



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. S. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 74

Tribunal File Number: GE-16-626

BETWEEN:

**J. S.**

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: Eleni Palantzas

HEARD ON: May 9, 2017

DATE OF DECISION: May 31, 2017

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

The Claimant, Mr. J. S. and his representative, Mr. Bernie Hughes, participated in the teleconference hearing from separate locations.

### **INTRODUCTION**

[1] The Claimant voluntarily left his employment on August 17, 2015 because the employer's illegal practices were against his morals and integrity and after the final incident; he had no alternative but to leave.

[2] On October 9, 2015, the Canada Employment Insurance Commission (Commission) denied the Claimant's application for employment insurance regular benefits. It determined that the Claimant voluntarily left his employment without just because leaving was not his only reasonable alternative.

[3] The Claimant requested that the Commission reconsider its decision however; on January 21, 2016, the Commission maintained its decision.

[4] On February 18, 2016, the Claimant appealed the Commission's decision to the General Division of the Social Security Tribunal (Tribunal).

[5] The hearing was initially scheduled for September 7, 2016 however the Claimant requested that it be adjourned (GD6 and GD7). The hearing of January 10, 2017 had to be adjourned a second time due to exceptional circumstances where the Claimant's representative could not attend (GD8). After several attempts made by the Tribunal to obtain a suitable hearing date from the Claimant and his representative, and then waiting an additional month, on March 9, 2017 the Tribunal set the hearing date for May 9, 2017 (GD9).

[6] The present hearing was held by teleconference given (a) the complexity of the issues under appeal (b) the fact that the credibility is not anticipated to be a prevailing issue and (c) the 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**

[7] The Member must decide whether the Claimant demonstrated just cause for leaving his employment on August 17, 2015 and whether he should be disqualified from receiving any benefits pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

## **EVIDENCE**

[8] The Claimant applied for employment insurance regular benefits after having left his employment as a foreman and project manager of 18 years with a custom home construction company. He initially indicated that he left because of discrimination, harassment and personal conflict with the owner of the company (R.). He stated to the Commission that the employer was proceeding with the construction and/or moving forward with projects without getting proper permits and not advising the homeowners and the Claimant had to deal with the repercussions.

[9] The Claimant described an incident after he returned from Christmas break where he discovered workers building a shed that did not have proper permits or approvals. When he brought it to the employer's attention, he was reassured that the approvals were obtained however; when he followed-up himself, official applications and approval were still required which put the homeowners at risk. He indicated that he was expected to rectify the situation by compromising and manipulating the process in order to keep the project moving forward. The municipality was not happy and the employer was required to implement a remediation plan. The employer disregarded the requirement and kept landscaping and building. The Claimant was required to deal with, and lie, to the homeowners who had no idea they did not have approval. This issue continued for months and was still unresolved and the homeowners were still not aware that there were no permits for the shed.

[10] The final incident occurred upon his return from vacation on August 17, 2015 at another site where he advised the homeowners at a meeting that the change in plans explained by the employer would cost 3 times more as per the subcontractor. The employer approached him angrily after the meeting about what he had said and told him that he had a lot of issues with the Claimant. The employer (R.) swore at him telling him that they have to have a meeting and that

he should clean out his truck. The Claimant stated to the Commission that the employer called him to discuss their issues but the Claimant refused and advised the employer that he quit.

[11] The Claimant indicated that he did not plan to quit his job. Over the eight months prior to the final incident however, he has had to lie to clients and compromise his own honesty, integrity and moral standards. He had spoken to the employer and feels that he made a reasonable effort to accommodate their differences with respect to the employer's business practices. The employer however, was unwilling to change and blamed him, called him names and swore at him making him feel incompetent and fearful of making a mistake. He did not consult with external agencies because reporting the employer would have made matters much worse for the homeowners, employer and him (GD3-3 to GD3-17, GD3-20 and GD3-24).

[12] The employer confirmed on the Record of Employment (ROE) and to the Commission that the Claimant quit his employment on August 17, 2015. The employer advised the Commission that regarding the issue with the shed, an engineer had approved it but the municipality had not. The employer stated that they had to do some negotiating to fix the issue and that they did not "... have to upset the homeowner over it". It was the Claimant's responsibility as a project manager to deal with contractors and that he can't help it if the Claimant was tired of being the "go-between" as that was the nature of his job. The employer admitted to swearing at the Claimant (GD3-18 and GD3-22).

