



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. A. v Canada Employment Insurance Commission*, 2019 SST 853

Tribunal File Number: GE-18-3255

BETWEEN:

G. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: July 30, 2019

DATE OF DECISION: July 31, 2019

DECISION

[1] The appeal is allowed. I find that the Canada Employment Insurance Commission (the Commission) has not proven that the Claimant voluntarily left his employment.

OVERVIEW

[2] The Claimant worked at X. He spoke to his immediate supervisor about a raise. The supervisor told him that he would need to speak with the boss. The Claimant approached his boss to discuss a raise. His boss started to yell at him and told him to leave. The Claimant left the workplace and did not return.

[3] The Claimant made a claim for regular employment insurance benefits. He stated in his claim that he was dismissed from his employment. The Commission decided that the Claimant qualified for benefits because the circumstances of his departure did not amount to misconduct. The employer requested reconsideration of the Commission's decision and argued that the Claimant was not dismissed but rather that he voluntarily left his employment. On reconsideration, the Commission disqualified the Claimant from receiving benefits because the Commission decided that the Claimant voluntarily left his employment without just cause. This resulted in an overpayment.

[4] The Claimant appealed this disqualification before the Social Security Tribunal. He argued that he did not voluntarily leave his employment because his boss told him to leave.

PRELIMINARY MATTERS

[5] At the outset of the hearing, it was apparent that the Claimant spoke very little French and his English was poor.

[6] I asked the Claimant if he wanted to adjourn the hearing so the Tribunal could make arrangements for an interpreter to be present. The Claimant confirmed that he would testify in English and that he wished to proceed with the hearing.

[7] I reconfirmed with the Claimant that he wanted the hearing to be conducted in French as his representative spoke more French, that the Claimant wanted to testify in English and that the Claimant wanted the correspondence from the Tribunal in English.

ISSUES

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

Issue 2: If yes, did the Claimant have just cause for voluntarily leaving his employment because he had no reasonable alternative to leaving?

ANALYSIS

[8] I must decide whether the Claimant is disqualified from receiving benefits because he voluntarily left his job without just cause. To do this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

[9] 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.¹ 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 at X?

[10] To determine if a claimant left work voluntarily, the Commission must prove on the balance of probabilities that the claimant took the initiative to sever the employer-employee relationship.²

[11] I find that the Claimant did not voluntarily leave his employment.

[12] The Commission relied upon the employer's statements, which consistently stated that the Claimant quit. This was the employer's position both in the record of employment and in the statements provided to the Commission. The employer stated that the Claimant had a pattern of

¹ *Green v Canada (Attorney General)*, 2012 FCA 313.

² *Coté v Canada (Attorney General)*, 2006 FCA 219.

leaving work without warning his manager and therefore abandoning his position. The employer's statement says that on June 17, 2018, the Claimant left the workplace after he asked his boss for a raise and asked to borrow money for personal reasons. The employer stated that the Claimant did not come to work even though his supervisor tried to contact him when he did not report to work for his shifts later during the week. The Claimant only contacted his employer at the end of the week to ask for his final paycheque. The Commission argues that the Claimant voluntarily left his work because he abandoned his position.

[13] The Claimant, however, has consistently argued that he did not quit. He argued that the employer dismissed him. He maintained this position when he filed his initial claim and throughout his discussions with the Commission. He also maintained this position when he filed an unjust dismissal complaint against his employer under the *Act Respecting Labour Standards*.

[14] The Claimant testified that he had spoken to his supervisor on several occasions about a raise since he had not received a raise in about five years. His supervisor, who was his boss's brother, told the Claimant that he needed to speak to the boss. The Claimant testified that on June 17, 2018, he approached his boss because the boss appeared to be in a good mood. The Claimant was on his break. The Claimant testified that he started to ask for a raise. The Claimant testified that as soon as he touched upon the subject of his raise, his boss began to shout and cut him off from speaking. The boss yelled at him saying that the Claimant was always complaining about his salary to the supervisor and that he was driving the supervisor and the boss crazy with his requests for an increase. The Claimant said that the boss yelled at him, pointed to the door, and told him to leave and not to come back.

[15] The account of the events on June 17, 2018, by the employer and the Claimant are very different. I find the Claimant's testimony about these events to be credible and sincere. The Claimant described the interaction with his boss in detail and explained the context of the discussion and the manner in which his boss told him to leave the workplace.

