



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Z. W. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 195

Tribunal File Number: GE-16-3048

BETWEEN:

Z. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: March 30, 2017

DATE OF DECISION: August 30, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant attended the hearing of his appeal via Videoconference from Edmonton. He was assisted by an Interpreter provided by the Social Security Tribunal, Janet Zhu (Ms. Zhu), who provided translation services between English and Mandarin Chinese.

INTRODUCTION

[1] The Appellant made an initial application for regular employment insurance benefits (EI benefits) on February 16, 2016. The Respondent, the Canada Employment Insurance Commission (Commission), investigated the reason for his separation from employment and determined that the Appellant voluntarily left his employment with X on February 13, 2016 without just cause. On March 14, 2016, the Commission advised the Appellant that he was disqualified from receiving EI benefits because he voluntarily left his employment without just cause.

[2] On May 10, 2016, the Appellant requested the Commission reconsider its decision, stating he “never quit work” at X. The Commission maintained its decision and, on August 5, 2016, the Appellant appealed to the General Division of the Social Security Tribunal of Canada (Tribunal).

[3] The hearing was held by videoconference because of the fact that an interpreter would be present and because 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

[4] Whether an indefinite disqualification from EI benefits should be imposed upon the Appellant because he voluntarily left his employment at X on February 13, 2016 without just cause.

EVIDENCE

[5] The Appellant made an initial application for EI benefits on February 16, 2016 (GD3-4 to GD3-16). On his application, the Appellant stated that he worked at X from March 30, 2014 until February 13, 2016, and gave the reason for his separation from employment as “Dismissed” (GD3-7). The Appellant completed a Questionnaire: Fired (Dismissed) as part of his application (GD3-8 to GD3-9), in which the Appellant stated that he did not know why he had been dismissed. The Appellant described a prior instance of misconduct in January 2016 as follows:

“My co-worker ask me to clean his area. I ask why because this is not my duty. He said boss told him to work another place. I work both places, mine and his. I did that. Next day my boss said that I can’t ask why I have to do something. I just have to do it. But I said I must ask because it’s my right to know why I do extra work..after that I think he hate me.” (GD3-8)

[6] A Record of Employment (ROE) was issued by X on February 17, 2016 (GD3-17), which stated that the Appellant’s last day of work was February 13, 2016, and that he “Quit”.

[7] An Amended ROE was issued by X on March 4, 2016 (GD3-18), which maintained that the Appellant “Quit”, but was amended to report a \$915.00 separation payment to the Appellant identified as “Pay in lieu of notice”.

[8] On March 8, 2016, an agent of the Commission spoke with the employer about the Appellant’s separation from employment (see Supplementary Record of Claim at GD3-19), and documented the discussion as follows:

“The employer states that the client got dismissed because he was not following the directions. He was a houseman, and had a (*sic*) clean the common areas, outside and the pool area. As soon as he was done thoses (*sic*) areas, he had to double check with the front desk if he could entrer (*sic*) in the rooms to do some repairs. He kept on entering (*sic*) the rooms without asking the front desk if the rooms were occupied. He received only verbal warnings. Everytime his employer would warned (*sic*) him, he would answer “If you what me to do, I’ll go”. On the final event, the employer realized that the client entered a room without permission while the pool wasn’t clean yet. The client indicated her that he was going to do it late and if she wanted, he would leave. The employer accepted him because he wasn’t doing his duties as mentioned on his job description.”

[9] The employer provided the Commission with the following documents:

- a) The Job Description for Houseperson, as acknowledged and signed by the Appellant (going by "J. W.") (GD3-20 to GD3-21); and
- b) The House Attendant Log for the Appellant for various dates on which the Appellant's work was not done or incomplete between January 18, 2016 and February 13, 2016 (GD3-22 to GD3-28). The Log for February 13, 2016 – the Appellant's last day of work – includes a query about why the Appellant was in room 308 and a notation: "Please don't enter rooms that you are not supposed to."

[10] The agent made a number of attempts to contact the Appellant regarding the reason for his separation from employment (see Supplementary Record of Claim at GD3-29), but the Appellant never returned the agent's calls.

[11] By letter dated March 14, 2016 (GD3-30 to GD3-31), the Appellant was advised that he would not be paid EI benefits because he voluntarily left his employment with X. on February 13, 2016 without just cause within the meaning of the *Employment Insurance Act* (EI Act).

