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

Citation: *C. K. v Canada Employment Insurance Commission*, 2019 SST 1619

Tribunal File Number: GE-19-884

BETWEEN:

C. K.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: April 9, 2019

DATE OF DECISION: April 25, 2019

Canada

DECISION

[1] The appeal is dismissed. The Commission has proven the Claimant voluntarily left his employment. The Claimant has not proven, on a balance of probabilities, having regards to all the circumstances, that he had no reasonable alternative to leaving his employment.

OVERVIEW

[2] The Claimant worked as a long haul trucker based in Ontario driving a company owned rig on various routes in Canada and the United States. The Claimant repeatedly complained to his boss that the cab smelled of exhaust fumes which the Claimant believed was caused by a leak in the exhaust system. To make enough money the Claimant drove the maximum number of hours and days permitted until he was, in his words, "burnt out." The Claimant took two weeks off and quit the day following his return to work. The Canada Employment Insurance Commission (Commission) disentitled the Claimant from receiving employment insurance (EI) regular benefits because it determined he voluntarily left his employment without just cause. In response to the Claimant's request for reconsideration, the Commission upheld its decision. The Claimant appeals the Commission's reconsideration decision to the Social Security Tribunal (Tribunal).

ISSUES

Issue 1: Did the Claimant voluntarily leave his employment?

Issue 2: If so, did the Claimant have just cause to leave his employment?

ANALYSIS

[3] A claimant is disqualified from receiving any EI benefits if the claimant voluntarily left any employment without just cause.[1]

[4] 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

[1] *Employment Insurance Act* (Act), section 30(1)

burden of proof in this case is a balance of probabilities, which means it is "more likely than not" the events occurred as described.

Issue 1: **Did the Claimant voluntarily leave his employment?**

[5] Yes, I find that, on a balance of probabilities, the Claimant did voluntarily leave his employment. To determine whether a claimant voluntarily left his employment the question to be answered is whether the claimant had a choice to stay in or leave the employment.[2]

[6] The Claimant testified that he drove the employer's truck to his home province and took two weeks off work. As he was driving the truck back to Ontario to resume working the truck broke down on Ontario Highway 401. The next day, when he was at the garage, he spoke to his boss. The Claimant stated that he told his boss that there was something different about himself and he thought he had trucker burnout. The Claimant testified that he asked his boss if he could have a layoff until he got things straightened out. The boss declined to issue a layoff. The Claimant testified that he and his boss agreed that it would be beneficial for the Claimant to stay off the truck until the Claimant figured out what was going on with himself. The Claimant then told his boss that he would be quitting and flew back to his home province. As a result, while the employer agreed to the Claimant's remaining off the truck for a period of time so that the Claimant could address his concerns, I find the Claimant initiated the separation from his employment when he chose to leave his employment after his request for a layoff was refused. Accordingly, I find the Claimant voluntarily left his employment.

Issue 2: If so, did the Appellant have just cause to leave his employment?

[7] No, I find the Claimant did not have just cause to voluntarily leave his employment when he did.

[8] To establish he had just cause to leave his employment, the Claimant must demonstrate that, on a balance of probabilities, he had no reasonable alternative to leaving his employment, having regard to all of the circumstances.[3]

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[2] *Canada (Attorney General) v. Peace*, 2004 FCA 56
[3] *Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Imran*, 2008 FCA 17

[9] The Act lists some circumstances[4] which I have to consider when assessing if a claimant has proven just cause for leaving his employment; however, just cause is not limited to those listed circumstances. The Claimant must prove that his circumstances, whether listed or not, show it is more likely than not that he had just cause. Even when a listed circumstance exists, the Claimant must still prove he had no reasonable alternative to leaving his employment and I must "have regard to all the circumstances."[5]

[10] A circumstance to be considered is "working conditions that constitute a danger to health or safety." [6] For this circumstance, I must consider whether the fact that the Claimant voluntarily left his employment as a result of fears he had of dangerous conditions at his work was the only reasonable alternative available to the Claimant. [7]

[11] The Claimant testified that he had arranged to work for this employer while he was in school in his home province learning to drive tractor trailers. He flew to Ontario and started to drive a company owned truck. The truck cab had a sleeper unit in which he lived as he did not have his own residence in Ontario. The Claimant worked for the employer from June 24, 2018, to October 23, 2018, during that period he spent a total of three nights away from the truck, when he stayed with relatives. The Claimant testified that he did not bring his car to Ontario and his only means of transportation was the truck.

