



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. K. v Canada Employment Insurance Commission*, 2020 SST 506

Tribunal File Number: GE-20-165

BETWEEN:

**A. K.**

Claimant/Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Heather Hamilton

HEARD ON: February 3, 2020

DATE OF DECISION: February 4, 2020

## **DECISION**

[1] The appeal is dismissed. The Claimant has not shown just cause because she had reasonable alternatives to leaving her job when she did. This means she is disqualified from receiving benefits. These are my written reasons why.

## **OVERVIEW**

[2] The Claimant worked part-time at a Fabric store making minimum wage and usually had four shifts a week. She liked to work weekends which most employees did not like to work. There were weeks when the store was not as busy. For example, after Xmas her days were reduced from four to three days and they might even be reduced to two days per week. The Claimant was also a geologist. She attended a Mineral Exploration conference in January 2019 and applied for work with a Wellsite Supervision consulting firm about a week earlier. This would be contract work which is like seasonal employment because you work for short periods of time and it is not permanent, only sporadic temporary assignments.

[3] After the conference she was offered a short contract for work on very short notice. She spoke to the Supervisor on Thursday night and asked for time off starting Saturday so she could accept the contract work. The Claimant offered to find someone to work her shifts; however, the Supervisor told her if she wanted time off she had to give two weeks notice or quit to accept the contract work. The Claimant chose to quit her employment to accept the temporary contract because she could not give two weeks notice.

[4] I must decide whether the Claimant has proven that she had no reasonable alternatives for leaving her job. The Commission says the Claimant's main reason for quitting her job was the employer would not give her time off with a short notice and the Claimant decided to quit. They further say that the Claimant has not shown just cause for voluntarily leaving a permanent job in order to take a temporary position, knowing that at the end of both jobs she would be unemployed. She made a personal decision to leave work to accept temporary contract work, when she had the reasonable alternative of continuing at the fabric store until she secured other permanent employment. The Claimant disagrees and says she had spoken to the Supervisor when she was hired and was told they probably could accommodate her doing some contract work and having another job.

## ISSUES

[5] I must decide whether the Claimant is disqualified from being paid 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.

### Reasons for my decision

#### The Claimant voluntarily left her employment

[6] When determining whether the Claimant voluntarily left her employment, I must determine whether she had a choice to stay in the job at the time.<sup>1</sup> If you had a choice, and you choose to leave the job, then you have quit your job. The Employment Insurance Act calls this "voluntarily leaving."<sup>2</sup>

[7] Many workers pay into the employment insurance fund. To respect others you should always show that you tried to avoid unemployment.<sup>3</sup> You must think about reasonable alternatives before you quit. Sometimes this means that you should talk to your boss or your union first if you think you have problems at work. Sometimes this means that you should try to find a new job before you quit.<sup>4</sup>

[8] I have to consider what circumstances were in your situation. I have to consider whether these circumstances apply to your case, but you still have to prove that quitting your job was the only reasonable alternative.

[9] You can only receive employment insurance benefits after you quit your job if quitting was the only reasonable alternative in your particular situation. If you can prove quitting was the only reasonable alternative, the law says that you have just cause for quitting. If you do not have just cause for quitting, you cannot receive employment insurance benefits. The law tells me this is called a disqualification.<sup>5</sup>

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<sup>1</sup> This is set out by the Federal Court of Appeal in *Canada (Attorney General) v. Peace*, 2004 FCA 54

<sup>2</sup> In *Canada (Attorney General.) v. Peace*, 004 FCA 56, the Federal Court of Appeal (FCA) says that a claimant has voluntarily left their job if they have a choice and they choose to leave.

<sup>3</sup> In *Tanguay v. Unemployment Insurance Commission*, A-1458-84, the FCA says that a claimant is only justified in asking others to bear the burden of their unemployment if the circumstances excuse it.

<sup>4</sup> *Canada (A.G.) v. White*, 2011 FCA 192, the FCA says that claimants have an obligation to attempt to resolve workplace conflicts or demonstrate efforts to find other work before they quit a job.

<sup>5</sup> This is from sections 29(c) and 30(1) of the *Employment Insurance Act*.

[10] The Claimant was employed at the fabric store from April 6, 2018 to January 31, 2019.

