Citation: *DN v Canada Employment Insurance Commission*, 2023 SST 1028

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	D. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (554413) dated December 1, 2022 (issued by Service Canada)

Tribunal member:	John Noonan
Type of hearing:	In person
Hearing date:	May 17, 2023
Hearing participants:	Appellant
Decision date:	June 8, 2023
File number:	GE-23-59

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, D. N., was upon reconsideration by the Commission, notified that having examined his claim, which became effective on August 28, 2022, they are unable to pay him Employment Insurance regular benefits starting August 28, 2022 because he voluntarily left his job with X on August 25, 2022 without just cause within the meaning of the Employment Insurance Act. The Commission is of the opinion that voluntarily leaving his job was not his only reasonable alternative. The Appellant asserts that he chose to leave his employment with X because of the toxic environment and to relocate from Ontario to Newfoundland to get support for his disabled wife (GD3-26). The Tribunal must decide if the Appellant should be denied benefits due to his having voluntarily left his employment without just cause as per section 29 of the Act.

Issues

[3] Issue # 1: Did the Appellant voluntarily leave his employment with X on August 25, 2022?

Issue #2: If so, was there just cause?

Analysis

[4] The relevant legislative provisions are reproduced at GD-4.

[5] A claimant is disqualified from receiving EI benefits if the claimant voluntarily left any employment without just cause **(Employment Insurance Act (Act), subsection 30(1)).** Just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances **(Act, paragraph 29(c)).**

[6] The Respondent has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Appellant to demonstrate he had just cause for

leaving. To establish he had just cause, the Appellant must demonstrate he had no reasonable alternative to leaving, having regard to all of the circumstances **(Canada (Attorney General) v. White, 2011 FCA 190; Canada (Attorney General) v. Imran, 2008 FCA 17)**. The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

Issue 1: Did the Appellant voluntarily leave his employment with X on August 25, 2022?

[7] For the leaving to be voluntary, it is the Appellant who must take the initiative in severing the employer-employee relationship.

[8] When determining whether the Appellant 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).**

[9] Both parties here agree the Appellant voluntarily left this employment with X on August 25, 2022

[10] Given that he had the choice whether or not to return, I find that the Appellant here voluntarily left his employment with X on August 25, 2022.

Issue 2: If so, was there just cause?

[11] No.

[12] The Appellant stated he left his employment as he was ready to retire and the fact that his employer was under new ownership gave him reason to decide to leave his employment when he did.

[13] He found the workplace under the new ownership to be stressful. He was working long days six days a week. He told his supervisor of the need for more staff.

[14] Having considering retiring and moving to NL for a long time, he now made the decision and in fact made the move on September 4, 2022.

[15] He explained he quit the position so as to move to NL and as a result have some support in caring for his disabled wife.

[16] Rather than request a medical leave, a leave of absence or any other form of accommodation he decided to retire and relocate.

[17] He confirmed, at his hearing, that he chose to retire from X because of the toxic work environment and to relocate to Newfoundland where friends and family could help with his disabled wife. He explained that the toxic work environment had been there for years and was created by multiple ownership changes and a lack of experienced staff. He was required to train the new staff and would stay late to get work finished. He was working long days and up to 6 days a week which was too much for his age and his situation with his wife. Working overtime was not required of him and was a personal choice. He had spoken to his supervisor numerous times over the years about hiring more staff but the staff hired would quit or were not skilled. His supervisor was out on stress leave when he chose to retire and that he did not speak to anyone else about his concerns.

[18] The Appellant stated that his disabled wife does not need constant care but help with cleaning and showering. He confirmed that he is able to work full time with his wife at home but having people around to help makes it easier.

[19] He had been considering moving for a long time and when he heard there were more changes happening with his employer that was the deciding incident. He liked his job and did not consider leaving until he made the choice to relocate. He confirmed he would have chosen to relocate whether or not there were work issues. The move to Newfoundland was not urgent but he had been thinking about it for years.

[20] The Appellant stated that he and his wife have been planning to move for some time so once he heard that X might be making some more changes (ownership change) he decided that it was time for him to move on. This was the final incident that led him to quit (GD3-28-30).

[21] The Appellant confirmed at his hearing that he did leave his employment voluntarily.

[22] After 38 years with this employer, he was finding the job stressful, his supervisor being away and his having to deal with new, inexperienced workers.

