



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *O. G. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 67

Tribunal File Number: GE-16-2188

BETWEEN:

**O. G.**

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: Yoan Marier

HEARD ON: April 26, 2017

DATE OF DECISION: May 9, 2017

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

The Appellant and his representative, Counsel Kim Bouchard, attended the teleconference hearing.

### **INTRODUCTION**

[1] The Appellant filed an initial claim for Employment Insurance benefits effective February 7, 2016.

[2] On March 14, 2016, the Canada Employment Insurance Commission (Commission) determined that the Appellant was disqualified from receiving Employment Insurance benefits due to voluntarily leaving his employment with Axa Assistance Canada Inc. without just cause.

[3] On April 27, 2016, upon reconsideration, the Commission upheld its initial decision.

[4] The Appellant appealed the reconsideration decision to the Social Security Tribunal on May 19, 2016.

[5] The hearing was held via teleconference for the following reasons:

- a) The complexity of the issue or issues;
- b) The fact that the Appellant will be the only party present at the hearing;
- c) The information in the file, including the need for additional information; and
- d) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

## **ISSUE**

[6] The Tribunal must determine whether the Appellant should be disqualified from receiving Employment Insurance benefits due to leaving voluntarily without just cause, pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

## **EVIDENCE**

### **On File**

[7] The Appellant's initial claim for Employment Insurance benefits that was filed with the Commission on February 9, 2016. (GD3-3 to 12) This application took effect on February 7, 2016. (GD4-1)

[8] A Record of Employment issued by the employer Axa Assistance Canada Inc. (Axa) on February 10, 2016, indicating "voluntary leaving" as the reason for issuing the Record. (GD3-13)

[9] In a letter written by the Appellant to the Commission on February 14, 2016, he stated that the company had eliminated his position as team leader on December 27, 2015. After his position was eliminated, he was demoted back to a consultant agent position and suffered a significant loss of salary. He noted that in his new position as consultant agent, he was subjected to harassment from his immediate supervisors. He noted that he had tried everything to keep his job and said that he had become ill during the month of January, 2016. (GD3-14)

[10] A file entitled [translation] "change to employee file" indicates that the Appellant's position had been changed from "team leader for night shift" to "consultant agent for night shift" on December 28, 2015. (GD3-15)

[11] In a conversation between C.M., a human resources representative, and the Commission on March 1, 2016, the employer noted that the Appellant had left his employment because he had difficulty working with the team. The Appellant had been the subject of several complaints when he had been team leader, but the employer maintains that his position was eliminated for budgetary reasons. Following the elimination of his position, the Appellant was offered a position as a consultant agent and he accepted. His volume of work would increase, because he

would no longer be required to supervise employees. The Appellant had not discussed the harassment allegations with human resources or his supervisor. (GD3-18)

[12] In a conversation between the Appellant and the Commission on March 11, 2016, the Appellant claimed to have left his employment due to harassment in the workplace. He had been in the team leader position for a year, but his position had been eliminated and he had been offered a consultant agent position. According to the Appellant, the employer wanted to get rid of him. In his new position, he had a conflict with another employee, who was on the same shift as him and who was also a close friend of one of the team leaders, and he was harassed by that employee. He stated that he suffered from depression as a result of being harassed by this employee, who was supported by the team leader friend. He did not seek medical help or consult human resources about this situation. (GD3-19)

[13] In an email sent to a team leader called "Y.N.", on an unspecified date, the Appellant made reference to the behaviour of another employee (called "A") who was condescending and who had insulted him several times. This employee was a friend of the team leader, called "J", who also seemed to have changed his behaviour towards the Appellant. He said that he wanted to work in peace and let things go for the moment, but that he had begun to feel that the employee in question wanted him to quit or be dismissed. In the same email, he noted that he did not need a meeting to discuss the situation but that he would bring the file to human resources and to M.A. (director) if necessary. (GD3-20)

[14] In an email sent to M.A. (director), C.M. (human resources) and Y.N. (team leader) on February 4, 2016, the Appellant resigned from his job at Axa. He claimed to have resigned for a number of reasons, but that the triggering incident was a meeting the previous week between himself, Y.N., J. and A. The Appellant stated that the meeting had addressed complaints against the Appellant that team leaders J. and Y.N. had allegedly received from two other employees. This meeting had escalated into a confrontation. He reiterated that A. seemed to have a personal vendetta against him. (GD3-21 to 23)

[15] In a conversation between M.A., director at Axa, and the Commission on March 11, 2016, M.A. stated that she was unaware of any harassment and that she had been surprised to receive the Appellant's resignation. She confirmed that the Appellant did not get along with A.,

but that both parties were responsible. According to the director, some of the company's employees had allegedly resigned or changed shifts because they did not want to work with the Appellant.

