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

Citation: *A. M. v Canada Employment Insurance Commission*, 2020 SST 249

Tribunal File Number: GE-19-4328

BETWEEN:

A. M.

Appellant
(Claimant)

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Kimber Johnston

HEARD ON: January 15, 2020

DATE OF DECISION: January 23, 2020

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Claimant left her permanent part-time employment to take a temporary job offering more hours and more pay. The law says that a claimant does not generally have just cause in quitting a permanent job for temporary employment knowing in advance that the new employment will only be of short duration. This is because taking the temporary job places the claimant in a potential situation of being unemployed once the temporary job ends. The employment insurance program is premised upon claimants not deliberately placing themselves in a position of possible unemployment. The Claimant had the reasonable alternative of speaking with her employer in an attempt to resolve her workplace concerns, including discussing such options as obtaining additional hours or accommodating both shift jobs, prior to taking a unilateral decision to quit her permanent job and, therefore, she has not shown just cause for leaving. Having failed to prove just cause for leaving her employment, the Claimant is therefore disqualified from receiving benefits.

PRELIMINARY MATTERS

[3] The Claimant did not attend the hearing; however, her designated representative appeared on her behalf.

ISSUES: 1. Did the Claimant voluntarily leave her job? If so, then:

2. Did the Claimant have just cause for voluntarily leaving?

ANALYSIS

Issue 1: Did the Claimant voluntarily leave her job?

[4] The claimant was a student who worked part-time at a grocery from June 17, 2017 until June 24, 2019. She then took a summer job from July 1 until August 23, 2019. She applied for

benefits on August 30, 2019. The issue before me is whether the Claimant voluntarily left her job at the grocer.

[5] In her application for benefits and in her statements to the Commission the Claimant stated she quit her job at the grocer. The Claimant's Record of Employment issued by the grocer indicates that she quit. At the hearing, the Claimant's representative confirmed it was the Claimant's choice to leave her job. There is no evidence to contradict that she quit. Accordingly, I find that the Claimant voluntarily left her job.

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

[6] The law says that a claimant is disqualified from receiving Employment Insurance (EI) benefits if they left their job voluntarily and without just cause.[1] Having a good reason for leaving a job is not enough to prove just cause.

[7] The law says 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 she had no reasonable alternatives but to leave when she did. In deciding this question, I must look at all of the circumstances that existed at the time the Claimant quit. The circumstances which existed at the time the Claimant left her employment are as follows.

[8] As earlier indicated, the Claimant was a student working part-time at a grocer until June 24, 2019. She worked one to two shifts (approximately 15 hours) per week. It was her intention upon graduating secondary school in June to attend university in September, 2019. She was hoping to make more money after graduating and before starting university in the fall so she looked for summer jobs which would employ her at least 30-35 hours per week. She was offered such a summer job working at the canteen in a ball park. This job also included shift work, often on short notice, but she was guaranteed 35 hours per week.

[9] The Claimant knew that this was not a permanent job offer and she would work there for

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[1] Section 30 of the *Employment Insurance Act*
[2] *Canada* (*Attorney General*) v. *White*, 2011 FCA 190 and subsection 29(c) of the *Employment Insurance Act*
[3] *Canada* (*Attorney General*) v. *White*, 2011 FCA 190

July and August only, but she accepted the temporary summer job because she was guaranteed full-time hours and therefore she would earn more money than if she remained at the grocer. So, the Claimant left her job at the grocer and worked at the ball park until she was laid off at the end of the summer, on August 23, 2019. The Claimant's submissions to the Tribunal and the Commission indicate, and her representative confirmed at the hearing, that it was the Claimant's continuing intention, both when she left her job at the grocer in June and upon being laid off from the ball park in August, to go to university in September 2019 and she did.

[10] I now turn to whether the Claimant had just cause for leaving her job at the grocer.

[11] With respect to the Claimant's intention to go to school, the case law has consistently made clear that quitting employment to pursue a course of studies is not just cause. A decision to leave employment to go to school does not meet the requirements to prove just cause for leaving employment.[4] While the Claimant has not specifically argued that her intention to go to school constitutes just cause for her leaving her employment, I am nonetheless referencing the legal precedent on this point because the evidence supports that it was her intention to go to school prior to leaving her employment at the grocer and, because the Commission has argued that leaving employment to go to school does not constitute just cause in their submissions to the Tribunal. I feel it is important, therefore, to address the matter and I agree with the Commission that the jurisprudence holds that an intention to return to school does not constitute just cause for voluntarily leaving employment.

