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

[TRANSLATION]

Citation: *S. C. v. Canada Employment Insurance Commission and Jarvis Industries Canada Ltd.*, 2019 SST 23

Tribunal File Number: GE-18-2287

BETWEEN:

S. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

Jarvis Industries Canada Ltd.

Added Party (employer)

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: December 5, 2018

DATE OF DECISION: January 9, 2019

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant had worked for the same employer, Jarvis Industries Canada Ltd., a supplier of equipment and machinery for meat processing plants (commonly called slaughterhouses), since November 2006. He was a technical representative for Quebec and the maritime provinces. After a change in management in 2016, the company introduced several procedural changes. The Appellant disagreed with certain changes, notably the removal of certain powers and responsibilities, the reduction of his access to critical information about his clients, and the introduction of rigid, complicated procedures he considers unnecessary. The Appellant decided to leave his employment because of the changes to his work conditions and because the employer would not honour a pay raise it had promised.

[3] The Canada Employment Insurance Commission (Commission) determined that the Appellant did not have just cause for voluntarily leaving his employment and, as a result, disqualified him from Employment Insurance benefits.

PRELIMINARY MATTERS

[4] The hearing was held in person, but the employer participated by teleconference because it was located far from the hearing location. The hearing was held in French at the Appellant's request. The employer had an interpreter to translate the proceedings and to allow it to speak its preferred language, English, at the hearing.

ISSUES

[5] The Tribunal must decide the following issues:

1. Did the Appellant experience a significant change in his work duties?

2. Was the Appellant's voluntary departure the only reasonable alternative in his circumstances?

ANALYSIS

[6] Although the Appellant wrote in his notice of appeal that he felt that he was the victim of a constructive dismissal, neither the Appellant nor his representative raised this argument during the hearing, and none of the evidence filed deals with this line of reasoning. I therefore consider the Appellant to be admitting that he decided on his own to leave his employment in March 2018.

[7] The overarching issue the Tribunal must analyze is whether the Appellant had just cause for leaving his employment according to the *Employment Insurance Act* (EI Act). Generally, a person who leaves their employment voluntarily is disqualified from Employment Insurance benefits (section 30 of the EI Act). I recognize, however, that the EI Act contains exceptions and that sometimes a person may have just cause for voluntarily leaving their employment and be eligible for Employment Insurance benefits. As a result, the burden of proof has shifted to the Appellant.

[8] The Tribunal considered the Appellant's reasons for leaving in its analysis by answering the following questions:

Issue 1: Did the Appellant experience a significant change in his work duties?

[9] Section 29(c) of the EI Act contains a non-exhaustive list of circumstances that may justify a person voluntarily leaving their employment. For example, section 29(c)(ix) of the EI Act states that a significant change in work duties may justify voluntarily leaving.

[10] In this case, I find that the Appellant experienced a significant change in his work duties.

[11] The Appellant explained that, in 2016, the company's director left and two new people (S. and J.) took over. He added that everything went well with the new managers at first, but that, over time, new rules and a number of changes to his work duties were introduced.

[12] In August 2017, the Appellant experienced a myocardial infarction after which he was off work for about four months. The Appellant stated that the most significant changes in his work duties occurred while he was on sick leave. He noted that, during his convalescence, he

continued to check his work email and read emails from S. announcing procedural changes, which the Appellant observed more concretely when he returned in January 2018.

[13] The Appellant stated that the changes included a GPS device being installed on the company truck he used for his work and his having to inventory the materials on his truck each month instead of twice a year. The Appellant stated that he disagreed with the new obligation, that it made him lose a day of work each month, and that he considered it a waste of time. He also stated that the employer withdrew his access to sales reports, a work tool he considered crucial for doing his job well. The company email account in his name was closed, and he had to use a generic email address under the name "Quebec Sales" for the entire province of Quebec. He was no longer responsible for giving clients quotes; office workers took over this task. He stated that he previously had some discretion in terms of the credit that could be extended to his clients, but, when he returned, he had to get approval every time. The Appellant also expressed his disagreement with the new tipping policy directing him to leave a 10% tip—instead of the usual 15%—in restaurants when he was travelling.

