



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. W. v Canada Employment Insurance Commission*, 2018 SST 1414

Tribunal File Number: GE-18-1421

BETWEEN:

D. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: September 18, 2018

DATE OF DECISION: September 27, 2018

DECISION

[1] The appeal is dismissed. The Appellant voluntarily left his employment without just cause.

OVERVIEW

[2] The Appellant separated from his employment because he accepted a gift of money from a parolee by borrowing money from him, which is a breach of the employer's policy. He wrote a letter of resignation in which he indicated that he breached one of the employer's policies, but said that if his employer had not threatened to terminate his employment, he would not have resigned. The Appellant submitted medical notes to support his statement that he also had medical reasons for leaving his employment. The Respondent denied the Appellant's application for regular benefits because the Appellant voluntarily left his employment without just cause.

PRELIMINARY MATTERS

[3] Although the Appellant filed an appeal with the Social Security Tribunal (Tribunal) on April 13, 2018, which is beyond the time limit set out in subsection 52(1) of the *Department of Employment and Social Development Act* (DESD Act), on May 29, 2018, the Tribunal allowed an extension of time within which to bring the appeal.

ISSUES

[4] Did the Appellant voluntarily leave his employment?

[5] Did the Appellant have just cause to voluntarily leave his employment because his employment was about to be terminated, or because of his medical condition?

ANALYSIS

[6] The relevant legislative provisions are reproduced in the Annex to this decision.

[7] Claimants are disqualified from receiving employment insurance benefits where they voluntarily leave any employment without just cause (subsection 30(1), *Employment Insurance Act*).

[8] The Respondent must prove that the Appellant voluntarily left his employment. Then, the Appellant must establish just cause for voluntarily leaving by showing, in the circumstances, that he had no reasonable alternative to leaving his employment (*Green v. Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v. White*, 2011 FCA 190).

Issue 1: Did the Appellant voluntarily leave his employment?

[9] The Tribunal finds that the Appellant voluntarily left his employment.

[10] In his application for employment insurance benefits, the Appellant indicated that he quit his job. He said that when asked by his employer if he had borrowed money from a parolee, he admitted to having done so. The Appellant stated that he asked if the employer wanted his resignation, and the employer said yes. He confirmed this evidence at the hearing.

[11] The Appellant later said that he had quit his job because he breached company policy and because of medical stress, but said that he did so under threat of dismissal. He submitted a copy of the letter of resignation to the Respondent, in which he acknowledged breaching company policy, testifying that he resigned because he took ownership for what he did.

[12] The Respondent's evidence, in the form of a record of employment issued by the employer is that the Appellant quit his job. The employer said that although a letter was ready to terminate the Appellant's employment because of his breach of policy, the Appellant did the honourable thing and resigned.

[13] The Tribunal accepts as fact the Respondent's evidence that the Appellant's employer would have fired him if he had not resigned. However, the Tribunal gives a lot of weight to the Appellant's letter of resignation, his evidence in his application for benefits that he quit, his testimony that he resigned because he had done wrong, and to his evidence that he quit so that his record of employment would not show that he had been dismissed. The Tribunal finds that the Appellant made a conscious decision to quit his job so as not to negatively impact his future employment opportunities. Accordingly, the Tribunal finds that by submitting a letter of resignation to the employer, the Appellant voluntarily left his employment.

Issue 2: Did the Appellant have just cause to voluntarily leave his employment because his employment was about to be terminated, or because of his medical condition?

[14] The Tribunal finds that the Appellant did not have just cause to leave his employment when he did.

[15] The Appellant's evidence is that he chose to resign his position with the employer instead of being terminated. His evidence was remained consistent, that he breached the employer's policy when he borrowed money from a parolee. The employer confirmed that the Appellant's employment would have been terminated for this breach in policy, and that a letter of termination had been prepared.

[16] The Tribunal understands the Appellant's choice to voluntarily leave his position to avoid being fired and to have that noted on his record of employment. However, even though technically he had no other alternative than to leave in the face of inevitable termination of his employment, the Tribunal does not find that this is just cause. The Appellant admitted to having done something that he knew was a breach of the employer's policy and this is the reason why he resigned. When asked if he would have quit his job if there had been no breach of policy, the Appellant told the Respondent that he would have stayed at his job.

