



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. B. v Canada Employment Insurance Commission*, 2019 SST 932

Tribunal File Number: GE-19-2701

BETWEEN:

**R. B.**

Appellant

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: Solange Losier

HEARD ON: August 12, 2019

DATE OF DECISION: August 13, 2019

## **DECISION**

[1] The appeal is allowed. The Appellant has shown just cause because he had no reasonable alternatives to leaving his job when he did. This means he is not disqualified from receiving benefits.

## **OVERVIEW**

[2] The Appellant worked as a manager for a company in a remote area of Alberta for approximately three years. He applied for employment insurance sickness benefits on January 21, 2019 and quit his employment on January 23, 2019. The Canada Employment Insurance Commission (Commission) approved his claim for sickness benefits from January 13, 2019 to approximately May 11, 2019.

[3] On April 26, 2019, the Respondent determined that the Appellant quit his employment without just cause because there were other reasonable alternatives. This resulted in the Appellant being disqualified from receiving employment insurance regular benefits. The Appellant said that he quit his employment because he was performing two jobs at work and it became unbearable, overwhelming, anxiety-inducing and that his mental health was suffering which led him to move to Ontario to be closer to his family. The Appellant appealed to the Social Security Tribunal (Tribunal).

## **ISSUES**

[4] Issue 1: What is the reason for separation from employment?

[5] Issue 2: Did the Appellant have just cause to leave his employment? Were there any reasonable alternatives?

## ANALYSIS

[6] You are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>1</sup> Having a good reason for leaving a job is not enough to prove just cause.

[7] The law says that you have just cause to leave if, having regard to all of the circumstances, you had no reasonable alternatives to quitting your job when you did.<sup>2</sup> It is up to the Appellant to prove this.<sup>3</sup> The Appellant 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 Appellant quit.

### **Issue 1: What is the reason for separation from employment?**

[8] I accept that the Appellant voluntarily left his job because he agrees that he quit his employment on January 23, 2019. This fact was not disputed between the parties. This was also consistent with his resignation text message and record of employment (GD3-17; GD3-65 to GD3-67).

### **Issue 2: Did the Appellant have just cause to leave his employment? Were there any reasonable alternatives?**

[9] Yes, I find that the Appellant had just cause to leave his employment having regard to all of the circumstances because of working conditions that were a danger to his health and due to a significant change in work duties. I also find that remaining employed and taking an extended medical leave of absence was not a reasonable alternative for the following reasons.

[10] The parties do not agree that the Appellant had just cause for voluntarily leaving his job when he did.

[11] The Appellant says that he left his employment because he was responsible to fulfill the duties of another manager who quit his employment. He acknowledged that it was agreeable for a short period of time, but it became extended which started taking a significant toll on his

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<sup>1</sup> This is set out at section 30 of the *Employment Insurance Act*

<sup>2</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

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

mental health. This resulted in a medical leave of absence, the resignation from his employment, his move out of province to be with his family and the receipt of employment insurance sickness benefits.

[12] The Appellant submits that he had no reasonable alternatives to leaving at that time because he initially tried obtaining disability benefits thru his employment. He completed the blue cross application and submitted it to his supervisor for his review and signature. However, his supervisor did not review the forms, which the Appellant suggests was deliberate move. The Appellant relied on a copy of the text message sent to his supervisor asking about whether he had reviewed the blue cross forms, and his supervisor's reply was "no" (GD6-6). He asked on more than one occasion, but his supervisor's reply was always "no" and he did not offer a timeline or any assurances about when it would be completed.

[13] The Appellant testified that he was employed as an upper-level manager and said that the work environment was not a supportive place for employees who left on a medical leave of absence and later returned to work. For instance, he recalled his supervisor once saying that when a particular employee returns from a medical leave of absence, they should try to find a way to get rid of them after a short period of time. This made the Appellant feel uncomfortable and hesitant about taking an extended medical leave of absence himself because he knew his supervisor's opinions about employees in similar predicaments and expected that he might be dismissed anyway.

[14] The Appellant worked closely with one other manager: the operations manager. They each had different tasks and responsibilities. The Appellant looked after the general management of the business, including overseeing all managers, the image of the business, sales, allocating general ledger accounts on a weekly basis and other related tasks. The operations manager was responsible for the daily functioning of the business, which included inventory, trucks, scheduling, driver meetings, etc.

[15] During his three year employment with this company, he says that he worked with three different operations managers, some of whom left because they did not have a good relationship with the supervisor. The last operations manager left in April 2018 and the Appellant initially accepted that he might have to do some extra tasks until a new person was hired. However,

things became more challenging in July 2018 because his anxiety worsened, he was also trying hard to please his supervisor, but he was suffering on a daily basis. He was seeing his psychiatrist and therapist on a regular basis to help him cope with workplace issues, but it was obvious that his performance began to suffer.