[23] He was not advised by his doctor to leave his employment when he did.

[24] He is not in receipt of a company pension.

[25] His wife had had a series of major back surgeries and with his job he was not able to provide the support he felt she needed. Her having 5 sisters in X, NL contributed to his desire to retire when he did.

[26] Given his wife's condition and the workplace situation, he decided to speed up his retirement.

[27] The Appellant, in using the reasoning of stressful toxic work place is citing section 29 (c)(iv) (working conditions that constitute a danger to health or safety), as just cause for leaving his employment when he did. However, if he felt that his health was an issue the onus is on the Appellant, not the employer, to initiate any attempt to mitigate, with the employer, any situation by seeking reasonable alternatives before placing himself in an unemployed situation needing the support of the EI program. There is no evidence before me that would indicate any such attempt on the Appellant's part. **Canada (AG) v. Hernandez, 2007 FCA 20**

[28] I find that, at the time of the quit, there is no evidence that the circumstances on the worksite or in the employment in general were intolerable to the point the Appellant was required to leave when he did.

[29] He was not advised by his doctor to quit prior to his deciding to leave his employment and retire.

[30] Remaining in employment until a new job is secured is generally a reasonable alternative to taking a unilateral decision to quit a job **(Graham 2011 FCA 311; Campeau 2006 FCA 376**).

[31] The Appellant retired and moved to NL. He indicated he planed for years to return to NL.

[32] The Appellant, by referring to seeking support for his disabled wife, is citing section 29 (c)(v) (obligation to care for a child or a member of the immediate family), as just cause for leaving his employment when he did. However, there is no evidence before me that the care of his wife was urgent as he was providing care for her and just wanted additional support from family in NL.

[33] There is no medical evidence before me that would indicate the Appellant's wife required full time care which would require the Appellant to leave his employment when he did. In fact the Appellant stated he only wanted a little assistance,

[34] Everyone has the right to leave / quit an employment but that decision does not automatically qualify one to receive EI benefits. It is inevitable that a person who has the right to receive benefits will be called upon to come forward and prove that he or she satisfies the conditions of the Act.

[35] In this case the Appellant neither sought out through his employer, any type of reasonable mitigation to deal with his concerns regarding his working conditions, his health nor did he seek out other employment prior to his quit, in fact he retired.

[36] I find that the Appellant made a personal choice to leave his employment when he did and although it may have been a good cause for him, it does not meet the standard of just cause required to allow benefits to be paid.

[37] I find that the Appellant had reasonable alternatives available to him other than leave his employment when he did. He could have sought out through his employer, any type of reasonable mitigation to deal with his concerns regarding his health and

safety or seek out other employment prior to his quit. His leaving when he did not meet any of the allowable reasons outlined in section 29 (c) of the Act.

[38] “More credibility is given to the initial statements because the claimant provided information more candidly than the subsequent statements which were provided with the intent of overturning a previous unfavourable decision.” As supported by Canada (AG) v. Gagné, FCA A-385-10.

[39] The words "just cause" in section 29 of the EI Act are not synonymous with "reason" or "motive". It is not sufficient for the claimant to prove that they were quite reasonable in leaving their employment. Reasonableness may be "good cause", but it is not necessarily "just cause" (**Tanguay A-1458-84).**

[40] While a claimant left their job for what may be considered a good reason that was not sufficient to establish "just cause", within the meaning of paragraph 29(c) of the EI Act (**Imran 2008 FCA 17).**

[41] Neither the Tribunal or the Commission have any discretion or authority to override clear statutory provisions and conditions imposed by the Act or the Regulations on the basis of fairness, compassion, financial or extenuating circumstances.

Conclusion

[42] Having given careful consideration to all the circumstances, I find that the Appellant has not proven on a balance of probabilities that he had no reasonable alternative to leaving his job. The question is not whether it was reasonable for the Appellant to leave his employment, but rather whether leaving the employment was the only reasonable course of action open to him (**Canada (Attorney General) v. Laughland, 2003 FCA 129).** Given the Appellant did voluntarily leave his employment I find he had reasonable alternatives to leaving when he did and thus does not meet the test for having just cause pursuant section 29 or the provisions outlined in section 30 of the Act. The appeal is dismissed

John Noonan
Member, General Division – Employment Insurance Section