



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. R. v Canada Employment Insurance Commission*, 2019 SST 942

Tribunal File Number: GE-19-2316

BETWEEN:

**J. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

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

---

DECISION BY: Teresa Jaenen

HEARD ON: July 24, 2019

DATE OF DECISION: August 14, 2019

## **DECISION**

[1] The appeal on the issue of voluntary leaving is dismissed. 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 as of June 4, 2017.

[2] The appeal on the issue of week of unemployment is allowed. I find the Claimant's self-employment was minor in extent because the Claimant's involvement was such that person would normally rely on this self-employment venture as a principal source of livelihood. This means that the Claimant should not be disentitled to EI benefits as of April 15, 2018.

## **OVERVIEW**

[3] The Claimant left his job and applied for employment insurance (EI) benefits. The Commission looked at the Claimant's reasons for leaving and decided that he voluntarily left his employment without just cause, so it was, unable to pay him, benefits.

[4] I must decide whether the Claimant has proven that he had no reasonable alternatives for leaving his job. The Commission says that the Claimant could have continued working until such time he has assurance of other employment or self-employment that was to commence immediately after quitting rather than a future date. The Claimant disagrees and states that the real reason he quit was he had gotten into an argument with his employer and was being mistreated. I find that the Claimant's initial reason that he left the employment was to start his own business to be more credible. B. B. /X (employer) from March 20, 2017, until June 5, 2017, at which time he voluntary left his job. On April 15, 2018, the Claimant filed a renewal application where he stated he had left the employer due to a shortage of work.

[5] The Commission contacted the employer who said that the Claimant was not laid off but rather he had left before he needed to tend to personal business. He stated that the Claimant had contacted him later for more work, but he did not have any work for him.

[6] The Commission determined that the Claimant voluntary left his employment and disqualified him from benefits effective June 4, 2017. The Commission also disentitled the Claimant to EI benefits based on his renewal claim because they determined his involvement in

his business was not minor in extent and he failed to prove he was unemployed from April 15, 2018.

### **ISSUE – Voluntary Leaving**

[7] 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 the Claimant had just cause for leaving.

[8] I accept that the Claimant voluntarily left his job. The Claimant initially told the Commission he had been laid off but then agreed that he quit on June 9, 2017. I see no evidence to contradict this.

[9] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause. Having a good reason for leaving a job is not enough to prove just cause.

[9] 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. It is up to the Claimant to prove this. 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.

[10] The Claimant says that he was going to leave his employment because he wanted to start his own business but on the last day, he got into an argument with his employer. He says that the employer got all in his face and acted as if he wanted to fight him. He says he had no reasonable alternative because this made him feel uncomfortable and he no longer wanted to work for the employer. He said that he did make up with the employer but he was still focusing on building his self-employment.

[11] The Commission says that the Claimant did not have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says that the Claimant could have stayed employed until he found other employment or commence his business immediately after quitting.

[12] I find that the Claimant made a personal choice to leave his employment so he could start his own business. I am of the view that the Claimant may have gotten into an argument with his employer, which may have led him to leave sooner than later. However, the Claimant did not provide any compelling evidence to support that the working conditions were so intolerable that he had to leave when he did. In fact, the Claimant testified that the argument with his employer was a one-time, isolated event, and that his employer apologized right after the incident. The Claimant testified that he did in fact ask the employer for work again.

[13] I considered the Claimant initially told the Commission that the reason for separation for employment on June 5, 2017, was due to a shortage of work. However, the record of employment indicated the Claimant quit, and the employer confirmed this.

[14] The Commission notified the Claimant that they had disqualified him from EI benefits because he voluntarily left his job on June 5, 2017, the Claimant wrote to the Commission. In that first letter, he said he quit because he started his own business.

[15] I commend the Claimant for wanting to start his own business, but starting a business is a personal choice, and unfortunately, personal choices are not just cause.

[16] The Claimant wrote a second letter where he reiterated leaving to start his own business and added that on the day of his last shift, he and his employer got into an argument and he no longer wanted to work for him. He said that he and his employer had made up and talked about it and are okay again but he still wanted to continue running his own business.

[17] A Claimant will have just cause to leave an employment if there is antagonism with a supervisor if the claimant is not primarily responsible for the antagonism. However, I do not find the circumstances can justify him just cause to leave.

[18] I find from the Claimant's evidence on the file, and his testimony at the hearing does not support that the working conditions were so intolerable that he had no choice but to leave.

[19] I find the Claimant's testimony supports my finding because he said that the argument that occurred was an isolated and happened unexpectedly. He stated that the employer apologized right after. The Claimant confirmed that they had worked everything out and that he

even went back to work for the employer for a week because he owed the employer money.

[20] I considered the Claimant's argument that he did not initially mention it to the Commission the fight he had with his employer but I do not find this to be credible. I am of the view that if this was the reason and the Claimant felt that uncomfortable about the situation that it would have been reasonable to tell the Commission.

