Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *K. L. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 125

Tribunal File Number: GE-15-4243

BETWEEN:

K. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: September 7, 2016

DATE OF DECISION: September 30, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant attended the hearing of his appeal via videoconference.

INTRODUCTION

[1] On May 6, 2015, the Appellant made an initial application for regular employment insurance benefits (EI benefits) and established a benefit period effective May 3, 2015. The Appellant subsequently worked for Vango Vapes while on claim, and left that job on August 14, 2015 over a dispute about his hourly wage. The Respondent, the Canada Employment Insurance Commission (Commission), investigated the reason for the Appellant's separation from employment at Vango Vapes and determined the Appellant voluntarily left his job without just cause within the meaning of the *Employment Insurance Act* (EI Act). On November 26, 2015, the Commission advised the Appellant that he was disqualified from EI benefits starting August 9, 2015 because he voluntarily left his job without just cause.

[2] On December 21, 2015, the Appellant requested the Commission reconsider its decision, stating that he made the decision to leave Vango Vapes because the work was ill suited to his health and well-being, it created an inability to continue looking for a job, it had negligible financial benefits and because he consulted with the Commission on a consistent basis throughout his job search process. On February 19, 2016, following an investigation, the Commission maintained its decision that the Appellant had not shown just cause for voluntarily leaving his employment at Vango Vapes.

[3] The Appellant appealed to the General Division of the Social Security Tribunal of Canada (Tribunal) on March 21, 2016.

[4] The hearing was held by videoconference because that form of hearing respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[5] Whether the Appellant is disqualified from receipt of EI benefits starting on August 9, 2015 because he voluntarily left his employment at Vango Vapes on August 14, 2015 without just cause.

THE LAW

[6] Subsection 30(1) of the EI Act stipulates that 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
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> (b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

[7] Whether a claimant has "just cause" involves a consideration of subsection 29(c) of the EI Act, which provides that for the purposes of sections 30 to 33,

> (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;
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> (i) sexual or other harassment,
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> (ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,
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> (iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act,
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> (iv) working conditions that constitute a danger to health or safety,
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> (v) obligation to care for a child or a member of the immediate family,
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> (vi) reasonable assurance of another employment in the immediate future,
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> (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 to 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.

[8] Subsection 30(2) of the EI Act stipulates that 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.

[9] Subsection 30(5) of the EI Act provides that 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).

EVIDENCE

[10] The Appellant made an initial application for EI benefits on May 6, 2015 (GD3-3 to GD3-12). On his application, the Appellant indicated he worked at Masters Remediation Services until he was laid off on May 6, 2015. The Appellant established a claim for EI benefits effective May 3, 2015 (GD4-1).

[11] On August 25, 2015, while on claim, the Appellant contacted the Commission and advised he had worked for 3 days for another employer before leaving the employment over a dispute about his hourly wage. Specifically, the Appellant stated he was supposed to get $15/hour but his wage turned out to be $13/hour (see Supplementary Records of Claim at GD3-13 and GD3-14).

[12] On September 22, 2015, the Appellant completed a Voluntary Leaving questionnaire (GD3-15 to GD3-16). According to the Appellant, he quit on August 14, 2015 because of a wage dispute: he told the employer the minimum he could accept was $15 and then the employer told him they were only going to pay $13 an hour.

[13] On November 12, 2015, an agent of the Commission spoke with the Appellant and documented the conversation in a Supplementary Record of Claim (GD3-18). The agent noted the Appellant's statements that, during the job interview, he discussed a salary of $15/hour, but the employer said the starting wage was not normally that high and was actually $13/hour. According to the Appellant, he found out that the job was not paying $15/hour when he went to speak to the employer after learning how much his wife's maternity benefits were going to pay and determining his salary requirements.

[14] The agent then spoke with the owner of Vango Vapes (see Supplementary Record of Claim at GD3-19), and noted the employer's statements that:

(a) The Appellant was asked what his salary expectation was and said $15/hour. However, the owner of Vango Vapes was very clear in the interview that everyone started at $13/hour.

(b) The Appellant agreed to the wage and the employer hired him on probation.

