Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *J. K. v Canada Employment Insurance Commission*, 2019 SST 1011

Tribunal File Number: GE-19-3042

BETWEEN:

J. K.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: September 25, 2019

DATE OF DECISION: September 25, 2019

Canada

DECISION

[1] I am dismissing the appeal. The Claimant has not shown just cause for voluntarily leaving his employment on August 24, 2018, and he has not worked enough hours of insurable employment to qualify for benefits since that date. This means he is disqualified from receiving benefits.

OVERVIEW

[2] The Claimant left his job at a restaurant and worked two other successive jobs. He was laid off from his last employment and applied for employment insurance (EI) benefits. The Commission looked at the Claimant's reasons for leaving his job at the restaurant and decided that he was unable to receive benefits because he had voluntarily left his employment without just cause and had not worked enough hours of insurable employment since leaving.

[3] I must decide whether the Claimant had just cause for voluntarily leaving his employment at the restaurant. The Commission says the Claimant had reasonable alternatives to leaving, such as seeking medical attention for his pain and requesting accommodation from the employer. The Claimant disagrees and says that he left his job due to persistent pain and because the employer did not treat him fairly. He says he should be entitled to benefits because he has worked steadily and paid into the EI system.

ISSUE

[4] Did the Claimant voluntarily leave his employment and, if so, did he have just cause to leave when he did?

[5] Did the Claimant accumulate sufficient hours of insurable employment to qualify for benefits since leaving his employment at the restaurant?

ANALYSIS

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

[7] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.[2] You have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.[3] It is up to the Claimant to prove this.[4]

There is no dispute that the Claimant voluntarily left his job

[8] I accept that the Claimant voluntarily left his job. The Claimant agrees that he quit on August 24, 2018. I see no evidence to contradict this.

The parties dispute that the Claimant had just cause for leaving

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

[10] Having a good reason for leaving a job is not enough to prove just cause. 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.

[11] The Claimant worked at the restaurant in question from October 20, 2016 to August 24, 2018. He worked part-time during the school year and full-time when he was not in school. He says that he left the job for several reasons. He felt the employer was treating him unfairly because he was a hard worker and the employer repeatedly promoted others instead of him. He also said that he experienced back pain, which he thought may be attributed to the long hours of standing at work. The Claimant also said he experienced wrist pain, but was not certain whether that was caused by his work duties or by other activities.

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[1] *Canada Pacific Ltd. v. Canada (Attorney General)*, [1985] 1 S.C.R. 678
[2] This is set out at section 30 of the *Employment Insurance Act*.
[3] *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.
[4] *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

[12] The Claimant said that he spoke to the employer about being overlooked for promotions and was not given a reason why he was not being promoted. Other employees continued to get promoted and he decided to quit several months after that conversation, in part, because he felt he was not appreciated in his job.

[13] The Commission says the Claimant had the reasonable alternative to seek other employment before he quit. In most cases a claimant has an obligation to attempt to resolve workplace issues or demonstrate efforts to seek alternative employment before making a unilateral decision to quit a job.[5]

[14] The Claimant testified that he started seeking work shortly after leaving his job. He says that he did not look for another job before leaving because he did not have time. He said he was busy that summer working full-time and was away on the weekends performing as a musician.

[15] The Commission says the Claimant also had the reasonable alternative to seek medical attention, discuss his health concerns with the employer and request accommodation or medical leave if needed. Employees have an obligation to discuss their concerns with their employer before leaving to see if their concerns can be resolved.[6]

[16] The Claimant said he did not speak to the employer about his health concerns before he quit. He said he was not certain that the pain was caused by his employment duties and did not know how the employer would react to his need for accommodation.

[17] The Claimant testified that he began experiencing back pain around three to six months after his employment started in October 2016. He did not seek medical attention for the pain because he did not have time to attend the doctor due to his work hours and traveling. The Claimant found subsequent work as a dishwasher in September 2018. He said that this job also involved standing for long periods of time and he felt the same back pain in this job. He saw a doctor in October 2018 and was prescribed physiotherapy.

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[5] *Canada (Attorney General) v. White*, 2011 FCA 190
[6] *Canada (Attorney General) v. Hernandez*, 2007 FCA 320

[18] The Claimant has not proven that he had just cause to voluntarily leave his employment, as there were reasonable alternatives to leaving his job when he did.