[16] On March 14, 2016, the Commission informed the Appellant that he was disqualified from receiving Employment Insurance benefits due to leaving Axa Assistance Canada Inc. voluntarily without just cause on January 31, 2016. (GD3-25 and 26)

[17] In his request for reconsideration, the Appellant stated that, after being demoted back to a consultant agent position, he had on several occasions been verbally harassed by a team leader or another employee. He stated that he had sent emails to another supervisor and met with him in person regarding the situation and that there were no other options but to leave due to constant harassment, which was affecting his health. He had tried unsuccessfully to change his shifts.

[18] In a conversation between the Appellant and the Commission on April 22, 2016, the Appellant reiterated that he had been harassed by another employee called A. The Appellant believed that A. was angry with him because when he was demoted back to the consultant agent position, he had taken the position that she was after (as a junior agent). He stated that this employee teamed up with J., a team leader, to make him look bad in front of the rest of the staff. The Appellant said he had met with Y.N., another team leader, several times regarding the situation, but that it had never been resolved. The Appellant claims to have resigned following a meeting between himself, Y.N., J. and A., in which he was accused of being the subject of other junior employees' complaints. Following the meeting, when the Appellant spoke to one of these junior employees, they denied making a complaint against the Appellant. The Appellant stated that the situation made him depressed, but that he had not sought medical help. (GD3-32)

[19] In a conversation between M.A., director at Axa, and the Commission on April 26, 2016, the director stated that other employees had been complaining about the Appellant. The problems had begun while the Appellant was working as a night supervisor. When the Appellant's position had been eliminated, he had accepted a consultant agent position. The employer stated that it had lost employees and had had to move staff from the night shift to the day shift because of the Appellant. Other agents had complained that the Appellant did not

respond to their questions and left them without support. The director stated that she had been aware that the Appellant felt harassed. She explained that A. was outspoken, but that she was appreciated by her co-workers. The employer denied that the Appellant was subject to harassment and stated that A. had simply let the Appellant know that his work was not up to par. According to the employer, it was not true that A. wanted the Appellant's position. (GD3-33 and 34)

[20] On April 27, 2016, following the reconsideration decision, the Commission informed the Appellant that it had upheld its initial decision of March 11, 2016. (GD3-35 and 36)

### **At the Hearing**

[21] The Appellant stated that he had started working for the employer Axa in September 2006. He had first worked as an agent, then as a consultant agent, before being promoted to team leader in 2015. His team leader position was eliminated in December 2015 and he was given the option of continuing to work for the company as a consultant agent, which he accepted despite a significant drop in salary.

[22] The Appellant stated that he did good work as a team leader. He managed several complex files and had never received disciplinary notice from his employer.

[23] After going back to his consultant agent position, the Appellant felt that the employer wanted to get rid of him by giving him a greater volume of work as well tasks that were almost identical to those of a supervisor.

[24] The Appellant stated that he had been harassed by an employee called A., who was friends with a team leader called J., who was also on his back. This harassment came from several negative comments towards him and the employee's insistence on making the entire office aware of all the problems associated with the Appellant's files by copying the entire staff on emails to the Appellant.

[25] He discussed the situation several times with a team leader called Y.N. and explained the situation by email, but the situation did not change. The Appellant stated that the incident

that triggered his resignation was a meeting between A., J. and Y.N. in which he felt that the three were against him. The meeting was about other employees' complaints against him. In order to resolve the situation, the Appellant spoke to one of the employees who had allegedly made a complaint against him and the employee apparently denied ever having made a complaint against the Appellant.

[26] The work environment had become toxic. His issues at work were affecting his health. He did not, however, seek medical help because he believed it would not help.

[27] He wished to continue working for the company, but he had no choice but to leave given the circumstances.

## **PARTIES' ARGUMENTS**

### **Appellant's Arguments**

[28] He had to leave his job because of harassment. The Appellant also claims to have left due to harmful working conditions and antagonism with a supervisor, for which he is was not primarily responsible.

[29] By accepting the demotion, the Appellant wanted to remain employed by Axa and did everything he could to keep his job. He spoke to his employer on several occasions about the harassment situation and put the situation in writing in an email sent to a team leader before his resignation. His efforts were unsuccessful.

[30] The Appellant's working conditions had become toxic and were affecting his health.

[31] He left his employment when he did because he had no other reasonable alternative.

### **Respondent's Arguments**

[32] The Appellant sent an email of resignation to his employer, showing that he voluntarily left his employment with Axa.

[33] The Appellant left due to antagonism with one of his co-workers. Antagonism alone cannot justify voluntary leaving.

[34] The Appellant did not attempt to talk to his employer about improving the situation at work and did not file a complaint with the Labour Board. He did not seek medical advice and did not look for other employment before leaving. The fact that the Appellant did not attempt other solutions shows that he did not have just cause for leaving his employment like he did.

