



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. D. v Canada Employment Insurance Commission*, 2019 SST 748

Tribunal File Number: GE-19-1831

BETWEEN:

T. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: June 5, 2019

DATE OF DECISION: July 10, 2019

DECISION

[1] I am allowing the appeal. I find that the Appellant's employment ended because he voluntarily left his job to move back home to care for his wife during her medical crisis. I find that he had just cause for leaving since he had no reasonable alternative.

OVERVIEW

[2] The Appellant (who I refer to below as the Claimant) left his employment in Fort McMurray on February 6, 2019. He moved back to Calgary the next day. He reported that the company laid him off because of a shortage of work. The employer reported that it dismissed him because of misconduct.

[3] The Respondent (the Commission) agreed with the employer and disqualified the Claimant from receiving benefits. He asked the Commission to reconsider the disqualification but it did not change its decision.

[4] The Claimant is now appealing the reconsideration decision. He argues that his employer's allegations of misconduct are false and malicious. At the hearing, he shared confidential information about his wife's medical condition. He testified that he quit his job to return home to Calgary since his wife had alarming symptoms and needed his care and support.

[5] I must decide whether the Claimant was laid off from his job or dismissed, or if he left voluntarily. If he left voluntarily, I must decide whether he had just cause for leaving under the *Employment Insurance Act* (EI Act)

PRELIMINARY MATTERS

[6] After the hearing, the Claimant submitted additional documents about his wife's medical condition. I accepted these documents as relevant to his appeal. I shared them with the Commission and it responded on June 11, 2019. On June 13, 2019, the Claimant provided further documentation. I shared this additional medical evidence with the Commission and offered it another opportunity to reply. The Commission made no further submissions.

ISSUES

- [7] **Issue 1: Did the Claimant lose his job because of a shortage of work?**
- [8] **Issue 2: Did the employee dismiss the Claimant because of misconduct?**
- [9] **Issue 3: Did the Claimant leave his job voluntarily?**
- [10] **Issue 4: If so, did the Claimant have just cause for leaving?**

ANALYSIS

[11] When you leave a job, you are not automatically entitled to employment insurance (EI) benefits. You can receive benefits if your employer lays you off because of a shortage of work. You cannot receive benefits if your employer dismisses you for misconduct, or if you leave your job voluntarily without just cause.¹

Misconduct

[12] The Commission has the burden of proof to show that your employer dismissed you for misconduct.² It must provide clear evidence to identify the actions that caused your dismissal and show that you committed them.³ It must also show that your actions were wilful and breached your duty to your employer. As well, you have to have known, or should have known, that these actions would cause your dismissal.⁴

Voluntary Leaving

[13] The Commission has the burden of proof to show that you left your job voluntarily. Once it proves this point, you have to show that you had just cause for leaving.⁵ You can show just cause if you had no reasonable alternative to leaving based on all your circumstances.⁶

¹ You cannot receive benefits if you are disqualified under ss 29 and 30 of the *Employment Insurance Act* (EI Act).

² The standard of proof is on a balance of probabilities. This means it is more likely than not that the events a party relies on took place as reported.

³ *Crichlow v Attorney General of Canada*, A-562-97.

⁴ *Attorney General of Canada v Lemire*, 2010 FCA 314.

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

⁶ *Attorney General of Canada v Imran*, 2008 FCA 17.

Issue 1: Did the Claimant lose his job because of a shortage of work?

[14] No. There is no evidence to show that his employer laid him off because of a shortage of work. The email the employer sent him on February 6, 2019, only shows that the company did not have enough work to give him in Calgary. The Claimant conceded that there was still work in Fort McMurray for four or five more months.

Issue 2: Did the employee dismiss the Claimant because of misconduct?

[15] No. The Commission has not shown that the Claimant was dismissed on February 6, 2019, because of misconduct. The Claimant agrees that he used the employer's truck and trailer to move his belongings back to Calgary on February 7, 2019. The employer considered this action a wilful violation of the Claimant's duty to the company. It later recorded a dismissal for misconduct on his Record of Employment (ROE). However, this incident took place after his last day of work. On this basis, I find that the Claimant's actions did not cause his dismissal on February 6, 2019.

Issue 3: Did the Claimant leave his job voluntarily?

