



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. C. v Canada Employment Insurance Commission*, 2019 SST 465

Tribunal File Number: GE-19-961

BETWEEN:

J. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: April 4, 2019

DATE OF DECISION: April 11, 2019

DECISION

[1] The appeal is allowed. The Claimant has proven on the balance of probabilities that he had no reasonable alternative to leaving his employment.

OVERVIEW

[2] The Claimant worked for nine months as a general labourer and a core cutter at a remote mining work site. During his employment, the Claimant was not provided with pay information or the details of the deductions that were made from his salary. The Claimant also had safety concerns associated with the lack of safety training, the use of unsafe equipment and the lack of adherence to general safety standards in the workplace. The Claimant quit his job and left the work site when his supervisor insisted that the Claimant stay alone and work.

[3] The Commission disqualified the Claimant from receiving benefits because it concluded that he voluntarily left his employment with X without just cause. The Claimant now has appealed the Commission's reconsideration decision before the Social Security Tribunal and argues that he had just cause to leave his position.

ISSUES

Issue 1: Did the Claimant voluntarily leave his employment with X?

Issue 2: If yes, did the Claimant have just cause for voluntarily leaving his employment because he had no reasonable alternative to leaving due to his pay issues and his workplace safety concerns?

ANALYSIS

[4] A claimant is disqualified from receiving benefits if he voluntarily leaves any employment without just cause.¹ A claimant can establish just cause for voluntarily leaving if he can prove that leaving his employment was the only reasonable alternative in the circumstances.²

¹ Section 30 of the *Employment Insurance Act*.

² Paragraph 29 (c) of the *Act*.

[5] The Commission has the burden to prove that the leaving was voluntary. Then, the burden shifts to the claimant who must prove that he had just cause for leaving.³ The burden of proof for both the claimant and the Commission is a balance of probabilities, which means that it is “more likely than not” that the events occurred as described.

Issue 1: Did the Claimant voluntarily leave his employment with X?

[6] I find that the Claimant left his employment voluntarily.

[7] The Claimant stated to both the Commission and the Tribunal that he quit his employment. These statements are corroborated by the Claimant’s two records of employment from X, which state that he quit.

[8] The Claimant testified that on October 24, 2017, he was working with a geologist at the X Mine. The Claimant stated that groceries and fuel supplies were low at the work site, so the geologist told the Claimant that he was going to drive to the nearest town to purchase supplies. The geologist instructed the Claimant to continue his work while he left to get the supplies. The Claimant testified that he informed the geologist that he did not want to work alone at the mine since he felt it was dangerous. The Claimant stated that he quit to avoid working alone. Accordingly, I find the Claimant had a choice to stay and work in the mine or leave his employment. He chose to leave voluntarily.⁴

Issue 2: Did the Claimant have just cause for voluntarily leaving his employment because he had no reasonable alternative to leaving due to his pay issues and his workplace safety concerns?

[9] I find that the Claimant had just cause to leave his employment.

[10] A claimant demonstrates just cause by proving on a balance of probabilities that leaving his employment was the only reasonable alternative in the circumstances.⁵

³ *Green v Canada (Attorney General)*, 2012 FCA 313.

⁴ *Canada (Attorney General) v Peace*, 2001 FCA 56.

⁵ *Canada (Attorney General) v White*, 2011 FCA 190.

[11] The law sets out a non-exhaustive list of circumstances to consider when determining whether there is just cause.⁶ Consequently, a claimant whose situation does not fall into one of the circumstances listed in the law can nevertheless prove just cause by showing that having regard to all of the circumstances, he had no reasonable alternative to leaving.⁷

[12] The Claimant argued that he had just cause to leave his employment due to safety concerns within the workplace and issues with his pay.

Safety Concerns

[13] The Claimant raised several safety concerns with the workplace. The concerns touched upon three main areas – lack of safety training, unsafe equipment and poor overall workplace safety standards. The Claimant highlighted that his employer failed to provide him with safety training on several key equipment that he used regularly in his job. The Claimant stated that he was required to operate a quad, a bobcat and a boat without receiving prior training. He was required to operate trucks on the work site even though he did not have his trucking licence. The Claimant also testified that he was not provided with first aid training, despite working at a remote work site. In addition, the Claimant testified that he was working with unsafe equipment. As examples, the Claimant testified that he was required to cut core rock samples with a chainsaw that did not have a safety lock and was forced to operate a bobcat in the rain, even though there were no windows on the machine. When the Claimant performed his core cutting tasks, he worked in a small shack that was not properly ventilated and which required him to periodically leave the shack in order to get fresh air. In relation to overall safety standards in the workplace, the Claimant stated that he was instructed to prospect, walking for kilometres in the bush, without a prospector's licence. The Claimant also testified that on several occasions he was left to work alone on the work site, which created a serious safety concern because if he was injured, there was nobody to assist him or call for help. The Claimant stated that he raised these concerns with the two geologists who were on the work site with him and who were his immediate supervisors. The Claimant testified that they dismissed his concerns telling him that he was raised in the bush and therefore he should be accustomed to working in an environment

