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

[TRANSLATION]

Citation: *P. D. v. Canada Employment Insurance Commission,* 2017 SSTGDEI 72

Tribunal File Number: GE-16-3158

BETWEEN:

P. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Bernadette Syverin

HEARD ON: March 14, 2017

DATE OF DECISION: May 25, 2017

Canada

REASONS AND DECISION

APPEARANCES

The Appellant, P. D., did not attend the hearing, but was represented by Cathy Coulombe. The Canada Employment Insurance Commission (the Commission) was not present.

INTRODUCTION

[1] The Appellant made an initial claim for regular employment insurance benefits on January 12, 2016. A benefit period effective January 10, 2016, was established. During the benefit period, the Appellant voluntarily left another employment. According to a record of employment issued by Usinage CNC Production Inc. (the Employer), on February 16, 2016, the Appellant had worked from February 2, 2016, to February 5, 2016, and the reason for separation was a voluntary leaving.

[2] On June 8, 2016, the Commission determined that it could not pay benefits to the Appellant starting on January 31, 2016, because he had voluntarily left his employment with the Employer on February 5, 2016, without just cause. The Commission also found that the Appellant had knowingly made a false representation in a statement to the Commission, by failing to report that he had voluntarily left his employment. A penalty was also imposed under section 38 of the *Employment Insurance Act* (the Act) for making false or misleading statements, and a notice of violation was issued under subsection 7.1(4) of the Act.

[3] The disqualification for the unreported voluntary leaving resulted in an overpayment of $8,081, a penalty of $1,533 and $54 representing compensation other than that declared. A notice of debt in the amount of $9,668 was issued on June 11, 2016.

[4] The Appellant filed a request for reconsideration of the decision rendered on June 8, 2016. In a reconsideration decision rendered on July 26, 2016, the Commission decided in favour of the Appellant with respect to the penalty and violation. However, the finding that the appellant had voluntarily left his employment without just cause was upheld.

[5] The Appellant appealed to the Tribunal on August 18, 2016.

[6] On August 19, 2016, the Tribunal informed the Appellant that his notice of appeal was incomplete, because some of the mandatory information was missing. The Tribunal stated that, to complete the notice of appeal, the Appellant had to provide a copy of the reconsideration decision that was the subject of the appeal and a signed statement certifying that the information provided was true. The Tribunal informed the Appellant that, if it received all the information missing from the notice of appeal by September 22, 2016, it would deem the complete notice of appeal as having been received on August 18, 2016.

[7] On September 14, 2016, the Appellant provided the information requested by the Tribunal.

[8] This appeal was heard by teleconference for the following reasons:

(a) This 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

[9] The Tribunal must determine whether the appeal from the Commission’s decision with respect to the disqualification of the Appellant, because he had not demonstrated that he had just cause to leave his employment, is justified under sections 29 and 30 of the Act.

EVIDENCE

[10] According to a record of employment issued on February 16, 2016, the Appellant worked for the Employer from February 1, 2016, to February 5, 2016, and the reason for separation was a voluntary leaving. (GD3-11).

[11] According to an information form completed by the Employer, the Appellant voluntarily left his employment because he had found another job. (GD3-12-GD3-13).

[12] In statements to the Commission, the Appellant maintains that he left his employment for the following reasons (GD3-14-GD3-15):

(a) There was an agreement between the Appellant and the Employer that he would try the job for one week and would leave the job if he did not like it;

(b) The working conditions were dangerous, because the equipment used to do the work was old and unsafe. For example, the machine used in the Appellant's duties rotated at speeds of 6,000 to 7,000 RPM with steel blocks, and sometimes a block would slip off the collets. The Appellant stated that an incident had occurred in which a steel block slipped off and the Appellant ended up against the wall. The Employer had provided safety equipment, and the Appellant had discussed his safety concerns with the person who was showing him how to do the work, but the person apparently told him that it was normal with that machine. The Appellant argues that this way of doing things is surely not approved under occupational safety standards. The Appellant did not discuss his concerns with the Employer, and the workplace was not unionized;

(c) The Appellant also voluntarily left his employment because the Employer failed to keep its promise regarding the wage, which had been agreed upon at the time of hiring. The Appellant was hired to work evenings but had to attend mandatory training during the day. It had been agreed that he would be paid at an hourly rate of $19 ($18 + $1 evening premium); however, during the daytime training, he was paid $17 instead of $18. The Appellant left his employment without discussing his pay with the Employer.

