



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *ST v Canada Employment Insurance Commission*, 2019 SST 1693

Tribunal File Number: GE-19-2654

BETWEEN:

**S. T.**

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: Candace R. Salmon

HEARD ON: August 28, 2019

DATE OF DECISION: September 12, 2019

## DECISION

[1] The appeal is dismissed. I find the Claimant voluntarily left his employment and did not establish just cause for voluntarily leaving because he failed to exhaust the reasonable alternatives available to him. The result is that the Claimant is disqualified from receiving employment insurance benefits.

## OVERVIEW

[2] The Claimant worked for the same employer for over 25 years, and spent the past seven years as a kitchen worker. The Claimant was part of a union, and was suspended by the employer while it performed an investigation into his conduct. The employer found that the Claimant could be dismissed for his conduct in the workplace, but the union negotiated with the employer and a settlement agreement was reached to allow the Claimant to retire instead of being terminated.

[3] The Claimant made a claim for employment insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) determined the Claimant was disqualified from receiving EI benefits because he voluntarily left his employment without just cause. The Commission upheld its decision after reconsideration. The Claimant appeals the decision to the Social Security Tribunal (Tribunal), arguing he did not voluntarily leave his employment or, alternatively, had just cause to leave his employment because he was being harassed.

## ISSUES

[4] **Issue #1:** Did the Claimant voluntarily leave his employment?

[5] **Issue #2:** If so, did the Claimant have just cause for voluntarily leaving his employment?

## ANALYSIS

[6] The purpose of the *Employment Insurance Act* is to compensate persons whose employment has terminated involuntarily and who are without work.<sup>1</sup>

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<sup>1</sup> *Canadian Pacific Ltd. v. Attorney General of Canada*, [1986] 1 S.C.R. 678

[7] A claimant is disqualified from receiving EI benefits if the claimant voluntarily left any employment without just cause.<sup>2</sup> Just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances.<sup>3</sup>

[8] The Commission has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Claimant to demonstrate he had just cause for leaving.

**Issue 1: Did the Claimant voluntarily leave his employment?**

[9] The legal test to determine voluntary leaving is whether the Claimant had a choice to stay or leave the employment.<sup>4</sup>

[10] The Claimant testified that he did not want to quit, but was forced to quit by the employer. He stated that he would not have quit a good job with only a few years left to work for a full pension, but was pushed out by a “coup” of the employees. On November 2, 2018, the Claimant told the Commission that he retired and took his pension credits, because his co-workers harassed and bullied him and he could no longer work in the stressful environment.

[11] The Record of Employment states the reason for issuance is code E, meaning the Claimant “Quit/Voluntary Retirement.” The Commission contacted the employer on November 21, 2018, who stated the Claimant was going to be terminated for cause but instead an agreement was made in conjunction with the Claimant’s union to let him retire. At the hearing, the Claimant disputed that the employer had sufficient evidence to terminate his employment, though the employer stated to the Commission that a co-worker lodged a complaint against the Claimant and interviews were completed in an investigative process which resulted in the employer having enough information to terminate the Claimant’s employment with cause.

[12] If the Claimant left the employment due to stress, I find he voluntarily left his employment because, while he states he was forced to retire, he made the ultimate decision to leave his employment instead of remain and grieve his termination. If the Claimant left because he made an agreement to voluntarily retire to avoid termination, I find the Claimant still initiated his

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<sup>2</sup> *Employment Insurance Act*, section 30(1)

<sup>3</sup> *Employment Insurance Act*, section 29(c)

<sup>4</sup> *Canada (Attorney General) v. Peace*, 2004 FCA 56

separation from the employment because he could have grieved the termination, so find he voluntarily left his job. In either circumstance, I must now consider whether the Claimant had just cause to voluntarily leave his employment.

**Issue 2: Did the Claimant have just cause for voluntarily leaving his employment?**

[13] The legal test to determine whether a claimant had just cause for leaving an employment is whether, considering all the circumstances, the claimant had no reasonable alternative to leaving.<sup>5</sup>

[14] Just cause is not the same as a good reason. The question is not whether it was reasonable for the Claimant to leave his employment, but whether leaving his employment was the only reasonable course of action open to him, having regard to all the circumstances.<sup>6</sup>

[15] The *Employment Insurance Act* outlines a list of circumstances I must consider when deciding whether the Claimant had just cause for leaving his employment, but the list is not comprehensive: I must weigh all of the circumstances to determine whether he had just cause.<sup>7</sup>

[16] The Claimant made an initial claim for regular EI benefits on October 22, 2018, effective September 16, 2018. On the form, the Claimant stated that he was dismissed from his employment for something “inappropriate” but gave no further information. He stated his union was grieving the dismissal and did not want him to discuss the details.