[14] The employer admitted to introducing the changes the Appellant cited. It stressed that those changes were administrative: they were either ordered by the head office or made because the new management deemed certain adjustments necessary for the good of the company; for proper monitoring of information, expenses, and rates given to clients; and for more efficient operations. The employer argued that the changes implemented never changed the Appellant's work conditions or the essence of the Appellant's work.

[15] The employer also argued that, contrary to the Appellant's claims, the two new managers of Jarvis Industries Canada Ltd. were not hired to restructure the company. However, it did state that it was their job, as new managers, to ensure the efficient management of the company, the resolution of problems, and, as in any company, the ongoing analysis and improvement of strategies and operations.

[16] Based on the evidence, I accept that the Appellant experienced a number of changes to internal work processes and procedures after 2016 and particularly in late 2017. I find that the changes to internal policies (for example concerning the reimbursement of tips), expense reports,

and access to information did not change the Appellant's work duties. The installation of a GPS device on his company vehicle did not change them either. Despite these adjustments, he continued to complete the same tasks, with some changes in the application of procedures. However, I find that certain changes affected his independence and his ability to make decisions within the company, which did change his work duties. I find that the removal of certain responsibilities constitutes a change in an employee's work duties.

[17] I note that the Appellant expressed his frustration regarding his last pay raise, which was 3% instead of the 10% he had received the previous year. He stated that the employer had promised him a similar raise, which did not occur. I will not deal with this point separately because the Appellant clearly established during the hearing that the real reason for his departure was the change to his work duties and that his disappointment with his raise was simply the final straw. In this circumstance, I will consider the Appellant's raise as part of the next issue when I analyze the context of the Appellant's departure.

Issue 2: Was the Appellant's voluntary departure the only reasonable alternative in his circumstances?

[18] For me to determine that the Appellant had just cause for leaving his employment, the Appellant must also show that, having regard to all the circumstances, he had no reasonable alternative but to leave (*Canada (Attorney General) v Patel*, 2010 FCA 95; *Bell v Canada (Attorney General)*, A-450-95; *Canada (Attorney General) v Landry*, A-1210-92). In fact, Judge Letourneau recalled in the *Hernandez* decision that, along with the exceptions cited in section 29 of the EI Act, a decision-maker must also consider whether voluntarily leaving their employment was a person's only reasonable alternative and that failing to do so constituted an error of law (*Canada (Attorney General) v Hernandez*, 2007 FCA 320).

[19] In this case, I find for the following reasons that the Appellant's departure did not constitute the only reasonable alternative in his circumstances.

[20] The Appellant argued that the Commission incorrectly applied the test for voluntarily leaving. Citing the Federal Court of Appeal in *Chaoui v Canada (Attorney General)*, 2005 FCA 66, he advanced that the Commission decided by analyzing whether leaving constituted the only

reasonable alternative when it should have analyzed the changes in the work conditions as well. I concede that the Commission concentrated on the Appellant's dissatisfaction with his raise instead of on a significant change in his work duties. It should have considered the changes in its analysis of the voluntary leaving.

[21] However, I do not find that the Commission applied the test incorrectly. As it stated in its arguments, it considered the Appellant's grievances concerning the changes at his workplace. It simply found that the real reason for the Appellant's departure was his dissatisfaction with the raise, which explains why it favours this reason in its analysis.

[22] I would also like to point out that the analysis was done in two steps and that, essentially, the ultimate test is indeed showing that voluntarily leaving was the only reasonable alternative in a person's circumstances (*Canada (Attorney General) v White*, 2011 FCA 190). A claimant may satisfy one of the circumstances listed in section 29 of the EI Act without being able to demonstrate that leaving was the only reasonable alternative. If that is the case, they should be disqualified from receiving benefits.

