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

Citation: *S. B. v Canada Employment Insurance Commission and X*, 2018 SST 1181

Tribunal File Number: GE-18-2080

BETWEEN:

S. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: November 7, 2018

DATE OF DECISION: November 8, 2018

Canada

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant established a claim for regular Employment Insurance benefits (EI benefits) on September 10, 2017. The Appellant worked as X for X until March, 3 2017, and left his employment. The Appellant subsequently worked for another employer and accumulated 742 insurable hours. The Respondent determined the Appellant qualified to establish a claim for EI benefits. However, the Respondent explained they did not use the Appellant's insurable hours with X in calculating his EI benefits since he voluntarily left his employment without just cause. The Appellant submitted he had just cause for leaving his employment with X because of health and safety violations on the work site. The Appellant further submitted that he approached his supervisor (and others) about the health and safety violations, but nothing was done. I find the Appellant had just cause for voluntarily leaving his employment, because he had no reasonable alternative to leaving having regard to all the circumstances.

PRELIMINARY MATTERS

[3] The Appellant attended the videoconference hearing at the scheduled time. The Added Party ("X") did not attend the hearing. The Added Party's Notice of Hearing (dated October 4, 2018) was sent by Express Post and the document was signed for on October 10, 2018. The "Canada Post" documentation was listed on the file.

[4] Section 12(1) of the *Social Security Tribunal Regulations* states that: "If a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing." I am satisfied the Added Party received their Notice of Hearing and will proceed in their absence.

ISSUES

[5] The Tribunal must decide the following issues:

> Did the Appellant voluntarily leave his employment? If so, did the Appellant have just cause for voluntarily leaving his employment?

ANALYSIS

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

[7] There are numerous circumstances of just cause for voluntarily leaving an employment listed in section 29(c) of the *Employment Insurance Act* (EI Act). However, the Federal Court of Appeal has explained that the burden is on the claimant to show they had no reasonable alternative to leaving an employment having regard to all the circumstances (*Patel v. Attorney General of Canada*, 2010 FCA 95; *White v. Attorney General of Canada*, 2011 FCA 190).

Did the Appellant voluntarily leave his employment?

[8] I find the Appellant voluntarily left his employment, because his resignation letter provided a two-week notice due to "unjust action" on the work site (Exhibit GD3-38). I realize the Appellant submitted that he was constructively dismissed by the employer. Nevertheless, I find no evidence the Appellant was forced out of his job and can only conclude he voluntarily left his employment.

Did the Appellant have just cause for voluntarily leaving his employment?

[9] I find the Appellant had just cause for leaving his employment for the following reasons. First: The Appellant testified there were serious health and safety violations on the worksite which endangered his safety. For example, the Appellant explained there were co-workers driving trucks and other equipment erratically and too fast. Furthermore, the Appellant explained that co-workers were not wearing the required protective gear and ignored him when he addressed the matter as their safety representative. I find the Appellant's oral testimony on these matters to be credible since his statements remained consistent, detailed, and plausible.

[10] Second: The Appellant attempted to raise his concerns about health and safety violations to his supervisor (T. B.), but nothing was done. I recognize the employer (M. P./Human Resources) explained in the Appeal Docket that T. B. received the Appellant's resignation letter, but did not have knowledge of the safety issues. Nevertheless, I prefer the Appellant's statement that T. B. knew about his safety concerns because his statements were forthright, consistent, and plausible. Furthermore, M. P. explained in the Appeal Docket that several times between February 24, 2017, and March 7, 2017, the Appellant attended their administration office to bring forward concerns he had related to health and safety, lateral violence, and unsafe workplaces (Exhibit GD3-23).

[11] Third: The Appellant attempted to raise his health and safety issues with the Federal Labour Department, but was told the matter was an internal matter for the employer. I realize the Respondent submitted that a reasonable alternative for the Appellant was to set up a meeting with the Federal Labour Department to address his safety issues because he was the safety representative. Nevertheless, I prefer the Appellant's testimony that he tried to raise the issue with the Federal Labour Department and was advised this was a matter for "Fort William First Nation."

[12] I do recognize the Respondent further submitted that another reasonable alternative for the Appellant was to secure alternate employment prior to leaving. However, the specific circumstances in this case were important to consider. For example, the Appellant testified in detail about the dangerous working conditions on the work site where the workers were doing surface mining. Specifically, the Appellant testified that co-workers were driving heavy machinery and trucks erratically and too fast. The Appellant further testified there were blind-spots on the jobsite where workers could be seriously injured if a loading truck or other machinery was going too fast. I must take into account the Appellant's testimony on these matters, because they are important circumstances. In short, I find the Appellant had no reasonable alternative to leaving his employment because his own safety was endangered on the worksite.

[13] I do wish to emphasize the Appellant attempted to raise serious health and safety issues with his supervisor (T. B.), M. P. (Human Resources) and the Chief Executive Officer (K. O.) on

numerous occasions. However, there was no action taken by the employer on these safety issues while the Appellant was working for them.

[14] In summary: I find the Appellant had just cause for leaving his employment, because he had no reasonable alternative to leaving having regard to all the circumstances.

CONCLUSION

[15] The appeal is allowed.

Gerry McCarthy
Member, General Division - Employment Insurance Section

HEARD ON:	November 7, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	S. B., Appellant

ANNEX

THE LAW

Employment Insurance Act

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.