[12] The Claimant argues that she had just cause for leaving her employment at the grocer because she had reasonable assurance of other employment in the near future. In fact, as earlier noted, the Claimant actually went to work at that other employment. While not specifically stated, I accept that the Claimant is referring to subsection 29(c)(vi) of the *Employment Insurance Act (Act)*. The Commission argues that there is more involved than simply having another job to go to in order to prove just cause for leaving a previous job. I agree. Section 29(c) of the *Act* requires that I must have regard to all of the circumstances surrounding the Claimant's leaving in order to determine if it was the only reasonable alternative, including

[4] *Lakic* v. *Canada* (*Attorney General*) 2013 FCA 4; *Canada* (*Attorney General*) v. *Langevin*, 2011 FCA 163

examining the nature of the respective employments.

[13] The Commission submits that the Claimant was employed at the grocer as a permanent, part-time employee and she left this permanent employment for a temporary job. The Claimant's representative at the hearing argued that the Claimant did not consider herself a permanent employee and was never told she was a permanent employee; rather, she was referred to as a student and it was known by her employer that she was eventually going to university. The representative agreed that the Claimant could work at the grocer as long as work was available, but argued that something could happen on their end and if they wanted they could end her job.

[14] The terms permanent and temporary are not defined in the legislation. Accordingly, I am to give these terms their ordinary and usual dictionary meaning.[5] Permanent means continuing or enduring. Temporary means lasting for a limited time. As her representative indicated, the Claimant could work at the grocer as long as work was available. This supports that the employment was of a continuing and enduring nature. Permanent employment does not require that the work must forever be available; rather that while it is available, it is of a continuing and ongoing nature. Nor does it matter that the employee is employed part-time, that she never considered herself or was never told she was a permanent employee or that she might eventually leave the employment. There is no evidence before me to support that the Claimant was only employed at the grocer for a limited period of time. Accordingly, I find that so long as she chose to remain employed at the grocer, the Claimant had a job on a continuing, indeterminate basis and she was therefore a permanent employee.

[15] The Claimant agrees that her next job at the ball park was temporary. The Claimant stated to the Commission that she was looking for summer employment, which is seasonal employment lasting for a limited time. The Claimant stated that she knew the new job was not permanent, but she opted for the temporary job over the summer because it offered more hours and she would earn more money. She submitted to the Tribunal that she tripled her earnings

[5] *Blanchet* v. *Canada* (*Attorney General*), 2007 FCA 377

during her summer employment and accordingly, she had no reasonable alternative but to quit her job at the grocer, given the math.

[16] The Commission argues that leaving permanent part-time employment for a job of short duration, even if it is at a higher pay, does not amount to just cause. I agree. The jurisprudence holds that a person does not generally have just cause in quitting a permanent job for temporary employment knowing in advance that the new employment will only be of short duration. This is because taking the temporary job places the person in a potential situation of being unemployed once the temporary job ends. This legal precedent applies even in situations where the person takes the temporary employment to improve their situation in life by obtaining higher pay.[6]

[17] The reason for this approach goes to the foundation of the employment insurance program which functions on the risk of an insured employee losing their employment. It is the responsibility of an insured employee not to deliberately place themselves in a position of possible unemployment. An employee voluntarily leaving permanent employment in favour of seasonal employment poses a problem under the employment insurance scheme because seasonal employment, by its very nature, involves a cessation of work. This is why the Federal Court has ruled that while it is legitimate for a worker to want to improve their circumstances in life, she cannot expect the employment insurance fund to bear the cost of that legitimate desire. This applies equally to those who decide to go back to school to further their education or start a business or to those who simply wish to earn more money.[7] The evidence supports that the Claimant was aware that her new job would only be of short duration. Therefore, I find that the Claimant did not have just cause for leaving her permanent employment at the grocer pursuant to the jurisprudence and subsection 29(c)(vi) of the *Act*.

