



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *NM v Canada Employment Insurance Commission*, 2020 SST 678

Tribunal File Number: GE-20-1412

BETWEEN:

N. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: July 16, 2020

DATE OF DECISION: July 31, 2020

DECISION

[1] The appeal is dismissed. I find that the Appellant did not have just cause for voluntarily leaving her employment.¹ Her disqualification from receiving Employment Insurance regular benefits as of August 25, 2019, is therefore justified.

OVERVIEW

[2] The Appellant worked as an egg collector ([translation] “agricultural day labourer”) for the employer X (employer) from November 16, 2018, to August 27, 2019, inclusive. She stopped working for that employer after she voluntarily left. On September 20, 2019, the Appellant made an initial claim for Employment Insurance benefits (regular benefits).

[3] On October 28, 2019, the Canada Employment Insurance Commission (Commission) informed the Appellant that she was not entitled to Employment Insurance benefits as of August 25, 2019, because she had voluntarily stopped working for the employer on August 30, 2019,² without just cause within the meaning of the Act.³

[4] According to the Appellant, she left her job at X to settle in the Gaspé Peninsula to purchase a bed and breakfast and care for two sick or dying friends. She indicates that, in late July 2019, about a month before moving to the Gaspé Peninsula, she contacted a potential employer in the area, who told her that there was work for her. The Appellant also points out that the job she had at X was part-time and that her hours had been cut. She argues that she is entitled to benefits. On March 19, 2020, the Appellant challenged the Commission’s reconsideration decision. That decision is now being appealed to the Tribunal.

ISSUES

[5] In this file, I must determine whether the Appellant had just cause for voluntarily leaving her employment.⁴

¹ Sections 29 and 30 of the *Employment Insurance Act* (Act).

² The Appellant says that she stopped working on or around August 27, 2019.

³ See GD3-24 and GD7-25.

⁴ Sections 29 and 30 of the Act.

[6] I must answer the following questions:

- 1) Does the Appellant's termination of employment amount to voluntary leaving?
- 2) If so, did the Appellant have no reasonable alternative to voluntarily leaving?

ANALYSIS

[7] Federal Court of Appeal (Court) decisions indicate that the test for determining whether a claimant had just cause for leaving their employment under section 29 of the Act is whether, having regard to all the circumstances, and on a balance of probabilities, the claimant had no reasonable alternative to leaving their employment.⁵

Issue 1: Does the Appellant's termination of employment amount to voluntary leaving?

[8] Yes. I find that, in this case, the Appellant's termination of employment does amount to voluntary leaving under the Act.

[9] I find that the Appellant had the choice of continuing to work at X, but that she chose to voluntarily leave her employment.

[10] The Court has held that, in a case of voluntary leaving, it must first be determined whether the person had the choice to stay at their job.⁶

[11] The Appellant's explanations indicate that she voluntarily left her employment at X.⁷

[12] The Appellant does not dispute the fact that she voluntarily left her employment with that employer.

[13] The Appellant notes that, contrary to what is indicated in her statements to the Commission,⁸ she did not voluntarily leave her employment with two employers. The only

⁵ The Court established this principle in the following decisions: *White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Laughland*, 2003 FCA 129; *Astronomo*, A-141-97; *Landry*, A-1210-92.

⁶ The Court established this principle in *Peace*, 2004 FCA 56.

⁷ Notice of appeal, claim for benefits, statements to the Commission—GD2-1 to GD2-6, GD3-3 to GD3-19, GD3-22, GD3-23, and GD3-29.

⁸ See GD3-22 [*sic*] GD3-29.

employment she voluntarily left was at X. The Appellant says that she worked as an attendant ([translation] “lab attendant”) for the employer X from April 15, 2019, to August 11, 2019. It was a contract to replace people who were on vacation or on leave for health reasons in the summer of 2019. She stopped working there because of a shortage of work, as shown by the Record of Employment issued by that employer.⁹

[14] I consider that the Appellant had the opportunity to continue the employment she had at X, but that she took the initiative of ending the employment relationship by informing the employer that she would not continue working for it.¹⁰

[15] I must now determine whether the Appellant had just cause for voluntarily leaving her employment and whether it was the only reasonable alternative in her case.

Issue 2: Did the Appellant have no reasonable alternative to voluntarily leaving?

[16] No. I consider that the Appellant had reasonable alternatives to voluntarily leaving.