[12] The Claimant testified that when he started working for the company he could smell exhaust fumes in the cab of the truck. He stated that there was a leak in the exhaust system two feet below the air intake for the truck cab. When the truck was in motion the amount of air coming in would dilute the smell. When he would stop overnight at a truck stop, he would have to run the truck engine to operate the air conditioning in the cab as he slept. The Claimant testified that he would wake up in the morning thinking he was lucky he did not die overnight. The Claimant provided pictures of the truck engine which, he stated, showed the exhaust leak. After the hearing, the Claimant provided a series of texts between himself and a former company employee who had driven the same truck. The text included pictures of the engine and the

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[4] Act, subsection 29(c)
[5] *Canada (Attorney General)* v. *Lessard,* 2002 FCA 469
[6] Act, subparagraph 29(c)(v)
[7] *Canada (Attorney General) v. Hernandez,* 2007 FCA 320

former employee suggested that the manifold was gone or the manifold gasket was the issue. The Claimant testified that he told his boss several times about the smell of exhaust fumes in the truck and asked to have the truck repaired. He also testified that a co-worker and the co-worker's spouse were in the truck cab and the spouse noticed the smell of exhaust. He stated that the spouse texted the boss to get the exhaust leak fixed. The Claimant testified that he asked his boss a week later if the boss would put the truck in to get the exhaust leak fixed and the boss replied yes. The Clamant stated that when he brought the truck to the garage the next day an appointment had not been made.

[13] The Claimant testified he was paid a percentage of the value of the load that he was delivering. If he was hauling an open flat bed he would have to take time to secure the load. He stated that on three occasions he experienced heat stroke while securing a load. The Claimant testified that his working hours were regulated by the Department of Transportation. His driving hours were recorded in a digital log book. When he drove in the United States he was limited to driving for 11 hours a day. When driving in Canada he was limited to driving for 13 hours a day. When crossing the border between the two countries, the destination country's driving limits applied. In addition to a daily driving limit, the Claimant was limited to driving 70 hours in any 7 day period. The Claimant testified that because he was paid on a per load basis that he worked as many hours as he could. He would work until "his log book ran out" which meant that he could not drive any more because he was at the daily or 70 hour time limits. The longest period of time that he took off while working was 36 hours and that was due to regulatory requirements. He was supposed to take a 30 minute break but chose to take 15 minutes because he could not spare the time.

[14] The Claimant testified that it was necessary to keep the brokers happy. The brokers were the people who contracted with the company to haul loads. The Claimant stated that while Google maps may show that a trip was a certain kilometre distance and should be completed in a certain number of hours customers did not always realize that the driving day was limited by regulation and would get upset if the load was not delivered when they thought it should be delivered. The Claimant testified that he was on a "load to load" schedule and was always rushing to get loads delivered. He found this was stressful. He wanted to earn as much money as he could and so he took as many loads as he could. He did not take any time off other than

what was required by the regulations. At one point, he drove for 12 days in a row. The Claimant stated in his appeal that he was losing money when he would drive in the United States because he was paid in Canadian dollars, but had to buy prepared meals with US dollars. The exchange rate at 70% made his US expenses much higher than his Canadian expenses. He was living in the sleeper part of the truck cab and could not prepare meals from scratch. The Claimant also stated that the cost of internet access was very high.

[15] The Claimant testified he has attention deficit hyperactivity disorder (ADHD) and stopped taking medication for it in 2000. He testified that due to financial difficulties, brought about by the loss of his employment some years earlier, that he had developed some mental health issues, including thoughts of harming himself. The Claimant testified that he received counselling for those mental health issues. The Claimant stated that he also received help in redirecting his thoughts from a person outside the medical profession. The Claimant testified that he was extremely lonely when he was on the road. He would strike up conversations with strangers when he stopped driving. The Claimant testified that when he left his employment he felt as if he was in a fog. He stated that as he continued working he began to find himself in the same dark place as before when he wanted to harm himself. The Claimant testified that he was taught to remove himself from situations where he may be harmed. He stated that when he returned home family members and friends told him that he did not seem like himself and it took him a month or so for him to return to normal.

[16] The Claimant testified that in October 2018 he drove a load to his home province and took two weeks off work, keeping the company truck at home with him. During that time he saw a doctor at the clinic he regularly visited. He had not seen this doctor before. The Claimant testified that he explained what he was feeling to the doctor. He stated that the doctor told him she did not have the professional qualifications to help him and referred him to a psychologist for assessment to determine if he should take medication for his ADHD. The appointment with the psychologist was scheduled in November 2018. The Claimant testified that the doctor did not do anything for him, she did not recommend that he stay in or leave his job.

