Citation: *KB v Canada Employment Insurance Commission*, 2024 SST 552

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	K. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (621368) dated October 26, 2023 (issued by Service Canada)

Tribunal member:	John Noonan
Type of hearing:	Teleconference
Hearing date:	January 19, 2024
Hearing participants:	Appellant
Decision date:	January 23, 2024
File number:	GE-23-3483

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, K. B., was upon reconsideration by the Commission, notified that having examined his claim, which was activated on July 16, 2023 they are unable to pay him Employment Insurance regular benefits starting July 16, 2023 because he voluntarily left his job with X on March 31, 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. The Appellant asserts that leaving his employment was the only option after he tried to secure a transfer with no success because he was relocating (GD3- 23). 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 March 31, 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 March 31, 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 agree the Appellant voluntarily left this employment with X on March 31, 2023.

[10] The employer indicates the Appellant resigned but gave no reason for his resignation.

[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 March 31, 2023.

Issue 2: If so, was there just cause?

[12] No.

[13] The Appellant stated he left his employment due to not being able to afford rent and other expenses, in other words, for financial reasons.

[14] He asserts his hours were cut due to it being the slow season.

[15] In doing so he is citing section 29 (c)(vii) of the Act “significant modification of terms and conditions respecting wages or salary,” as just cause for leaving his employment when he did.

[16] The Appellant worked for this employer for nine months.

[17] There is no evidence before me that would indicate the Appellant attempted to mitigate, through his employer, his situation prior to his quitting.

[18] The Appellant initially indicated that he had, through his employer, requested a transfer to his planned future residence in North Bay where his rent would be less expensive.

[19] However, the employer here advised the Commission that no such formal request had been made by the Appellant, information confirmed by the Appellant.

[20] At his hearing the Appellant testified that the Commission had spoken to HR regarding his requesting a transfer but he had approached his store manager who informed him such a transfer was not possible due to the union contract.

[21] The Appellant confirmed that he was experiencing financial hardship, had to move in March but his Social Assistance was not approved and issued until April. This source of funding also helped him with his move to North Bay.

[22] He further testified that he did not start work in North Bay as indicated by him in his submissions, rather he had been offered a position with a landscaping firm but contracted an infection which prevented him from ever starting this job. Therefore no ROE on file.

[23] The Appellant testified he has found work but he is waiting on some personal documentation before he can start.

[24] 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**).

[25] 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.

[26] In this case the Appellant never sought out any other employment prior to his quit other than through Indeed, for which he has no records. He never dropped off any resumes or contacted any employment agencies before or since the quit.

[27] There was no effort by the Appellant to mitigate the situation.

[28] 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.

[29] 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.

[30] Normally, “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. However, in this case credibility becomes an issue as the Appellant told the Commission he had requested a transfer and it was denied by the employer. Evidence shows no such request was made to the appropriate department, HR, and therefore no denial. There was no indication that the contract with the union forbade such transfers only that more senor employees were given preference in such situations.

[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] The Appellant has submitted extensive documentation to show his dire financial situation and difficulties. 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.

[36] The Appellant’s financial situation cannot be and was not a factor in my reaching the conclusion here.

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. The appeal is dismissed.

John Noonan

Member, General Division – Employment Insurance Section