[13] On October 9, 2015, the Commission advised the Claimant of its decision to deny him benefits. The Commission did not find that the employment situation was so intolerable that he could not consider some reasonable alternatives including speaking and attempting to resolve the issues with his employer, securing alternative employment and/or report the employer to proper authorities prior to leaving. The Commission determined that the Claimant voluntarily left his employment without just because leaving was not his only reasonable alternative (GD3-24 to GD3-26).

[14] The Claimant requested that the Commission reconsider its decision. The Commission spoke to the Claimant's representative twice but was unable to speak with the Claimant regarding his request (GD3-32 and GD3-34).

[15] The Commission spoke with the employer who advised that the Claimant did not really provide a reason for quitting. Regarding the shed incident, the employer advised that an engineer had determined how far it could be built from the lake and obtaining permits along the way was nothing new and if changes were required they'd comply. Regarding the final incident with the cost of the glass, he would have absorbed the additional cost and the customer did not have to be involved. He stated that he and his wife are the owners and they make the decisions. He admitted to being very angry with the Claimant for talking about this in front of the customer and that he swore at the Claimant telling him that things had to change. He called the Claimant later that evening but the Claimant indicated that there was nothing to discuss and dropped off the keys to the company truck (GD3-33).

[16] On February 18, 2016, the Commission maintained its decision.

#### Testimony at the Hearing

[17] The Claimant confirmed his job duties as a project manager were to ensure the projects ran smoothly and to obtain approvals from municipalities, engineers, etc.

[18] The Claimant provided further details regarding the final events of August 17, 2015. As he previously indicated in his statements to the Commission, he was simply being honest with the homeowners in the meeting. When they finished, R. was angry stating "what the F... are you doing?" "what the F ... are you saying?" "clean the F... truck ..." The Claimant testified that he walked away removing himself from the situation.

[19] The Claimant added that he then went across the street to see the trades since he had just come back from vacation. He was told that electrical wiring and underground plumbing, etc. was being installed in the garage and that they were going to be covering it up quickly so that it was not discovered. The Claimant explained that the garage was being built in a 'red zone' - there was a cliff that may come down therefore normally one cannot build there. The Claimant stated that he was the one that went to the municipality and worked hard to get approval for a garage to be built there however; they were specifically told they cannot build 'living quarters' there as it was very dangerous. So while he was away on vacation, the trades were told to do it anyway and they were trying to cover it up.

[20] The Claimant testified that R. was also told by the municipality that since the house (which was across the street from the garage) was also in the 'red zone' and the family would be living in the house, he had to build a retaining wall of a certain height around the house itself. The Claimant stated that R. said "we're not going to F... do it" and again, the homeowners did not know about it. The Claimant stated that this, plus the incident regarding the meeting was enough and he quit. The Claimant stated that the situation was dangerous and "from an ethical stand point that was the final straw for me".

[21] Regarding the ongoing incident with the shed at another site, the Claimant testified that again, while he was away for the holidays (December 2014), R. proceeded with the building of the shed and had 60% of it built when he returned. R. told him the engineer approved it but when he followed up with the engineer, he was told that approval was not given. When he advised R. of this, he got very angry and was swearing insisting that the engineer come back. The Claimant testified that the municipality did not approve the shed being built so close to the lake and it required that R. follow a remediation plan. The Claimant testified that he was told by R. to continue with the planting with no approval because that's what R. wanted. The municipality was still denying approval and he was dealing with it up until he left.

[22] The Claimant stated that the employer went ahead and built the shed at one site and then was putting living quarters in the garage at the other 'red zone' site despite knowing there were no approvals and that it was dangerous. The Claimant testified that it was his name on all the paperwork. The employer was proceeding illegally both times while he was away on vacation and without his knowledge; only for him to have to deal with any repercussions when he returned. The Claimant confirmed that he told R. "I'm done" and quit on August 17, 2015. He stated that he couldn't put his name on papers anymore because he questioned "what if something happens?" "Am I liable?" He stated that building the living quarters in the garage in a 'red zone' was a "human safety issue" that went beyond past practices and he just couldn't do it anymore.

[23] The Claimant confirmed that he did not want to speak to the employer on the final day because he felt that all he wanted to do is scold him. The Claimant stated that speaking with the employer about the incident would have been futile because once he had made up his mind there was no negotiating. The Claimant stated that the employer got mad at the meeting

because he was simply being honest about the cost of the glass, so he questioned what would have happened if he told the homeowners about the foundation/retaining wall not being built high enough.