[13] The Employer stated the following to the Commission: (GD3-18 to GD3-19)

(a) There was no formal agreement between the Employer and the Appellant that the Appellant would try the job. However, there is an unwritten rule that, when an employee starts, the intention is to try it and see if it works out. The Appellant was the ideal candidate for the position; he had all the potential and skills to do the work.

(b) The Appellant was supposed to begin his employment on January 25, 2016, but he did not show up. When the Employer contacted him, he said that he was sick; it was agreed that he would start on Tuesday, but he did not show up; finally, the Employer told him to

stay home for the rest of the week. He ultimately started working on February 1, 2016, but he was absent on February 3, 2016, stating that he had to drive his mother to the hospital in Trois-Rivières. He called the Employer on February 8, 2016, to say that he was leaving his employment because he had found another job.

(c) According to the Employer, the equipment used to do the work is compliant and approved by the Quebec Commission de la santé et la sécurité du travail (CSST). The company has never had an accident. The Employer explained that the lathe is in a secure space and that the operator is outside. The lathe will not start if the door is not closed by the operator. As well, the operator wears safety equipment such as boots and glasses. The Appellant never informed the Employer about his safety concerns.

(d) It had been agreed that the wage was $17 per hour plus the premium and that there would be a reassessment after three months. Three weeks of training would have been sufficient.

[14] On June 8, 2016, the Commission determined that it could not pay benefits to the Appellant starting on January 31, 2016, since he had voluntarily left his employment with the Employer on February 5, 2016, without just cause. The Commission also found that the Appellant had knowingly made a false representation in a statement to the Commission, by failing to report that he had left his employment voluntarily. A penalty was also imposed under section 38 of the Act for making false or misleading statements, and a notice of violation was issued under subsection 7.1(4) of the Act.

[15] On June 23, 2016, the Appellant requested a reconsideration of the decision rendered on June 8, 2016. He stated that he would not have accepted the position had he known in advance that the wage was $17 per hour. He said that it was when he received his pay statement that he noticed that his hourly rate was $17. He further stated that his wage at his second last employer, Mailhot Industries Inc., was $23.15. Under the employment insurance criteria, he was required to accept any employment that would pay him $18.52 per hour. The wage that the Employer was offering him was 20% less than his previous wage. As a result, he left his employment because of a significant change in terms and conditions of pay. He included with his request for

reconsideration his pay statements from his former employers, Usinage CNC Productions Inc. and Mailhot Industries Inc. (GD3-24-GD3-28)

[16] On July 26, 2016, the Appellant told the Commission that he decided to leave his employment on the weekend following his first week of work. He stated that the job did not pay enough and he had bills to pay, because he had to live. He also stated that he had not quit his job to stay at home, but rather to try to get a decent wage. (GD3-29)

Evidence presented at the hearing by the Appellant's representative

[17] The appellant was not present at the hearing; however, his representative, Cathy Coulombe, stated the following:

(a) According to the verbal agreement between the Employer and the Appellant, the wage was $18 per hour plus a $1 premium for evening work, for a total of $19 per hour. The wage agreed upon for the training was $18 per hour. The Appellant left his employment because he realized that his pay statement showed a wage of $17 per hour when it had been agreed that he would be paid $18 per hour during the training.

(b) Although the Appellant worked from February 1 to 5, 2016, and the pay period ended on February 13, 2016, and the Appellant was paid on February 18, 2016, that is, after his leaving, it is quite possible that the Appellant learned before his leaving that his wage would be $17 and not $18, as agreed. The Appellant left his employment without seeking clarification on his pay, because there was no one else in the company, such as a union or a collective agreement, to whom he could raise his concerns.

(c) Moreover, before becoming an employment insurance claimant, in his previous employment, the Appellant was earning $23.15 and, for the class of claimants to which he belonged, he was required to accept a job paying a wage of $18.52 or more. The Employer was paying him $17, so he had just cause to leave his employment voluntarily, because the employment was not suitable employment within the meaning of the Act.

(d) In performing his duties, the Appellant had to use a holder, which is a tool consisting of a cylindrical base with a tip at the end for machining the inside of a workpiece. The holder was defective, because it was loose and vibrated too quickly. The Employer repaired the holder in a makeshift manner, by installing a collet purchased in a hardware store and installing a block on each side. The Appellant was afraid of being injured. The Appellant repeatedly expressed his concerns to the person who had trained him, but he did not direct his concerns to anyone else in the company, since he considered his trainer to be his supervisor.

