



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. G. v Canada Employment Insurance Commission*, 2018 SST 1420

Tribunal File Number: GE-18-2534

BETWEEN:

**D. G.**

Appellant/Claimant

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: Catherine Shaw

HEARD ON: December 4, 2018

DATE OF DECISION: December 10, 2018

## **DECISION**

[1] The appeal is dismissed. The Claimant did not have just cause to voluntarily leave his employment because he failed to demonstrate that he had no reasonable alternatives to leaving when he did.

## **OVERVIEW**

[2] The Claimant was employed as a floorhand/roughneck with an oilfield drilling company. He quit shortly after he obtained the position because he discovered he was being paid less than some of his co-workers and felt mistreated by the employer as a result. The Canada Employment Insurance Commission (Commission) disqualified the Claimant from receiving employment insurance benefits because it determined he did not have just cause to voluntarily leave his employment. The Claimant requested a reconsideration and stated that he also quit because working night shifts during cold temperatures and high wind was causing him health problems and exacerbating his varicose vein. The Commission maintained its decision and the Claimant now appeals to the Social Security Tribunal (Tribunal).

## **PRELIMINARY MATTERS**

[3] The Claimant requested an oral in-person hearing and the hearing was originally scheduled to be heard via videoconference, as this format was determined to allow the Tribunal to proceed as quickly as circumstances, fairness and natural justice permit. At the time of the hearing, there were technical difficulties with the videoconference equipment and the hearing proceeded as a teleconference, with the agreement of the Claimant.

## **ISSUE**

[4] Did the Claimant voluntarily leave his employment and, if so, did he have just cause to leave his employment when he did?

## **ANALYSIS**

[5] A claimant is disqualified from receiving regular employment insurance benefits if they voluntarily left any employment without just cause (subsection 30(1) of the *Employment Insurance Act* (Act)).

[6] The Commission has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Claimant to demonstrate he had just cause for leaving. The term burden is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is more likely than not the events occurred as described.

### **Did the Claimant voluntarily leave his employment?**

[7] It is undisputed that the Claimant voluntarily left his employment. The Claimant confirmed that he quit his job after the employer refused to increase his wages and the record of employment issued by the employer also states he quit. As such, I find the Claimant voluntarily left his employment.

### **Did the Claimant have just cause to voluntarily leave his employment?**

[8] To establish that he had just cause for leaving an employment the Claimant must show that, having regard to all the circumstances, on a balance of probabilities, he had no reasonable alternative to leaving his employment (*Canada (Attorney General) v. Imran*, 2008 FCA 17; *Canada (Attorney General) v. White*, 2011 FCA 190).

[9] The Claimant submits that he left his employment because the employer did not negotiate his wage fairly, as well as due to the poor working conditions which exacerbated his existing medical condition.

[10] The Claimant does not dispute that he accepted the position at a wage of \$25 per hour, but states that he felt disrespected by the employer after discovering that other employees on the same work site were receiving a higher rate of pay. At the hearing, he stated that he learned that he was getting a lower wage than other employees when a “new hire” told him that the employer had first offered \$25 per hour but the employee had rejected the wage and was “instantly

offered” \$27 per hour. The Claimant states he felt the employer treated him unfairly by offering him a lower wage than other employees with similar or less experience than he had.

[11] The Claimant stated that he brought his concerns to the employer and asked for a higher wage. When the employer refused to increase his wage, he immediately told the employer to book him a flight home, as he would not be staying. He stated at the hearing that he worked three or four additional shifts after that conversation waiting for his flight home to arrive, as the work site was in a remote location.

[12] The Claimant stated to the Commission and the Tribunal that he called several companies to inquire about other positions before he resigned but was informed that they were not hiring as the drilling season was ending soon. Despite that, he decided to quit his employment and return home rather than remain in his position until the end of the season.

[13] The Claimant also stated that he made the decision to quit because the position involved working the night shift in cold temperatures while exposed to high winds. He stated that the wind at the worksite was higher than he anticipated because the site had been previously cleared of trees. The Claimant stated that these conditions exacerbated the varicose vein in his leg, causing him pain, and that he started smoking as a way to cope with the cold.

