Citation: *RS v Canada Employment Insurance Commission*, 2024 SST 240

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	R. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (629775) dated November 10, 2023 (issued by Service Canada)

Tribunal member:	John Noonan
Type of hearing:	Teleconference
Hearing date:	January 18, 2024
Hearing participants:	Appellant
Decision date:	January 23, 2024
File number:	GE-23-3501

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, R. S., was upon reconsideration by the Commission, notified that having examined his claim, which was reactivated on October 22, 2023 they are unable to pay him Employment Insurance regular benefits starting July 9, 2023 because he voluntarily left his job with X on May 23, 2023 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. Additionally, since leaving this employment without just cause, he had accumulated only 648 of the required 665 hours of insurable employment required to establish a claim for regular benefits. The Appellant asserts that he was told by the supervisor he was not a good fit, and the following day the manager called saying they had filled the position with someone else, hence he was dismissed. The Tribunal must decide if the Appellant should be denied benefits due to his having voluntarily left his employment without just cause as per sections 29 and 30 of the Act.

Issues

[3] Issue # 1: Did the Appellant voluntarily leave his employment with X on May 23, 2023?

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 May 23, 2023?

[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 do not agree the Appellant voluntarily left this employment with X on May 23, 2023.

[10] The employer, when the Appellant failed to show for a second day of work, reached out to him in an effort to ascertain the reason why. This is confirmed by the Appellant's submissions. I find the employer did not dismiss the Appellant after his first day on the job as they were expecting his return.

[11] Given that he had the choice whether or not to return, I find that the Appellant here voluntarily left his employment with X on May 23, 2023.

Issue 2: If so, was there just cause?

[12] No.

[13] The Appellant stated he left his employment due to being told he was not a good fit for the position.

[14] In doing so he is citing section 29 (c)(xiii) of the Act “undue pressure by an employer on the claimant to leave their employment” as just cause for leaving his employment when he did.

[15] The Appellant worked for this employer for one day during which time he was in training.

[16] There is no evidence before me that would indicate the employer dismissed the Appellant. In fact, when the Appellant failed to show for work the following day, the manager directed the supervisor to contact the Appellant. The Appellant’s supervisor stated that , as the Appellant was involved in training and shadowing on his first day, there had been no opportunity to assess the Appellant’s suitability.

[17] The Appellant was told that if he did not return the employer would have to hire someone else.

[18] Abandoning one’s job is the same as quitting even though the Appellant did not inform the employer of his decision to leave when he did.

[19] At his hearing the Appellant testified that he never quit but rather was dismissed after one day on the job.

[20] He further testified that the supervisor told him he was not suitable for the position.

[21] The Appellant testified he is still looking for work to attempt to get sufficient insurable hours to qualify for benefits but is adamant that since he did not quit, hours accumulated before that date should be used in his calculation.

[22] 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**).

[23] 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.

[24] In this case the Appellant never sought out any other employment prior to his quit.

[25] There was no effort by the Appellant to ascertain from the employer a reason for his “not being a suitable fit” for the job in an effort to mitigate the situation.

[26] 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.

[27] I find that the Appellant had reasonable alternatives available to him other than leave his employment when he did. His leaving when he did not meet any of the allowable reasons outlined in section 29 (c) of the Act.

[28] “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.**

[29] In this case the Appellant submitted the same text message as the employer dated two days after his leaving wherein the employer was still unsure if the Appellant was returning thereby showing no dismissal by the employer.

[30] Based on my observations at the hearing, there may have been a language issue where the Appellant could possibly misunderstood something said by the supervisor, if so, the onus is on the Appellant to mitigate by getting any or all information explained.

[31] 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"

[32] I find that when the Appellant quit his job without first securing other work, he risked unemployment, thereby “compelling others to support [him] through … benefits” **(Attorney General of Canada v. Tremblay, A-50-94).** Claimants have a responsibility not to risk unemployment, or transform what is only a risk of unemployment into a certainty **(Attorney General of Canada v. Langlois, 2008 FCA 18).** That is why remaining employed is considered a reasonable alternative to leaving **(Attorney General of Canada v. Murugaiah, 2008 FCA 10.)**

[33] Based on the evidence and the submissions of both parties, I find that the Appellant had reasonable alternatives to quitting when he did. He therefore did not show just cause for voluntarily leaving his employment. As a result, he is disqualified from receiving regular benefits. (**Tanguay A-1458-84).**

[34] 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).**

[35] Hours of insurable employment accumulated prior to a disqualification cannot be used in the calculation for benefit purposes.

[36] While the Appellant testified to his present dire financial situation, 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

[37] 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. Additionally, the Appellant has not, since his disqualification for voluntarily leaving without just cause, accumulated the number of insurable hours required to establish a claim. The appeal is dismissed.

John Noonan
Member, General Division – Employment Insurance Section