



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RK v Canada Employment Insurance Commission*, 2020 SST 1065

Tribunal File Number: GE-20-1255

BETWEEN:

R. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: June 17, 2020

DATE OF DECISION: June 17, 2020

DECISION

- [1] The appeal is allowed. This means that the Claimant is not disqualified from receiving employment insurance (EI) benefits.
- [2] He voluntarily left his employment. He had just cause to leave, having regard to all of the circumstances. His reasons for leaving included relocating to a new province because he was not earning enough to support his family and he was unable to find other suitable employment before he left.

OVERVIEW

- [3] The Claimant applied for regular EI benefits after leaving his 2 part-time jobs as a hotel front desk clerk.
- [4] The Commission looked at his reasons for leaving one of his part-time jobs and they found that the Claimant did not have just cause for leaving and he is disqualified from receiving EI benefits.
- [5] The Claimant says that he quit his job of 3 years for just cause when he moved from Manitoba to Ontario. He claims that he needed to move so that he could afford to support his family because the minimum wage is considerably higher in Ontario than his minimum wage in Manitoba. He says that he tried to find suitable local work in Manitoba without success and he could not find work in Ontario before deciding to leave his job.
- [6] He claims that other reasons for leaving was that there was no career growth or pay hike potential in his job; he needed to move to milder weather due to his health condition; he was concerned for his personal safety while taking public transit to and from work for his night shift at the hotel.
- [7] The Commission says that the Claimant voluntarily left his employment without just cause when he had reasonable alternatives to leaving having regard to all the circumstances, such as finding suitable work in Ontario before making the personal

choice to quit his job in Manitoba. Voluntarily leaving his employment due to insufficient wages does not amount to just cause to leave.

[8] I find that the Claimant voluntarily left his employment with just cause when he had no reasonable alternatives to leaving having regard to all the circumstances.

ISSUE

[9] I must decide whether the Claimant is disqualified from collecting benefits because he voluntarily left his 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.

ANALYSIS

There is no dispute that the Claimant voluntarily left his job

[10] I accept that the Claimant voluntarily left his job. The Claimant's former employer prepared a Record of Employment, which says that the Claimant quit his job. The Claimant agrees that he quit, but says that he had just cause for leaving.

[11] When determining whether the Claimant voluntarily left his employment, the question to be answered is: did the employee have a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56)?

[12] I find that the Claimant decided to quit his job voluntarily. He had a choice to stay or leave (*Peace*).

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

[13] I find that the Claimant had just cause to voluntarily leave his employment.

[14] The parties do not agree that the Claimant had just cause for voluntarily leaving his job when he did.

[15] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.¹ Having a good reason for leaving a job is not enough to prove just cause.

[16] 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.² It is up to the Claimant to prove this.³ The Claimant has to show that it is more likely than not that he had no reasonable alternatives but to leave when he did. When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant quit.

[17] The Claimant testified that he had just cause to quit his job. He says that he quit his job of 3 years for just cause when he moved from Manitoba to Ontario. He claims that he needed to move so that he could afford to support his family because the minimum wage is considerably higher in Ontario than his minimum wage in Manitoba. He says that he tried to find suitable local work in Manitoba without success for about 3 years and he could not find work in Ontario before deciding to leave his job.

[18] The Claimant says that he applied for several jobs in Manitoba, but he was unsuccessful. He also applied for several jobs in Ontario before moving, but employers wanted in-person interviews. He says that he is the sole income earner in the family and he could not go to job interviews in Ontario because he could not leave his disabled spouse who has challenges with activities of daily living and needs his assistance.

[19] He also says that that there was no career growth or pay hike potential in his job; he needed to move to milder weather due to his hypothyroid health condition which made him very sensitive to Manitoba's cold weather including heightened risk of hypothermia. He was concerned for his personal safety while taking public transit to and from work for his night shift at the hotel and he had several incidences of harassment.

¹ This is set out at s 30 of the *Employment Insurance Act*.

² *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

³ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

[20] He testified that he could not move closer to his job in Manitoba due to the high, unaffordable rent.

[21] The Commission says that the Claimant did not have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says that the Claimant could have moved closer to his job in Manitoba to improve his personal safety at night and he could have found suitable employment in Ontario before deciding to leave his job.

[22] I find that:

- The Claimant voluntarily left his employment in Manitoba; however, he had just cause to leave without reasonable alternatives considering all the circumstances;
- It is not reasonable to expect the Claimant to endlessly search for work in Manitoba while challenged to financially support his disabled spouse and baby;
- Despite significant efforts over about 3 years, he was unable to find higher paying employment in Manitoba and he could no longer afford to live on minimum wage, which is much lower than the Ontario minimum wage. He was the sole income earner for his family;
- The Claimant did not have reasonable alternatives to leaving his employment when he did;
- I find that he could not reasonably find suitable new alternate employment in Manitoba and he had legitimate concerns for his personal health and safety in Manitoba due to the need to use public transport for night shifts. He could not afford to move closer to his work in Manitoba to ease his personal safety concerns with public transit at night;
- Leaving his employment in Manitoba was the only reasonable course of action open to him, having regard to all the circumstances (*Canada (Attorney General) v. Imran* 2008 FCA 17; *Canada (Attorney General) v. Laughland*, 2003 FCA 12).

- The Claimant could not find another job in Ontario before quitting his job in Manitoba and deciding to move. He could not reasonably have endlessly continued working until he found suitable work in Ontario because of his financial situation. Securing a new job in Ontario while living in Manitoba was difficult due to his inability to leave his disabled wife and baby;
- I find that the Claimant has met his onus of proving that he had just cause within the meaning of the EI Act, to voluntarily leave his employment when he did.

CONCLUSION

[23] I find that the Claimant is not disqualified from receiving benefits. This means that the appeal is allowed.

Glen Johnson

Member, General Division - Employment Insurance Section

HEARD ON:	June 17, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. K., Claimant