(c) After the Appellant's first pay cheque was cut, he contacted the employer and insisted he should be paid $15/hour. When the employer would not adjust the $13/hour wage, the Appellant said he wanted to be paid as a sub-contractor as he had been self-employed in the past.

(d) The Appellant told the employer he was going to quit and find a job at $18 or $19/hour.

(e) The Appellant quit after two (2) days of work, so the employer agreed to pay the Appellant as a sub-contractor, although the employer's intention when hiring the Appellant was to pay him as an insurable employee.

[15] By letter dated November 26, 2015, the Commission advised the Appellant that he would not be paid EI benefits starting August 9, 2015 (the Sunday of the week in which benefits would normally have been paid as per the EI benefit period provisions) because he voluntarily left his job at Vango Vapes on August 14, 2015 without just cause (GD3-20 to GD3-21).

[16] On December 21, 2015, the Appellant requested the Commission reconsider its decision to deny his renewal claim for benefits (GD3-22 to GD3-23). The Appellant attached a detailed summary of the reasons why he left his job (GD3-24), listing the following main headings:

> "The work was ill suited to my health and well being"
>
> "Inability to continue looking for a job"
>
> "Negligible financial benefits"
>
> "Consulted with EI employees"

[17] On February 9, 2016, a different agent of the Commission spoke with the Appellant regarding his request for reconsideration and documented the call in a Supplementary Record of Claim (GD3-26 to GD3-27). The agent noted the Appellant's statements as follows (referring to the Appellant as "Mr. K. L."):

> "Mr. K. L. stated that he took the job because he wanted to work. Mr. K. L. stated that at the interview he was asked what he was willing to work at. Mr. K. L. stated that he advised that he would not work for less than $15.00 in order to support his family. Mr. K. L. stated that in the interview he told the employer this and they told him they could only afford $13.00. Mr. K. L. stated that he reiterated that he could not work for that. So when he got a job offer later that day he assumed they had decided to pay him.
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> Mr. K. L. stated that the other issue was that it was taking too long to get to work and when he factored in the time that he was spending travelling to work via transit it was like he was making no money. Mr. K. L. stated that his commute was taking him 2 hours per way. It was adding 4 hours to his day. Because he then had no time to search for work when he got home and it would be like he was working for even less money. Agent asked why he would have no time to look for work. Mr. K. L. stated that by the time he got home the businesses would be closed etc. He stated that there was no point. He would have to take time off in order to go to interview etc. Mr. K. L. stated that it did not make sense to him to go to work for an additional $200 more a month than what EI was paying him. Mr. K. L. stated that why would he work that little amount of money when he could be home searching for a real job and making just as much money.

> Mr. K. L. stated that the job was also having an impact on his health because he was having to bend over too much. He stated that the benches were too short for him because he was so tall. He stated that bending over in this manner was causing his back to be in knots by the end of the day. Agent asked if he spoke to the Employer about this issue. Mr. K. L. stated that he did not. Mr. K. L. also stated that he was working with nicotine to make the vape as a lab assistant and he did not want to work with nicotine on his hands all the time. Agent asked if he could wear gloves. He stated that he did not ask. Agent asked if he was aware of the job at the time that *(sic)* accepted it. Mr. K. L. stated that he was aware of what they had made at the time yes.
>
> Agent asked when he realized he would not be being paid $15.00. Mr. K. L. stated that he knew that day and that was why he left. Agent then stated that the Employer indicated that you did not start calling on the wage issue until you had received the cheque. Mr. K. L. stated that this is correct. It must have been later that he had found out about the money. Agent stated that if he had found out about the money later, why did *(sic)* quit. Mr. K. L. stated that even at $15 an hour working was not worth it for him. Mr. K. L. stated that once he paid for transit and tax etc he was barely making more money than he would be on benefits so it was not worth it to him. Also he was told afterwards he did not need to accept a job that was that low of a wage. He was told that he could continue to look for higher wages. Mr. K. L. stated that he also would like it to be a part of what the Commission does at the start of a claim is to tell people not to try out jobs because if they don't like the job and leave it they will not get benefits."