(e) The Appellant left his job without telling the Employer that the working conditions were dangerous, because he was in training and could see that it was not going to work out, and he therefore preferred to leave his employment by saying that he had found another job. Ms. Coulombe could not specify the number of times that the Appellant had used the holder before he determined that it constituted a danger to safety, but the holder was the tool used to do the work.

PARTIES' ARGUMENTS

[18] The Appellant argues that he had just cause to voluntarily leave his employment, because there was a significant change in the terms and conditions of pay, the working conditions constituted a danger to safety, and the employment was not suitable. He believes that he had just cause to voluntarily leave his employment under section 29(c) of the Act.

[19] The Commission argues that the Employer's pay period end date (GD3-28) was February 13, 2016, and that the date payable was February 18, 2016. Therefore, contrary to the Appellant's claims, the Appellant could not have known before leaving his employment on February 8, 2016, that the hourly rate negotiated at the time of hiring had not been respected.

[20] The Commission maintains that the Appellant cannot justify his voluntary leaving based on a significant change in the terms and conditions of pay, since the wage agreed upon was the wage that was paid. Moreover, the Appellant's argument that the employment was not suitable cannot be accepted, because the Appellant accepted the employment knowingly.

[21] The Commission further argues that the Appellant did not demonstrate that his situation was intolerable, because he did not discuss with the Employer, before he voluntarily left his employment, his concerns about the working conditions that constituted a danger to safety.

[22] The Commission maintains that the Appellant did not have just cause to leave his employment on February 8, 2016, because he failed to exhaust all reasonable alternatives before leaving his employment. Based on the evidence, a reasonable alternative would have been to discuss his situation with the Employer or to attempt to secure another job better suited to him before leaving the position. Consequently, the Appellant failed to demonstrate that he had just cause, within the meaning of the Act, to leave his employment.

ANALYSIS

[23] The relevant statutory provisions are appended to this decision.

[24] The purpose of the Act is to compensate persons whose employment has terminated involuntarily and who are without work (*Gagnon* [1988] SCR 29). Thus, claimants who have lost their employment voluntarily are not entitled to benefits unless they demonstrate that they had just cause, under sections 29 and 30 of the Act.

[25] The onus is first on the Commission to show that the Appellant left voluntarily and then on the Appellant to demonstrate just cause for the voluntarily leaving (*Green* 2012 FCA 313; *White* 2011 FCA 190; *Patel* 2010 FCA 95).

[26] In this case, the Appellant reported having voluntarily left his employment in statements to the Commission and in the statements of his representative at the hearing. This is also corroborated by the record of employment issued by the Employer, and the Employer told the Commission that the Appellant voluntarily left his employment.

[27] The Tribunal finds that the Appellant voluntarily left his employment. Therefore, the Appellant must show that he had no reasonable alternative but to leave his employment.

[28] The test for determining whether a claimant had just cause for leaving an employment under section 29 of the Act is whether, having regard to all the circumstances and on a balance of

probabilities, the claimant had no reasonable alternative to leaving the employment (*White* 2011 FCA 190; *Macleod* 2010 FCA 301; *Imran* 2008 FCA 17).

[29] In this case, the Appellant outlined three factors that contributed to his decision to voluntarily leave his employment. Specifically,

(a) There was a significant change in the terms and conditions of pay; the employer failed to keep its promise regarding the wage;

(b) The employment was not suitable employment; and

(c) The working conditions constituted a danger to safety.

[30] The Tribunal will examine each of the factors above to determine whether, having regard to all the circumstances, the Appellant had no reasonable alternative but to voluntarily leave his employment.

(a) There was a significant change in the terms and conditions of pay; the employer failed to keep its promise regarding the wage

[31] The Appellant's representative basically states that the Appellant had just cause to leave his employment, because there was a significant change in the terms and conditions of pay and because his situation matched the circumstances set out in subparagraph 29(c)(vii) of the Act, which states specifically that "(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: . . . (vii) significant modification of terms and conditions respecting wages or salary . . . ."

[32] The Tribunal notes that paragraph 29(c) of the Act is neither restrictive nor exhaustive, that subparagraphs (i) to (xiv) list circumstances to be considered, and that a claimant does not necessarily need to meet one of those criteria for there to be "just cause" (*Campeau* 2006 FCA 376, *Lessard* 2002 FCA 469).

[33] The Tribunal finds that the facts in the file are inconsistent with the argument that a "significant change in the terms and conditions of pay" led the Appellant to voluntarily leave his employment. For example, the uncontested evidence shows that the Appellant worked for four days and voluntarily left his employment during his training period. The Appellant also alleged that his voluntary leaving was motivated by the Employer's failure to keep its promise regarding the wage, which was negotiated at the time of hiring.