[23] As a result, the Appellant experienced a significant change in his work duties as stated in section 29(c)(ix) of the EI Act, but he still had another step to complete to reverse his disqualification from benefits.

[24] In this case, I think that the Appellant felt attacked and degraded by having certain responsibilities taken away and that he took it extremely badly. Based on the Appellant's statements, I find that his ego was affected. I understand that, for a number of years, the Appellant had considerable discretion and some power within the organization as part of his work duties and that this loss of independence was difficult. However, the Appellant has not persuaded me that the difficulties brought about by those changes in the company culture left him no other choice but to leave.

[25] Disagreement with administrative changes and not wanting to accept a minor loss of power points, in my opinion, to a personal decision. The final straw, which ultimately made him decide to leave, was his dissatisfaction with the raise. This adds to the personal aspect of his choice to leave. However, the Employment Insurance program cannot support the costs of

appellants' personal choices, as admirable as they may be. The Appellant may disagree with the new managers' decisions, but it does not justify him leaving his employment. If it is true that certain duties changed, I find based on the evidence that neither his salary nor his work conditions changed to the point of placing him in a precarious situation that forced him to leave. The employer has a managerial right to decide to change policies and internal procedures as it sees fit. Faced with these changes, the Appellant had the choice to stay or to leave. But, once again, choosing to stay or leave is a personal decision because it is closely linked to his personal view of things.

[26] A person who disagrees with their employer's practices always has the option of looking for other employment and leaving only when other employment is available. This constitutes a potential reasonable alternative. The Appellant confirmed that he did not try to look for employment before leaving Jarvis Industries Canada Ltd.

[27] Another reasonable alternative that is expected of a claimant is that they will try to resolve conflicts with an employer until their departure becomes the only reasonable alternative (*White*). While the Federal Court of Appeal has not set a precise time frame during which a person must try to resolve conflict, I find that the Appellant decided to leave sooner than was reasonable in this case. He returned to work in January 2018 and resigned on March 15, 2018, about two months later. The Appellant argued that he tried in vain to settle the conflicts with his employer. He stated that he submitted email exchanges showing the negotiations between the parties. The documentary evidence shows that the exchanges concerned the Appellant's salary almost exclusively, which does not prove that he tried to resolve the problem of the changes in his work duties. I see no evidence that the Appellant spoke to his employer so that they could discuss his work duties. The employer's emails announcing the directives are annotated with the Appellant's personal comments. They show only his disagreement with the changes, which has already been clearly established. Conversations more specifically about his work duties stand out among others, but they took place after his departure. As a result, they do not support the idea that the Appellant did everything he could to resolve the situation with his employer.

[28] The Federal Court of Appeal has made clear that the principle that persons insured by the Employment Insurance program should not cause the risk or certainty of unemployment is the

fundamental principle of insurance systems: "...a system of insurance against unemployment, and its language[,] must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur." (*Tanguay*, A-1458-84). In this case, I find that, unfortunately, the Appellant placed himself in a position of unemployment when there were other reasonable alternatives. It appears from the evidence that the Appellant became extremely angry after the change in management—so much so that he became convinced he should leave. Unfortunately, I conclude that, based on a balance of probabilities, becoming unemployed was not the only reasonable alternative.

[29] That said, I am not questioning the Appellant's decision to leave his employment. He thought he deserved better and wanted to avoid stress in light of his medical condition. In these circumstances, I am of the opinion that he chose what he thought was the best option for him. However, the decision to leave remains a personal decision that does not justify benefits within the meaning of the EI Act.

CONCLUSION

[30] The appeal is dismissed.

Lucie Leduc
Member, General Division – Employment Insurance Section

HEARD ON:	December 5, 2018
METHOD OF PROCEEDING:	In person
APPEARANCES:	S. C., Appellant Laetitia Tremblay, Representative for the Appellant J. S., Added Party (employer)