



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. F. v Canada Employment Insurance Commission*, 2019 SST 960

Tribunal File Number: GE-19-2607

BETWEEN:

**J. F.**

Appellant/Claimant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Catherine Shaw

HEARD ON: July 31, 2019

DATE OF DECISION: August 12, 2019

## **DECISION**

[1] I am dismissing the appeal on all issues.

[2] The Claimant has not shown just cause because he had reasonable alternatives to leaving his job when he did. This means he is disqualified from receiving benefits.

[3] The Claimant also knowingly made a false representation when he failed to declare that he had left his job. The Commission acted judicially when it imposed the penalty and violation. This means I will not modify the penalty or violation.

## **OVERVIEW**

[4] The Claimant was on a claim for EI benefits and was working part time for a staffing agency. The agency sent him to a job site to work. On his second day of work, he left the job site at lunch and did not return to work because he could not find free parking at the site. He continued receiving EI benefits and did not report on his claims that he had left the job. He reported some earnings for the two days of work, but not all of them.

[5] Following an investigation, the Commission decided the Claimant had voluntarily left his employment without just cause and it was unable to pay him benefits. It also decided to impose a monetary penalty and violation because it determined the Claimant had knowingly made a false representation when he did not declare that he had left the job and when he reported less earnings than he had received during that period.

[6] I must decide whether the Claimant has proven he had no reasonable alternatives for leaving his job, as well as whether the Commission correctly imposed a penalty and violation. The Commission says the Claimant could have contacted the employer to inquire about parking before he left the job, and that he knew at the time he submitted the report that he had left the job and was unlikely to be confused about his earnings after such a short period of employment. The Claimant disagrees and states that he did not knowingly make a false representation but made a mistake when he reported his earnings for that period.

[7] I find the Claimant had reasonable alternatives to leaving his employment when he did. He may have made a mistake in reporting his earnings but he knowingly made a false

representation when he failed to declare that he had left his job. In my view, the Commission acted judicially so I will not modify the penalty amount or the violation.

### **THE CLAIMANT DID NOT ATTEND THE HEARING**

[1] The Claimant did not attend the hearing. A hearing is allowed to go ahead without the Claimant if the Claimant was given the notice of the hearing.<sup>1</sup> I think that the Claimant received the notice of hearing because the notice was sent to the e-mail address he provided. Several e-mails were sent to this address from the Tribunal and there is no evidence the e-mails were returned as undeliverable. So, the hearing proceeded on the date that was scheduled, but without the Claimant.

### **ISSUES**

[8] The issues before me are as follows:

[9] Issue 1: I must decide whether the Claimant is disqualified from being paid 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 he had just cause for leaving.

[10] Issue 2: I must decide whether the Commission correctly imposed a penalty and violation on the Claimant. This means I must determine whether the Claimant knowingly made a false representation on his weekly claim. If he did, I must decide whether the Commission acted judicially when it imposed the penalty and violation,

### **ANALYSIS**

#### **ISSUE 1: VOLUNTARY LEAVING**

##### **Did the Claimant voluntarily leave his employment?**

[11] The law says that you voluntarily left your employment if you had a choice to stay in the employment and chose to leave.<sup>2</sup>

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<sup>1</sup> Section 12 of the *Social Security Tribunal Regulations*

<sup>2</sup> *Canada (Attorney General) v. Peace*, 2004 FCA 56

[12] The Claimant was employed from July 20, 2016 to July 21, 2016. The Claimant stated to the Commission that he stopped working for the employer because it was a staffing agency that only provided part-time work and he was called to work random jobs. He left the jobsite at lunch on July 21, 2016, because there was nowhere to park and he did not have money to pay for parking. He said the job cost him more money than he was making.

[13] The Commission's evidence consists of statements by the employer. They said the Claimant was deployed to a worksite and left the site at lunch on the second day. The Claimant did not inform anyone he was leaving and did not contact the employer after that day. They considered that he quit when he walked off the worksite and issued his record of employment stating that he quit.