[35] The Appellant did not successfully prove that he had just cause for leaving within the meaning of the Act, because he failed to show that he had exhausted all reasonable alternatives before leaving.

### **ANALYSIS**

[36] The relevant legislative provisions are reproduced in an appendix to this decision.

[37] Section 30 of the *Employment Insurance Act* (Act) provides for a disqualification from receiving Employment Insurance benefits if a claimant loses their employment due to their own misconduct or if they leave that employment voluntarily without just cause. Paragraph 29(c) provides that a claimant will have just cause for voluntarily leaving their employment if, given all the circumstances, leaving was the only reasonable alternative in their case. A non-exhaustive list of specific circumstances justifying leaving voluntarily is provided in paragraph 29(c).



[38] It is incumbent upon the Commission to prove that the leaving was voluntary and upon the Appellant to show that he had just cause to leave his employment (*Green v. Canada (Attorney General)*, 2012 FCA 313).

[39] Therefore, as a first step and before ruling on the issue of just cause, the Tribunal must first determine whether there was, in this case, a situation of voluntary leaving.

[40] At the hearing, the Appellant admitted that he had voluntarily left his employment. This statement reflects the evidence on file. The Tribunal finds that the Appellant voluntarily left his employment.

[41] Concerning the justification for leaving voluntarily, the Federal Court of Appeal confirmed in its decision *Canada (Attorney General) v. White*, 2011 FCA 190, that it is incumbent upon the claimant having voluntarily left their job to prove that there was no other reasonable alternative to leaving their job when they did.

[42] In order to justify his voluntary leaving, the Appellant alleges that he was subject to harassment at work, that his working conditions were harmful to his health, and that there was antagonism with a supervisor for which he was not primarily responsible. The Tribunal will therefore examine each of these circumstances and then determine whether, having regard to all the circumstances, the Appellant's decision to leave his employment was his only reasonable alternative.

### **Harassment**

[43] One of the circumstances the Tribunal must consider is that described in subparagraph 29(c)(i) of the Act, which provides that a claimant may have just cause for voluntarily leaving their employment if they are a victim of sexual or other harassment. In this case, it is not a matter of sexual harassment but of "other" harassment. More specifically, the Appellant claims that his co-worker's degrading comments and hostile behaviour towards him constitute harassment.

[44] At the hearing, the Appellant referred at great length to the behaviour of a co-worker called A. since he had been demoted in December 2015 from team leader for night shift to consultant agent for night shift. He stated that since changing positions, he has been subject to this employee's degrading comments as well as her relentless efforts to pick apart the Appellant's files and raise every little detail before the entire office by sending email complaints to the Appellant with the entire staff in cc. The Appellant stated that the employee in question was supported by one of the team leaders, J., who was also her close friend. The conflict allegedly culminated in a meeting between the Appellant, A., the team leader J., and the team leader Y.N. During this meeting, the Appellant complained that these three individuals had allegedly made accusations regarding his work and told him that other employees had been complaining about him. The Appellant had resigned shortly thereafter.

[45] As set out by the Federal Court of Appeal in *Bell v. Attorney General of Canada*, A-450-95, determining whether the claimant had indeed been harassed is important when deciding whether, given the circumstances, the claimant had no reasonable alternative to leaving. In deciding this issue, we must examine whether the employer seems to have closed their eyes to the situation described by the claimant.

[46] The Appellant stated that he had discussed the situation on numerous occasions with another team leader, called Y.N. who was less involved in the conflict. The evidence on file also shows that the Appellant wrote an email to this team leader before his resignation, detailing the situation, and the Appellant's resignation letter references at length the behaviour of A. and her friend/team leader J. According to the Appellant, no remedial action had been taken by the employer with respect to the alleged harassment. During the hearing, the Tribunal found the Appellant credible. He was calm and composed and responded in detail to the Tribunal's questions. He did not contradict himself and was consistent with his version of the facts throughout the process. In the Tribunal's view, it seems that the employer turned a blind eye to the alleged harassment.

[47] The Tribunal finds interesting the director's version of the facts who, in conversations with the Commission, first stated that she was unaware of any harassment, that she was surprised by the Appellant's resignation and that the conflict between the Appellant and his co-

worker was both of their responsibilities. In another conversation with the Commission several months later, this same director acknowledged that there was a conflict between the Appellant and his co-worker and that the Appellant felt harassed at work. The employer alleges that the Appellant was subject to complaints by his co-workers and that his work was not up to par. The employee in question, A., [translation] "was not afraid to speak her mind", but was only identifying errors in the Appellant's work. The employer then noted A.'s exceptional work.