[16] Moreover, I prefer the Claimant's firsthand account to the evidence submitted by the Commission. I note that the Commission relied upon the statement of the Human Resources Manager and did not provide a statement from the boss or any individuals who witnessed the discussion between the Claimant and his boss. In the initial contact with the Commission, the

Human Resources Manager stated that she could not confirm exactly what was said or asked on that day.³ Upon further inquiry, the Human Resources Manager stated that the Claimant had asked his boss for a raise and for personal money. She stated that the boss told him that he could not loan him any money and that he should take his break and go back to work. The employer stated that he never told the Claimant to go home.⁴ The employer provided a statement when it asked for reconsideration. The statement speaks about the Claimant's pattern of abandoning work but makes no mention of a discussion between the Claimant and his boss on June 17, 2018.⁵ In the final statement provided by the employer, the employer states once again that the Claimant left work because he had a pattern of leaving work and that he was not fired. The employer says that the boss told the Claimant to go back to work.

[17] Beyond these statements, there is no information provided by the Commission that relates to the content of the discussion that took place between the Claimant and his boss or the details of that interaction.

[18] I find it more likely than not that a discussion occurred around the salary of the Claimant and that the boss elevated his tone. The Claimant's testimony about his boss's demeanour is corroborated by the employer's statement. The employer stated that the boss is "direct and speaks loudly" and "il est vrai que le patron parle fort".

[19] I also find it more likely than not that the boss told the Claimant to leave and not come back. The Claimant testified that throughout the 14 years he worked for this boss, he had seen the boss fire several employees. He testified that he had never seen his boss get as angry as he did with the Claimant. The Claimant testified that it was because of his boss's level of anger and the way his boss gestured to the door, telling him to go and not to come back that the Claimant understood that he had been dismissed.

[20] Moreover, I do not accept the Commission's argument that the Claimant abandoned his work because he left on June 17, 2018, and did not come to work for his subsequent shifts. The Claimant testified that he was not contacted by his supervisor to come to work on the days

³ GD3-23

⁴ GD3-24

⁵ GD3-28 & 29

following the meeting with his boss. I accept the Claimant's testimony on this point. He was adamant that he did not receive a call from his supervisor. Although the employer stated that the Claimant was called by his supervisor in the days following the events, the employer could not provide a log of those calls and could not confirm if a message was left to the Claimant.

[21] I find that the Claimant's conduct after the discussion with his boss was consistent with the behaviour of an employee who genuinely believed that he had been told to leave the workplace. The Claimant contacted his employer on June 25, 2018, which was his payday. He testified that he wanted to make sure that he would receive his final pay. The employer confirmed that the Claimant asked for his pay and asked that it be given to one of his colleagues to bring to him. I find that the Claimant's conduct between June 17, 2018, and June 25, 2018, reinforces the Claimant's testimony that he was told to leave the workplace. In short, there was no need for the Claimant to contact the employer before his payday because he understood that he was no longer wanted in the workplace.

[22] Last, I do not accept the Commission's argument that Claimant abandoned his position on June 17, 2018, because he had a history of leaving the workplace without authorization. The Claimant testified that in the past, he did not leave work without permission. The Claimant testified that he did have periods during his 14 years of service where he was absent from the workplace. He stated that he left on one occasion because he had hurt his back. He also testified that his supervisor would tell him to go home when it was not busy in the store or call him at the last minute to tell him to stay home. I accept the Claimant's testimony that there was a lot of fluidity around his working hours and that he had not left the workplace in the past without the consent of his supervisor.

[23] I prefer the Claimant's position to that of the Commission because the Commission did not provide any information, beyond the statement that the Claimant had a pattern of abandoning his work. The employer said in their statement that they were trying to address this pattern with the Claimant. However, there were no disciplinary letters or warnings to substantiate the employer's statement. Therefore, I cannot accept the employer's statement that the Claimant had a pattern of leaving the workplace without authorization (that was being addressed by the employer) and therefore abandoned his position on June 17, 2018.

[24] In short, I find that the Claimant did not initiate the end of the employment relationship and did not have the choice to stay or leave his employment.⁶ Consequently, I find that the Commission has not proven on the balance of probabilities that the Claimant voluntarily left his employment.

Issue 2: Did the Claimant have just cause for voluntarily leaving his employment because he had no reasonable alternative to leaving?

[25] Given my findings that the Commission has not demonstrated that the Claimant voluntarily left his employment, it is not necessary to consider this issue.

CONCLUSION

[26] The appeal is allowed.

Christianna Scott
Member, General Division - Employment Insurance Section

HEARD ON:	July 30, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	G. A., Appellant S. S., Representative for the Appellant

⁶ *White v Canada (Attorney General)*, 2011 FCA 190.