[34] Given the above, based on the statements made by the Appellant's representative at the hearing and on earlier statements by the Appellant, the Tribunal finds that the Appellant appears to have left his employment because, according to him, the Employer failed to keep its promise regarding the wage, which was discussed at the time of hiring. The Tribunal will examine this argument to determine whether the promise regarding the wage, which was discussed at the time of hiring, was broken and whether, having regard to all the circumstances and on a balance of probabilities, the Appellant had no reasonable alternative but to voluntarily leave his employment.

[35] In his application for benefits and in his dealings with the Commission, the Appellant stated that he had entered into a verbal agreement with the Employer to work at an hourly rate of $18 plus a $1 premium for the evening shift, for a total of $19. Before starting work at an hourly rate of $19, the Appellant was required to take training during the day at an hourly rate of $18. The Appellant took the training starting on February 1, 2016, and the record of employment shows that the separation occurred on February 5, 2016.

[36] The Appellant justifies his voluntary leaving by stating that he realized that, for the training period, he was being paid at an hourly rate of $17, when he should have been paid at the rate of $18. The Employer argued that the wage agreed upon was $17 plus the premium and that there would be a reassessment after three months. According to the Employer, the wage agreed upon for the training period was $17 per hour.

[37] According to the uncontested evidence provided by the Employer, the Appellant contacted the Employer by telephone on February 8, 2016, to inform the Employer that he was voluntarily leaving his employment, because he had found another job. The Appellant stated that he quit his job because "on payday, I had $17 per hour on my pay stub (GD325)." This statement

is corroborated by the pay statement put in evidence by the Appellant, which indicates that the Appellant was paid at an hourly rate of $17 (GD3-28). The pay statement also shows that the pay period ended on February 13, 2016, and that the wage was paid on February 18, 2016.

[38] The Commission argued that the Appellant voluntarily left his employment on February 8, 2016. Therefore, the voluntary leaving occurred before the pay period ended, on February 13, 2016, and well before the first pay was issued, on February 18, 2016. Thus, the Appellant could not have known "[translation] on payday" (February 18, 2016) that his wage was $17, because he had already left his employment when the wage was paid.

[39] At the hearing, the Appellant's representative stated that it was quite possible that the Appellant learned before his leaving that his wage would be $17 and not $18, as agreed. However, the Tribunal notes that no explanation was provided on the way in which the Appellant might have learned before voluntarily leaving his employment that the wage paid would not be the wage agreed upon at the time of hiring.

[40] Given the above, the Tribunal finds that there is no evidence to support the Appellant's argument that he was informed before he voluntarily left his employment that his wage would not be the wage agreed upon. The Tribunal finds that the Employer's version, that the wage agreed upon was $17 per hour plus the evening premium with a possible review after three months, is far more probable and plausible.

[41] The evidence in the file shows that the appellant voluntarily left his employment because, according to him, his employment was insufficiently remunerative. Indeed, on July 26, 2016, the Appellant told the Commission that, on the weekend following his week of work, he decided to leave his employment voluntarily because he had bills to pay and he had to live. The Appellant also argued to the Commission that he quit his job not to stay at home, but rather to try to make a decent wage.

[42] In *Langlois,* the Court stated:

> *While it is legitimate for a worker to want to improve his life by changing employers or the nature of his work, he cannot expect those who contribute to the employment insurance fund to bear the cost of that legitimate desire. This applies equally to those*

who decide to go back to school to further their education or start a business and to those who simply wish to earn more money.

[43] In *White* (2011 A-381-10), the Court made the following reminder: ". . . The jurisprudence of this Court imposes an obligation on claimants, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job."

[44] In this case, the evidence shows that the Appellant did not discuss his concerns regarding his wage with the Employer before deciding to leave his employment voluntarily. Indeed, the uncontested evidence shows that the Appellant notified the Employer that he was leaving his employment for another job. Moreover, at the hearing, the Appellant's representative also confirmed that the Appellant voluntarily left his employment without seeking clarification on his pay because, apart from the Employer, there was no one else in the company, such as a union or a collective agreement, to which he could raise his concerns.

[45] In this case, the Tribunal is not satisfied, based on the documentary evidence in the file and the arguments presented, that the Appellant had no alternative but to voluntarily leave his employment. The Tribunal agrees with the Commission that the Appellant could have discussed his wage with the Employer and could have tried to find alternate employment before voluntarily leaving his employment.