[17] The Respondent, referring to the decision of the Federal Court of Appeal, *Canada (AG) v. Easson*, A-1598-92, submitted that it does not matter whether the Appellant took the initiative in terminating the employer-employee relationship where a reprehensible act is the real cause of the termination. Based on the analysis in the paragraph above, the Tribunal agrees with this submission.

[18] The Tribunal finds that even though the Appellant would have been fired from his job for breaching the employer's policy, this did not represent just cause for him to leave his employment when he did.

[19] In his request for reconsideration of the Respondent's initial decision, the Appellant said that he had doctors' notes from before he resigned, and that the combination of stress at work and his rheumatoid arthritis was too much to bear. He attached to his request for reconsideration a doctor's note that said that the Appellant was seen the day before he quit his job, and that the

doctor had determined that the Appellant is totally disabled and is not to return to work. The note continued that the doctor would revisit the decision if he was fit for work in six months. The Appellant attached another note indicating that he was seen by his doctor approximately two and a half months later. The doctor confirmed that the Appellant has rheumatoid arthritis, has been experiencing worsening pain in recent months, but has been doing better with regard to pain since he left work.

[20] The Appellant told the Respondent that his illness was a secondary reason that he quit his job, stating that his doctor told him to take some time off. When asked about the doctor's note from the day before he quit his job, the Appellant testified that he had told his doctor that he was stressed, and felt guilty about having borrowed money from the parolee, so the doctor suggested that he take some time off. The Appellant confirmed that the doctor did not tell him to quit his job. When asked if he was not going to be terminated, whether he would have quit his job because of his medical condition, the Appellant testified that he does not think he would have resigned, but would have taken some time off.

[21] The Tribunal accepts the Appellant's evidence concerning the personal circumstances that led to him borrowing money from the parolee, as well as the stress and guilt that resulted, which, combined with his rheumatoid arthritis, led to his inability to work. However, the Tribunal finds that this inability to work was not determined to be permanent at the time, based on the first doctor's note that indicated that the doctor would revisit his decision concerning the Appellant's fitness to work in six months, and the Appellant's evidence that the doctor did not tell him to quit his job, but said that he should take some time off.

[22] The employer told the Respondent that it was aware that the Appellant had medical issues and had been on sick leave and attended doctor's appointments. Under the circumstances, the Tribunal does not find that the Appellant's medical condition was such that he had no alternative to leave his employment. Although the employer said that the Appellant's medical issues were not discussed at the time of his resignation, the Appellant could have requested to time off work until his medical condition improved and his doctor cleared him to return to work.

[23] The Tribunal sympathizes with the Appellant, understanding that his personal circumstances led him to make a poor choice that negatively impacted his employment. The

Tribunal commends him for his honesty and integrity in accepting responsibility for his actions. However, the purpose of the *Employment Insurance Act* is to compensate persons whose employment has terminated involuntarily and who are out of work. The loss of employment which is insured against must be involuntary (*Caron v. Canada (Employment and Immigration Commission)*, [1991] 1 S.C.R. 48).

[24] The Tribunal finds that because the Appellant has not demonstrated that he had just cause to leave his employment when he did, he is disqualified from receiving employment insurance benefits.

CONCLUSION

[25] The appeal is dismissed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	September 18, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. W. , Appellant

ANNEX

THE LAW

Employment Insurance Act

29 For the purposes of sections 30 to 33,

- (a) *employment* refers to any employment of the claimant within their qualifying period or their benefit period;
- (b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;
 - (b.1) voluntarily leaving an employment includes
 - (i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,
 - (ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and
 - (iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and
- (c) 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, including any of the following:
 - (i) sexual or other harassment,
 - (ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,
 - (iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,
 - (iv) working conditions that constitute a danger to health or safety,
 - (v) obligation to care for a child or a member of the immediate family,
 - (vi) reasonable assurance of another employment in the immediate future,

- (vii) significant modification of terms and conditions respecting wages or salary,
- (viii) excessive overtime work or refusal to pay for overtime work,
- (ix) significant changes in work duties,
- (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
- (xi) practices of an employer that are contrary to law,
- (xii) discrimination with regard to employment because of membership in an association, organization or union of workers,
- (xiii) undue pressure by an employer on the claimant to leave their employment, and
- (xiv) any other reasonable circumstances that are prescribed.

30 (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:

(a) hours of insurable employment from that or any other employment before the employment was lost or left; and

(b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.