



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. H. v Canada Employment Insurance Commission*, 2019 SST 1666

Tribunal File Number: GE-19-3059

BETWEEN:

A. H.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: September 23, 2019

DATE OF DECISION: September 24, 2019

DECISION

[1] I am allowing the appeal. The Commission has not met its burden of proving that the Claimant voluntarily left his employment. This means the Claimant is not disqualified from receiving benefits.

OVERVIEW

[2] The Claimant is employed as a X. He requested a transfer from his site assignment because the supervisor at that site was hostile and antagonistic towards him. The employer told him he could be transferred as soon as another permanent position was available, but that he could continue working on a casual basis at other sites until then. The Claimant accepted and received regular shifts over the next several weeks. After that, he stopped being scheduled for shifts. He applied for employment insurance (EI) benefits.

[3] The Commission looked at the circumstances around the Claimant moving from full-time employment to casual employment and decided that he had voluntarily left his full-time position without just cause and disqualified him from receiving benefits. The Claimant says that he did not voluntarily leave. He requested the transfer to resolve workplace issues with the site supervisor and did not believe he would be placed in a position of unemployment as a result.

ISSUE

[4] Did the Claimant voluntarily leave his employment?

ANALYSIS

[5] The purpose of the *Employment Insurance Act* is to compensate persons whose employment has terminated involuntarily and who are without work.¹ You are disqualified from receiving EI benefits if you voluntarily left your employment and cannot show that you had just cause for leaving.²

¹ *Canada Pacific Ltd. v. Canada (Attorney General)*, [1985] 1 S.C.R. 678

² Sections 29 and 30 of the *Employment Insurance Act*

[6] The Commission has to prove that the Claimant voluntarily left his employment by showing that he could have stayed in his employment but chose to leave. If I find that the Claimant voluntarily left, then he has to prove that he had just cause for choosing to leave his employment.

The Claimant did not voluntarily leave his employment

[7] The following facts are not in dispute. On March 16, 2019, the Claimant asked the employer to transfer him to another site. The employer told him there were no other permanent positions available at the time, but that he could work on a casual, on-call basis until a permanent position was offered. The Claimant accepted.

[8] The Commission says that the Claimant voluntarily left his employment when he accepted the change from a full-time permanent position to a casual, on-call position.

[9] The Claimant disagrees. He says it was normal and customary for commissionaires to request transfers to other sites. These transfer requests are regularly processed within a short period of time. He did not think anything of accepting casual employment until the transfer request was completed, because he believed he would be placed at another site quickly.

[10] The law requires that I consider whether the Claimant had a choice to stay in his employment and chose to leave.³ The Commission has the burden of proving that the Claimant chose to leave, on a balance of probabilities.

[11] I find the evidence supports that the Claimant did not voluntarily leave his employment. I accept the Claimant's testimony that it was a normal and customary practice for employees in his position to request transfers to other sites. I also accept that an employee transfer was typically completed in an efficient and rapid manner. In support of his position, the Claimant gave the example that two of his co-workers at his original site assignment had both requested transfers to other sites in the months following his request. They were both quickly given new site assignments and had no interruption in their employment schedule.

³ *Canada (Attorney General) v. Peace*, 2004 FCA 56

[12] I believe the Claimant's testimony that he requested a site transfer in order to resolve workplace issues he had with the site supervisor. The Claimant gave detailed testimony regarding the hostility and antagonism he was experiencing with the supervisor. He said that he addressed these concerns to the employer and requested that he be transferred to another site to avoid further issues. In my view, the Claimant did not have the intention to sever his employment relationship when he requested this transfer. He intended to deter further workplace issues by engaging in the normal and customary practice of transferring to another site assignment.

[13] The Claimant acknowledges that the employer informed him there were no permanent positions currently available at the time of his request. He accepted that he would work casually on an on-call basis until a permanent position was offered. The Claimant gave open and credible testimony that he believed this casual employment would last only a short period of time and that he would be given a new position quickly, based on the employer's past practices. After several weeks of casual employment, the Claimant received a letter from the employer stating that he was now considered a casual employee and would be receiving a lower rate of pay as a result. This is when he realized that his employment status had changed.

[14] The Claimant's statements at the hearing indicate that he did not intend to leave his employment on March 16, 2019, but simply arrange a customary site transfer in order to resolve a workplace issue.

[15] The employer's statements to the Commission, and the issuance of the letter confirming the Claimant's casual employment status, indicate that they interpreted the Claimant's acceptance of temporary casual employment as a resignation of his permanent employee status. I believe this was a misunderstanding between the Claimant and the employer. Where a claimant left his employment due to a misunderstanding, there is a significant question of whether the termination could be said to be voluntary.⁴

⁴ *Bedard v. Canada (Attorney General)*, 2001 FCA 76

[16] In considering the Claimant's circumstances as a whole, I cannot conclude that the Claimant initiated his departure from employment. On a balance of probabilities, I find it is more likely that the Claimant did not have a choice to stay or leave his employment.

CONCLUSION

[17] I find the Claimant did not voluntarily leave his employment. This means the appeal is allowed.

Catherine Shaw
Member, General Division - Employment Insurance Section

HEARD ON:	September 23, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. H., Appellant