(b) The employment was not suitable employment

[46] The Appellant was receiving employment insurance benefits when he voluntarily left his employment with the Employer. Therefore, based on the criteria for suitable employment set out in section 9.004 of the *Employment Insurance Regulations* (the Regulations), the Appellant argued that his employment with the Employer was not suitable employment.

[47] The Appellant argues that, according to the earnings scale for suitable employment set out in section 9.004 of the Regulations, the earnings offered to him by the Employer should have been 80% or more of the earnings from his previous employment with Mailhot Industries, where the Appellant had been earning $23.15 per hour. The Appellant therefore considers that he was required to accept any employment that would pay at least $18.52 ($23.15 × 80%) per hour. When he accepted the employment with the Employer, the Appellant was expecting to earn a wage of $19 per hour. Having learned that his wage from the Employer would be $17 per hour, the Appellant maintained that he had just cause to voluntarily leave his employment with the Employer, because the employment was not suitable employment within the meaning of the Act.

[48] According to the Appellant's argument, the suitability of an employment should be considered just cause to leave the employment within the meaning of section 30 of the Act. The provisions of the Act relating to suitable employment are found in section 27 of the Act, which specifically states the following:

> **27 (1)** A claimant is disqualified from receiving benefits under this Part if, without good cause since the interruption of earnings giving rise to the claim, the claimant
>
> **(a)** has not applied for a suitable employment that is vacant after becoming aware that it is vacant or becoming vacant, or has failed to accept the employment after it has been offered to the claimant;
>
> **(b)** has not taken advantage of an opportunity for suitable employment;
>
> . . .

[49] Paragraph 27(1)(b) of the Act states that a claimant is disqualified from receiving benefits if, without good cause since the interruption of earnings giving rise to the claim, the claimant has not taken advantage of an opportunity for suitable employment. In this case, the reconsideration decision rendered on July 26, 2016, which is the subject of this appeal, concerns a disqualification resulting from a voluntarily leaving under section 30 of the Act and not within the meaning of section 27 of the Act. The issue is whether, having regard to all the circumstances, the Appellant had no alternative but to voluntarily leave his employment.

[50] In *Campeau v. Canada (AG),* 2006 FCA 376, the Federal Court of Appeal stated the following: ". . . Moreover, 'just cause' within the meaning of section 30 is not necessarily synonymous with 'reason' or 'motive' . . . Accordingly, good cause for failing to accept a suitable employment under section 27 is not necessarily just cause for leaving one under section 30."

[51] Therefore, the Tribunal finds that section 27 does not apply since, according to the circumstances set out in that section, the Appellant has neither failed to accept suitable employment nor failed to take advantage of an opportunity for suitable employment. In this case, the Appellant had accepted this full-time employment and could have kept it, but he made the decision to voluntarily leave the employment.

[52] In *Tanguay,* the Court stated the following: "The fact that the claimant considers the job to be insufficiently remunerative cannot as such justify his quitting the job and compel others to support him through unemployment insurance benefits."

[53] Applying the Court's teachings to this case, the Tribunal finds that the Appellant had reasonable alternatives to voluntarily leaving his employment. The Appellant had been hired on a full-time basis, and he could very well have kept his job and discussed his concerns with the Employer, while he looked for a new job that better met his expectations.

(c) The working conditions constituted a danger to safety

[54] The Appellant argued that he left his employment because the working conditions constituted a danger to safety. This reason is provided for in subparagraph 29(c)(iv) of the Act, which states that just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances, including working conditions that constitute a danger to health or safety.

[55] The Tribunal finds that the Appellant has not shown that the working conditions constituted a danger to health or safety, as set out in subparagraph 29(c)(iv) of the Act, for the following reasons.

[56] The Appellant told the Commission that the working conditions constituted a danger to safety, because the equipment used to do the work was old and unsafe. For example, the machine rotated at speeds of 6,000 to 7,000 RPM with blocks of steel, and sometimes a block would slip off the collets. At the hearing, the Appellant's representative argued that the tool used to do the work, called a "holder," was defective, because it was loose and would vibrate too quickly. However, the Tribunal notes that there is no evidence in the file to describe how fast the machine or tool should normally rotate.

[57] The Tribunal notes that, according to the Appellant, the machine or tool used to do the work was old and defective. However, did the machine or tool constitute a danger to the Appellant's safety?