[19] The Claimant felt unappreciated in his job, in part, because newer employees were being promoted and he was not. I recognize that the Claimant spoke to the employer about his concerns and said the employer did not give him a reason why he was not promoted. When he was still not promoted several months later, he decided to quit and find employment elsewhere. The Claimant said he did not look for a new job before he quit because he did not have time. I do not find this a reasonable explanation. If the Claimant was unhappy in his position and wanted a new job, a reasonable alternative would have been to look for other work before leaving.

[20] I acknowledge that the Claimant experienced pain which may have been attributable to his work duties. However, I agree with the Commission that the Claimant had the reasonable alternative to speak with the employer about his back and wrist pain before he quit. The employer told the Commission that medical accommodation may have been possible, as several employees are on modified duties due to back pain. Trying to find a solution to the problem was a reasonable course of action open to the Claimant.

[21] The Claimant also could have sought medical attention to address the cause of his back and wrist pain before leaving his job. The Claimant admitted that he was not certain the pain was caused by his work which is part of the reason he did not address his concerns with the employer. I consider the Claimant's argument that he could not attend the doctor before leaving because he was too busy. The Claimant said that he began experiencing this pain around three to six months after his employment started. He was employed for nearly two years before he quit. It is not reasonable to conclude that the Claimant did not have time to see a doctor for over one year. A reasonable alternative to leaving his employment would have been for the Claimant to seek medical attention and advice regarding his pain.

[22] I also consider that the Claimant accepted new employment with nearly the same conditions shortly after leaving his job. He found work as a dishwasher in another restaurant in September 2018. He said this job also involved long periods of standing and caused his back to hurt. It is not reasonable to find that the Claimant had no choice but to leave his job due to this back pain, only for him to put himself in the same position in his next employment. While I

appreciate that the Claimant experienced back pain in both of these positions, I find it would have been reasonable for the Claimant to stay employed while seeking another job, as he has not demonstrated that he had an urgent need to quit due to pain.

[23] For the reasons stated above, the Claimant did not have just cause to voluntarily leave his employment when he did because reasonable alternatives to leaving existed.

[24] The Claimant also argued that he has paid into EI throughout his entire working life and should be entitled to benefits while he is unemployed. However, employment insurance is not an automatic benefit. It is an insurance program that is meant to compensate persons who are unemployed through no fault of their own. And like any other insurance program, you must meet certain requirements to qualify. In this case, the Claimant does not meet these requirements because he put himself in a position of unemployment when there were reasonable alternatives to leaving his job.

The Claimant does not have enough hours to qualify for benefits since August 24, 2018

[25] The law says that when you voluntarily leave your employment without just cause, the hours of insurable employment collected before the date you left cannot be used to qualify for benefits.[7] This means that you must work enough hours of insurable employment to qualify for benefits **after** leaving your employment.

[26] The Claimant applied for EI benefits on May 15, 2019 and established a benefit period effective May 5, 2019. The Commission says the Claimant needed 700 hours of insurable employment to qualify for benefits based on his regional rate of unemployment.[8] He had to accumulate these hours since leaving his employment on August 24, 2018.

[27] The Claimant worked in two jobs since August 24, 2018. The ROEs for these jobs show that he worked a total of 584 hours of insurable employment in this period. The Claimant has produced no evidence of any other insurable employment during this time.

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[7] The Federal Court of Appeal interprets subsection 30(5) of the *Employment Insurance Act* in *Canada (Attorney General) v. Trochimchuk*, 2011 FCA 268
[8] Section 7 of the *Employment Insurance Act*

[28] The Claimant required 700 hours of insurable employment to qualify for benefits and only has 584 hours of insurable employment. Therefore, he does not have enough hours of insurable employment to qualify for benefits since leaving his employment on August 24, 2018.

CONCLUSION

[29] The Claimant is disqualified from receiving benefits because he voluntarily left his employment without just cause. He has not worked enough hours of insurable employment since that time to qualify for benefits. This means the appeal is dismissed.

Catherine Shaw
Member, General Division - Employment Insurance Section

HEARD ON:	September 25, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. K., Appellant