[17] In this case, I consider that, despite the many reasons she cited, the Appellant has failed to show that she had just cause, within the meaning of the Act, for voluntarily leaving her employment when she did. Those reasons are the following:

- Purchasing a bed and breakfast in Gaspé
- Caring for two sick or dying friends
- Having employment in the Gaspé Peninsula
- Having her hours cut at the employer

Purchasing a bed and breakfast in Gaspé

[18] According to the Appellant, she left her employment to go live in the Gaspé Peninsula to purchase a bed and breakfast in Gaspé. She settled there on August 28, 2019. The Appellant

⁹ See GD9-1.

¹⁰ The Court established this principle in *Peace*, 2004 FCA 56.

indicates that she informed the employer of this situation. She says that she still has her personal residence in Saint-Jean-sur-Richelieu.¹¹

[19] I consider that the Appellant has failed to show that her decision to voluntarily leave her employment to settle in another city to purchase a bed and breakfast is a circumstance justifying her leaving. It was a personal choice that the Appellant made to reorient her career path.

[20] I note that, in one of her statements, the Appellant herself indicated that she left her employment for personal reasons.¹²

Caring for two sick or dying friends

[21] According to the Appellant, she also left her employment to settle in the Gaspé Peninsula to care for two sick or dying friends.¹³ The owner of the bed and breakfast she wants to purchase is one of those two people. The Appellant says that she first went to the Gaspé Peninsula in late July 2019 on vacation. She already knew at that time that the friend was sick and needed help. She has been living with him since arriving in the Gaspé Peninsula on August 28, 2019. She indicates that she is still acting as his caregiver. The other person she cared for has passed away.¹⁴

[22] The Appellant says that she has not applied for “family caregiver” benefits (special benefits). She indicates that she discussed this matter with the Commission to file her appeal with the Tribunal.¹⁵

[23] I consider that the Appellant’s decision to settle in the Gaspé Peninsula to help two sick or dying friends does not justify her voluntary leaving either.

[24] I find that the Appellant’s explanations in this regard do not reflect a situation showing an obligation to care for a family member, specifically a child or close relative.¹⁶ This situation

¹¹ See GD3-11, GD3-22, and GD3-23.

¹² See GD3-23.

¹³ See GD2-4.

¹⁴ See GD2A-1 to GD2A-4.

¹⁵ See GD2A-1 to GD2A-4.

¹⁶ Section 29(c)(v) of the Act.

cannot entitle the Appellant to receive Employment Insurance regular benefits. I note that the individuals are friends of the Appellant, not members of her family.

[25] In addition, I am of the view that this was not a circumstance that existed when the Appellant left her employment in late August 2019.

[26] I note that the Appellant raised this ground only once she received an unfavourable decision from the Commission concerning her claim for benefits, on October 28, 2019.

[27] I also note that, when she applied for benefits on September 20, 2019, the Appellant indicated that she had left her employment to settle in the Gaspé Peninsula and [translation] “take over” a bed and breakfast.¹⁷ In her claim for benefits, after providing this explanation, the Appellant answered “no” to the following question: [translation] “We asked you for the reasons and circumstances behind your leaving this job in particular. Do you have relevant comments to add?”¹⁸

[28] I find it ironic that, when applying for benefits, the Appellant did not mention the fact that she had settled in the Gaspé Peninsula to care for two sick or dying friends, given her statement about knowing since her vacation in that area in late July 2019 that one of the two individuals in question was sick and needed help.

[29] The evidence on file indicates that the Appellant did not complete forms related to a claim for family caregiver benefits for one of those two individuals until March 2020.¹⁹

[30] In response to a request from the Tribunal, the Commission indicated that the Appellant had not made any claims for “family caregiver” benefits and that it had not made any decisions on that issue.²⁰

¹⁷ See GD3-11.

¹⁸ See GD3-11.

¹⁹ The following forms: Authorization to Release a Medical Certificate for Employment Insurance Family Caregiver Benefits; Medical Certificate for Employment Insurance Family Caregiver Benefits; Family Member Attestation for Employment Insurance Family Caregiver Benefits or Compassionate Care Benefits—GD2A-1 to GD2A-4.

²⁰ See GD8-1.

[31] On that point, I note that, as a Tribunal member, I am bound by the Commission's reconsideration decision. I cannot decide an issue that was not before me.

[32] However, I note that claimants who are disqualified from receiving Employment Insurance regular benefits can receive special benefits if they meet the necessary conditions in this regard.