## **SUBMISSIONS**

[24] The Claimant submitted that he had to quit his employment because the employer's business practices were illegal and potentially dangerous. The employer required that he lie to the municipality and be dishonest with homeowners by moving forward with projects that were not approved. The employer's practices were against his morals and integrity and after the final incident; he had no alternative but to leave.

[25] The Claimant submitted that his prior attempts to speak with the employer proved to be futile. He did not plan to quit on the day that he came back from vacation so he did not look for other work or report the employer to authorities. The Claimant submitted that staying and reporting the employer to authorities prior to leaving, would have made matters much worse for the homeowners, employer and him. Reporting the employer on the day he quit would have resulted in the same outcome: he'd be dismissed and he'd be unemployed.

[26] The Commission submitted that the Claimant failed to prove that he left his employment with just cause within the meaning of the EI Act. The Claimant did not show that he was forced to lie to a customer or that the employer acted in an immoral, inappropriate or unethical manner in the final meeting/incident. Although the employer used foul language and this was upsetting to the Claimant, it was not so intolerable as to support the Claimant quitting.

[27] The Commission submitted that the Claimant also failed to exhaust all reasonable alternatives prior to quitting. The Claimant could have secured other employment before leaving, made an effort to speak with his employer to resolve the issue(s) and/or reported the employer to the applicable governing body if he felt the employer was behaving in an illegal or immoral manner.

## **ANALYSIS**

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

[29] Sections 29 and 30 of the EI Act stipulate that a claimant who voluntarily leaves his/her employment is disqualified from receiving any benefits unless he/she can establish 'just cause' for leaving. It's a well-established principle that 'just cause' exists where, having regard to all the circumstances, the Claimant was left with no reasonable alternative to leaving pursuant to subsection 29(c) of the EI Act (Patel A-274-09, Bell A-450-95, Landry A-1210-92, Astronomo A-141-97, Tanguay A-1458-84).

[30] The Member first considered that it is initially incumbent of the Commission to show that the Claimant left his employment voluntarily. In this case, it is undisputed evidence that the Claimant voluntarily left his employment on August 17, 2015.

[31] The onus of proof then shifts to the Claimant to show that he left his employment for just cause (White A-381-10, Patel A-274-09). In this case, the Member finds that the Claimant met that onus by showing that he had exhausted all reasonable alternatives when he left his employment. The Member finds therefore that, for the reasons to follow, the Claimant had just cause for leaving his employment on August 17, 2015 pursuant to paragraph 29(c) of the EI Act.

[32] The Commission submitted that the Claimant failed to show that he was forced to lie to the homeowners or that the employer acted in an immoral, inappropriate or unethical manner in the final meeting/incident. Further, the Commission found that the situation was not so intolerable that he had to leave without first exhausting some reasonable alternatives. The Member understands the Commission's position since the Claimant confirmed that his job was to ensure that the projects run smoothly and to obtain the requisite approvals. The Commission therefore accepted the employer's statements that being the "go-between" and negotiating with the authorities regarding compliance, is a normal for part of the Claimant's responsibilities. The Commission however, was unable to speak with the Claimant at the reconsideration level to obtain details of the final events on August 17, 2015 that led the Claimant to leave his job.

[33] At the hearing, the Claimant provided direct testimony that explained in more detail his prior statements on his application form (GD3-9 and GD3-11) and to the Commission (GD3-20). The Claimant testified that the employer's angry reaction after the meeting with the homeowners coupled with his discovery of yet another, this time dangerous, violation of the approved permits was the reason he left on August 17, 2015. The Claimant testified that



preparing for living quarters in the garage and by not building the retaining wall/foundation of the house as is legally required in a 'red zone' was a "human safety issue". The Claimant testified that the employer not only did not build the wall high enough on the house, he did not tell the homeowners. The Claimant stated that in both the case of the shed at the other site, and in this case, the employer moved forward without approval, or contrary to the approval, while he was away. The Claimant indicated that he has had to lie to clients and compromise his own honesty, integrity and moral standards. The Claimant submitted that the events of August 17, 2015 went beyond past practices; they were illegal and dangerous and he just couldn't stay anymore.

