the circumstances, I find that the Appellant has proven on a balance of probabilities that she had no reasonable alternative to leaving her job when she did, considering all of the circumstances. The question is not whether it was reasonable for the Appellant to leave her employment, but rather whether leaving the employment was the only reasonable course of action open to her (Canada (Attorney General) v. Laughland, 2003 FCA 129). Given the Appellant did voluntarily leave her employment, I find she had no reasonable alternatives to leaving when she did and thus does meet the test for having just cause pursuant sections 29 and 30 of the Act. The appeal is allowed.

John Noonan

Member, General Division - Employment Insurance Section

HEARD ON:	October 28, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. D., Appellant