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

[TRANSLATION]

Citation: *M. L. v Canada Employment Insurance Commission*, 2020 SST 451

Tribunal File Number: GE-20-792

BETWEEN:

M. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARD ON: March 26, 2020

DATE OF DECISION: April 1, 2020

Canada

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The employer says it offered the Appellant a new contract for the winter. However, the Appellant allegedly refused that work. The Appellant disagrees with the fact that he refused that work. He says that he only asked his employer to issue his Record of Employment at the end of his contract. He says that he wanted to be able to receive Employment Insurance when he was not working because the employer had told him that some weeks might not be full.

[3] The Commission found that the Appellant did not have just cause for leaving his employment because he failed to show he had exhausted all reasonable alternatives before leaving. Given the circumstances, a reasonable alternative would have been to accept the full-time position his employer offered him or to secure a job elsewhere.

ISSUES

[4] Did the Appellant voluntarily leave his employment?

[5] Given all the circumstances, was voluntarily leaving the Appellant's only reasonable alternative?

ANALYSIS

[6] A claimant is disqualified from receiving benefits if they lost any employment because of their misconduct or voluntarily left any employment without just cause.[1]

[7] The Commission has the burden of proof to demonstrate that it was indeed voluntary leaving. The claimant must then demonstrate, on a balance of probabilities, that they had no reasonable alternative to leaving.[2]

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[1] *Employment Insurance Act* (Act), s 30(1).
[2] The burden of proof is explained in *Canada (Attorney General) v White*, 2011 FCA 190.

Issue 1: Did the Appellant voluntarily leave his employment?

[8] The Appellant disagrees with the fact that he voluntarily left his employment. He says that the employer terminated his contract because it did not want to issue him his Record of Employment.

[9] I find that the Appellant has stated repeatedly that he did not leave his employment. From his first contact, the Appellant explained that the employer offered him a new contract and that at no time did he refuse it.[3] He wanted to have his Record of Employment because the employer could not guarantee him full-time workweeks. The Appellant explained that his family was notified that he had to work during the holidays and said that he does not understand where the allegation that he wanted to spend time with family came from.

[10] My role is first to decide whether the Appellant left his employment voluntarily. The Commission has the burden of proving this. If the answer is yes, I must then decide whether the Appellant had just cause for leaving his employment. It is then up to the Appellant to demonstrate this.[4]

[11] As a result, I cannot come to the same conclusions as the Commission about the circumstances of the Appellant's leaving. Given the serious consequences associated with voluntary leaving in Employment Insurance, such a finding must be based on clear evidence and not on mere speculation and suppositions.[5] Furthermore, the Commission must prove that such evidence exists.

[12] I take into consideration the Commission's position, which gives more credibility to the employer's statements. The Commission considers the employer's version, which states that the Claimant had voluntarily left his employment. The Claimant says that he did not leave his employment, but that there had been a misunderstanding. The Claimant submitted a copy of the letter that the employer had written following their meeting on Tuesday, December 17, 2019. The letter sums up what the employer had retained from their conversation. In particular, the

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[3] Summary of conversation with the Appellant (GD3-29).
[4] The burden of proof is also explained in *Green*, 2012 FCA 313.
[5] Explained in *Crichlow*, A-562-97.

letter confirms that the Claimant had responded that he was not interested and that he preferred to finish his employment with them on Friday, December 20. However, following the meeting, the Claimant had decided to terminate his employment immediately. The Commission argues that, if there had been a misunderstanding or error, the Claimant could have contacted the employer to try to explain that he was not leaving his employment, thus avoiding a situation of unemployment.

[13] The Appellant explained that he had received a notice in his electronic file that he had received his Record of Employment. He therefore learned that the employer considered that he had voluntarily left his employment. The Appellant said he then received the employer's letter by mail. The Appellant did not try to reach the employer. He explained that he had met with the employer twice and gone to see his supervisor on two occasions to get an update on the situation. I am of the view that the letter was not given to the Appellant in person because it is not signed. Moreover, the employer said it had sent the letter the same day, which suggests that it was sent by mail.[6] As a result, I can understand why the Appellant did not react after receiving that letter. He had received his Record of Employment, and the decision seemed clear as he had already spoken to the company owner and his supervisor.

[14] I note that the employer's position is contradictory. The employer says that the work is full-time and that it [translation] "could happen that employees are required to stay home."[7] I am of the view that these statements confirm what the Appellant said and explain the reasons why he wanted to have his Record of Employment.

[15] As a result, I give credibility to the Appellant's statements. The Appellant gave testimony about the events that led to the termination of employment. The Appellant wanted to have his Record of Employment to establish his claim for benefits and make his statements to keep his claim for benefits active in case he was not working full-time. The Appellant was worried about being left without income because of his family situation.

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[6] Summary of conversation with the employer (GD3-40).
[7] Summary of conversation with the employer (GD3-28).

[16] I find that the evidence presented is not conclusive. I am of the view that the situation resulted from a misunderstanding. The Appellant could have waited to have an actual interruption of work before asking for his Record of Employment. However, I take into consideration the fact that he confirmed this, but that the employer's position went downhill. He really believed he would return to work and went to see his supervisor twice. On the other hand, the Appellant's request for his Record of Employment was in no way inappropriate, as the employer itself stated that there could be some days of interruption. As a result, nothing prevented the employer from issuing a Record of Employment at the Appellant's request.

[17] Moreover, having had the benefit of the Appellant's testimony to clarify the facts, I give more weight to the version. I am of the view that the Appellant's version is credible, logical, and that his testimony, which constitutes direct evidence, corroborated the version of the facts that he gave about the reasons for his termination of employment.

[18] As a result, I am of the view that the Appellant did not voluntarily leave his employment. I find that the evidence is not convincing and sufficient to make a finding, on a balance of probabilities, of voluntary leaving. Because the Commission did not meet its burden of proving that there was indeed voluntary leaving, I find that it is not necessary to continue the analysis in more depth.

[19] I am of the view that the Appellant is entitled to receive Employment Insurance benefits.

[20] Finally, I take into consideration the Commission's note that [translation] "If the Social Security Tribunal of Canada allows the issue of voluntary leaving, the Commission asks that the Tribunal return the file to the Commission so that it can examine the issue of the Claimant's availability." I cannot understand why the Commission did not make a decision on this issue from the beginning, if that was its intention. I am of the view that waiting to make that decision is to the Appellant's disadvantage. Moreover, I would like to point out that, in view of the credibility given to the Appellant, I find there is no need for that decision.

CONCLUSION

[21] The appeal is allowed.

Charline Bourque
Member, General Division – Employment Insurance Section

HEARD ON:	March 26, 2020
METHOD OF PROCEEDING :	Teleconference
APPEARANCE:	M. L., Appellant