



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. R. v Canada Employment Insurance Commission*, 2019 SST 1004

Tribunal File Number: GE-19-2782

BETWEEN:

H. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: John Gillis

HEARD ON: August 30, 2019

DATE OF DECISION: September 3, 2019

DECISION

[1] The appeal 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.

OVERVIEW

[2] The Claimant left his job as a machine operator 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.

[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 looked for other work before leaving his job or spoken to his supervisor about workplace issues he had. The Claimant disagrees and states that he had had enough of his job. I find that the Claimant could have spoken to his supervisor about his workplace issues and could have looked for other work. I find that the Claimant did have reasonable alternatives to leaving his job.

ISSUE

[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 on March 18, 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 question, I have to look at all of the circumstances that existed at the time that the Claimant quit.⁴

[9] The Claimant says that he left his employment because of his concern for his health, issues he had with his supervisor and changes in his work schedule. The Claimant says that he had no reasonable alternatives to leaving at that time because he had enough of his job and he did not have time to see a doctor or look for other work.

[10] 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 spoken to his supervisor about his concerns, looked for other work before leaving his job, or returned to a doctor to investigate his health problems.

[11] I find that the Claimant left his job because he was frustrated with it. The Claimant worked for a temporary staffing agency and they placed him at a manufacturing factory. The Claimant's job was to operate a machine that created cabinet parts. The area of the factory that the Claimant worked in was very dusty. The Claimant worked the night shift. He was not sleeping well. The Claimant wanted to find a permanent job and not work for temporary staffing agencies any more.

[12] While there was a change in the Claimant's work schedule, he agreed to it. The Claimant testified that when he started working at the factory that he worked day shifts. His supervisor approached the Claimant and his co-workers to see if they would work 12-hour night shifts

¹ This is set out at section 30 of the *Employment Insurance Act*.

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

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

⁴ Section 29(c) of the *Employment Insurance Act* list some of the circumstances that I must consider.

instead. The Claimant testified that he agreed to the schedule change because it meant that he would not work on Fridays. I find that the Claimant agreed to the change in his work terms.

[13] While the night shifts were affecting the Claimant's sleep, he did not thoroughly investigate the health risks. The Claimant testified that he found working the 12-hour overnight shifts too much. He found that he was not sleeping well and was losing sleep. He believed that the loss of sleep was causing him anxiety. He did not have a family doctor but was able to go to a walk-in clinic and speak with a doctor. The Claimant testified that the doctor told him that the Claimant would have to return to see the doctor on multiple occasions. The reason for the repeat visits to the doctor was to do a proper assessment of the Claimant. The Claimant decided not to return to the doctor to have the proper assessment done. The Claimant also did not raise the issue with his supervisor or with the temporary staffing agency. The Claimant could have followed the doctor's suggestion or spoken to his supervisor but chose not to. I find that the Claimant did not thoroughly investigate the impact of working the night shifts.

[14] The factory was very dusty but the Claimant did not ask his supervisor for a mask. The factory cut particleboard in the manufacturing process. The cutting created much dust. While the Claimant was careful to reduce the problem, he says that some of his co-workers were not as cautious. The factory did have vacuums on the cutting machines and ventilation. The Claimant says that he was worried about the dust in the air. He would blow his nose after each shift and dust would come out from his nose. The Claimant was previously a smoker and was worried about cancer. None of the other cutting workers used masks to protect their breathing. Painters who worked in the factory did use masks to protect themselves. The Claimant testified that he was sure that if he asked his supervisor for a mask that he would have been give one. The Claimant did not ask for a mask because he feared that his co-workers would make fun of him. The Claimant could have used a mask to protect himself. I find that the Claimant made the choice to not use a mask to protect himself.

[15] The Claimant did not have a friendly relationship with his supervisor. The Claimant testified that his supervisor treated him differently because he was a temporary worker. One time his supervisor chatting with each of the Claimant's co-workers but not with the Claimant. On another occasion, he brought a mechanical issue to his supervisor's attention. The supervisor did

nothing and the machine broke. The supervisor completed a report of the mechanical failure but the Claimant did not see the report. Another time, the supervisor did not let the Claimant know that work was cancelled because of a snowstorm. Finally, the Claimant's assigned machine was frustrating to operate due to mechanical issues. The supervisor was aware of the problem but he did nothing. While the Claimant's relationship with his supervisor was not friendly, based on the evidence, I do not find it to be an antagonistic relationship.

[16] The Claimant did not look for other work. The Claimant testified that he did not want to work for temporary staffing agencies anymore. He wanted to work directly for an employer. There is no evidence that the Claimant could not have asked the temporary staffing agency for another job. As the Claimant worked during the night, he was available during the day to look for work. The Claimant was having problems sleeping during the day. The Claimant was also available on Friday to look for work. I find that the Claimant did not look for other work before leaving his job.

[17] Considering all of the circumstances, the Claimant had reasonable alternatives to leaving his job. The Claimant could have returned to the doctor to investigate his sleep problems. He could have spoken with his supervisor about using a mask to protect himself or other issues. He could have found another job before leaving his job.

CONCLUSION

[18] I find that the Claimant is disqualified from receiving benefits. This means that the appeal is dismissed.

John Gillis

Member, General Division - Employment Insurance Section

HEARD ON:	August 30, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	H. R., Appellant