[17] On November 2, 2018, the Claimant stated to the Commission that he retired and took his pension credits. He added that he thought that once his pension credits ran out, he would get EI benefits. The Commission stated to the Claimant that before leaving his employment, he was expected to explore reasonable options, like looking for other work. The Claimant stated he would look for other work after his pension credits were exhausted. He also stated that he had to leave the employment because of stress, and said the employees were “plotting a coup against him.” He submitted that he made complaints about bullying but nothing was done. When the Commission

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<sup>5</sup> *Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Imran*, 2008 FCA 17

<sup>6</sup> *Canada (Attorney General) v. Imran*, 2008 FCA 17; *Canada (Attorney General) v. Laughland*, 2003 FCA 12

<sup>7</sup> *Employment Insurance Act*, section 29(c), *Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Lessard*, 2002 FCA 469

asked for specific examples, the Claimant stated he was being ignored in the lunch room and that when new workers started, other workers told the new staff not to “hang out” with him. The Claimant stated there were “many more examples,” but did not cite any other incidents. He stated he went through the union and nothing was done, and he was “tired of it” so he quit.

[18] After the Commission spoke to the employer, who stated the Claimant was going to be terminated but instead an agreement was made to allow him to retire, the Claimant stated to the Commission that he was off of work on stress leave “a couple of times,” and found the job too stressful so decided to retire. The Claimant stated that he suffers from anxiety, and is seeing a psychiatrist. After being advised of the employer’s statement regarding the circumstances around his reason for separation, the Claimant stated that his union told him the employer could not fire him. The Claimant stated the union advised him that he could grieve the termination, but it would take approximately 10 months. The Claimant stated that the stress would have been too much for him, so he decided to retire.

[19] The Commission stated to the Claimant, on the November 21, 2018, telephone call, that anyone who willingly retired from their job was not entitled to EI benefits as they are then placing an economic burden on contributors to the EI fund when they could have remained working. The Commission told the Claimant that if someone quit their job on the advice of their doctor, for medical reasons, then they may be eligible for EI benefits.

[20] The Commission issued a decision on November 22, 2018, finding the Claimant was disqualified from receiving EI benefits because he voluntarily left his employment without just cause. The Claimant requested reconsideration, stating that he could not return to his employment due to anxiety and stress.

[21] The Commission contacted the Claimant on June 4, 2019. The Claimant stated that he used 15 weeks of EI sickness benefits, but was denied when he requested to convert to regular benefits. The Commission states that a doctor’s note was received dated December 14, 2018, stating the Claimant could not work for 16 weeks due to illness. A second doctor’s note dated April 15, 2019, stated the Claimant was unable to work due to illness from April 6, 2019, until April 20, 2019. The Claimant stated that prior to those dates, he did not need a medical note because he was on medication. He added that his “nerves couldn’t handle” the grievance process, and that a young

woman complained about him and the employees had united together against him, so he could not work there anymore.

[22] In the same conversation, the Claimant stated that his union told him that it would be easy to grieve the termination, but he said he could not handle the grievance process. He stated that he should have grieved it and he would have won, but submitted he could not go through the process and had to retire. The Claimant stated that he was off work three times due to stress because of his poor treatment at work, which he described as a “coup” against him. The Commission asked the Claimant if he would have left the employment, even if the employer had not decided to terminate his employment. The Claimant stated he would not have left, because he was making excellent money in the employment.

[23] On June 4, 2019, the Commission contacted the employer to determine whether the Claimant voluntarily left his employment, or whether he was fired for misconduct. The employer stated that whenever there is a termination, a grievance is filed automatically. She added that the employer had prepared the termination documents and organized a meeting with the Claimant, and the union filed a grievance on September 24, 2018. She stated that the employer had a discussion with the union, to try and find a resolution, and ultimately the union withdrew the grievance and the resolution reached was to allow the Claimant to retire. The employer stated that a settlement was drafted and the Claimant signed the document and a resignation letter.

[24] The Commission contacted the Claimant on June 11, 2019, and reviewed the employer’s June 4, 2019, statement with him. The Claimant confirmed that he was allowed to retire instead of being dismissed, and that he signed the agreement and a resignation letter. He also stated that he did not commit any misconduct and the union could have proven it, if he was able to proceed with the grievance. He stated that he has dealt with harassment over his many years of employment, and could no longer handle it. The Claimant confirmed that he was not directed by a doctor to quit his job.

[25] On June 12, 2019, the Commission issued a reconsideration decision, upholding its previous decision to find the Claimant had voluntarily left his employment and did not prove just cause for leaving. The Claimant filed a Notice of Appeal on July 1, 2019, stating he was forced to retire.