[18] The agent then spoke with the owner of Vango Vapes (see Supplementary Record of Claim at GD3-28) and noted the employer's statements as follows (referring to the owner as "Mr. G." and the Appellant as "Mr. K. L."):

> "Mr. G. stated that Mr. K. L. only worked a few hours for him. He stated that it was a total of two days.
>
> Mr. G. provided the address of the location that Mr. K. L. was working. It is X X street X BC. Mr. G. stated that when Mr. K. L. was hired he was hired at $13.00. He had explained that from the start of the interview. He had asked him what wage he would be willing to work for. Mr. K. L. had stated that he wanted $15. Mr. G. stated that he had advised that the max they could do was $13 per hour. He advised that the wage may increase after time but at this point that is there *(sic)* starting wage. Mr. G. stated that he was actually surprised when he called him later and offered the job that Mr. K. L. accepted.
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> Employer stated that the job was as a lab assistant and their Manager is paid $15 so there was no way that he could offer him additional money. He stated that he made this clear in the interview. Agent asked what Mr. K. L. had provided for leaving his job when he did. Employer stated that he did not like the work and wanted to make more

> money. He indicated that he could make more money in construction so he was going to go and do that.
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> Employer indicted that he did not hear from Mr. K. L. again until he received his cheque at which time he started calling and getting very hostile towards him indicating that he was to be paid $15.00 per hour. Employer indicated that Mr. K. L. called over and over again. Employer stated that if he thought that he was getting $15 per hour why would he have quit the job when he did. Employer stated that Mr. K. L. did not respond to him".

In a subsequent conversation (see Supplementary Record of Claim at GD3-30), the agent noted the employer's further statements as follows:

> "Agent asked Employer about height of tables in the lab. Employer stated that they are standard height. Employer stated that Mr. K. L. did not come to him with concerns about bending. Employer stated that there was *(sic)* lab stools in the lab for the employees to utilize while at work.
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> Agent asked if Mr. K. L. was aware of the job site in the interview. Employer stated that he was as the interview was at the job site. Employer stated that Mr. K. L. was given a tour etc. so that he was aware of what the job entailed etc."

[19] The Commission considered the Appellant's statements with respect to the time it took to commute from his home to his work at Vango Vapes. According to information obtained from local transit authorities (see GD3-31), the Appellant's morning commute was 57 minutes.

[20] By correspondence dated February 19, 2016, the Commission advised the Appellant that its decision of November 28, 2015 was maintained (GD3-32 to GD3-33).

[21] On March 21, 2016, the Appellant appealed to the Tribunal. In his Notice of Appeal (GD2A), the Appellant wrote:

> "I believe I had good cause to not accept/leave employment which was not giving me a wage I could afford, and would be paying me through misinformation a lower wage which, EI standards claim I may refuse. Additionally the employment would significantly inhibit my job search." (GD2A-4)

The Appellant also attached an 8-page memo explaining his situation (GD2A-6 to GD2A-13), and included his own mathematical calculations showing that, after transit costs and deductions, his net from the $13/hour job would be $1,608 monthly compared to the $1,400 he was

receiving “from EI”. The Appellant also identified a scenario where he could have actually made less money while working than he would get “being on EI” (see GD2A-10).

At the Hearing

[22] The Appellant testified that the main reasons he left his job at Vango Vapes were:

(a) He wasn’t making enough money;

(b) Health concerns due to working conditions; and

(c) The length of his commute put him at a disadvantage of finding a better job.

[23] With respect to the dispute over his hourly wage, the Appellant denied that $13/hour was ever agreed to in the interview. The Appellant denied the employer ever told him that the maximum starting wage was $13/hour or that he couldn’t afford to pay more. The Appellant testified that he told the employer his schedule was “open” and “all I asked for was full time hours at $15 an hour”. According to the Appellant, the employer said he would have to talk to his other employees and do the other interviews, and would get back to the Appellant after that.