[33] There are provisions in the Act under which the disqualification from receiving Employment Insurance regular benefits is suspended during any week for which the claimant is otherwise entitled to special benefits, including family caregiver benefits.²¹

Having employment in the Gaspé Peninsula

[34] The Appellant explained that she also left her job to work at X, a manufacturer of wind turbine rotor blades, in Gaspé. On July 27, 2019, she contacted that employer, who told her that there was work for her. The Appellant submits that she had a promise of employment from that employer but did not receive a contract offer. She noted that she was going to improve her situation by moving to the Gaspé Peninsula. The Appellant had a hiring interview with the employer in question on October 29, 2019, but was not hired. She indicated that she thought she would find work, and that is why she did not think to apply for benefits as soon as she arrived in the Gaspé Peninsula.²²

[35] On October 25, 2019, the Appellant told the Commission that she had not received confirmation that she would have another job before leaving the one she had. She indicated that she had not asked the employer for time off because she had not thought of it.²³

[36] In her statement to the Commission on October 17, 2019, the Appellant explained that she could not look for employment because she had to do renovations in the bed and breakfast she was planning to purchase.²⁴

²¹ Section 30(4) of the Act.

²² See GD2-4, GD3-26, GD3-28, and GD3-29.

²³ See GD3-23.

²⁴ See GD3-22.

[37] I consider that the Appellant has failed to show that she had reasonable assurance of another employment in the immediate future before she left her employment at X.²⁵

[38] I find contradictory the Appellant's statements that she had received a promise of employment from a potential employer she had applied to in July 2019, namely X. I consider that such a promise was not made to the Appellant.

[39] I note that, in her statements to the Commission on October 25, 2019, and on November 19, 2019, the Appellant indicated that she had not received confirmation that she would have another job before leaving the one she had and that she had not received a contract offer from the employer she had applied to.²⁶

[40] The Appellant did not have a hiring interview with the potential employer in question until October 29, 2019, more than two months after voluntarily leaving her employment. She was not hired.²⁷

[41] In her statement to the Commission on October 17, 2019, the Appellant also explained that she had to do renovations in the bed and breakfast she was planning to purchase and was therefore unable to look for employment.²⁸

Having her hours cut at the employer

[42] The Appellant also attributes her voluntary leaving to her hours being cut at X. When she was employed there, she was working part-time, at 15 to 25 hours per week. When she began that job in November 2018, the Appellant was also working for another employer, X. The Appellant says that her hours at X were cut to around 10 to 15 hours per week because of the hiring of foreign workers. She says that she provided training to foreign workers and was then going to be [translation] "fired."²⁹

²⁵ Section 29(c)(vi) of the Act.

²⁶ See GD3-23 and GD3-29.

²⁷ See GD2-4.

²⁸ See GD3-22.

²⁹ See GD2-4.

[43] I do not accept the Appellant's argument that her leaving was also due to the employer cutting her hours from 15 to 25 hours per week to 10 to 15 hours because of the hiring of foreign workers.

[44] In my view, these circumstances were not behind her voluntary leaving, given the explanations she initially gave in her claim for benefits, her statements to the Commission, and her notice of appeal.

[45] It was not until the hearing that the Appellant presented these circumstances. To me, that is ironic. I am of the view that the Appellant added these circumstances in an effort to show that her voluntary leaving was justified after having cited a number of other reasons for it.

[46] In addition, the Appellant has not specified what steps she took with the employer to find out whether a solution could be found to this problem, or how long the problem existed.

[47] I consider that the decrease in hours cited by the Appellant does not justify her voluntary leaving.

[48] The Court has established that a decrease in hours is not just cause for leaving employment, even in the case of a part-time employee.³⁰

[49] I also do not accept the Appellant's argument that the employer was going to terminate her employment following the arrival of foreign workers. I find that the Appellant was anticipating a situation that never happened and that she has not provided relevant evidence of it.

Reasonable alternative

[50] The Appellant says that she finds it deplorable and a little absurd that she is not entitled to benefits because of her voluntarily leaving her employment at X.³¹ Despite her opinion about this, I consider that the Appellant had other options besides leaving her employment on August 27, 2019.

³⁰ The Court established this principle in *Marshall*, 2002 FCA 78.

³¹ See GD3-29.

[51] I consider that a reasonable alternative within the meaning of the Act, for example, would have been for the Appellant to make sure she found another job matching her interests and expectations before voluntarily leaving.

[52] I find that the Appellant has failed to show that she had no reasonable alternative to leaving her employment.

CONCLUSION

[53] Having regard to all the circumstances, I find that the Appellant did not have just cause for voluntarily leaving her employment.

[54] The Appellant's disqualification from receiving Employment Insurance regular benefits as of August 25, 2019, is justified.

[55] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	July 16, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	N. M., Appellant