[12] The Appellant filed a Request for Reconsideration (GD3-32 to GD3-33), asking the Commission reconsider its decision and denying that he ever quit his job at X.

[13] On June 9, 2016, a different agent of the Commission spoke with the Appellant, who had the aid of a translator, regarding his request for reconsideration (see Supplementary Record of Claim at GD3-38). The agent read the employer's statement to the Appellant's and noted the Appellant's responding description of events as follows:

"The claimant stated on 12 Feb. 2016 his manager Z. L. went through the motel with him and rechecked together three rooms, he was asked to clean the beds in the rooms, between the mattress and headboard. His duty was to move the mattress and clean in between the space only. Rest of the cleaning was house-keeper's responsibility. Stated the manager did not tell him to do it at any particular time.

The claimant stated on his last day of work 13 Feb. 2016, He had many jobs to do, he worked for 1.5 hours in the morning doing his regular job. He cleaned the yard, windows, hallway and the door. Stated he doesn't remember if he cleaned the swimming pool or not as it is not that important. Stated he could have done that duty any time rest

of the morning. Stated then he decided to do the room before the house keeper came in to do rest of the cleaning.

Stated before he went into the room, he spoke to the housekeeper leader. Stated himself and the housekeeper leader went together into the room and he showed her the situation. Stated he doesn't know her name, she is immigrant lady from India. Then housekeeper leader left and he continued to do his work, 10 minutes later he was called to manager's office.

Stated he was cleaning the room when general manager called him into the office. At the time he was called he was trying to fix a bed frame which was broken. Stated his manager asked him couple of question but he can't remember them. Stated he told the manager that he was trying to fix the bed frame. At that time manager Z. L. asked him to leave.

Stated he does not remember the conversation. He has no idea why he was dismissed, she asked him to leave twice during that conversation. Stated he did not say that he will leave, if she wanted him to leave. House keeper leader was in the room and she can verify the conversation. Stated he thinks there was not enough work due to economic situation. Two months before there were 8 housekeepers laid off due to slow time for the business and now there were 7 left out of 15. Stated his hours of work were reduced from 8 hours to 6 hours. The claimant stated he thinks he was laid off due to shortage of work. He doesn't know of any other reasons for his dismissal."

[14] The agent then spoke with the Appellant's manager at X, Z. L. (see Supplementary Record of Claim at GD3-40 to GD3-41), and documented her statements as follows:

"The employer called back and stated Z. W. was hired as a houseman. His main job was always to do the work out side and he was given his list of duties. The claimant was to do all of his job duties first and then around 11am he was to check with the manager or guest services manager for further work that needs to be done for the day. Stated on the weekend a list duties for the claimant to do after his main duties was always left with head housekeeper. Once the claimant had his next to do list then he needed to check with the front desk to make sure the rooms he needs to go into are not occupied.

Stated biggest issue they had with Z. W. was that he was going into occupied rooms, or go into the rooms where house keepers were working. The claimant was advised many times that he needs to check with the front desk before going into the rooms. Stated room booking changes on regular basis. The claimant's response was that he knows what his job is, he was reminded that he can not just enter rooms he had to check first. The claimant just did what he wanted to do.

Stated on Feb. 12, 2016 the claimant was shown rooms and was advised to do deep cleaning between mattresses, headboard. Housekeepers were responsible for other

cleaning. The claimant was reminded to check with front desk and to check with the house keeper leader to find out which rooms needs to be done next.

Stated she came in on Saturday that was her day off. When she came in, she saw that outside was not cleaned it was still dirty. Stated she asked to page Z. W. for him to come into the office. Housekeeper leader tracked him down, he was in the occupied room.

Stated she asked the claimant as to why he was already in the room when his main duties outside work was not done. The claimant was told that he should be focusing on the work that he was hired to do which is to clean outside and common area first and he must check with front desk and the house keeper leader before entering a room. Stated he would check items off his job duty list as done, but they were not done. Stated the claimant said, he knows what his job is and if you want me to leave, I will leave. Stated she told the claimant that I am asking you why you went into the rooms when outside work is not done. The claimant's reply was that I know what my job is and if you want me to leave then I will leave. Stated she told him that it was up to him. The claimant gave her the keys and left.

Stated there was always misunderstanding with him all the time, he did not follow directions given to him. It was brought to his attention more than once verbally but don't remember the dates. Always his reply was "you want me to go, I will go." The claimant was fully aware of the procedures in place but he chose not to follow them.