[14] At the hearing, he stated that the job involved a lot of standing around and that this increased the pain in his leg due to his varicose vein. He stated to the Tribunal that he did not seek medical advice before leaving his position because he was familiar with his condition and knew that the standing aggravated it, so he did not need medical advice to know that reducing the amount of time standing would alleviate his pain.

[15] Additionally, the Claimant stated that working night shift was difficult because he had a lengthy and difficult transition back to a daytime schedule once he returned home after leaving his employment. The Claimant stated at the hearing that, even if the employer had increased his hourly wage, he would not have returned from his first week off from work as it was only when he arrived home that he realized the physical strain transitioning from night shift to a daytime schedule took on him. I acknowledge the Claimant’s statements, but as the Claimant did not experience this transition until after he had left his employment, I find that it was not a condition

that I can consider when determining whether his leave was justified. Only the facts that existed at the time a claimant left his employment can be considered (*Canada (Attorney General) v. Lamonde*, 2006 FCA 44).

[16] Just cause is not the same as a good reason. The question is not whether it was reasonable for the Claimant to leave his employment, but rather whether leaving his employment was the only reasonable course of action open to him, having regard to all the circumstances (*Imran, supra; Canada (Attorney General) v. Laughland*, 2003 FCA 12).

[17] I understand the Claimant's argument that he felt the employer treated him unfairly by offering him a lower wage than other employees on the worksite; however, I consider that the Claimant acknowledged that he accepted the offered wage and signed an employment contract for that hourly rate of pay. He further acknowledged at the hearing that he had the same opportunity to negotiate his wage as the other employees and did not do so because he felt the employer had offered him the best wage possible due to his experience and the rapport they had during the interview. I find that his belief that he was offered the best wage at the time of his hiring does not absolve him from abiding by the terms of his employment agreement and that he was only unhappy with those terms after discovering that others had negotiated a higher rate of pay. As such, I find the Claimant did not have just cause to voluntarily leave his employment because of his dissatisfaction with his hourly rate of pay, as he agreed to that rate of pay at the time he was hired.

[18] I accept the Claimant's argument that the working conditions on the work site were worse than he had anticipated, due to the lack of trees to act as a wind break. However, I consider the Claimant made consistent statements to the Commission and the Tribunal that he would have continued working regardless of the poor conditions were it not for the disrespect he felt from the employer due to his low wage. I find the Claimant's willingness to remain employed despite the working conditions supports that the conditions were not so intolerable that the Claimant had no reasonable alternative but to quit.

[19] I also accept that the Claimant's varicose vein may have been exacerbated by the long periods of standing required in his position and consider that the Claimant not discuss his medical condition with the employer. While I recognize that the employer could not likely have

modified the setting or the job requirements, some accommodation may have been possible to reduce the amount of time the Claimant spent standing which could have reduced the pain he experienced as a result.

[20] I do not accept the Claimant's argument that the employment was a danger to his health and safety because he started smoking as a result of the conditions on-site. The Claimant stated at the hearing that he would use smoking as an excuse to take a break in the truck and get out of the cold weather for a few minutes; however, I find it unlikely that that the Claimant could not have taken the same break from the cold weather without smoking. The Commission submitted that the Claimant made a choice to start smoking and I agree with the Commission's position in this regard.

[21] I acknowledge that the Claimant made several attempts to find other employment before making the decision to quit and was told that the season was ending soon and they were not hiring. I consider the Claimant's awareness that finding new employment at the time of his resignation would be difficult would be even more reason for the Claimant to stay in his position and avoid a longer unemployment.

[22] The Claimant is responsible for proving that he had just cause for voluntarily leaving his employment and he must show that he had no reasonable alternative but to leave his employment when he did. Considering all the circumstances, I find the Claimant had other courses of action open to him. He could have spoken with the employer regarding his medical condition and requested accommodation. He also could have remained employed until the end of the season as it was only a short time away. Therefore, I find the Claimant did not have just cause to voluntarily leave his employment and is disqualified from receiving benefits in accordance with sections 29 and 30 of the *Act*.

## **CONCLUSION**

[23] The appeal is dismissed.

Catherine Shaw  
Member, General Division - Employment Insurance Section

HEARD ON:	December 4, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	D. G., Appellant/Claimant