[18] A claimant who accepts new employment fully aware that it would be of short duration then must prove that leaving their permanent position was the only reasonable alternative. The Commission submits that a reasonable alternative would have been for the Claimant to speak

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[6] Canada (Attorney General) v. Langlois, 2008 FCA 18
[7] *Canada* (*Attorney General*) v. *Langlois*, 2008 FCA 18; *Canada* (*Attorney General*) v. *Campeau*, 2006 FCA 376

with her employer. I agree. The jurisprudence imposes an obligation on claimants, in most cases, to attempt to resolve workplace concerns with an employer before taking a unilateral decision to quit a job.[8]

[19] The Claimant submitted in her Notice of Appeal to the Tribunal that she knew she could not accommodate her shifts both at the grocer and at the ballpark. At the hearing, the Claimant's representative submitted that, based upon previous experience, the Claimant felt her supervisor at the grocer would not be amenable to accommodating her schedule. There is no evidence to support, however, that the Claimant actually spoke with her employer to validate her assumptions about accommodating both shift jobs or to discuss her concerns about needing additional work, before quitting. The Claimant's representative submitted that while the Claimant had been told in the January to March 2019 timeframe that the grocer could not guarantee her full-time hours in the summer, the Claimant did not speak to her employer about additional hours or about the possibility to go full-time prior to quitting at the end of June, 2019. While I accept that the Claimant may not have felt her supervisor would be open to discussing her concerns, the Claimant still had the option of speaking with her manager at the grocer. The Claimant's representative indicated that the Claimant had approached her manager previously about a possible transfer within the grocer, which supports that the Claimant had the option of speaking directly with the grocery manager before quitting. Accordingly, I find that the Claimant had the reasonable alternative of speaking with her employer in an attempt to resolve her workplace concerns, including discussing such options as obtaining additional hours or accommodating both shift jobs, prior to taking a unilateral decision to quit her job at the grocer and, therefore, she has not shown just cause for leaving.

[20] The Commission submitted that the Claimant had other reasonable alternatives prior to quitting, including seeking other employment. Having found that the Claimant had the reasonable alternative of attempting to resolve her workplace concerns with her employer prior

[8] *Canada* (*Attorney General*) v. *White*, 2011 FCA 190; *Canada* (*Attorney General*) v. *Hernandez*, 2007 FCA 320; *Canada* (*Attorney General*) v. *Campeau*, 2006 FCA 376; *Canada* (*Attorney General*) v. *Murugaiah*, 2008 FCA 10

to leaving her employment, it is not necessary for me to make a finding on these additional submissions.

[21] Before concluding, the Claimant and her representative stressed in their submissions that the Claimant's choice to leave her job at the grocer for the job at the ball park was a reasonable alternative. The representative submitted that the Commission failed to recognize how reasonable a decision it was for the Claimant to leave the grocer job. The term reasonable alternative in the *Act* is "a reasonable alternative to leaving". This should not be confused with a good or reasonable reason for leaving. The words "just cause" or "reasonable alternative" in the legislation are not synonymous with "reason" or "motive". The Claimant may have a good personal reason for quitting, but it does not meet the requirement to prove just cause for leaving employment and causing others to bear the cost of the Claimant's unemployment.[9]

[22] Reference was also made during the hearing to the provincial EI Connect program, where a person who qualifies for EI benefits may also go to school, and the Commission's submissions regarding the timing of the Claimant's applying to the program. I agree with the representative's submissions that the timing of the application is irrelevant in the matter before me; rather, the issue is whether or not the Claimant is qualified to receive benefits. The Claimant further submitted that she knows of other people who received benefits after finishing a summer job. My jurisdiction as a Tribunal Member is restricted to a review of the Commission's reconsideration decision in the Claimant's case alone.

[23] Finally, the Claimant's representative raised a number of other matters, including that there were pages missing from the Claimant's application for benefits and that the Commission had insufficiently summarized the Claimant's submissions in their submissions. Only the relevant pages of the application for benefits are required to be submitted by the Commission and, the representative confirmed at the hearing that she had no additional documentation to file on the Claimant's behalf. Further, I find that these matters are not materially relevant to the issues under appeal before the Tribunal.

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[9] *Canada* (*Attorney General*) v. *White*, 2011 FCA 190; *Canada* (*Attorney General*) v. *Langlois*, 2008 FCA 18; *Canada* (*Attorney General*) v. *Imran*, 2008 FCA 17; *Canada* (*Attorney General*) v. *Laughland*, 2003 FCA 129

CONCLUSION

[24] In conclusion, I find that the Claimant's leaving her permanent employment for temporary employment does not constitute just cause and she had the reasonable alternative of attempting to resolve her workplace concerns with her employer prior to leaving her permanent employment. Having failed to prove just cause for leaving her employment, the Claimant is therefore disqualified from receiving benefits. The appeal is dismissed.

Kimber Johnston

Member, General Division - Employment Insurance Section

HEARD ON:	January 15, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. C., Representative for the Appellant