



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. J. v Canada Employment Insurance Commission*, 2020 SST 187

Tribunal File Number: GE-20-345

BETWEEN:

C. J.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: February 17, 2020

DATE OF DECISION: February 18, 2020

DECISION

[1] I am allowing the appeal. I find that C. J. (the Claimant) had just cause for taking a leave of absence from his employment.

OVERVIEW

[2] The Claimant is a teacher at a northern Saskatchewan school. His wife worked at the same school. The Claimant and his wife learned in November 2018 that his mother-in-law was severely ill. The Claimant's wife decided to leave her job to move to Ontario to take care of her mother. The Claimant took a one-year leave of absence from work. The Claimant and his wife moved to Ontario.

[3] The Claimant applied for employment insurance benefits. The Canada Employment Insurance Commission (Commission) disentitled the Claimant from benefits because they decided that he took a leave of absence without just cause. The Claimant has appealed this decision before the Social Security Tribunal (Tribunal).

Facts agreed upon

[4] The Claimant and the Commission agree that the Claimant took a one-year leave of absence from his employer in northern Saskatchewan. The Claimant explained that the school board approved his leave of absence and he is scheduled to return in August 2020.

Issues in this appeal

[5] The Commission says that the Claimant took a leave of absence without just cause. The Claimant disagrees. He says that he took a leave of absence so that he could follow his wife to Ontario.

What I have to decide

[6] The law says that when a claimant takes a leave of absence from their employment without just cause, the claimant will be *disentitled* from receiving EI benefits.¹ This means that for a certain period, a claimant cannot receive benefits.² The law says that, depending on the case, the disenitment lasts until the claimant resumes the employment; loses or voluntarily leaves the employment; or, after the beginning of the period of leave, the claimant accumulates with another employer the number of hours of insurable employment required to file a new claim.³

[7] But, if a claimant shows that they had just cause to take the leave of absence, they will not be disentitled from receiving benefits because of the leave. A claimant must prove this on the balance of probabilities. Having a good reason for taking a leave of absence is not enough to prove just cause.⁴ The law says that a claimant has just cause to leave only if they had no “reasonable alternatives” to taking the leave when they did.⁵

[8] So, I must decide:

- Did the Claimant have just cause to take a leave of absence from his job as a teacher in northern Saskatchewan?

REASONS

[9] The Claimant says that he had just cause to take a leave of absence because he followed his wife to Ontario when she moved to take care of her ailing mother.

¹ Section 32 of the *Employment Insurance Act* (Act).

² I note that *disentitlement* is different from disqualification. If the claimant voluntarily leaves any employment without just cause, the claimant will be *disqualified* from receiving benefits (sections 29 and 30 of the *Employment Insurance Act* – (Act)). In these situations, claimants are precluded from receiving benefits as all insurable hours prior to the voluntary departure are not considered for employment insurance purposes.

³ Subsection 32(2) of the Act

⁴ *Tanguay v Canada (Unemployment Insurance Commission)*, A- 1458-84.

⁵ *Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Racine*, A-694-96.

Obligation to Accompany a Spouse to another Residence

[10] The law says that I must consider whether a claimant has just cause to take a leave of absence because a claimant has an obligation to accompany a spouse to another residence.⁶

[11] The Claimant says that he and his wife have been married for about three and half years. During their marriage, the only time that they lived apart was when his wife left for three weeks in December 2018. At the time, his mother-in-law had just been diagnosed with a terminal illness.

[12] The Claimant explained that he moved to be with his wife so that he could support her emotionally. He also moved so that they could remain as a family to deal with his mother-in-law's illness.

[13] Given the circumstances that led to the Claimant's leave of absence, I find that the Claimant has proven that had an obligation to accompany his spouse to Ontario.

Reasonable alternatives

[14] The Commission says that there were several reasonable alternatives open to the Claimant at the time he took his leave of absence.

[15] The Commission says that the Claimant could have:

- Continued working while his wife temporarily moved to Ontario to care for her mother;
- Continued working with his wife in northern Saskatchewan while other family members took care of the Claimant's mother-in-law;
- Continued working with his wife in northern Saskatchewan while other care workers took care of the Claimant's mother-in-law; and
- Ensured that he had permanent work in Ontario before he took his leave of absence.

⁶ See subsection 29(c) ii) of the Act

[16] The Claimant argues that taking a leave of absence was the only reasonable alternative. He says that none of the options identified by the Commission were reasonable alternatives when considering all of the circumstances.

[17] The Claimant says that it was not reasonable for him to continue to work temporarily in northern Saskatchewan while his wife lived in Ontario. The Claimant explains that his mother-in-law's condition was debilitating. The family does not know how long his mother-in-law will need support and how quickly her situation will worsen. Because his wife would be in Ontario for an extended period, staying alone in northern Saskatchewan was not a reasonable alternative, particularly when the Claimant needed to support his wife and family during this difficult period. Moreover, the distance between the northern community in Saskatchewan and his mother in law's home in Ontario would likely only permit the couple to see one another at Christmas and during the summer.

[18] Also, I consider that two of the options proposed by the Commission must be rejected from the outright as they are premised on the Claimant's wife staying in Saskatchewan. These alternatives are that the Claimant could have:

- Continued working with his wife in northern Saskatchewan while other family members took care of the Claimant's mother-in-law; and
- Continued working with his wife in northern Saskatchewan while other care workers took care of the Claimant's mother-in-law.

[19] My role is not to determine reasonable alternatives for the Claimant and his wife but rather, reasonable alternatives for the Claimant having regard to all of the circumstances. Moreover, the Claimant explained that only one family member lives near his mother-in-law and that individual suffers from severe depression and is unable to assist the family. The Claimant also explained that the family does not have the financial means to hire full-time help for his mother-in-law. He says that his father-in-law is unable to care for his wife alone since she needs help to stand up, dress and perform daily tasks.

[20] The Claimant also explained that as soon as he could, he placed his name on the supply list to teach in Ontario. He also says that before he left northern Saskatchewan he looked for work in Ontario.

[21] I accept that Claimant's explanation of the circumstances he faced at the time he took his leave of absence. He was credible and forthright in his explanation. I do not accept the Commission's argument that the Claimant should have stayed in northern Saskatchewan until he found permanent employment in Ontario. The Claimant explained the efforts he made to find employment and described why he was required to follow his wife to Ontario.

[22] Contrary to the position set out by the Commission, I do not consider this as a situation where the Claimant made a personal choice to take a leave of absence. Rather, this is a situation where the Claimant had an obligation to accompany and support his wife. I find that having regard to all of the circumstances, taking a leave of absence was the only reasonable alternative.

CONCLUSION

[23] The appeal is allowed.

Christianna Scott

Member, General Division - Employment Insurance Section

HEARD ON:	February 17, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. J., Appellant