[14] I find the Claimant voluntarily left his employment when he left the worksite on July 21, 2016. The statements of both the employer and the Claimant support that he had the choice to stay and work on that day but chose to leave because he could not find free parking. As he made the choice to leave when he could have stayed, he voluntarily left the employment.

**Did the Claimant have just cause to voluntarily leave his employment when did?**

[15] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>3</sup> The law says that you have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.<sup>4</sup> It is up to the Claimant to prove this.<sup>5</sup>

[16] Having a good reason for leaving a job is not enough to prove just cause. The Claimant has to show that it is more likely than not that he had no reasonable alternatives but to leave when he did. When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant quit.

[17] The Claimant says that he left his employment because he could not find free parking at the worksite. He acknowledged to the Commission that he should have contacted the employer

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<sup>3</sup> This is set out at s 30 of the *Employment Insurance Act*.

<sup>4</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

<sup>5</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

to discuss the parking, but said he felt frustrated by the situation and decided to leave. The Claimant also said the job was not reliable, the employer would call him to work for one or two days per week only and he wanted to find a full-time job.

[18] The Claimant told the Commission that he obtained a new job shortly after leaving his employment. He started calling around for work after he left his job with the staffing agency and was hired by a landscaping company in the first week of August 2016.

[19] The *Employment Insurance Act* lists some circumstances which I have to consider when assessing if a claimant has proven just cause for leaving his employment, including reasonable assurance of another job in the immediate future.<sup>6</sup> In this case, the Claimant confirmed to the Commission that he did not have a job offer for his new position before he left the job with the staffing agency. Therefore, the Claimant could not have had reasonable assurance of another employment at the time he quit.<sup>7</sup>

[20] The Claimant has offered personal reasons for wanting to leave his job, including that the work was inconsistent and he wanted to find more stable employment. However, these reasons do not amount to just cause.

[1] The question is not whether it was reasonable for the Claimant to leave his employment, but rather whether leaving his employment was the only reasonable course of action open to him, having regard to all the circumstances.<sup>8</sup> Considering all the circumstances, the Claimant had the reasonable alternative to discuss his concerns about the parking with the employer before leaving his job. He could also have remained working at the staffing agency while looking for other work. In most cases a claimant has an obligation to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job.<sup>9</sup>

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<sup>6</sup> This circumstance is found at paragraph 29(c)(v) in the *Employment Insurance Act*

<sup>7</sup> *Canada (Attorney General) v. Lamonde*, 2006 FCA 44 explains that only the circumstances that existed at the time a claimant left their employment can be considered when assessing whether a claimant had just cause

<sup>8</sup> *Canada (Attorney General) v. Laughland*, 2003 FCA 12

<sup>9</sup> *Canada (Attorney General) v. White*, 2011 FCA 190

[2] The Claimant did not exhaust these reasonable alternatives before leaving his employment. As a result, he has not demonstrated just cause for voluntarily leaving his employment. This means he is disqualified from receiving EI benefits.

## **ISSUE 2: THE PENALTY AND VIOLATION**

### **Did the Claimant knowingly make a false or misleading statement?**

[3] The law says the Commission can impose a penalty if you have made a representation that you knew was false or misleading.<sup>10</sup> This means that you knew the information was untrue when you made the statement, it does not mean that you had the intention to deceive anyone.<sup>11</sup>

[4] The Commission is the party that must prove it is more probable than not that the Claimant made a misrepresentation and did so knowingly.<sup>12</sup>

[5] The Commission says the Claimant failed to report that he had quit his job on July 21, 2016, when he filed his weekly claim for benefits for the week beginning July 17, 2016. The Claimant also reported that he had \$154 in earnings for this period, when the employer's records show he was paid \$219 that week.

[6] The Claimant disagrees that he knowingly made a false representation. He says that when he filed the weekly claim he was not sure if he was going to be working with the employer any more. He also says that he was not sure on how much he was making while working at the staffing agency as he was on-call and worked sporadically. He asserts that underreporting his earnings for that week was simply a mistake.

