



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. A. v Canada Employment Insurance Commission*, 2019 SST 937

Tribunal File Number: GE-19-2490

BETWEEN:

W. A.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: August 14, 2019

DATE OF DECISION: August 16, 2019

DECISION

[1] The appeal is allowed. The Claimant 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 Claimant left his job with X and applied for regular Employment Insurance benefits. The Commission considered the Claimant's reasons for leaving and decided that he voluntarily left this job without just cause, so they were unable to pay him regular benefits.

[3] 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 attempted to resolve the issues with his employer, sought the assistance of the provincial workplace health authority and his doctor, or secured other employment before quitting. The Claimant disagrees and states that his health was seriously declining, due to the unhealthy working conditions and increasing costs of travel to the work site. I find that the Claimant had no reasonable alternative but to leave his job when he did.

ISSUES

[4] 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.

ANALYSIS

There is no dispute that the Claimant voluntarily left his job

[5] I accept that the Claimant voluntarily left his job. The Claimant agrees that he quit effective December 21, 2018, but his last day paid was January 4, 2019. I see no evidence to contradict this.

The parties dispute that the Claimant had just cause for voluntarily leaving

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

[7] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.¹ Having a good reason for leaving a job is not enough to prove just cause.

[8] 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.² It is up to the Claimant to prove this.³ 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, I have to look at all of the circumstances that existed at the time that the Claimant quit.

[9] The Claimant was working at a remote open-pit mining operation from August 2018 to December 2018, with a 14-day rotation in camp. He says that he left this employment because he had experienced a significant decline in his mental and physical health due to the unhealthy and unsafe working conditions, increasing travel costs, and the stress of leaving his wife at a time when her health was declining.

[10] The Claimant testified at the hearing that he has worked in camp jobs for over 30 years and the working conditions at this camp were so unclean and unhealthy that his anxiety increased and he became physically ill. He said that his doctors have been treating him for an anxiety disorder for most of his life.

[11] The Claimant gave detailed testimony about the unhealthy and unsafe working conditions and argued that he was healthy before starting the job with X. He said he began to suffer from physical illnesses and his anxiety increased over the period of his employment. He stated that when he found this job through the internet, he did not know the camp conditions were so

¹ This is set out at s 30 of the *Employment Insurance Act (Act)*

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

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

unhealthy and argued that things continued to get worse while he was working there because the employer was going bankrupt.

[12] The Claimant testified that the toilets were often out of service and at times were so full of feces he could not flush them. The shower floors had feces in them and the sinks were dirty and filled with body hair. He said the walls of his bedroom in camp were smeared with patches of an unknown brown substance, his bedding was never changed during his 14-day rotations in camp, and there was mould in the bathrooms and other buildings. He testified that this camp was such a “dirty dirty” place to live and he and his coworkers were sick with various illnesses.

[13] The Claimant stated that he was healthy when he started working for X and while there, he got a rash on his back, which his doctor diagnosed as dermatitis. He contracted a foot fungus from the dirty showers; he had pink eye; and a chest infection. He saw a doctor for all of these illnesses, while out of the camp, and when he had a chest infection, his doctor took him off work for a few weeks. He said he was cleared to go back to work on October 16, 2018.

[14] He states that he could not discuss his medical issues with his employers or the on-site first aid staff because if he did, they would never offer him another job in this industry again. When asked why, he said they would not hire him because of the medication he takes for his anxiety and then clarified that he takes a low dose of his medication so it does not affect his ability to work.

[15] The Claimant testified that he had sought assistance from his doctor when he was on his days out of the camp and they had discussed that the illnesses may be from his workplace. He said his doctor told him that “maybe this is not the place for you to be working” but for some reason she would not put that in writing. He argued that it takes upwards of six weeks to see his doctor so he had also gone to the clinic for treatment when he was not in camp.

[16] Upon review of the medical note issued January 2, 2019, the Claimant’s physician writes, “He had reported of foot fungus, repeated chest infections and dermatitis.” The Claimant testified that he cannot explain why his doctor chose to write the letter this way and consistently stated that she was aware of his ongoing health issues. He argued that his anxiety was increasing and was at the highest it had ever been, due to everything that was going on with his health, the

dirty living conditions, the increased cost of travel, his dislike of flying, and worrying about his wife's illness. He admits that his doctor did not specifically state "you need to quit your job" but she did discuss how his illnesses were progressing due to these working conditions.

[17] The Claimant explained that because the employer was going bankrupt they did not provide safe travel into camp. They contracted or leased planes that were old and not properly maintained and offered bus rides on buses that were not mechanically safe to be on the road. He argued that he has always had a fear of flying but that in the past when he was working at other camps, he was able to manage his fear because he was not sick or having to deal with an increased state of anxiety.