[34] The Member finds that the Claimant was able to show that he did not leave simply because he disagreed with the employer's practices nor because he was tired or dissatisfied with his job. The Member finds that although the events of December regarding the shed were a contributing factor to his decision (and were ongoing); he did not leave at that time. The Claimant left on August 17, 2015, when for the second time the employer implemented changes while he was on vacation that did not comply with the approved permits. The Member finds that the employer's practices were contrary to the law and the Claimant was expected to lie to the homeowners through omission. That is, he was expected to not tell the homeowners at either site, what they did not need to know according to the employer. For instance, the Claimant testified that he was told by the employer to tell the municipality regarding the shed (remediation plan) that "we're still working on it" while they were still not complying (they continued with the building and planting), and the homeowners were not told that they still did not have approval. The Member agrees with the Commission, that there is no evidence to show that, on his last day, the Claimant was expected to lie at the meeting with the homeowners regarding the increased cost of a glass/shower. The Member finds however, that on his last day the Claimant also discovered that the employer was illegally proceeding contrary to the approved permits in a 'red zone' without his or the homeowner's knowledge. The Member agrees with the Claimant, that the employer's actions were not only illegal but dangerous and the expectation he move forward with the project and/or that he not advise either the municipality or the homeowners is unethical.

[35] Given the Claimant's reasons for leaving, the Member also considered whether the Claimant had no reasonable alternative but to leave pursuant to paragraph 29(c)(xi) of the EI

Act because the employer's practices were contrary to law. The Commission submitted that the Claimant failed to exhaust all reasonable alternatives prior to quitting. It submitted that the Claimant could have remained employed until he secured other employment or he could have reported the employer to the appropriate governing agency or made an effort to speak with his employer to resolve the issues. The Member finds however, that given the circumstances, it is not reasonable to expect the Claimant to remain employed after discovering that the employer was proceeding illegally in a 'red zone' knowing that it was dangerous and ethically wrong. Although the Member understands that the employer would ultimately be the one responsible for his actions and business practices, the Claimant's concerns for his own potential liability are justified. Further, the Member finds that although there may not have been an immediate or imminent danger, it is not reasonable to expect the Claimant to remain working on the site(s) knowing of the improprieties while he considers other employment options and/or while he reports the employer to the authorities only to also be involved with the repercussions.

[36] For the same reasons, the Member finds that it is not reasonable to expect the Claimant to remain employed while he attempted to resolve the issues with his employer. Besides, the evidence also supports the Claimant's submission that the employer was unwilling to change and that another discussion with the employer would have been futile. The Claimant had indicated that he had spoken to the employer in the past but he was unwilling to change, blamed him, called him names and swore at him making him feel incompetent and fearful of making a mistake (GD3-11). Further, the Claimant provided specific examples from the preceding 8 months (shed, glass cost, garage living quarters, house foundation) to show that the employer was willing to proceed despite not having approval and that he expect the Claimant to do the same without advising the homeowners. For instance, even when the Claimant reported the construction of the shed to the proper authority (the engineer), the employer still did not comply and he instructed the Claimant to keep going and to tell them "we're still working on it". Further, the Claimant noted that the employer got very angry with him on his last day for being honest about costs at the meeting, and therefore questioned what would have happened if he told them, or the authorities, about the retaining wall not being in compliance. The Member finds it understandable therefore, that the Claimant would have left without attempting to resolve these issues with the employer.

[37] The Member's findings are supported by case law. CUB 51219 stands for the principle that an act contrary to law, as cited in paragraph 29(c)(xi) does not require a grievance or prosecution. All it requires is that the practice is contrary to law. As in this case, although it could be argued that the claimant had the reasonable alternative of staying in his or her employment, the Umpire found that a place that does not abide by the union contract or provincial laws is hardly a place where one would want to continue to work.

[38] Similarly, in CUB 37586, the Umpire found that claimants are not required to remain in employment which offends their personal ethical values. Further, given the circumstances, expecting that the claimant to perform a job which offended his sense of honesty, confronting the employer and refusing to perform his job duties were not reasonable alternatives.

[39] For all these reasons, the Member finds that, having regard to all the circumstances, the Claimant met the onus placed upon him to demonstrate that he had no reasonable alternative but to leave his employment on August 17, 2015 pursuant to paragraph 29(c) of the EI Act.

[40] The Member therefore finds that the Claimant had just cause for voluntarily leaving his employment and therefore should not be disqualified from any benefits pursuant to sections 29 and 30 of the EI Act.

## **CONCLUSION**

[41] The appeal is allowed.

Eleni Palantzas  
Member, General Division - Employment Insurance Section

## ANNEX

### THE LAW

#### Section 29 of the Employment Insurance Act states:

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.

**Section 30 of the Employment Insurance Act states:**

(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.