[21] I find on the balance of probabilities, the Claimant left his employment to start his own business. I am satisfied this to be credible because he communicated this to the Commission several times during the process as well as to me at the hearing. It has been held that initial spontaneous statements will hold more weight than statements made after the fact.

[22] After considering all the circumstances, I find that the Claimant did have reasonable alternatives available to him. I find a reasonable alternative would have been to stay employed until such time he was able to start his business immediately after leaving his employment.

### **ISSUE – Week of Unemployment**

[23] I must decide whether the Claimant is disentitled from being paid benefits because he failed to prove he was unemployed. To do this, I must decide whether the Claimant's level of engagement in his business was minor in extent by analyzing the six factors in the context of the business activities.

[24] The law states when an insured person who qualifies to make an initial claim for benefits, a benefit period shall be established and, once it is established, benefits are payable to the person in accordance with this part of each week of unemployment that falls.<sup>1</sup> The law states a week of employment for a claimant is a week in which the claimant does not work a full working week.<sup>2</sup>

[25] The law states if a claimant is self-employed or engaged in the operation of a business on his or her own account ("self-employment") during any week in a benefit period,<sup>3</sup> deems that claimant to have worked a full working week during that week. As a result, that week will not be

---

<sup>1</sup> Section 9 of the *Employment Insurance Act* (EI Act)

<sup>2</sup> Section 11(1) of the EI Act

<sup>3</sup> Subsection 30(1) of the *Employment Insurance Regulations* (EI Regulations)

considered a week of unemployment.<sup>4</sup> There are exceptions to the deeming rule<sup>5</sup> where the self-employment is minor in extent. The issue in this application is whether that exception applies to the Claimant.

[26] The Claimant says that when he left his employment on June 5, 2017, it was to start his own business. He said that in 2017, there was lots of work but 2018 was a hard year for him. He said his business was in construction and seasonal and he looked for work in the winter months.

[27] The Claimant stated his, business season, did not start until the middle of June 2018, and he was finished it in early August 2018. He said he never had any other business.

[28] The Claimant said that when he applied for EI in 2017, and he told the Commission about his business and they allowed his claim. He said that in April 2018, he made a renewal of his claim because, he had, weeks of entitlement left, but at that time, the Commission denied his claim. He said he initially thought it was because he did not have enough hours. He said he never got the letter stating he was being disentitled because he was self-employed.

[29] The Claimant said that when he filled in his application for EI benefits, he put down he was putting in 15 hours a week into his business in the event he did. He said that he was looking for a full-time job at that time. He said he applied at Co-op and Walmart but his intention was to go back to his business once the season started. He said he did not have an actual job list but could likely get confirmation that he applied.

[30] The Claimant said that the money he stated that he had put into his business was money he spent in 2016 and before he started his business. He said they received an inheritance and purchased tools and a trailer. He said he already had this before he started his business.

[31] The Claimant said that he was not running his business in 2019. He said he had gotten work as a subcontractor in Saskatoon, but it was too much of a distance to travel every day and at the end of it all, he was not making any money. He said he is looking to move to Saskatoon, and then his business should be more viable.

---

<sup>4</sup> Section 9 of the EI Act

<sup>5</sup> Section 30(1) of the EI Regulations

[32] The Claimant said he had provided copies of his income tax returns for the last couple of years to show he did not make much money.<sup>6</sup>

**Was the Claimant self-employed?**

[33] Yes, I find that the Claimant was self-employed. The Claimant does not dispute the fact that he is the owner of X, which started operating in June 2017.

**Is the Claimant's involvement in self-employment minor in extent?**

[34] I must weigh and consider all of these factors, but the two most important factors are the time spent and the claimant's intention and willingness to seek and accept other employment.<sup>7</sup>

[35] The Commission submits that, when viewed objectively all six factors point to a finding that the Claimant's engagement in the operation of his business was that of a person who would normally rely on that level of self-employment as their principal means of livelihood.

**Time Spent**

[36] The Commission submits that the Claimant normally works 15 hours or more in his self-employment business. The Claimant controls his number of hours worked per day, days of the week worked and the time of day the work is performed.

[37] The Claimant said that since January 2018, he has only had one contract and it did not begin until mid-June to early August 2018. He said that when he filled in his application for EI benefits he reported he was working 15 hours a week in the event he did.

[38] I accept the Claimant's testimony that the time he spent on his business was minimal. I considered his testimony that his business in 2017 was good but 2018, his income was significantly less. This is supported by the tax returns he submitted.

**Nature and amount of the capital resources invested**

---

<sup>6</sup> GD6-1 to GD6-3

<sup>7</sup> *Charbonneau v. Canada (Attorney General)*, 2004 FCA 61

[39] The Commission submits that the Claimant has spent \$25,001.00 to \$50,000.00 on premises built, purchased or leased. The equipment purchased or leased cost over \$20,000.00. The inventory cost is \$1,001.00 to \$5,000.00. Over \$20,000.00, income was reinvested into the business.