[48] The Tribunal gives more weight to the Appellant's version of the facts because it is plausible, consistent and contains no contradictions.

[49] The Commission states that the Appellant did not discuss the situation with his employer. This argument is contradicted by the Appellant, who claimed to have met with a team leader on several occasions with respect to the situation. According to the Appellant, the company management was clearly aware of the situation, because it was the team leader's job to report these types of problems in meetings with management. Furthermore, the evidence on file shows that the Appellant twice put the situation in writing in emails sent to the company management before and at the time of his resignation.

[50] In its arguments, the Commission does not address in detail the issue of harassment and sums up the situation as a [translation] "conflict with co-workers." The Tribunal does not agree with the Commission on this issue. The Appellant's description of the situation at work goes beyond a simple conflict. Although it is possible that there were issues with the Appellant's work, that does not excuse the behaviour of the employee in question.

[51] The Tribunal finds that the version of the facts recounted and retained by the Tribunal shows that he was a victim of harassment by a co-worker. The evidence also shows that the Appellant brought this situation to the employer's attention, that the employer was aware of the situation and that the employer did nothing to solve the problem. The Tribunal finds that the Appellant meets the criteria of paragraph 29(c)(i) of the Act.

### **Working conditions that constitute a danger to health or safety**

[52] Another circumstance the Tribunal must consider is that set out in subparagraph 29(c)(iv) of the Act, which provides that a claimant may have just cause for leaving their employment if they show that their working conditions constituted a danger to health or safety.

[53] According to the Appellant, his working conditions had become toxic to his health because of the harassment he was experiencing. He stated that this was the reason that he was depressed and that his health and mood were affected by his work. The Appellant did not seek medical help regarding this situation because he felt that it would not help him. The Appellant stated that he had tried unsuccessfully to find solutions by discussing his issues at work with a team leader.

[54] In *Brisebois v. Canada (Canada Employment and Immigration Commission)* A-510-96, the Federal Court of Appeal established that a medical certificate was not necessary to prove a health problem, in the case where the claimant's credibility was not an issue.

[55] As mentioned above, the Tribunal found the Appellant's version of the facts credible. In light of the Appellant's testimony, the Tribunal finds that there is no doubt that the situation experienced by the Appellant in his workplace could negatively affect his health. Naturally, a visit to the doctor would have been advisable for proper diagnosis of his health problems and support of a medical certificate; however, the Tribunal is of the opinion that, despite not having a medical certificate, the Appellant showed that his work environment right before his resignation was harmful to his health. The Tribunal finds that the Appellant meets the criteria of subparagraph 29(c)(iv) of the Act.

### **Antagonism with a supervisor**

[56] The third circumstance invoked by the Appellant is that set out in subparagraph 29(c)(x) of the Act, which provides that a claimant may have just cause for leaving their employment if they show that there was antagonism with a supervisor if the claimant is not primarily responsible for the antagonism.

[57] The Appellant stated that J., one of the team leaders, was a close friend of A., the employee who was allegedly responsible for the harassment and that he had developed a conflicting relationship with this team leader because A. had influenced her to be on the Appellant's back.

[58] The evidence on file and the Appellant's testimony provide a detailed account of A.'s behaviour toward the Appellant, but there is little evidence of the team leader J.'s behaviour towards the Appellant. The Tribunal finds that the Appellant's evidence is insufficient to establish a conflicting relationship with the team leader. The Tribunal finds that the Appellant does not meet the criteria of subparagraph 29(c)(x) of the Act.

### **Reasonable Alternatives**

[59] In *Canada (Attorney General) v. Laughland* (2003 FCA 129), the Federal Court of Appeal reaffirmed the principle that the Employment Insurance scheme is intended to protect those persons with no other reasonable choice but to leave their employment.

[60] After reviewing the circumstances surrounding the Appellant's leaving and after examining the totality of the evidence and the parties' arguments, the Tribunal finds that, having regard to all the circumstances, the Appellant has demonstrated that he had no alternative but to leave his employment. The evidence shows that the Appellant wanted to keep his job and made efforts to resolve the problems he encountered at work by meeting with his employer and emailing management, but that the employer made no attempt to remedy the situation. It was established that the work environment weighed heavily on the Appellant's health and he stated that it made him depressed. The Appellant has demonstrated that, having regard to the circumstances, he had no reasonable alternative to leaving his job quickly, even before finding other employment elsewhere. For him, leaving when he did was his only reasonable alternative.

[61] The Tribunal finds that the Appellant had just cause for leaving his employment with Axa Assistance Canada Inc., because he demonstrated that, having regard to all the circumstances, he had no reasonable alternative but to leave.

## **CONCLUSION**

[62] The appeal is allowed.

Yoan Marier  
Member, General Division – Employment Insurance Section

## APPENDIX

### 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 employment; and

(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.