[58] The Appellant stated that there was an incident in which a steel block had slipped off and the Appellant ended up against the wall, and the person who was training him apparently told him that it was normal with that type of machine. Was it normal? The Appellant adduced no evidence to show otherwise.

[59] During the hearing, the Appellant's representative stated that the Appellant was afraid of being injured. However, the Tribunal notes that there is no evidence in the file that describes what was not working with the machine and that would justify the fear of potential injury.

[60] While dangerous working conditions may be just cause for leaving an employment, the case law clearly establishes that the claimant must first seek ways to remedy the situation (*Canada v. Hernandez,* 2007 FCA 320).

[61] The Appellant's representative could not specify the number of times that the Appellant was required to use the holder during his employment, which lasted only four days, but the Appellant had repeatedly raised his concerns, in vain, with the person who was training him. The Appellant did not direct his concerns to anyone else in the company, because the Appellant considered his trainer to be his supervisor.

[62] In this case, the Appellant noticed dangerous working conditions and stated that, during his training, there was an incident in which a steel block had slipped off and the Appellant ended up against the wall; however, the Employer was not made aware of the incident. The Appellant had discussed his safety concerns with the person who was showing him how to do the work, but the person apparently told him that it was normal with that machine. The Appellant preferred to voluntarily leave his employment rather than raise his concerns with someone else in the company. The Appellant's representative confirmed that the Appellant left his job without telling the Employer that the working conditions were dangerous, because he was in training and could see that it was not going to work out, and he therefore preferred to leave his employment by saying that he had found another job.

[63] Based on all the above, the Tribunal finds that the Appellant's decision to voluntarily leave his employment was not the only reasonable alternative. In this case, if the working conditions were truly dangerous, the onus was on the Appellant to discuss it with another management representative or perhaps with relevant government authorities; otherwise, the Appellant should have ensured that he had another job before leaving. Since he has not done any of these steps, the Appellant's decision to voluntarily leave his employment cannot be considered the only reasonable alternative.

CONCLUSION

[64] According to the case law, the Act imposes on the claimant "the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur" (*Tanguay* A-1458- 84). Considering the specific circumstances brought to its attention in this case, the Tribunal finds that the Appellant did not exhaust all reasonable alternatives so as not to "deliberately cause" the loss of his employment.

[65] The Appellant stated that he left his employment because the Employer failed to keep its promise regarding the wage and because the working conditions constituted a danger to safety. However, the Appellant left his employment without discussing the working conditions with the Employer and did not explore with the Employer the possibility of changing the nature or working conditions of his employment to address his safety concerns. The Appellant's argument that the employment was not suitable also cannot be accepted, because the Appellant did not fail

to accept suitable employment or fail to take advantage of an opportunity for suitable employment. There is no material evidence in the file from the Appellant that would allow me to conclude that his voluntarily leaving was the only reasonable alternative.

[66] The appeal is dismissed.

Bernadette Syverin
Member, General Division—Employment Insurance Section

APPENDIX

THE LAW

Employment Insurance Act

Disqualification and Disentitlement

Disqualification—general

27 (1) A claimant is disqualified from receiving benefits under this Part if, without good cause since the interruption of earnings giving rise to the claim, the claimant

(a) has not applied for a suitable employment that is vacant after becoming aware that it is vacant or becoming vacant, or has failed to accept the employment after it has been offered to the claimant;

(b) has not taken advantage of an opportunity for suitable employment;

(c) has not carried out a written direction given to the claimant by the Commission with a view to assisting the claimant to find suitable employment, if the direction was reasonable having regard both to the claimant's circumstances and to the usual means of obtaining that employment; or

(d) has not attended an interview that the Commission has directed the claimant to attend to enable the Commission or another appropriate agency

(i) to provide information and instruction to help the claimant find employment, or

(ii) to identify whether the claimant might be assisted by job training or other employment assistance.

Termination of referral

(1.1) A claimant is disqualified from receiving benefits under this Part if

(a) the Commission or an authority that the Commission designates has, with the agreement of the claimant, referred the claimant to a course or program of instruction or training or to any other employment activity for which assistance has been provided under employment benefits; and

(b) the Commission has terminated the referral because

(i) without good cause, the claimant has not attended or participated in the course, program or employment activity and, in the opinion of the Commission, it is unlikely that the claimant will successfully complete the course, program or employment activity,

(ii) without good cause, the claimant has withdrawn from the course, program or employment activity, or

(iii) the organization providing the course, program or employment activity has expelled the claimant.

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.

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 is 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.