[24] The Appellant further testified that it was his understanding he could refuse work prior to accepting the job based upon conversations he had with Service Canada agents during the first month of his claim. According to the Appellant, he went into Service Canada and “went over what I would be allowed to refuse”. The Appellant stated that his time at Vango Vapes was a “trial period” and the wage was far below what he had made previously, so when he realized it was not suitable for a number of reasons (the wage dispute, working conditions, the commute), he left – as he thought he was entitled to do without jeopardizing his EI benefits.

[25] With respect to the working conditions, the Appellant testified that the issue was the height of the benches in the workplace. The Appellant stated that he is very tall and experiences back problems if he is bent over all the time. The Appellant further stated that he did speak to the owner about the height of the work tables and was told the solution would come when the employer switched over to an automated process. According to the Appellant, he didn’t file a formal complaint because he wasn’t sure he’d be at the Vango Vapes job for any length of time.

[26] With respect to the commute time, the Appellant testified that he felt "working and commuting for 10-12 hours per day" seriously "constricted" his ability to find another job and put him at a disadvantage in the job search because it meant he couldn't go to job fairs, which are held during regular working hours, and couldn't apply for jobs during regular business hours. The Appellant stated that it took him three (3) months just to find the job at Vango Vapes, which "wasn't very suitable", and that was the most promising opportunity he came across when he was "on EI" and had "full time days to look for jobs". The Appellant, therefore, believed it would be very difficult to find another job when 10-12 hours of his day were taken up by his job at Vango Vapes. The Appellant referred the Tribunal to "the math" in his appeal materials at GD2A-10 for an explanation as to how it could possibly have turned out that he would be netting more on EI benefits than by working at Vango Vapes.

[27] The Appellant testified that he had also additional responsibilities at home preparing for the birth of his child, which was another reason why he had less time to look for work in the few remaining hours he wasn't commuting and working at Vango Vapes. The Appellant denied that he ever told the employer that he didn't like the work itself. Rather, the Appellant stated that he told the employer he had a child coming and had talked to his wife, who had to check on her maternity benefits, and they determined it would not be feasible for the Appellant to continue working at Vango Vapes.

SUBMISSIONS

[28] The Appellant submitted that his employment at Vango Vapes was a "trial" and that he was entitled under the *Employment Insurance Regulations* (EI Regulations) to leave the job because it fell below 80% of his former wage and, therefore, was not considered to be "suitable employment under the EI rules". The Appellant further submitted that he had just cause for voluntarily leaving his employment at Vango Vapes in any event, namely a dispute over his hourly wage (as well as other financial considerations), a health concern because of the height of the work benches, and the disadvantage he faced in finding other employment because of the length of his commute to work.

[29] The Commission submitted that once the Appellant accepted the job at Vango Vapes and started working there, no matter how briefly, he was no longer considered to have refused

the work and became subject to the qualification provisions of section 29 and 30 of the EI Act. The Commission further submitted that none of the reasons provided by the Appellant constitute just cause because the Appellant had a reasonable alternative to leaving his employment at Vango Vapes, namely to continue working until he had secured other employment that was more suitable and/or at a more favourable rate of pay and/or with a more suitable commute. Having failed to exhaust these reasonable alternatives prior to leaving, the Appellant has failed to prove that he left his employment with just cause within the meaning of the EI Act.

ANALYSIS

[30] As a preliminary matter, the Tribunal will address the Appellant's argument that he treated his two (2) days of employment at Vango Vapes as a "trial" and that he was entitled to leave that employment because, under the EI Regulations he was allowed to refuse employment at less than 80% of his previous salary as "unsuitable".

[31] The regulations the Appellant refers to are EI Regulations 9.002 to 9.004, and in particular 9.004, which set out the criteria for determining what constitutes "suitable employment" for purposes of Regulation 9.001 and subsections 18(1) and 50(8) of the EI Act, which themselves provide that to be entitled to EI benefits, a claimant must prove they are making efforts to obtain "suitable employment". In other words, the EI Regulations the Appellant is attempting to rely upon as justification for leaving his employment are, in fact, applicable only to the consideration of whether he was capable of and available for work and unable to obtain "suitable employment" ***while on claim***, as required by section 18 of the EI Act. There is no provision in the EI Act or the EI Regulations for a claimant to try out a job. However, a claimant is permitted to leave a job at any time if the claimant has just cause pursuant to sections 29 and 30 of the EI Act. The Commission, therefore, has correctly set out (at GD4-3) that Regulation 9.004 defines the parameters under which a claimant is entitled to refuse an offer of employment. However, if an offer of employment is accepted and the claimant commences work – no matter how briefly – the claimant is no longer considered to have refused the work and becomes subject to the provisions of sections 29 and 30 of the EI Act.