[26] The Claimant stated to the Commission that he did not refuse to grieve his termination, and stated that if he was healthy he would have grieved it but because of the stress he could not handle it anymore. He submitted that he was forced to retire. I disagree with the Claimant's position. I find the Claimant had the reasonable alternative of grieving his dismissal, instead of retiring from the employment. He could also have seen his doctor to ask for a leave of absence, or obtained a medical opinion supporting his contention that he had to quit for medical reasons.

[27] At the hearing, the Claimant reiterated much of what he stated to the Commission. He said that he had stress over his years of employment, and felt that he was forced to retire because he could not handle the grievance process. He testified that he went through the grievance process once before, and it was stressful and caused him to be put on medication by his psychiatrist. The Claimant stated that he was "picked on" for many years, and the other staff sat across the room from him and encouraged new employees not to talk to him. He stated that he could not handle the stress anymore and felt that he was going to have a stroke if he had to deal with a grievance process again.

[28] The Claimant made multiple statements in testimony about having dealt with workplace harassment. The *Employment Insurance Act* does not define harassment. The test in law for what constitutes harassment is an objective one based on a reasonable person standard, not the subjective perceptions of the particular individual. I will rely on this principle to determine whether the Claimant was subject to harassment. In determining whether harassment is sufficiently severe or pervasive to create a hostile environment, the conduct should be evaluated from the objective standpoint of a "reasonable person," where I will consider the offending actions and how a reasonable person would perceive those actions

[29] The Claimant testified that when he worked in the paint room, before moving to the kitchen, a painter got mad at him and threw the Claimant's tools into the hall. He stated that this incident resulted in arbitration. He also stated that he told management about being harassed in the kitchen over the past seven years, and nothing was done about it. He stated that he once had an altercation with a colleague related to silverware, and in another incident a colleague was supposed to wait for him to perform a task, but did the task without him because she did not like him. He stated there were "several little things," including a previous grievance process he went through,

when a manager laid him off with 20 years of seniority and kept a family member working, who only had two years of seniority. The Claimant stated he won the grievance, and returned to his employment. With respect to his kitchen employment, the Claimant stated that his colleagues ignore him if he asks a question, and will not help him or talk to him.

[30] I find the Claimant has failed to prove that harassment in the workplace occurred, or that the working conditions were so intolerable that he had no option but to resign immediately. In fact, while the Claimant testified that harassment in the workplace is the reason he left, I find this is undermined by the Claimant's statement to the Commission that he would still be working in the employment if his employer had not decided to terminate him. I find that what the Claimant describes as "constant harassment" could not have been so serious that he had to leave his employment, because he said he would not have left if the investigation and dismissal had not occurred.

[31] The Claimant agreed, at the hearing, that he would have been dismissed if he did not retire. He felt his only option was retirement, because he did not believe he could handle the grievance process. Further, at the time he made the EI benefit claim, he was not on a medical leave directed by his physician. While the Claimant testified that he had an injury to his brain stem and deals with both physical disabilities and anxiety, I do not accept his submission that he did not see a doctor because he knows how he feels and does not need to speak to a doctor about leaving his job. If the Claimant wants to rely on his anxiety as the reason he left his employment, instead of grieving his dismissal and potentially winning his job back, then I find he must have made some effort to product medical evidence supporting that submission. The Claimant testified that when he was given the options of grieving his termination or retiring, he was at home on leave, and on a medical prescription from his psychiatrist. He submitted at the hearing that this means he was talking to his doctor, and had to retire. I find the Claimant has failed to prove that he had to leave his employment for medical reasons because he has not provided and medical evidence to support that statement and appears to be relying only in his subjective opinion.

[32] I have also considered whether the Claimant meets any other factors outlined in the *Employment Insurance Act*, or has any other circumstances in his case that support a finding of just cause. I can find none. The employment was not a danger to the Claimant's health or safety,



despite his statements that he was harassed and could not continue in the employment. As I have found the Claimant was not subjected to harassment, I similarly find he cannot say the employment endangered his health or safety because that submission is based on him having been harassed. This is also not a situation of undue pressure on the Claimant to leave an employment, because the employer was planning to terminate the Claimant for cause before the union negotiated a retirement settlement. The Claimant also confirmed to the Commission that he did not have any assurance of another employment in the immediate future, and I cannot find significant changes in his work duties, terms and conditions relating to wages or salary, or find any other circumstance that would support the Claimant's contention that he had just cause.

[33] I find the Claimant failed to prove he had just cause for voluntarily leaving his employment because multiple reasonable alternatives existed: the Claimant could have proceeded with the grievance through his union, or could have seen a doctor to obtain direction on whether it was medically necessary for him to leave his employment. Failing to pursue these reasonable alternatives means the Claimant cannot be successful in this appeal.

### **CONCLUSION**

[34] The appeal is dismissed. I find the Claimant voluntarily left his employment and did not establish just cause for voluntarily leaving because he failed to exhaust the reasonable alternatives available to him.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	August 28, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	S. T., Appellant