[11] The Claimant quit her job because the Supervisor would not let her find other employees to take her shifts for her. She could not give two weeks notice to take time off because of the short notification of the contract. She told me she quit her employment to be able to do the contract work.

[12] I find the Claimant voluntarily left her employment because she had a choice to stay in the employment and chose to leave. She was not dismissed.

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

[13] The parties do not agree that the Claimant had just cause for voluntarily leaving her job when she did.

[14] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>6</sup> Having a good reason for leaving a job is not enough to prove just cause. You have just cause to leave if, after considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.

[15] 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.<sup>7</sup> It is up to the Claimant to prove this.<sup>8</sup> The Claimant has to show that it is more likely than not that she had no reasonable alternatives but to leave when she did. When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant quit.

**Did the Claimant have just cause for voluntarily leaving her job?**

[16] The Claimant has not proven that she had just cause for leaving her job.

[17] The Claimant told me she was not in an intolerable situation at the fabric store. She wanted to be able to have two jobs and work at both of them. She asked the Supervisor to work

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<sup>6</sup> This is set out at s 30 of the *Employment Insurance Act*.

<sup>7</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

<sup>8</sup> The burden of proof is on the balance of probabilities. This means it is more likely than not that the events occurred as described.

with her and let her get other employees to take her shifts so she could have the contract work as it was the contract work that would help her pay her bills.

[18] The Claimant says she had no choice but to leave her job so she could take advantage of the contract work that she wanted because it helped pay her bills. In one week of working as a geologist she could earn five times as much as she did at the fabric store.

[19] The Claimant told me that she had an agreement in place with the employer that if a contract became available for the Claimant, her employer would try and accommodate her request. I find the Claimant did not provide a copy of any written agreement that the employer had agreed to and signed.

[20] I acknowledge that she wanted to work both jobs as many people do work two jobs. She explained she thought she could do the contract work and then come back to the fabric store and continue working four days per week at the fabric store until another contract opportunity became available. She did not expect that she would have to give two weeks notice at the fabric store to get time off. The Claimant had not anticipated that she would have to quit her permanent job to accept the temporary contract work that paid more money. The evidence in the file tells me that the company that gave her the contract work did not have any employees they had "contract employees only." The Claimant says due to her having the flu and having an eye infection she never did get the contract work because she had a fever and could not travel. She put snow tires on her car but in the end she was too sick to accept the work.

[21] The Commission says the Claimant was leaving a part-time permanent position for a temporary position, knowing that at the end she would be unemployed. Considering all the evidence she had reasonable alternatives. A reasonable alternative was to continue working at the fabric store until she secured other permanent employment. The Commission says the Claimant must accept the consequences of leaving almost full time employment permanent employment for temporary contract employment that the Claimant knew would end in unemployment.

[22] The law states that one of the circumstances to have regard to in considering whether the Claimant had just cause for her voluntary leaving is a reasonable assurance of another employment in the immediate future.<sup>9</sup>

[23] I note the Claimant felt she had another job lined up when she quit working at the fabric store as she had been contacted and notified of contract work with a Wellsite Supervision consulting firm. She accepted the work and quit her job at the fabric store on a Thursday and was to start the contract work on Saturday. The Tribunal acknowledges that contract work for her would have an increase in her hourly rate; however, a Claimant's desire to improve their financial situation may constitute good cause, but it does not constitute just cause.<sup>10</sup>

[24] I note there is contradiction within the law, which speaks of the Claimant having no reasonable alternative to leaving or taking leave<sup>11</sup> and that part which speaks of the circumstance of reasonable assurance of another employment in the immediate future.<sup>12</sup> The Court addressed the issues thusly:

“Indeed, it is by no means obvious that these two phrases exist harmoniously with one another: it is difficult, if not impossible, to contend or conclude that a person who voluntarily leaves employment to occupy different employment is doing so necessarily because leaving is the only reasonable alternative. A person may simply wish to reorient his career or advance within his trade or profession by changing employers.

Most of the situations envisaged by paragraph 29(c) relate to incidents or actions that arise in the context of the employment held by the claimant. Subparagraph 29(c)(vi) is intended for an entirely different scenario, one that involves a change of employment, so it is not a matter of coming up with or applying a remedy within a single employment context where alternatives to leaving can be easily envisaged.<sup>13</sup>

[25] The FCA has recognized that people may want to improve their lives by changing employers or types of work, but found that those who contribute to the EI fund cannot be expected to bear the cost of that choice.