⁶ Paragraph 29 (c) of the *Act*.

⁷ *Canada (Attorney General) v Patel*, 2010 FCA 95.

like the work site. The Claimant also testified that he tried to address his concerns with the CEO of the mine. However, the CEO worked in Toronto and was hard to contact. The Claimant stated that he did address his concerns with the CEO during one of the CEO's rare visits to the mine. However, no training or changes occurred after he brought his safety concerns forward. According to the Claimant, the CEO was dismissive and said that there was no real problem because nobody was there to keep tabs on violations.

[14] I find that the working conditions at the Claimant's work site were unsafe and that he raised these safety concerns not only with his immediate supervisors but also with the CEO of the Company. I accept the Claimant's testimony regarding these safety concerns because he was forthright in his testimony. When I asked clarification about the Claimant's safety issues, he responded with detailed examples of areas where he felt that workplace safety standards were not being met. Moreover, the Claimant testified that he had worked in remote work sites in the past and is accustomed to working at a location with minimal supervision. The Claimant's familiarity with working in remote location reinforces, in my view, the authenticity of his concerns about safety at the work location.

Pay/Compensation Concerns

[15] The Claimant testified that he was paid \$150 per day for the work he performed. This amount represented \$15 per hour for ten hours of work a day. He stated that he performed different tasks during his employment with X but had always understood that his salary would remain the same. The Claimant testified that he did not receive any pay stubs during the time that he worked and had little visibility on how his pay was calculated or how many hours were taken into account for the purposes of compensation. He received his pay through direct deposit to this bank account, but there were no payment details. The Claimant stated that he had originally received a net amount of \$150 per day but that later in his employment, his pay was subject to deductions. He testified that these deductions resulted in his pay being reduced from a net amount of \$150 per day to a net amount of between \$110 and \$120 per day. The Claimant did not understand why there was a drop in his salary since he was supposed to be paid at the same rate of pay for all of the work that he performed. The Claimant further testified that he was not paid overtime even though there were times when he worked beyond ten hours a day. He

stated that he is owed about 160 hours of overtime. In addition, there were many occasions where he was paid late. The Claimant testified that he raised his pay concerns with the CEO of the company in May 2017 and was advised that his employer was in the process of implementing a new accounting system. The Claimant was told to be patient and that changes were imminent. The Claimant stated at the hearing that he never received a detailed breakdown of his pay and that he is still waiting for a copy of his T4 statements. The Claimant also testified that until he received his records of employment, he was unaware that he had been hired both as a labourer and a core cutter. The Claimant thought that the only position that he held with the company was that of core cutter, even though he did multiple tasks in that role.

[16] The employer stated that originally the Claimant was a casual worker in the mine. He only worked a few days a week as a labourer when there was a need for general work to be completed. The Claimant was then hired as a regular employee. The employer stated that as a regular employee, the Claimant was subject to statutory deductions and that is what accounted for the reduction in his net salary.

[17] I find that there was a lack of transparency around the Claimant's pay and compensation. I accept the Claimant's testimony that he had no visibility over the amounts that were deducted from his pay and the details of his overall compensation. His position is corroborated by the lack of detail contained in the two records of employment completed by the employer. Neither the record of employment for the position of labourer nor the record of employment for the position of core cutter contain a breakdown of the insurable earnings per pay period. Moreover, the record of employment for the general labourer position does not indicate the first day worked by the Claimant and states only the last day worked and the final pay period. The document mentions the total number of insurable earnings but then states that the Claimant accumulated no insurable hours.

Reasonable Alternatives

[18] Having considered the two reasons for the Claimant's departure, I find that the Claimant has shown on the balance of probabilities that he had just cause to voluntarily leave his employment.