Stated house keeper team leader was present in the conversation and advised to feel free to talk to her. Stated house keeper team leader's name is H. J. X, she is on holidays and will be back to work on June 25, 2016. Stated she will leave a message for her to call and she will call back on Saturday.

The employer stated it was a slow period but work was available for the claimant, he was not going to be laid off. The claimant's hours did reduce from 8 hours to 6 hours a day. Stated they did not lay off six house keepers and she doesn't know where the claimant is getting these figures from.

Stated the claimant was brought to the office as he was not following directions given by the employer. Stated they had no intention of dismissing him."

[15] The agent then spoke with the Housekeeper leader at X, H. J. (see Supplementary Record of Claim at GD3-42), and documented her statements as follows:

"The employer stated the claimant's main job duties were to clean out side. The claimant was to check with her on the weekends for his next to do list. Then the claimant was to check with front desk to make sure the room he needs to go into was not occupied.

Stated a day before his last day of work, she did tell him that deep cleaning needs to be done of the rooms. The claimant was only responsible for deep cleaning of the rooms and shampooing carpet. They have another employee to do the maintenance work.

Stated she did not talk to the claimant on Saturday, his last day of work. When manager came in she saw all of the outside work was not done and she asked her (housekeeper lead) to page the claimant. They paged the claimant two or three times, he didn't take his pager with him. Then she went to each floor to look for the claimant and found him in the room he was trying to fix something. The claimant was in the occupied room, he did not check with front desk before going into the room. Stated she told the claimant to leave the job as someone is coming into the room and the manager wants to talk to him. The claimant said he checked yesterday and room was not booked. Stated room booking changes every hour and he has to check before he goes into the room on that particular day.

Stated she took the claimant to the office. Manager spoke to the claimant and questioned him as to why he didn't finish his job duties first before going into the room and why was he in an occupied room. Stated the claimant said he thought he would do rooms first. Stated the manager said "you must do your main duties first then check with the front desk. Why you make your own plans?" The manager reminded the claimant that all of these concerns were already brought to his attention before and he was not to enter the rooms without checking with front desk first. The claimant said he knows how to do his job. The manager asked the claimant "you want to keep this job or not", the claimant said "you want me to go". Manager said, I am asking you, "you want to keep this job or not". Then the claimant left his keys in front of her and left.

Stated same situation happened with the claimant many times, he was given verbal warning. The claimant had to follow the protocol. His main job duties were not done on that day. Stated she witness the entire conversation, the manager was just bringing issues to his attention she was not dismissing him. The claimant gave his keys and left."

[16] The agent had a final conversation with the Appellant (see Supplementary Record of Claim at GD3-43), and noted that the Appellant's statement that both the Manager and the Housekeeper Leader were lying. The agent also noted that the Appellant was adamant that he did not quit but was dismissed, and that the Appellant advised he had gone to Labour standards to request one week's pay and the employer had to pay him one week of pay in lieu of notice.

[17] On July 8, 2016, the Commission advised the Appellant that it was maintaining its original disqualification (see GD3-44 and GD3-45 to GD3-46).

[18] The Appellant filed a second Request for Reconsideration (GD3-48 to GD3-51), in which he reiterated that he did not voluntarily leave his employment with X. The Appellant included a

letter (GD3-50 to GD3-51) in which he described a disagreement he had with the Manager about one of his pay cheques being short 7 hours he worked and complained that the employer had not given him “written termination notice, ROE, vacation fee, termination fee.”

[19] In his Notice of Appeal, the Appellant gave the following reasons for his appeal:

“I was denied EI benefits because it was originally believed that I voluntarily quit, which is not true. On the last day I worked, I had a disagreement with my manager, after which she yelled at me to “go home!” several times. Given the intensity of the manager’s reaction, my language barrier, and the fact that this happened in the middle of a work day, I interpreted my manager’s requests for me to “go home!” as termination of my employment. I did not understand why, so I went back to my manager a few days later to ask for a letter explaining my termination. She refused to give me a letter, but agreed to give me termination pay. I only found out that I “quit” when I was in contact with Service Canada and saw that my ROE indicated “Quit”. However, this week, I received an updated ROE that now shows “Dismissed” instead of “Quit”.

I do not think my termination was because of misconduct. The Request for Reconsideration Decision letter I received also indicated that “the decision of misconduct has been removed from your claim, however it has been replaced with a finding of no just cause for voluntarily leaving employment.”