[16] The Appellant said that he had been seeing his psychiatrist for approximately one year. His supervisor knew about his anxiety and that it was worsening over time. The supervisor told him that they would support him, but the Appellant argues that it was a “thinly veiled” offer because there was no real substance. For example, the supervisor made no efforts to hire another operations manager from April 2018, or when his anxiety worsened in July 2018, or when he started his medical leave of absence on January 15, 2019, but instead his supervisor suggested that he work more hours. The supervisor suggested that he start coming into work earlier (5am instead of 7:30am) and go into work during the evenings and weekends to make sure people are working.

[17] The Appellant disputes that the operations manager’s tasks were delegated among staff because he was responsible to do everything himself. He notes that the supervisor was 4 hours away in Regina and had no means to be able to assist with daily and ongoing tasks. Further, the other mechanic manager was too busy to help him because they were always short mechanics.

[18] On January 15, 2019, the Appellant went to his psychiatrist who determined that a one month medical leave of absence from January 15, 2019 to February 12, 2019 was necessary. The medical note submitted identifies the date of January 3, 2019, but the Appellant said that was an error (GD3-25).

[19] The Appellant quit his employment on January 23, 2019 because he felt that he would not be able to overcome his depression and anxiety while residing and working in a remote area without family. (GD3-65). The Appellant decided to move to Ontario around February 12 or 13, 2019 to reside with his mother and for financial reasons. He was having some difficulty financially because once he commenced his medical leave of absence, he had no income, he had to return the company car and telephone and could not afford his rent.

[20] There is another medical note in his file from his psychiatrist. It states that the Appellant was offered an extended medical leave of absence until April 2019 (GD3-46). I asked the Appellant why he did not accept that offer. In response, he said that could not afford to remain in Alberta, he was struggling with his anxiety and depression, he just wanted to be with his family in Ontario and he feared returning to work because the supervisor had an informal practice of dismissing employees at least thirteen weeks after they returned from a sick leave (GD3-46).

[21] The Commission says that the Appellant did not have just cause, because he had reasonable alternatives to leaving when he did. Specifically, they say that the Appellant could have obtained the disability benefits offered thru his employment and remain off work until he could return at a later date (GD4-5).

[22] I considered subsection 29(c)(iv) of the Act: working conditions that constitute a danger to health or safety and subsection 29(c)(ix) of the Act: significant changes of duties.

[23] I am satisfied that the Appellant had just cause to leave his employment because of working conditions that constituted a danger to his health and due to significant changes of duties for the following reasons.

[24] The medical evidence in the file demonstrates that the Appellant was dealing with significant medical issues, specifically anxiety and depression. I accept that his medical condition worsened in January 2019 when his psychiatrist determined that a medical leave of absence was necessary and was directly related to the stress he was experiencing at work (GD3-25). This medical leave of absence was extended for three months, until April 2019, however the Appellant had already moved back to Ontario to be with his mother (GD3-46; GD3-56; GD3-60). A subsequent note from his family doctor in Ontario also states that he was incapable of working for medical reasons (GD3-61). I note that the Appellant was also in receipt of employment insurance sickness benefits based on his medical condition.

[25] I am satisfied that the totality of the evidence supports the fact that the Appellant was not able to work due to his medical condition and that it was the workplace conditions, namely the additional tasks which were causing his anxiety to worsen. Therefore, I find that the Appellant

had just cause to leave his employment based on working conditions which were a danger to his health.

[26] I find it more likely than not, that the Appellant was responsible to fulfill two management roles and tasks associated with each role without the support of his supervisor or colleagues. I preferred the Appellant's direct testimony over the supervisor's statements because he was located four hours away and not on-site to deal with any issues. This meant that the Appellant was doing his own job, in addition to the role of operations manager, which meant dealing with the day-to-day operational issues. Therefore, I find that the Appellant had just cause to leave his employment based on a significant change in work duties.

[27] I note that the previous operations manager left several months earlier and even though the supervisor knew that the Appellant's performance and mental health were declining due to workplace stress, they made no efforts or assurances to provide him with any meaningful support at work, but rather they added more pressure by suggesting that he work more hours. I accept that this is not reflective of a supportive workplace given the Appellant's medical conditions.

[28] I accept that the Appellant made efforts to try to obtain disability benefits from work, but was discouraged when his supervisor delayed his review of the forms. The Appellant has provided evidence that he followed up with his employer. I find that it was more likely than not, that the supervisor deliberately delayed reviewing the forms, ultimately causing additional anxiety and uncertainty for the Appellant. I accept that this led him to feel he had no reasonable alternative but to resign and move back to Ontario where he felt that he could be better supported medically and financially by his family.

[29] As a result, I find that it was not a reasonable alternative for the Appellant to remain employed and on an extended medical leave of absence until April 2019. More specifically, the Appellant was residing in a remote area and there was no assurance that he would have been approved for disability benefits thru his workplace, he had no income while his employer delayed reviewing the disability forms and his mental health was deteriorating. Given that it was company's practice to find reasons to dismiss employees thirteen weeks after they return to work from a medical leave of absence, it was a not a reasonable alternative for the Appellant to remain employed based on his unique circumstances.

**CONCLUSION**

[30] I find that the Appellant is not disqualified from receiving benefits. This means the appeal is allowed.

Solange Losier

Member, General Division - Employment Insurance Section

HEARD ON:	August 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. B., Appellant