[17] The Claimant testified that he drove the truck back to Ontario. As he was driving along the 401, the truck began losing speed and he pulled it over to the side. He was able to get the

truck moving and took it to a garage. After the truck was parked, smoke started coming out from under the hood. He stated he looked under the hood and saw it was the exhaust leaking. The Claimant met with his boss the next day at the garage where the truck was located. The Claimant told his boss that he would be quitting.

[18] The Commission submitted that the Claimant's allegations that the truck was not mechanically fit and that the employer refused to put it in for service is rebutted by the evidence from the employer that the truck had passed the required safety inspection and had been in for service before the client quit. The Commission also submitted that the reasons given by the Claimant that he had to pay for food and phone data while working in the United States and that he was not reimbursed by the employer for his GPS were all rebutted by the employer.

[19] The employer told the Commission that the company is not responsible for covering meals, the Claimant could deduct the cost of meals from his income tax. The truck's headlights were in working order and it was the Claimant who refused to drive at night due to his concentration. With respect to data usage, the employer told the Claimant to buy a data plan and he would pay for half. There was a national truck stop chain that offered a year round membership that the employer offered to purchase. The software application, Keep Trucking App, that the Claimant was required to use had minimal data usage and other drivers had no issue with the application.

[20] The Commission argued the Claimant did not have just cause for leaving his employment because he failed to exhaust all reasonable alternatives prior to leaving. The Commission stated that reasonable alternatives to leaving would have been for the Claimant to: take a period of leave from his employment to spend time with his family and get medical treatment for his health issues; return to work and opt to take fewer loads until he was able to secure more suitable work; or, provide medical evidence if he was unable to return to long haul trucking work for health reasons. In addition, the Commission submitted, the Claimant could have contacted a regulatory authority if he felt that the truck was still unsafe after being inspected and cleared.

[21] The Claimant testified that when he was told about the job a lot of the parts were left out and if he had known of the conditions of the job he would not have taken it. He testified that wi-fi was discussed by the employer and was available to him at certain truck stops on a cost shared

basis with his employer. He testified that it was agreed that he would not be paid for meals when he was hired.

[22] The Claimant submitted that when he left his employment he could not keep going the way he was going. The Claimant stated that as a result of his experiences with the boss he believed the employer had burned bridges with him. The Claimant stated that if he claimed EI sickness benefits he would have to return to work with the employer and for that reason he did not request a leave of absence. The Claimant submitted that taking fewer loads was not a reasonable alternative given his mindset, that it was beneficial to his health and others health that he not be on the road. The Claimant testified that he had asked his boss for a layoff and his employer declined to do so.

[23] The Claimant's evidence indicates that he was working as many hours as he could and felt "burnt out" to the point that he was experiencing a recurrence of past mental health issues and thoughts of self-harm. I find that it would have been reasonable for the Claimant to request a period of time off or to take fewer loads, thus taking some time off to attend to his issues and overall spending less time driving.

[24] The Claimant made numerous references to the presence of an exhaust leak that he believed was causing exhaust to enter into the cab of the truck. The employer provided three invoices detailing repairs that were made to the truck driven by the Claimant. There is evidence in the appeal file that the truck was inspected prior to the Claimant starting work and also that the truck was driven prior to the Claimant starting work by the persons servicing the truck. Two of the invoices were for repairs made prior to the Claimant starting work. One invoice dated April 19, 2018, shows that a road test was made as part of the work. One invoice, dated May 4, 2018, was for an "Annual Safety Inspection." That invoice lists a number of repairs that were made to the truck. There is no evidence that an exhaust leak was present on either of those occasions. One invoice dated September 10, 2018, for repairs made while the Claimant was working, shows the complaint as "Truck in derate *(sic)*, will not complete a regen *(sic)*." The Claimant testified that he was at that garage, located in New Castle, Delaware, on September 9, 2018, when the truck was being serviced. The invoice for the work performed on September 9, 2018, is in the appeal file and shows that the Claimant paid for the work and was later reimbursed by the

employer. The invoice has an unsigned handwritten note "brought truck in for service and had them check for all leaks. Did not find any as you can see in the summary. This is just before he quit." The Claimant states that at the September 9, 2018, servicing he made the mechanic aware of the exhaust leak. The Claimant stated that the mechanic said "that's pretty bad" and that the boss said it would be fixed when the Claimant returned to Ontario. The truck was also driven by a mechanic during the servicing on September 9, 2018. There is no indication on the invoice that an exhaust leak was the complaint. There is no indication that an exhaust leak was present at that time or that any work was performed to repair an exhaust leak. I find that it is not reasonable or likely that a mechanic, once made aware of an exhaust leak and commenting on it, would allow a person to continue driving the vehicle. The employer told the Commission that in addition to the invoices that he provided to the Commission that four days before he finished his employment the Claimant had brought the truck into a place in Nova Scotia for service, a fuel filter, and there was no exhaust leak at that time. The Claimant did not reference the exhaust leak as a reason for leaving his employment in his application for EI benefits. He testified that he did not do so because he did not think it was relevant.