[7] The Claimant made false statements on his claim for the week beginning July 17, 2016. He does not dispute that he made \$219 in earnings during this week, so his report that he made \$154 in earnings was false. Additionally, I have already found that he did voluntarily leave an employment during this reporting period, so his failure to report that leaving was a false statement. Now I will consider whether the Claimant made those statements knowingly. To do

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<sup>10</sup> *Employment Insurance Act*, section 38(1)(a)

<sup>11</sup> *Canada (Attorney General) v. Gates*, A-600-94

<sup>12</sup> *Canada (Attorney General) v. Purcell*, [1996] 1 FC 644

this, I must consider the facts and circumstances at the time the Claimant made the representations when evaluating whether he knew that the statements were false.

[8] The Claimant made his claim for the week beginning July 17, 2016 on July 31, 2016. He left his job abruptly on July 21, 2016. The record of employment shows the Claimant was paid for 15 hours over the two days of work. He told the Commission that he began searching for more stable employment immediately after leaving his employment.

[9] I consider that there is no evidence the Claimant was paid by the staffing agency for his work on July 20 and 21, 2016, prior to submitting his weekly claim for benefits on July 31, 2016. I note that the record of employment for the Claimant's two days of work was not issued until December 2016, so the Claimant would not have seen it before submitting his claim for that week. For this reason, I accept the Claimant's assertion that he made an innocent error in reporting his earnings as he did not know how much he would be paid for the hours he worked. However, this only explains why the Claimant reported the incorrect income on his weekly claim; it does not explain why he failed to report that he had left a job in the week beginning July 17, 2016.

[10] Based on the circumstances presented by the Claimant, I find he would have been aware that he had voluntarily left his employment on July 21, 2016, at the time he made his claim on July 31, 2016. He did not contact the employer after he left the worksite on July 21, 2016. He was actively seeking another job, which he found shortly afterwards. He accepted the new position without informing the staffing agency that he was no longer available. All this evidence indicates the Claimant knew he was no longer working for the staffing agency. By failing to report that he had quit a job in the week beginning July 17, 2016, the Claimant did knowingly make a false statement.

**Did the Commission exercise its discretion properly when it set the penalty amount?**

[11] If the Commission determines that the false statement was made knowingly, it has the discretionary power to impose a penalty and a violation.<sup>13</sup> The decision to impose a penalty and

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<sup>13</sup> Section 38(1)(a) of the *Employment Insurance Act* authorizes the Commission to impose a penalty. Section 7.1(4) of the *Employment Insurance Act* gives the Commission the authority to impose a violation.

violation, as well as the calculation of the penalty amount, are discretionary decisions of the Commission.

[12] I may not interfere with the Commission's discretionary decisions unless I determine the Commission did not exercise its discretion in a judicial manner. This means that I may make the decision that the Commission should have made if it acted in bad faith or for an improper motive, if it took into account irrelevant factors or failed to consider relevant factors, or if it acted in a discriminatory manner.

[13] The Claimant has not made any submissions regarding whether the Commission's decision to impose a penalty was motivated by an improper or discriminatory motive. Nor did he argue that the Commission acted in bad faith. He did not point out any relevant factors the Commission failed to consider, or any irrelevant factors the Commission relied on in making its decision. I have independently reviewed the Commission's decision and have not found evidence to support the conclusion that it failed to act judicially when it imposed the \$789 penalty on the Claimant. Therefore, I find the penalty was correctly imposed by the Commission.

[14] The Claimant did not address any arguments related to the notice of violation which was imposed at the same time as the monetary penalty. I have also reviewed the Commission's record of decision regarding the violation and have found no evidence to support the conclusion that it failed to act judicially when it imposed the violation on the Claimant. Therefore, I also find the violation was correctly imposed by the Commission.

## **CONCLUSION**

[15] The appeal is dismissed on all issues.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	July 31, 2019
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METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	None