[19] The Claimant argues that, in the circumstances, leaving was the only reasonable alternative. The Commission argued that the Claimant has not proven that he had just cause to voluntarily leave his employment because he had not exhausted other reasonable alternatives. The Commission argued that the Claimant failed to exhaust three reasonable alternatives before leaving his job. The Commission argued that the Claimant needed to discuss his pay and safety concerns with his employer and attempt to resolve the issues, the Claimant should have filed a complaint with the labour board, and the Claimant needed to secure other employment before quitting his job.

[20] First, I do not accept the Commission's argument that the Claimant failed to discuss and attempt to resolve his workplace concerns because the Claimant testified in detail about the discussions he had with management to address these concerns. The Claimant testified that he spoke to his immediate supervisor at the mine and was not provided with any support. He also testified that he called the CEO of the company to inquire about his pay and to obtain details about the deductions. The Claimant testified that he was given assurances that he would obtain more clarity on his pay when changes were made to the accounting system. However, the Claimant never received the clarification that he was seeking. In addition, the Claimant also testified that he raised his safety concerns with the geologists at the mine and spoke to the CEO on at least one occasion when the CEO was visiting the mine. His safety concerns were dismissed. The Commission did not provide any evidence to contradict the Claimant's testimony that he had raised his concerns with his employer. Consequently, I find that the Claimant did attempt to resolve with his employer his pay and workplace safety concerns and did exhaust that avenue.⁸

[21] Second, I do not accept the Commission's argument that the Claimant should have filed a complaint with a labour board and/or secured alternate employment prior to leaving. In my view both of these options were not reasonable, given the remote work location of the work site as well as the circumstances that arose on the day the Claimant quit.

[22] The Claimant testified that the mine is located in the bush approximately 15 kilometres from the nearest town, X, Manitoba. To access the worksite from X, the nearest city in the area,

⁸ *Canada (Attorney general) v Hernandez*, 2007 FCA 320.

it was necessary to drive approximately 78 kilometres on a gravel road and another 25 kilometres on a bush road. The Claimant testified that he would work at the mine for 21 days and then leave for 7 days. This was the Claimant's work schedule during most of the period that he worked. The Claimant testified that he does not own a cell phone or a laptop and did not have access to any devices in order to connect to the internet while working at the mine.

[23] I find that it was not reasonable to require the Claimant to file a complaint with a labour board when he was so isolated at his work location and did not have a means of engaging and pursuing the complaint. Moreover, the Claimant testified that he needed to work in order to secure an income and collect insurable hours and therefore did not want to create any trouble with his employer by filing a complaint with a labour board. The Claimant's testimony on this point was sincere and he genuinely hoped that the employer would correct the situation and be more transparent about his pay deductions.

[24] Likewise, given the very short periods that the Claimant was away from the work site, I do not agree with the Commission's position that securing other employment before leaving his job was a reasonable alternative. The evidence shows that the Claimant was isolated for long periods and could not possibly have engaged in an active and sustained job search. The Claimant had no means of conducting a job search, engaging with prospective employers and connecting to set up interviews.

[25] Lastly, the circumstances surrounding the Claimant's sudden departure further support my finding that leaving his employment was the Claimant's only reasonable alternative in the circumstances. The Claimant testified that on October 24, 2017, his supervisor instructed him to work alone on the work site while the supervisor left to drive to town for supplies. The Claimant testified that he spoke to the supervisor and advised him that he did not want to be left alone on the work site because it was unsafe. The Claimant highlighted to his supervisor that if he were to injure himself, nobody would assist him or call for help. The Claimant also testified that there was also a possibility that he could encounter aggressive wildlife while working alone and this made him feel uneasy. Despite the Claimant's opposition to working alone on the site, the supervisor insisted that the Claimant stay and work. The Claimant testified that he decided to quit his job and leave the work site to ensure his own safety. He got into the back of his

supervisor's truck and rode to town with him. I accept the Claimant's testimony regarding the circumstances surrounding his departure from the work site because the Claimant's testimony was credible. Furthermore, the Claimant's testimony is corroborated by the information he included on his initial claim for employment insurance benefits. When asked about whether there were any additional remarks about the circumstance and reasons for quitting this particular job, the Claimant stated that "on more than one occasion they [employer] made me work alone at the site which wasn't safe".

[26] Consequently, I find that the Claimant should not be disqualified from receiving employment insurance benefits because he has proven that he had just cause to voluntarily leave his employment.

CONCLUSION

[27] The appeal is allowed.

Christianna Scott

Member, General Division - Employment Insurance Section

HEARD ON:	April 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. C., Appellant Amanda Fleury, Representative for the Appellant