[25] The Claimant testified that he did not report the issues with the truck to any regulatory authority because if had reported any issues it would get back to his boss and he would likely get fired. I find that it would have been reasonable for the Claimant to report the exhaust issue to a regulatory authority. I find that, by not reporting the exhaust issue to a regulatory body, the Claimant has not established, on a balance of probabilities, that leaving his employment due to his concerns with the exhaust leak was the only reasonable alternative available to him.

[26] When a claimant cites health reasons as a reason for leaving his employment, I must decide based on the facts whether, because of the claimant's health, he had no reasonable alternative but to leave his job. It is not necessary that medical evidence be in the form of a certificate from a doctor. Medical evidence can take many forms, it can be from the person himself or herself orally, it can be from a specialist orally or in writing, or it can be from other persons.[8] The presence or absence of a medical certificate is a question of evidence. If one exists, the evidence supporting the claimant's position may be stronger than otherwise. But, even

[8] Canada Umpire Benefits (CUB) 52107.

in the absence of a medical certificate, it is still open to me to find that a person had just cause, on the basis of health, for leaving employment.[9]

[27] The Claimant testified at the hearing that he was in a fog at the time he left his employment. He described it as feeling as if he had just woken up. He testified that he did not seek medical help in Ontario because he did not have his own transportation to get to a hospital nor did he have a provincial health care card. He did seek medical attention while he was in his home province on his two weeks off. He submitted that in his mind at the time he quit he had the choice to leave the job or to harm himself. The Claimant testified he had experienced similar mental health issues some years earlier and had received treatment. He recalled that while in treatment he would sign a contract stating that he would not harm himself prior to the next appointment. When he saw a doctor while he was in his home province he was not satisfied with the outcome of that visit. He testified that he tried to get in touch with his former doctor in his former town, but that was like "yelling at a wall." The doctor the Claimant saw when he was in his home province did not recommend that he leave his job. That doctor arranged for him to see a psychologist in the following month to assess the Claimant's ADHD to determine if he should resume his medications. There is no evidence that the Claimant disclosed to his physician or anyone else at the time he left his employment that had he not left his employment he would harm himself. The Claimant stated that he did not seek medical evidence to establish that he was unable to return to long haul trucking for medical reasons because he did not want to get out of trucking altogether, he just wanted to get away from that particular job. I acknowledge the Claimant's testimony that he felt he could not stay in his employment because it was negatively affecting his mental health. I also acknowledge that he found it difficult to access the mental health care he believed he needed to avoid his thoughts of self-harm. However, I find the Claimant has not established, on a balance of probabilities, that these reasons left him with no reasonable alternative but to leave his employment when he did. The Claimant had the reasonable alternative to seek medical attention, including making arrangements for transport to local clinics in Ontario for assessment.

[9] CUB 14805. Although I am not bound by CUB decisions, I am relying on these principles.

[28] There is a distinction between the concepts of “good cause” and “just cause” for voluntarily leaving. It is not sufficient for a claimant to prove they were reasonable in leaving their employment; reasonableness may be good cause but it is not just cause. It must be shown that, after considering all of the circumstances, the claimant had no reasonable alternative to leaving their employment.[10] The words "just cause" are not synonymous with "reason" or "motive.”[11] Although the Claimant may have felt he had a good reason to voluntarily leave his employment, a good reason is not necessarily sufficient to meet the test for “just cause.”[12]

[29] The Claimant testified that he was up for the challenge of driving. He stated he did not want to get out trucking he just wanted to get away from this particular job. While the Claimant offered good reasons for leaving his employment, such as protecting his mental health, I find that he failed to prove that he had no reasonable alternatives to leaving his employment when he did. The Claimant had the reasonable alternatives of requesting a time off or to take fewer loads, reporting the exhaust issue to a regulatory body, or seeking medical attention, including making arrangements for transport to local clinics in Ontario for assessment. He did not avail of any of these alternatives. As a result, the I find the Claimant’s decision to leave his employment does not meet the test of just cause to voluntarily leave employment as required by the Act and case law described above.

CONCLUSION

[30] The appeal is dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	April 9, 2019
METHOD OF PROCEEDING:	Teleconference

[10] *McCarthy* A-600-93
[11] *Tanguay v. Canada (Unemployment Insurance Commission)*, A-1458-84
[12] *Canada (attorney General) v. Laughland*, 2003 FCA 12

APPEARANCES:	C. K., Appellant