I submit that I neither quit nor was fired for any misconduct.” (GD2-3)

[20] The Appellant filed a 16-page letter prior to the hearing (GD6), in which he identified the facts relied upon by the Commission that he stated were “misrepresentations”, “misleading”, and “false”. The Appellant concluded:

“In conclusion, I did not leave the job voluntarily. I was told to “go home”. Also there is no misconduct on my part, since I checked the room I was in is “dirty” room, not occupied room. The guests have checked out the room prior.” (GD6-2)

At the Hearing

[21] The Appellant testified as follows:

- a) On Saturday, February 3, 2016, he did his work in the morning “as usual”. His routine duties were to clean the exterior of the building and to clean the elevator, staircases and hallways in the main trafficked areas inside.
- b) He did not quit his job. His manager, “Z. L.”, asked him to leave his job. The Appellant stated:

“She yelled at me twice – Go home! Go home! I didn’t leave right away, so a few minutes later, Z. L. yelled at me again – Go home! Go home!”

- c) The employer’s statements to the Commission at GD3-19 are “all fake, all fabricated”.
 - (i) The Appellant disputes that he entered rooms without getting information from the front desk. The Appellant stated:

“Prove it! Prove I received other warnings.”
 - (ii) On his last day, the pool wasn’t clean, but he got permission from the Housekeeper and the Housekeeper Leader to go into this room. He didn’t finish the pool because he discussed it with the Housekeeper Leader that his cleaning needed to get done before the regular Housekeeper cleaned the room.
 - (iii) He never said the sentence: “If you want me to, I will go.”

- d) He never wanted to leave this job.
- e) The employer’s statements to the Commission at GD3-38 are “basically correct”, but still have “some misrepresentations”.
 - (i) It was not three rooms, but two rooms he was supposed to clean.
 - (ii) His duties didn’t include cleaning in the room. His duty was only to remove the mattress. He is not responsible for the cleaning.
- f) The employer’s statements to the Commission at GD3-40 contain falsehoods.

- (i) The second paragraph – last two sentences – “not true at all”.
- (ii) The fourth paragraph – last sentence – “not true”. That room was not occupied, it was a “dirty room” and was ready to clean on that day. The Appellant got the check-out list from the front desk and confirmed with the Housekeeper that the next room she was going to clean was that room, room #308. Even the Housekeeping Leader went into that room too. It was in that room that the Housekeeping Leader and I discussed how to clean the “bed head area”. The Appellant stated:

“So I said to Housekeeping Leader, since Manager was not on duty, I was going to help the Housekeeper to clean the area because I didn’t have much to do outside.”

- (iii) The fifth paragraph – “false”. He never said “If you want me to leave, I will do so.”
- (iv) The last sentence in GD3-40 “is wrong”. The ROE he has says “dismissed”. The employer issued an amended ROE on August 5, 2016 and gave the reason for issuing the ROE as “dismissal”. He had the document with him at the hearing and undertook to provide a copy to the Tribunal immediately following the hearing.
- (v) The employer also paid him “termination pay”.

g) The employer’s statements to the Commission at GD3-42 are “100% fake, 100% lies”.

- (i) The Housekeeping leader was at the site when the incident happened and “the truth is totally opposite to her statement”.

h) The Appellant does not know why he was dismissed. There was no misconduct, but he does recall a “small dispute” with the Manager about 10 days before his last day.

[22] When asked if he handed his keys to the Manager on the last day, the Appellant stated:

“No! The Housekeeping Leader followed me to the basement where my personal belongings were. I cleaned out my things and the Housekeeping Leader was assigned by the Manager to follow me downstairs and she took the keys. On the way downstairs, I

told her there were still repairs in Room 308 to be done. “Did I have to finish that?” She said “No”. She said the Manager already dismissed you and you are to go.”

Documents filed by the Appellant after the Hearing

[23] The Appellant filed the following documents with the Tribunal following the hearing:

- a) Amended ROE issued by X on August 5, 2016, showing Reason for Issuing this ROE as “Dismissal” and “Pay in lieu of notice” of \$915.00 (GD7);
- b) Print-out of a page from the Appellant’s My Service Canada Account, with a message dated August 4, 2016 (GD8). It includes the statement:

“No Employment Insurance benefits are payable to you effective February 07, 2016 because you lost your employment due to your misconduct.” (GD8-2)

The Appellant included a covering page which reads:

“This document is from EI agency (service Canada), it point February 07, 2016. Employer already sent letter to Ei, state I misconduct, at this point, I still working in X, It hint she want dismissal me that is premeditate?” (GD8-1)

- c) Copy of a letter dated February 9, 2017 from X to an Alberta Employment Standards Program Delivery Officer (GD9), in which the employer stated:

“As per our conversation please find the requested information.