[18] The Claimant consistently argued that his employer only contributed \$200.00 towards his travel costs and during his employment, his travel costs continued to increase. When asked why he did not speak with his employer about the increasing costs, the Claimant stated that this employer was "old school". He explained that this employer's response to everything was "if you don't like it, leave". He asserted that the company was going bankrupt and this caused animosity amongst the managers, so they were very harsh to deal with and were always swearing at everyone. He said he did not want to approach anyone at work about his concerns because he was too sick to deal with it.

[19] The Claimant testified that his wife's illness was increasing at this time so he also had that worry while he was away in camp. He argued that his wife's illness was not the primary reason he quit but it did add to his increased anxiety at that time.

[20] The Claimant said that he was looking for other work before he quit. He said he was stubborn and was trying to continue working until he got another job but was forced to quit when his physical and mental illnesses increased due to the conditions at work.

[21] The Commission provided evidence that despite their attempts to reach the employer, the employer never returned their calls. The Commission does not explain why they did not give the

Claimant, the benefit of the doubt in the absence of evidence from the employer.⁴ Rather, they simply determined that the Claimant had reasonable alternatives to leaving his employment.

[22] The Commission says that the Claimant did not have just cause because he had reasonable alternatives to quitting. Specifically, they say that the Claimant could have requested an extended medical leave, reported the unhealthy or unsafe working conditions to the employer or provincial agency, speak with his doctor about how the work environment was unhealthy, request a letter stating he was advised to leave his employment, or secure another job prior to leaving.

[23] The Commission argues that the Claimant has not supported his reasons for leaving due to unsafe working conditions or health reasons because he has not shown good reasons for failing to report the conditions to his employer or the provincial authority or to request an extended medical leave.⁵ The Commission also states that the Tribunal will determine if the Claimant's medical documentation constitutes just cause.

[24] The Claimant disputed the Commission's submissions and stated that he had gone on a medical leave in October 2018, on the advice of his doctor, and is still physically ill. During the hearing, he read into evidence the return to work form, that his doctor signed authorizing him to return to work on October 18, 2018. When asked why he did not take another medical leave, the Claimant argued that he never fully recovered from his illnesses and each time he went back into the camp, he became more physically ill and his anxiety was increasing. He said it was around that time when his doctor said that maybe this was not the right job for him.

⁴ Subsection 49(2) of the *Act* states the Commission shall give the benefit of the doubt to the claimant on the issue of whether any circumstances or conditions exist that have the effect of disqualifying the claimant under section 30, if the evidence on each side of the issue is equally balanced.

⁵ The Commission relies on the principles stated in two Federal Court of Appeal decisions, although for one case they listed an incorrect citation. *Canada (Attorney General) v White*, 2011 FCA 190 confirms that the Claimant is required to try to resolve workplace conflicts or concerns with their employer before quitting their job. In *Green v Canada (Attorney General)*, 2012 FCA 313, (this is the correct citation) the Federal Court of Appeal upholds the Umpire's decision, which upheld the Board of Referee's decision that the Claimant had reasonable alternatives to leaving his job, which included discussing his working conditions with the employer.

[25] The Claimant reiterated that he could not report the unsafe working conditions because his employer would have just told him to leave. He consistently argued that this employer was going bankrupt so they did not have the money to fix anything and they did not care if a provincial agency received a report. He said that at this job if you did not like something you were told to leave. When asked why he did not remain employed until the sale of the business completed and new owners took over, or until he secured another job elsewhere, the Claimant stated that he was too ill to continue working there because his anxiety was increasing and he no longer slept.

[26] The Claimant testified that after he quit, he was home sick and recovering from December 24, 2018, until January 29, 2019, as supported by the medical note in evidence. During this time of recovery, he was still actively seeking employment because he knew he had to support himself and his wife. The Claimant testified that he secured another camp job effective January 30, 2019, where he now works, three weeks in camp and three weeks out of camp. He said he is able to travel into this camp because it is clean, healthy, and the equipment is safe so he is able to manage his anxiety. He requested permission to submit his ROE as proof that he returned to work on January 30, 2019. The post-hearing evidence was received by the Tribunal and included an email with his ROE attached, listing a first day worked with X as January 30, 2019.

[27] Although the Claimant told the Commission some of the reasons he quit were his increased travel costs and worrying about his wife's illness, he has proven these issues have not affected his ability to work. He has also consistently stated that these were not the main reasons he left his employment. I accept these additional factors aggravated his anxiety and physical illnesses caused by the unhealthy and unsafe work environment.

[28] Based on the Claimant's affirmed testimony and the medical notes in evidence, I accept that he was experiencing serious physical and mental health symptoms due to the combined circumstances of the unclean, unsafe working conditions and the work site culture. I believe him when he states that his doctor said that this may not be the right place for him to work and she chose not to write this in his medical notes. For these reasons, I find that the Claimant had no reasonable alternative to leave his employment when he did.

[29] Because the Claimant had no reasonable alternatives, I find he voluntarily left his job with X, with just cause. Therefore, he is not disqualified from receiving regular benefits.

CONCLUSION

[30] The appeal is allowed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	August 14, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	W. A., Appellant (Claimant)