[32] While the Appellant testified that he was advised by an agent at his local Service Canada office early in his claim that he could refuse to work at a job where the wage was less than 80% of his prior earnings, the Tribunal notes his preliminary statement to the agent responding to his Request for Reconsideration was that he found this out ***after*** he left his job at Vango Vapes (GD3-26 to GD3-27). The Tribunal, however, makes no findings with respect to whether the Appellant was misinformed by Service Canada. It is simply not the case that the Appellant can rely upon EI Regulations 9.002 to 9.004 by the analogy to try out a job and then, 2 days later, leave that employment because the hourly wage is unsuitable (as he has argued), as these EI Regulations do not apply to a situation where a claimant accepts a job and starts working at that job.

[33] The analysis, therefore, must shift to a consideration of whether the Appellant had just cause for voluntarily leaving his employment at Vango Vapes on August 14, 2015.

[34] Section 30 of the EI Act stipulates that a claimant who voluntarily leaves his employment is disqualified from receiving any benefits unless he can establish "just cause" for leaving.

[35] It is a well-established principle that "just cause" exists where, having regard to all the circumstances, on balance of probabilities, the claimant had no reasonable alternative to leaving the employment (*White 2011 FCA 190, Macleod 2010 FCA 301, Imram 2008 FCA 17, Astronomo A-141-97, Tanguay A-1458-84*).

[36] The initial onus is on the Commission to show that the Appellant left his employment voluntarily; once that onus is met, the burden shifts to the Appellant to show that he left his employment for "just cause" (*White, supra; Patel A-274-09*).

[37] In the present case, it is undisputed that the Appellant left his job voluntarily when he quit his job at Vango Vapes on August 14, 2015.

[38] The onus of proof then shifts to the Appellant to prove that he had no reasonable alternative to leaving his job when he did.

[39] The Tribunal must consider the test set out in sections 29 and 30 of the EI Act and the circumstances referred to in subsection 29(c) of the EI Act, and determine whether any existed

at the time the Appellant left his employment. These circumstances must be assessed as of that time (*Lamonde A-566-04*), namely the day he quit his job: **August 14, 2015**.

[40] It is not imperative that the Appellant fit precisely within one the factors listed in subsection 29(c) of the EI Act in order for there to be a finding of "just cause". The proper test is whether, on the balance of probabilities, the Appellant had no reasonable alternative to leaving his employment, having regard to all the circumstances, including but not limited to those specified in paragraphs 29(c)(i) to (xiv) of the EI Act (*Canada (Attorney General) v. Landry (1993) 2 C.C.E.L. (2d) 92 (FCA)*).

Wage Dispute and other Financial Considerations

[41] The Tribunal first considered whether the change to the Appellant's understanding of his hourly wage was a "significant modification of terms and conditions respecting wages or salary" within the meaning of paragraph 29(c)(vii) of the EI Act, which provides that an employee has just cause where there has been significant modification in the terms and conditions respecting wages or salary and he or she has no reasonable alternative to leaving the employment.

[42] There is abundant jurisprudence that has found a claimant to have "just cause" where the employer has acted unilaterally in any manner which fundamentally alters the terms of employment as they existed prior to separation (such as reducing a claimant's weekly hours, increasing the work-load or decreasing the pay (*CUBs 18960, 18009, 17495, 26973 affirmed by Lapointe v. C.E.I.C. A-133-95 (Fed. C.A.)*). Similarly, an employer's refusal to honour the terms of employment has been found to be just cause for leaving an employment *(CUB 17491*), as has reneging on the wage to be paid (*CUBs 12252, 12402, 23480*). For the reasons set out below, the Tribunal finds that the employer's payment of $13/hour when the Appellant assumed his wage would be $15/hour was not a significant modification in the terms and conditions of his employment at Vango Vapes and, therefore, not just cause for leaving that employment.