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<sup>9</sup> Paragraph 29(c)(vi) of the *Employment Insurance Act*

<sup>10</sup> *Canada (Attorney General) v. Graham*, 2011 FCA 311

<sup>11</sup> Subsection 29(c) of the *Employment Insurance Act*.

<sup>12</sup> Paragraph 29(c)(vi) of the *Employment Insurance Act*.

<sup>13</sup> *Canada (Attorney General) v Langlois*, 2008 FCA 18

[26] I find the Claimant has worked contract work before and she knew that once the temporary contract work was finished she would be unemployed. It is the Claimant's responsibility not to transform what was only a risk of unemployment into a certainty.<sup>14</sup> She left permanent work for temporary contract work. She could have left permanent work for another permanent job; however, that is not what she chose to do.

[27] I find the Claimant had the reasonable alternative of remaining in her employment at the fabric store because it was permanent employment, rather than voluntarily leaving for employment that was temporary. She could have remained employed and explained that for her to do temporary contract work with X she would need to give two weeks notice to the fabric store. If she wanted to work two jobs and be fair to each she needed to find a resolution that worked for both employers. I find a reasonable alternative was to remain employed at the fabric store to protect her permanent employment, rather than leaving for short-term contract work that created a larger risk of unemployment. The Claimant testified that her temporary short term work was only for three days of contract employment. She was not promised work after that. She was told that if another opportunity for contract work becomes available they will keep her name on the list and contact. The Claimant stated she did get called in March for another short term; however, I find this is short term temporary employment and not permanent employment. This evidence is confirmed by the employer that the Claimant is a contractor, all the jobs are contract, and there are no employees, they are contract employees.<sup>15</sup>

[28] The Claimant told me that she went into a Service Canada office personally and mentioned that if the Commission had no intention of giving her benefits why did the Representative at Service Canada encourage the Claimant to fill out an application. She asked this question to an adjudicator at the Commission and was told that the Representatives at Service Canada are not trained to tell them whether they would qualify for EI benefits; but are there to help them fill out the application form. She feels this process is unjust and unfair and that all Representatives should be trained to handle all questions and situations and provide advice as to whether she would receive benefits or not. She noted that the whole process is stressful and unnecessary if you are not going to get benefits from the Commission.

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<sup>14</sup> *Canada (Attorney General) v. Langlois* (2008 FCA 18 (CanLII)),

<sup>15</sup> GD3-37

[29] I rely on CUB 27239A where Umpire J. Reed stated:

[30] *I recognize that the CEIC officials are often in a difficult position. If advice is sought from them and they do not give it, they are criticized for not being helpful. If advice is sought and they give it, is possible that they do so on the basis of one side of the story only, or without fully understanding all the ramifications of the facts they are told.*

[31] *There should be some way of formalizing and documenting request for advice and the answers so given so that if misinformation is given the claimants are not disadvantaged thereby. As it stands now, however, Umpires have no jurisdiction to take such misinformation into account when they hear appeals (Granger v. C.E.I.C) A-684-85.*

[32] I deeply regret that mistakes of the Commission have caused the Appellant grief and hardship; however, I must address the issue before me, which is whether the Claimant had just cause to voluntary leave her employment under section 29 and 30 of the Act.

[33] I find the Claimant made a personal decision to separate from her employment. While I acknowledge her desire to want to earn more money, have a change, and keep up her career, she cannot expect those who contribute to the employment insurance fund to bear the costs of her decision to leave her employment in an attempt to do so.

[34] The Claimant failed to pursue any of the above-noted reasonable alternatives and, therefore she failed to prove that she was left with no reasonable alternative but to leave her employment. As a result, the Claimant has not proven she had just cause for leaving her employment.

## CONCLUSION

[35] The appeal is dismissed.

Heather Hamilton  
Member, General Division - Employment Insurance Section

HEARD ON:	February 3, 2020
METHOD OF PROCEEDING:	Teleconference



APPEARANCES:	A. K., Claimant/Appellant
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