In the pay period February 14 – February 27, 2016, paystub shoes: “MISC\$\$ - for \$915.00 which refers to Termination Pay.

I hope this explain it all.” (GD9-1)

The Appellant included a covering page referring to “very clear advise” from “Alberta government Labour Employment Standard agency” about his entitlement to termination pay, and that there was an “investment record and conclusion” (GD9-2).

SUBMISSIONS

[24] The Appellant submitted the following:

- a) He did not quit, he was dismissed.

- b) He does not know why he was dismissed.
- c) There was no misconduct involved in his dismissal.
- d) The decision to disqualify him from receipt of EI benefits is “based 100% on false testimony”. The whole testimony by the employer “is a fake, fabricated story”.
- e) The employer’s evidence is not reliable because they changed the ROE from “Quit” to “Dismissal” and paid him “termination pay”.

[25] The Commission submitted the following:

- a) The facts on file are “unclear or contradictory” as to whether the issue is actually a voluntary separation without just cause or a dismissal for misconduct, but further submitted that the consequences for the Appellant are the same either way, namely a disqualification from EI benefits.
- b) On “more than just the balance of probability”, the Appellant voluntarily left his employment as per the employer’s consistent evidence, and that he has not shown just cause for his hasty decision to quit his employment.
- c) Misconduct has been proven because the Appellant had previously been warned to check with the front desk before entering rooms. Ultimately, it was the actions of the Appellant that caused him to become unemployed and he is, therefore, disqualified from receipt of EI benefits.

ANALYSIS

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

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

[28] It is a well-established principle that “just cause” exists where, having regard to all the circumstances, on balance of probabilities, the claimant had no reasonable alternative to leaving the employment (*White 2011 FCA 190, Macleod 2010 FCA 301, Imram 2008 FCA 17,*

Astronomo A-141-97, Tanguay A-1458-84). The list of circumstances enumerated as “just cause” in paragraph 29(c) is neither restrictive nor exhaustive, but delineates the type of circumstances that must be considered (*Campeau 2006 FCA 376; Lessard 2002 FCA 469*).

[29] The initial onus is on the Commission to show that the Appellant left his employment voluntarily; once that onus is met, the burden shifts to the Appellant to show that he left his employment for “just cause” (*White, (supra); Patel A-274-09*). To have “just cause”, the Appellant must prove that he had no reasonable alternative to leaving his job when he did (*White, (supra), Patel, (supra)*).

[30] The Tribunal must first determine whether the Commission has proven that the Appellant left his employment voluntarily.

[31] The Tribunal considered the evidence that the Commission obtained from the employer, and noted the consistent and detailed descriptions of the final incident given by the Manager (at GD3-19 – prior to the initial decision; and at GD3-40 – as part of the reconsideration process) and by the Housekeeper Leader (at GD3-42 – as part of the reconsideration process). Both of the employer’s representatives credibly described how, when the Manager spoke with the Appellant about entering a guest room without permission and about how he had not yet finished the work he was to complete at the start of the day, the Appellant responded by saying he’d leave if the Manager wanted him to leave and then gave his keys to the Manager and left the premises. The Manager stated that she “accepted” the Appellant’s resignation because he wasn’t performing his duties in accordance with his job description, which is amply supported by the job description and the attendant logs from January 7, 11, 18 and February 13, 2016 provided by the employer (GD3-20 to GD3-28).

[32] By contrast, although the Appellant consistently maintained that he never quit his job at X, his version of events changed significantly over the course of the Commission’s investigations and his appeal:

- a) In his application for EI benefits on February 16, 2016 (GD3-3 to GD3-16), the Appellant gave his reason for separation as “Dismissed” and:

- i) The Appellant was unable to describe the final incident for which he was dismissed and stated that he didn't know why he was dismissed, just that the employer said "if you don't listen, then go" (GD3-8).
 - ii) The Appellant further stated that he thought his boss "hate me" because of an incident in January 2016 when the Appellant questioned why he should have to clean both his area and that of a co-worker (GD3-8).
 - iii) The Appellant had no other information about the circumstances related to his dismissal or the final incident that he wished to add.
- b) Then, after he was disqualified from receipt of EI benefits, in his first discussion with the Commission (on May 30, 2016) as part of the reconsideration process:
- i) The Appellant stated he does not speak English very well and would call back with a translator (GD3-34).