[43] The Tribunal considered the Appellant's evidence that he was supposed to be paid $15/hour. In his first discussion with the Commission's agent (see GD3-18), the Appellant stated that he discussed a salary of $15/hour during the job interview, but was told the starting wage was not normally that high and was actually $13/hour. Following the denial of his claim

for EI benefits, the Appellant advised the Commission that he told the employer at the job interview that he would not work for less than $15/hour, that the employer indicated the starting wage was $13/hour and the that the Appellant reiterated he could not work for that. The Appellant testified that the employer said he would have to talk to his other employees and do the other interviews, and would get back to the Appellant after that. Then when he got a job offer later that day, the Appellant assumed the employer had decided to pay him what he had asked for.

[44] The Tribunal then considered the evidence from the employer that it was made clear to the Appellant his wage would be $13/hour (see the statements documented at GD3-19 and GD3- 28). The Tribunal prefers the evidence of the employer because the employer had an obvious interest in being perfectly clear as to what the starting wage would be given the fact that the Appellant had requested more than what was on offer, as well as the fact that the Manager on site was earning what the Appellant was asking to start at for a general labourer position. The Tribunal also notes the Appellant's inconsistencies with respect to when he realized he was being paid $13/hour and not the $15/hour he allegedly assumed he was getting. At first the Appellant advised the Commission that he found out he was not getting $15/hour when he went to speak to the employer after learning how much his wife's maternity benefits were going to pay and determining his salary requirements (GD3-18). He subsequently advised the Commission that he realized he would not be paid $15/hour on the day he quit (GD3-26), but when confronted with the employer's statements (at GD3-19 – that the Appellant did not raise the $15/hour issue until he received his pay cheque after quitting), the Appellant reversed himself and said it must have been later, namely at some point after he received his pay cheque after quitting, and admitted that even at $15/hour, working at Vango Vapes was not worth it for him because he would barely be making more than he would be on EI benefits (GD3-26). This later admission is consistent with the employer's statements to the Commission that the Appellant's stated reason for quitting was to find a higher paying job in construction (GD3-19 and GD3-28) and that the employer did not hear from the Appellant until he received his cheque and argued he thought he was getting $15/hour but had no answer to the employer's question as to why, if he thought that, he quit after two days – prior to receiving his cheque (GD3-28).

[45] The Federal Court of Appeal has affirmed the general principle that, where the terms and conditions of employment are significantly altered, a claimant will have just cause for

leaving their position: *Lapointe (supra)*. The changes must originate from the employer (*CUB 51057*) and the word "significant" has been interpreted as "something of import, something above the normal".

[46] Additionally, "just cause" must be determined according to the test of whether a reasonable person would consider that he had no reasonable alternative to leaving his employment (*CUBs 75146B, 75719*); and where there is a disagreement as to the terms of employment, a claimant has an obligation to give the employer a reasonable chance to correct the situation (*CUBs 57605, 57628*).

[47] In the present case, the Tribunal finds there is no credible evidence that the employer reneged on the Appellant's starting wage or unilaterally reduced the Appellant's starting wage from $15 to $13/hour. The Appellant's assumption that his starting wage was going to be $15/hour was unfounded and wishful thinking at best. For the reasons set out in paragraph 44 above, the Tribunal gives more weight to the employer's evidence and finds that the Appellant knew he was going to be paid $13/hour from the outset and that, as the Appellant admitted to the Commission, at some point over the two (2) days the Appellant worked at Vango Vapes, he decided he would prefer to remain on claim and receive EI benefits while continuing his job search. The Tribunal further finds that the $2/hour difference between the Appellant's alleged expectation ($15/hour) and actual rate of pay ($13/hour) would not be considered "significant" for purposes of paragraph 29(c)(vii) of the EI Act, especially in light of the Appellant's stated difficulties in finding any employment at all after 3 months on claim. Finally, the Tribunal finds there is no evidence the Appellant gave the employer any chance to address his concerns about his wage prospects prior to quitting. The Appellant worked at Vango Vapes for two (2) days before quitting, and had not even received a pay cheque before he left his employment. Even if there was a misunderstanding between the Appellant and the employer over his hourly wage (which the Tribunal has found there was not), "just cause" must still be determined according to the test of whether a reasonable person in the Appellant's circumstances would consider that he had no reasonable alternative but to leave his employment after two (2) days. The Tribunal finds that a reasonable person would have had further discussions with the employer about the prospects for wage increases over time or continued working until he had secured other employment.