[16] Yes. I find that he left voluntarily. You leave a job voluntarily when you have the choice to stay or to leave.⁷ The Commission showed that the Claimant could have stayed. The email dated February 6, 2019, shows that the employer wanted him to stay. The Claimant conceded that there was work for him for a few more months, but he chose to leave. He testified that on January 6, 2019, he told the employer he would be leaving one month later.

Issue 4: Did the Claimant have just cause for leaving?

[17] Yes. I find that he had just cause since he needed to move back home to take care of his wife during her health crisis. The EI Act recognizes that having to care for a member of the immediate family can show just cause.⁸

⁷ *Attorney General of Canada v Peace*, 2004 FCA 56.

⁸ S 29(c)(v) of the EI Act.

[18] I accept the Claimant's sworn testimony that he and his wife discussed her worsening condition when she visited him in Fort McMurray during the 2018/2019 winter break. They decided that he needed to move back home to care for her while she waited for tests and surgery. He then gave his employer one month's notice.

[19] I give no weight to the employer's allegation that the Claimant quit to work on his partner's basement and collect EI benefits. The employer told the Commission he could submit text messages to prove this allegation. However, there are no such messages in the evidence. Moreover, the employer reported on the ROE that he dismissed the Claimant for misconduct. This contradicts his allegations that his employee quit to take advantage of EI.

[20] The Claimant originally told the Commission that the employer laid him off. He only later reported his wife's upcoming surgery. I understand that he preferred not to share her medical issues with the Commission at the time. It was a very private matter. I acknowledge the Commission's submission that it did not have this information when it made its original decision.

[21] However, after the hearing, the Claimant provided medical evidence about his wife's condition. I shared this information with the Commission. It is now aware of these facts. The Commission acknowledged that the Claimant submitted documentation showing his spouse had health issues that would require surgery. However, it submitted that this "does not justify the claimant's actions of taking the company truck and trailer without authorization."⁹

[22] I find that this submission is not relevant to the question of why the Claimant left his job. The dispute over him using the employer's truck and trailer took place *after* he left.

[23] The Commission argued that no surgery date had yet been set when this event took place. However, there is often a long wait for surgery. I find that patients experiencing distressing symptoms may need the care of their partners while waiting for medical tests and major surgery. As well, the meaning of the word "care" in the EI Act is not restricted to full-time physical care.¹⁰ It can mean assistance with daily physical tasks and emotional support.

⁹ GD10-1.

¹⁰ CUB 54526. CUBs do not bind me, but I find them relevant in this case.

[24] I find that the Claimant's wife needed such care and support. The evidence shows that her condition began to cause concern as early as January 2018, and then rapidly deteriorated. It started to interfere with her regular activities. Her internal mass had doubled in size by January 2019. She was facing major surgery and the possibility of a devastating diagnosis.

[25] I find that the Claimant had just cause to quit his job in these difficult circumstances. He had no reasonable alternative to moving home to care for his wife.

[26] The Commission considered whether he quit his job before deciding that the employer dismissed him. It argued that if he quit, he could have asked for a leave of absence to help his spouse after surgery as a reasonable alternative to leaving his job. However, a claimant who has to care for a family member does not have to ask for a leave of absence before quitting.¹¹

[27] The Claimant testified that he asked his employer to split his work schedule between Fort McMurray and Calgary as a reasonable alternative to leaving his job. His work in Fort McMurray was close to 800 kilometres from his home. This was at least an eight-hour drive each way. It was an even longer commute in the winter. His work schedule meant that he could only give care and support to his wife one week each month. The email dated February 6, 2019, shows that the employer considered his request but had no work for him in Calgary.

[28] By making this request, I find that the Claimant met his obligation to discuss his situation with his employer before he quit.¹² He showed that he tried to find a reasonable alternative to leaving his job.

[29] I find that the Claimant met the test under the EI Act to show just cause for voluntarily leaving his employment. He had no reasonable alternative to moving back to Calgary to provide care and support for his wife.

CONCLUSION

[30] The appeal is allowed.

¹¹ CUB 48123.

¹² *Attorney General of Canada v. Hernandez*, 2007 FCA 320.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	June 5, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	T. D., Appellant