However, the Tribunal notes that in the Job Description signed by the Appellant, he acknowledged that he "must speak, read and write English" as a condition of employment (GD3-21), and the employer never once indicated that the Appellant had any difficulties with communicating in English on the job. The Appellant also completed his application for EI benefits in English without third party assistance (GD3-10)

- c) In his second discussion with the Commission (on June 9, 2016):
- i) The Appellant said he *does* understand English, but it's hard for him to explain himself, so he still needed to obtain the services of a translator (GD3-37).
- d) In his third discussion with the Commission (on June 9, 2016) after the employer's statement was read to him:
- i) The Appellant provided a detailed version of the events of February 13, 2016, although he repeatedly stated he could not recall if he cleaned the swimming pool or not (which he said was not that important) *or* the conversation with the Manager that led to his dismissal – just that she asked him to leave twice during that conversation (GD3-38).
 - ii) The Appellant denied saying that he would leave if the Manager wanted him to leave.

- iii) The Appellant now stated that he was laid off due to a shortage of work, citing a reduction in his hours and the lay-off of 8 housekeepers two months earlier. The Appellant stated he didn't know of any other reason for his dismissal (GD3-38).
- e) In his fourth discussion with the Commission (on June 28, 2016) *after the Manager's second statement and the Housekeeper Leader's statement were read to him:*
- i) The Appellant stated both of the employer's representatives were lying.
 - ii) The Appellant advised that he went to "Labour standards" and the employer had to pay him 1 week's pay in lieu of notice.
 - iii) During the call with the Commission's agent, the Appellant took the phone away from the Translator because he wanted to explain the situation himself. The Commission's agent did not have any difficulty understanding the Appellant's English, noting:

"The claimant came on the phone and repeated himself many times, stated he never said that he will go if you want me to. The claimant stated he has used the expression of "if you want me to go, I'll go" in the past but not on the last day of work he was asked to leave. Stated he thinks that his letter said quit and that is why he did not qualify for benefits but he was dismissed and wish to make that clear." (GD3-43)
- f) Then, *after the disqualification was maintained upon reconsideration*, the Appellant filed a second Request for Reconsideration (on August 5, 2016):
- i) The Appellant described a prior disagreement with the Manager over a pay cheque that the Appellant claimed was short 7 hours, and stated that the Manager told him then that he was not going to be working at X any longer (GD3-50 to GD3-51).
- g) In his Notice of Appeal (filed on August 5, 2016):
- i) The Appellant now described a disagreement with the Manager on his last day, during which she yelled at him to "go home!" several times (GD2-3).
 - ii) The Appellant cited "the intensity of the manager's reaction, my language barrier, and the fact that this happened in the middle of a work day," as the reason he interpreted the Manager's statement "go home!" as termination of his employment (GD2-3).

iii) Now says he went back to see the Manager “a few days later to ask for a letter explaining my termination”, but she refused to give him a letter, “but agreed to give me termination pay”.

However, the Tribunal notes that this is contrary to his prior statement that he went to Labour Standards and that is what caused the employer to pay him 1 week’s pay in lieu of notice.

iv) The Appellant stated that he received an updated ROE that showed “Dismissed” instead of “Quit”.

h) Prior to the hearing of his appeal, the Appellant filed (on March 21, 2017) a 16-page letter, nearly entirely hand-written in English, in which he details the many facts in the employer’s statements that he disputes and provides his own facts (GD6).

i) At the hearing of his appeal on March 30, 2017:

i) The Appellant described the Manager yelling at him twice “Go Home!”

ii) The Appellant now recalled new details of his activities on February 13, 2016, and denied leaving his keys with the Manager, stating instead that the Housekeeper Leader followed him to the basement where he cleaned out his things and she (the Housekeeper Leader) took his keys.

iii) The Appellant now recalled a final conversation with the Housekeeper Leader wherein she told him he was dismissed and had to go home.

iv) The Appellant had an interpreter at the hearing, but the Tribunal observed the Appellant read aloud in English from documents that were in English. The Tribunal also observed the Appellant repeatedly interrupt and argue with the interpreter while she was interpreting English questions and statements from the Member, and noted the Appellant’s statements to the Tribunal that the interpreter’s interpretation “wasn’t accurate” and he would prefer to address the Tribunal in English himself.