[48] The Tribunal therefore finds that the Appellant has not proven that there was a significant modification of terms and conditions respecting wages or salary that would constitute just cause within the meaning of paragraph 29(c)(vii) of the EI Act.

[49] With respect to the other financial considerations the Appellant has raised, namely the difficulties of supporting his family on $13 or $15/hour, and the fact that, even at $15/hour, it would not have been worth it to him to continue working at Vango Vapes given how much he was receiving in EI benefits, the Tribunal notes that the purpose of the EI Act is not to provide benefits to people who quit their jobs in order to seek better, more remunerative employment (*Canada (Attorney General) v. Sacrey, 2003 FCA 377, CIB 67900*); and just cause is not present when a person chooses to voluntarily leave employment because they do not find it sufficiently remunerative and cannot meet their own expenses (*Canada (Attorney General) v. Tremblay, 1994 FCA 50*). While the Tribunal acknowledges and sympathizes with the Appellant's financial difficulties, the Appellant has failed to establish any circumstances regarding the alleged reduction in his starting wage which support a conclusion that he had no reasonable alternative to leaving his job at Vango Vapes on August 14, 2015. The Tribunal finds that a reasonable alternative would have been to continue working until the Appellant had secured other employment.

Health Concerns

[50] The Tribunal next considered the Appellant's submission that his job was adversely affecting his health and well-being. Paragraph 29(c)(iv) provides that an employee has just cause where "working conditions that constitute a danger to health or safety" exist and he or she has no reasonable alternative to leaving the employment.

[51] The Appellant testified that he is very tall and, as a result, had to bend over all the time to do his work at the benches in the workplace at Vango Vapes. This caused him to experience back problems, which he described to the Commission's agent as follows: "He stated that the benches were too short for him because he was so tall. He stated that bending over in this manner was causing his back to be in knots by the end of the day" (GD3-26 to GD3-27).

[52] The jurisprudence has held that where the detrimental effect on one's health is being proffered as just cause, a claimant must: (a) provide medical evidence (*CUB 11045*); (b) attempt to resolve the problem with the employer (*CUB 21817*); and (c) attempt to find other work prior to leaving (*CUBs 18965, 27787*).

[53] There is no evidence that the Appellant ever consulted a doctor in connection with the back problems he experienced while working at Vango Vapes, let alone any medical evidence that the height of the benches was such as to be a danger to his health. The Tribunal also notes the Appellant did not raise his health concerns on his Voluntary Leaving Questionnaire (GD3-15 to GD3-16) or in his conversations with the Commission's agents about the reason for separation from employment at Vango Vapes (GD3-13, GD3-14 and GD3-18). Indeed, the Appellant did not raise any health concerns as his reason for quitting Vango Vapes until after he was notified his claim for EI benefits was denied. The Tribunal prefers the Appellant's initial, spontaneous statements that he quit because of a dispute over the hourly wage he was to be paid (GD3-13, GD3-14, GD3-15, and GD3-18). While the Appellant testified that he did address his concerns with the employer, he could have continued to seek solutions through discussions with the employer (especially since the employer was amenable to accommodations as seen from the fact it was already providing lab stools for employees to utilize while at work – see GD3-30), and certainly could have waited longer than two (2) days for a solution to be found or to determine the timing for the employer's intended installation of an automated processing system. Finally, there is no evidence the Appellant attempted to find other work prior to quitting.

[54] The Tribunal therefore finds that Appellant has not met the onus on him to prove that his working conditions at Vango Vapes were adversely affecting his health such that he had no reasonable alternative but to quit his job on August 14, 2015; and further finds that a reasonable alternative would have been to continue working at Vango Vapes until other, more suitable, employment was found, or to request further accommodations from the employer.

