



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *RN v Canada Employment Insurance Commission*, 2019 SST 1767  
Tribunal File Number: GE-19-3183

BETWEEN:

**R. N.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: John Noonan

HEARD ON: October 15, 2019

DATE OF DECISION: October 28, 2019

## **OVERVIEW**

[1] The Appellant, R. N., a former worker at X. in ON, was upon reconsideration by the Commission, notified that having examined his claim, which became effective on December 23, 2018, they are unable to pay him Employment Insurance regular benefits starting when his special benefits were exhausted because he voluntarily left his job with X on September 10, 2018 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 quit this job when his medical condition resulting from an automobile accident in January of 2018 caused him to suffer pain. 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.

## **DECISION**

[2] The appeal is dismissed.

## **ISSUES**

[3] Issue # 1: Did the Appellant voluntarily leave his employment with X on September 10, 2018?

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 September 10, 2018?**

[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 agree the Appellant voluntarily left this employment with X on September 10, 2018. I find that the Appellant voluntarily left this employment.

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

[10] No.

[11] The Appellant here had indicated that he left his employment as pain in his hand and back was severe to the point he could no longer do his assigned tasks.

[12] The Appellant submitted that he had been in an accident 9 months earlier and was still taking treatment and physiotherapy.

[13] He was asked by the Commission to submit a medical note to confirm his ongoing medical condition. Up to the time of the appeal to the SST such a medical note was not submitted by the Appellant.

[14] At his hearing, the Appellant indicated he would obtain and submit the medical note to the Tribunal and was given a period of time in which to do so.

[15] A medical note dated October 16, 2019 was submitted and forwarded to the Commission for comment.

[16] The Commission's response at GD-10 states that "The medical documentation has explained that the claimant was advised to avoid certain types of work due to his ongoing medical conditions. However, it has not mentioned that the claimant had been advised to leave his employment."

[17] I am giving more weight to the letter written by the Appellant's doctor than to the other submissions given by him for his leaving his employment. The information included in the letter has verified that the Appellant was not advised to leave his employment but rather to avoid certain activities.

[18] That being said, 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.

[19] 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.

[20] In this case the Appellant neither sought out any type of leave to deal with his medical issues nor did he seek modified duties through his employer nor did he seek out other, more suitable, employment prior to his quit.

[21] 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.

[22] I find that the Appellant had reasonable alternatives available to him other than leave his employment with X on September 10, 2018. He could have sought out leave to deal with his

medical issues, sought out modified duties through his employer or looked for other, more suitable, 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.

## CONCLUSION

[23] 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, considering all of the circumstances. 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

HEARD ON:	October 15, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. N., Appellant