[33] The Tribunal prefers the evidence of the employer to that of the Appellant. While the Appellant has repeatedly declared the Manager and the Housekeeper Leader’s statements to be false, the Tribunal finds that the Appellant’s own evidence is not credible. As detailed in paragraph 32 above, the Appellant’s versions of events are inconsistent, contradictory, unreliable

and not plausible in the circumstances. The Tribunal is particularly troubled by the fact that the Appellant's evidence became more detailed after the unfavourable decisions on his claim and, indeed, as time went on – including at the hearing of his appeal, which was over a year after the final incident on February 13, 2016. The Appellant went from having no idea why he had been “dismissed” when he applied for EI benefits to recalling multiple disputes with his Manager and proffering a number of theories as to the reason for his dismissal.

[34] The Tribunal has similar concerns with respect to the Appellant's statements to the Commission regarding his ability to communicate in English and with the Appellant's statement that “my language barrier” caused him to interpret the events of February 13, 2016 as termination of his employment. It is simply not possible for the Appellant to have worked as a Houseperson at X if he had not understood the directions and instructions given by the employer - in English - for the work to be done and to safeguard the privacy of the hotel guests. He clearly had to read and understand the tasks on the daily House Attendant Logs, and check these tasks off as they were completed. By his own admission, he also had to communicate in English with the Front Desk staff, the Housekeepers and the Housekeeper Leader regarding room vacancies. The Appellant's statements as to his inability to communicate in English are further called into question by his own conduct at the hearing. The Tribunal was troubled to repeatedly observe the Appellant answering - in English - questions posed by the Member before the Interpreter could translate them from English to Mandarin Chinese for him, and correcting the Interpreter's English translations of his answers.

[35] By contrast, the employer's evidence is consistent, supported by the daily logs, verified by two different employees (the Manager and the Housekeeper Leader) and makes sense in the circumstances. The Tribunal notes that both the employer and the Appellant stated that the Appellant had previously said “If you want me to, I'll leave” when the employer raised issues with him about the quality of his work on other occasions (see Appellant's statement at GD3-43; and employer's statements at GD3-40 and GD3-42). The Tribunal gives great weight to the statements made to the Commission by the Housekeeper Leader:

“Stated she took the claimant to the office. Manager spoke to the claimant and questioned him as to why he didn't finish his job duties first before going into the room and why was he in an occupied room. Stated the claimant said he thought he would do

rooms first. Stated the manager said “you must do your main duties first then check with the front desk. Why you make your own plans?” The manager reminded the claimant that all of these concerns were already brought to his attention before and he was not to enter the rooms without checking with front desk first. The claimant said he knows how to do his job. The manager asked the claimant “you want to keep this job or not”, the claimant said “you want me to go”. Manager said, I am asking you, “you want to keep this job or not”. Then the claimant left his keys in front of her and left.

Stated same situation happened with the claimant many times, he was given verbal warning. The claimant had to follow the protocol. His main job duties were not done on that day. Stated she witness the entire conversation, the manager was just bringing issues to his attention she was not dismissing him. The claimant gave his keys and left.” (GD3-42)

There is no reason to believe that the Appellant would have responded any differently when the Manager confronted about the issues with respect to his work and his entry into an occupied room on February 13, 2016.

[36] The Tribunal accepts the employer’s credible testimony that, while it was a slower period for business at X, there was work for the Appellant and the employer had no intention of dismissing him (GD3-40 and GD3-42). The Tribunal also accepts the employer’s credible testimony regarding the events of February 13, 2016 and, in particular, the Appellant’s behaviour in leaving his keys with the Manager, exiting the premises and not returning to work thereafter. This evidence is supported by the initial ROE issued by the employer on February 17, 2016 as “Quit” (GD3-17), and by the first amended ROE issued on March 4, 2016 which maintained the “Quit” but added a separation payment of \$915.00 identified as “pay in lieu of notice” (GD3-18). While the Appellant puts great emphasis on the further amended ROE issued on August 5, 2016 as “Dismissal”, the Tribunal does not find this persuasive. Employers have been known to amend ROEs in an effort to avoid the time and effort they would have to put into responding to an investigation by a provincial Labour Standards agency. In the present case, the evidence clearly supports the original ROE issued by X as “Quit” (GD3-17), and the Tribunal gives greatest weight to that ROE.