[40] The Claimant said that the majority of the money that was invested in his business was for tools and a trailer that was purchased in 2016. He said that he had spent a couple of years getting ready to open his own business.

[41] I accept the Claimant's testimony that he had slowly been accumulating his tools and business supplied over the last couple of years while he was still employed. He said he was able to make the purchases after his wife received an inheritance back in 2016. I find the fact that the Claimant's career was in construction and had accumulated the tools prior to starting his own business; he would be using the tools before he started his own business and had not made any further investment.

#### **Financial success or failure of the employment business**

[42] The Commission submits that the gross revenue of the business was \$10,001.00 to \$15,000.00. There are no loans or grants. The Claimant stated he has not yet recouped his own financial investment.

[43] The Claimant said that when he began his business in June 2017, he had lots of work. However, the business is seasonal and by November, he was finished working. He said he did not start working again until June 2018 and he was finished by early August. He said that he was not running his business in 2019, and is hoping to relocate to Saskatoon, where he believes he will be able to make his business successful.

[44] I accept the Claimant's testimony that despite his desire to have his business successful, he is unable to do find work in Prince Albert. I find the fact the Claimant was only able to secure one job has an impact on the success of his business. I found the Claimant to be credible and despite his desire to have his own business, it just is not happening for him. I find that the tax returns support, the figures, the Commission, relied upon, are not correct and that his gross



income for 2018 is \$6,900.00. I am of the view; a gross income of \$6,900.00 cannot support a successful business.

### **Continuity of the employment business**

[45] The Commission submits the Claimant is in a partnership for X. The Claimant's self-employment began operating on February 9, 2016. The Claimant does not have a history of working in other employment while being self-employed. The Claimant's business activities have increased since the start of his business.

[46] The Claimant said that he started his business after he left his employment on June 5, 2017. He said that he began accumulating tools and materials in order to start in 2016, but he never had any jobs until August 2017.

[47] I accept the Claimant's testimony that despite the fact, he was accumulating tools since 2016; he did not start his business until after he left his employment on June 5, 2017. I find that the Claimant provided tax returns to support the business had not increased. I am of the view that because the business is seasonal it would allow the Claimant to work in other employment.

### **Nature of the employment or business**

[48] The Commission submits that the Claimant is a tradesperson that provides services for soffit, fascia, siding, eaves trough and roofing, which is the same as the work he performed for his past employer.

[49] The Claimant said he is a tradesperson and that his business is in construction because that his skill set.

[50] I accept the Claimant's testimony that the nature of the employment or business is one of construction.

### **Claimant's intention and willingness to seek and immediately accept alternate employment**

[51] The Commission submits that the Claimant is trying to make his self-employment his main source of income. He stated that on February 2, 2018, he is looking for work during the

winter and spring months and would like to devote his time solely to his business in the summer. The Claimant has no proof of having contacted employers for employment opportunities and his availability for work and subject to his desire to working a house and relocate to a new area to start his self-employment in a new location.

[52] The Commission submits that the Claimant is trying to make self-employment his primary means of livelihood. He works more than 15 hours per week on self-employment. The business is in the same field as his normal occupation. The Claimant's business has been in operation for quite a while, and he invested substantial amount of time and funds in his business. The Claimant has not provided a comprehensive job search to demonstrate his availability. Given the nature of the work, time invested and Claimant's intention, the Commission concludes that the Claimant is not unemployed to a minor extent.

[53] The Claimant said that he although his goal is to make the business, his primary means of livelihood, it is just not possible and he was looking for work outside of his business. He confirmed he does not have a job search list, but he has put in applications at Walmart and Co-op. He said he also went back to work for his former employer for a week, and he has contacted him for more work but there is nothing for him.

[54] The Claimant said he has not had any business since 2018, and he is not running his business in 2019. He hopes that he can relocate to Saskatoon and have better opportunities in starting his business there but, in the meantime, he has no choice but to find other employment. He said starting a business is harder than one thinks.

[55] I acknowledge the fact the Claimant's desire is to be self-employed and to make, his business, his primary livelihood. However, I find the Claimant credible and that he has been forthcoming in his desire, but he also provided sufficient testimony that he was seeking employment and was willing to immediately accept alternate employment. The Claimant provided his tax returns that support on the balance of probabilities; the business income is not a primary source of income.

[56] I am satisfied that the Claimant has provided sufficient testimony, to support; he has met the exception that his self-employment is minor in extent.

**CONCLUSION**

[57] The appeal is dismissed on the issue of voluntary leaving. I find that the Claimant is disqualified from receiving benefits from June 4, 2017.

[58] The appeal is allowed on the issue of week of unemployment. I find the Claimant should not be imposed a disentitlement as of April 15, 2018.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	July 24, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. R., Appellant