



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. B. v Canada Employment Insurance Commission*, 2020 SST 244

Tribunal File Number: GE-20-93

BETWEEN:

A. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: January 31, 2020

DATE OF DECISION: February 14, 2020

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant worked as a day labourer at X for more than 30 years. He lived in X. He explained that, gradually, his trip to and from work had become longer and more difficult, and he no longer had any quality of life. He therefore decided to change careers. He found a job closer to home at the Ministère du Transport [Québec's ministry of transportation]. He took unpaid leave from X so he could make sure he would like the new job. His experience was positive, so he eventually left his employment at X, on September 26, 2019.

[3] The job at the Ministère du Transport [Québec's ministry of transportation] was a seasonal contract from the spring to the fall. When his contract ended in October 2019, the Appellant applied for Employment Insurance benefits.

[4] The Employment Insurance Commission (Commission) decided to impose a disqualification on the Appellant starting September 26, 2019, because it argues that he voluntarily left his employment at X without just cause under the *Employment Insurance Act* (Act).

[5] After examining the issue, I find that the Appellant is not entitled to receive benefits because he did not have just cause for leaving. He did not have just cause because it was a personal decision, and the Appellant had reasonable alternatives to leaving.

ISSUE

[6] The Tribunal must determine whether the Appellant had no reasonable alternative to leaving his employment in his circumstances.

ANALYSIS

[7] Generally, a person who leaves their employment voluntarily is disqualified from receiving Employment Insurance benefits.¹ However, the Act states that, under exceptional circumstances, sometimes a person may have just cause for voluntarily leaving their employment and be eligible for Employment Insurance benefits. It is up to them to demonstrate this.

[8] In this case, the Appellant admitted from the beginning that he left his employment voluntarily. There is therefore no dispute over the voluntary nature of his leaving. The only remaining issue is whether there was just cause for leaving.

Issue: Did the Appellant have no reasonable alternative to leaving in his circumstances?

[9] The Federal Court of Appeal has repeated on numerous occasions that, to determine whether a person had just cause for leaving their employment, they must demonstrate that they had no reasonable alternative to leaving, having regard to all the circumstances.²

[10] In this case, the Appellant explained in detail how the travel situation had deteriorated over the years, especially in the last two. He said that he was arriving an hour and a half before his shift. He was leaving his home in X early in the morning to avoid traffic and find parking around X. At the end of the day, he spent about two hours in his car, in traffic, to return home.

[11] He thought long and hard about his options, took placement tests for the provincial government, and even applied to some positions to improve his situation. That is how he obtained a position at the Ministère du Transport [Québec's ministry of transportation] for a contract from April to October. He acted diligently and took unpaid leave from his permanent employment at the hospital to make sure everything would work and he would not find himself without a job. He said that, on September 26, 2019, he found that it was working and that the job suited him, so he officially handed in his resignation to the hospital.

¹ *Employment Insurance Act*, s 30.

² *Canada (Attorney General) v Patel*, 2010 FCA 95; *Bell*, A-450-95; *Landry*, A-1210-92; *Canada (Attorney General) v Hernandez*, 2007 FCA 320.

[12] That was when the Commission disqualified the Appellant's hours of insurable employment for leaving his employment without just cause.

[13] The Commission argues that the Appellant left his permanent, full-time employment by personal choice by choosing employment that was more precarious, but that improved his quality of life and travel time. The Commission also argues that choosing seasonal employment over full-time employment does not constitute just cause under the Act.

[14] I also find that the evidence shows that the decision to leave was the Appellant's personal decision. The Employment Insurance system cannot support the costs of appellants' personal choices, no matter how worthy they are. I completely understand why the Appellant would prefer a job that greatly improves his quality of life. I also understand that the Appellant has been able to spend more time caring for his mother who lives in a long-term care facility in X, which is completely understandable and commendable.

[15] However, the Tribunal finds that the principle that persons insured by the Employment Insurance program should not cause the risk or certainty of unemployment is the fundamental principle of insurance schemes. The Federal Court of Appeal has made this principle clear: "a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur."³ In this case, the Appellant put himself in a position of unemployment because he knew his job at the Ministère du Transport [Québec's ministry of transportation] was going to end a few weeks later in October 2019.

[16] Moreover, if the Appellant decided it was good for him to leave, I am in no way questioning the validity and good faith of this decision. It was perhaps the best decision for him in the circumstances. However, the decision to leave unfortunately remains a personal decision that cannot justify benefits under the Act. The fact that he had to deal with more and more traffic and the lack of parking near his work is unfortunate, but it does not constitute just cause under the Act.

³ *Tanguay*, A-1458-84.

[17] From the Appellant's point of view, the decision he made was reasonable. I agree. However, the issue is not whether it was reasonable for him to leave his employment, but whether he had no reasonable alternative, having regard to all the circumstances.⁴ Indeed, the Federal Court of Appeal has confirmed that, when assessing voluntary leaving in Employment Insurance, it is imperative and essential that this issue be examined. The Appellant said that he did not want to remain in a situation of seasonal work forever and that he wanted to work full-time. He therefore began taking a class 3 driving course to be able to do snow removal in the winter, which would give him the opportunity to work year-round.

[18] I find that, among other reasonable alternatives available to him, the Appellant could have waited longer before leaving his employment at the hospital to cover his unemployment period with his job at the hospital. During the layoff period at the Ministère du Transport [Québec's ministry of transportation], a reasonable alternative would have been to continue making the trip to Montréal even though it had become difficult. By acquiring additional skills like his class 3 licence, he could have eventually left the hospital permanently without putting himself in a situation of seasonal unemployment. That would be more in line with his obligations as an insured under Employment Insurance. Even if his employment as a day labourer at the hospital was reducing the Appellant's quality of life, it is difficult for the Tribunal to imagine finding that leaving his employment for a few months a year was more reasonable than maintaining the employment relationship with his permanent job. Moreover, he had taken measures not to break the employment relationship with the hospital until September 2019. He should have continued to do this until he could avoid finding himself unemployed after leaving his permanent, full-time employment.

[19] Furthermore, the Appellant could also have looked for work and kept his position at X until he found another employment that assured him year-round work.

[20] The Appellant asked the Tribunal to consider other similar cases to his. He argues that he knows of cases where people who left their employment for seasonal employment were entitled to Employment Insurance benefits. Each case is a particular case and it is impossible for me to

⁴ *Canada (Attorney General) v Laughland*, 2003 FCA 129.

compare the Appellant's situation with those of others whose particular details I do not know. Although I empathize with the Appellant's circumstances, I cannot change the Act. The state of the law at this time does not allow an insured to receive benefits when they have put themselves in a situation of unemployment voluntarily.

[21] In conclusion, I therefore find that, in these circumstances, the Appellant failed to show that he had no reasonable alternative to leaving. Although I empathize with his situation and the thoughtful choice he made, his decision to leave the hospital remains a personal choice that cannot be considered just cause according to the rules established by Employment Insurance. As a result, I find that he did not have just cause to voluntarily leave his employment under the Act and that a disqualification should be imposed.

CONCLUSION

[22] The appeal is dismissed.

Lucie Leduc
Member, General Division – Employment Insurance Section

HEARD ON:	January 31, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. B., Appellant