[37] The Tribunal finds that the Appellant initiated the severance of the employment relationship and proceeded to voluntarily leave his employment at X on February 13, 2016, at a time when the employer had work for him.

[38] Having found that the Appellant left his employment voluntarily, the Tribunal must now consider whether the Appellant has proven that he had just cause for doing so.

[39] The Appellant disputed that he quit his job at X and has provided no statements or information regarding his reasons for leaving the employment. The evidence accepted by the Tribunal indicates that the Appellant made a hasty and impulsive decision to leave his employment after being questioned by his Manager about not finishing his work and entering an occupied room that day. Instead of calmly discussing it with his Manager and clarifying his duties and the appropriate course of action with respect to entering guest rooms, the Appellant escalated the discussion with the statement “If you want me to leave, I will” and proceeded to leave his keys with the Manager, exit the premises and not return to work or make any efforts to safeguard his employment. Rather, he applied for EI benefits three days later. An angry or emotional response to work-related issues raised by a Manager in the course of employment is not just cause for leaving the employment.

[40] While the Appellant may have had personal reasons for wanting to leave his job at X, such as moving to another province (see the Appellant’s statement at GD3-38), a decision to leave a job for strictly personal reasons is not the same as “just cause”. The Federal Court of Appeal has clearly held that good cause for quitting a job is not the same as “just cause” (*Laughland 203 FCA 129*), and that it is possible for a claimant to have good cause for leaving their employment, but not “just cause” within the meaning of sections 29 and 30 of the EI Act (*Vairumuthu 2009 FCA 277*). The Federal Court of Appeal has also clearly held that leaving one’s employment to improve one’s situation – be it the nature of the work, the pay or other lifestyle factors – does not constitute just cause within the meaning of the EI Act (*Langevin 2001 FCA 163*, *Astronomo A-141-97*, *Tremblay A-50-94*; *Martel A-169-92*, *Graham 2001 FCA 311*; *Lapointe 2009 FCA 147*; and *Langlois 2008 FCA 18*).

[41] The tribunal finds that a reasonable alternative to leaving his employment at X on February 13, 2016 would have been for the Appellant to engage in a dialogue with the employer to resolve the issues regarding his work and when he can enter a guest room for work. A further alternative would have been to remain employed until such time as he found other suitable employment. Having failed to pursue either of these reasonable alternatives, the Appellant has

not proven that he had just cause for voluntarily leaving his employment at X on February 13, 2016.

[42] As the Tribunal has found that the Appellant left his employment with X voluntarily, there is no need for the Tribunal to consider the Commission's alternative submission, namely whether the Appellant was dismissed due to misconduct. The Tribunal, therefore, makes no findings with respect whether misconduct has been proven in the Appellant's case. However, the Tribunal points out that there is no merit to the Appellant's allegation at GD8-1 that the employer's dismissal was "premeditate", as the document he refers to uses the date of February 7, 2016 because that would have been the effective date of his claim for EI benefits had he not been disqualified – not because the employer advised of a dismissal on February 7, 2016.

CONCLUSION

[43] The Tribunal finds that the Appellant voluntarily left his employment at X on February 13, 2016 when he initiated the severance of the employment relationship and proceeded to leave his job at a time when the employer still had work for him.

[44] Having regard to all of the circumstances noted herein, the Tribunal finds that the Appellant had reasonable alternatives to leaving his employment on February 13, 2016, namely to resolve the issues surrounding his entry into guest rooms and the quality of his work directly with the employer, or to remain employed until such time as he secured other suitable employment. The Appellant failed to pursue either of these reasonable alternatives and, therefore, failed to prove that he was left with no reasonable alternative but to leave his employment. The Tribunal therefore finds that the Appellant did not demonstrate just cause for voluntarily leaving his employment and that he is disqualified from receipt of EI benefits pursuant to section 30 of the EI Act for doing so.

[45] The appeal is dismissed.

Teresa M. Day
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

29 For the purposes of sections 30 to 33,

(a) *employment* refers to any employment of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

(i) sexual or other harassment,

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,

(iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,

(iv) working conditions that constitute a danger to health or safety,

(v) obligation to care for a child or a member of the immediate family,

(vi) reasonable assurance of another employment in the immediate future,

(vii) significant modification of terms and conditions respecting wages or salary,

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

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

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

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

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

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

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

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

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

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

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

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