[55] The Tribunal also finds that none of the circumstances described by the Appellant assist him in establishing that he had no reasonable alternative to leaving his job at Vango Vapes on August 14, 2015 and, therefore, just cause for voluntarily leaving his employment. Unsatisfactory working conditions will only constitute just cause for leaving an employment

where they are so manifestly intolerable that the claimant had no other choice but to leave (*CUB 74765*). The Tribunal finds that such conditions did not exist for the Appellant at Vango Vapes when he quit on August 14, 2015.

Time spent Commuting

[56] The Appellant stated that he quit his job in part because of the time it took to commute back and forth from his home to work every day. According to the Appellant, his commute was taking him 2 hours each way, adding 4 hours to his work day, which meant he then had no time to search for work when he got home (GD3-26). The Appellant testified that he felt working and commuting for 10-12 hours per day seriously "constricted" his ability to find another job and put him at a disadvantage in his job search because he couldn't go to job fairs (which he stated are held during regular working hours) and couldn't apply for jobs during regular business hours. The commute, combined with his additional responsibilities preparing for parenthood, meant there were few remaining hours in which to search for another job.

[57] The Commission confirmed the Appellant's home address and the address of Vango Vapes and determined that his morning commute from home to work, based on the available public transit (which the Appellant said he utilized) would have been 57 minutes, or half of what the Appellant said it was.

[58] Generally speaking, transportation difficulties do not constitute just cause for leaving employment (*CUBs 16658A, 11351, 10176, 20964*) and certainly not where there is "no element of necessity, urgency or compulsion" for the claimant to leave prior to obtaining more suitable employment (*L.M. v. Canada Employment Insurance Commission, 2014 SSTGDEI 72*). In the present case, the Appellant commuted to work for only two (2) days before quitting, yet has provided no compelling reason why he could not continue to do so for a further period while he looked for other work. The Appellant's situation is not one involving a long, unsafe drive, or a transfer to a location far away from the original workplace or a conflict with another part-time job or job opportunity. As for the commute causing the Appellant to be disadvantaged in his job search, it cannot be said that after only two (2) days on the job, the Appellant had been prejudiced to the point where he had no reasonable alternative but to quit his job.

[59] The Tribunal acknowledges that personal reasons, such as wanting a shorter commute and time to spend on family matters (including preparing for the birth of a child), may well be good cause for leaving an employment. However, the Federal Court of Appeal has clearly held that good cause for quitting a job is not the same as "just cause" (*Laughland 203 FCA 129*), and that it is possible for a claimant to have good cause for leaving their employment, but not "just cause" within the meaning of section 29 of the EI Act (*Vairumuthu 2009 FCA 277*). The Tribunal finds that, in spite of the Appellant's stated desire to shorten his commute in order to spend more time looking for employment and attend to family responsibilities, the Appellant's decision to quit on this basis was precipitous when there was work available.

[60] The Tribunal further finds that a reasonable alternative would have been to continue working until the Appellant had secured other employment in his desired location. In the Appellant's case, he had been looking for jobs in the three months he was on claim before he started work at Vango Vapes, but there is no evidence that the Appellant engaged in a bona fide job search or looked for alternate employment prior to quitting his job at Vango Vapes on August 14, 2015. While the Appellant may have intended to resume his job search efforts once he was no longer working, he failed to pursue this reasonable alternative to quitting and, therefore, has not proven that he had just cause for voluntarily leaving his employment.

CONCLUSION

[61] Having regard to all of the circumstances noted above, the Tribunal finds that the Appellant did not prove that he was left with no reasonable alternative but to leave his employment at Vango Vapes on August 14, 2015. The Tribunal therefore finds that the Appellant did not demonstrate just cause for voluntarily leaving his employment and, therefore, is disqualified from receipt of EI benefits as of August 9, 2015 pursuant to sections 29 and 30 of the EI Act

[62] The appeal is dismissed.

Teresa M. Day

Member, General Division - Employment Insurance Section