



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. M. v Canada Employment Insurance Commission*, 2019 SST 1512

Tribunal File Number: GE-19-2572

BETWEEN:

S. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Melanie Petrunia

HEARD BY: Questions and Answers

DATE OF DECISION: September 30, 2019

DECISION

[1] The appeal is dismissed. The Claimant voluntarily left his job and he has not shown just cause because he had reasonable alternatives to leaving when he did. This means he is disqualified from receiving benefits.

OVERVIEW

[2] The Claimant left his workplace on October 25, 2018. That day, the truck that he ordinarily drove was not driveable. He was provided with a replacement which he found unsafe. He refused to drive the replacement truck and told his employer to contact him when his truck was repaired or there was safe replacement available. The employer did not contact the Claimant and he determined that he had been laid off. The Claimant filed a claim for employment insurance (EI) benefits on February 21, 2019. 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 voluntarily left his job and whether he has proven that he had no reasonable alternatives to leaving. The Commission says that the Claimant did voluntarily leave his employment because he initiated the separation and told the employer he would not return until his truck was fixed or a replacement provided. The Commission also argues that the Claimant could have spoken to the employer prior to leaving or contacted an outside agency such as the labour board if there were safety concerns.

[4] The Claimant disagrees and states that he did not quit. He states that he had a right to refuse to drive an unsafe vehicle and it was up to the employer to contact him. I find that the Appellant did voluntarily leave his job as he made the decision to leave the workplace and did not make any further inquiries of the employer. I also find that the Claimant did not have just cause for voluntarily leaving as there were reasonable alternatives available such as speaking with the employer prior to leaving and following up with the employer to confirm his assumption that he had been laid off.

ISSUES

[5] 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

Did the Claimant voluntarily leave his job?

[6] The burden of proof is on the Respondent to show that the Appellant left voluntarily. The burden then shifts to the Appellant to show that he had just cause for leaving (*Canada (Attorney General) v. White*, 2011 FCA 190).

[7] I find that the Claimant voluntarily left his job. The Claimant states that he did not quit his job but that he rightfully refused to drive an unsafe vehicle on the day in question and advised the employer to contact him when a vehicle was available for him. He states in his written answers to the Tribunal's questions that "the ball was in their court to contact" him. The Claimant confirmed in representations to an agent from Service Canada that the employer did not tell him to go home, but that he made the decision to leave.

[8] According to the Notice of Appeal, on October 25, 2018, the Claimant's usual truck had been run into by another employee and was not driveable. He was told to take another truck. He drove that truck from the X plant to the X plant and found that it was missing a step and the seat was wet. The truck was also a standard transmission which the Claimant had not driven in many years. He took the keys in to the Batchelor at the X plant and told him that he refused to drive the truck as he felt it was unsafe and asked to be called when his truck was fixed.

[9] In his answers to the Tribunal's questions, the Claimant stated that he also spoke with the X Plant Manager about his concerns with driving a standard shift and questioning why he hadn't been allowed to drive an automatic transmission truck that was in the yard that day. He also confirmed in his answers that he did not follow up with anyone else about the request to be contacted when his truck was fixed because he felt this was the employer's way to get rid of him after the treatment he had received over the last two years.

[10] I find that the Claimant made the decision to leave his workplace that day and also made the decision not to follow up or make any further inquiries of his employer. I find that the Claimant voluntarily left his employment.

Did the Claimant have just cause for voluntarily leaving?

[11] I find that the Claimant did not have just cause for voluntarily leaving because there were reasonable alternatives available such as contacting the employer about the status of his truck and inquiring about the status of his employment before assuming that he had been laid off.

[12] 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.

[13] 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.

[14] The Claimant says that he left his employment because the vehicle that he had been provided to drive that day was not safe and that he had no reasonable alternatives to leaving at that time because he had a right to refuse an unsafe vehicle and he was so upset that day that he could barely speak anymore and went home.

[15] 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 employer prior to leaving or sought advice from an outside agency such as the labour board about his concerns regarding the safety of the truck.

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

[16] I find that the Claimant had reasonable alternatives to leaving his employment when he did. He could have followed up with the employer to determine if there was a vehicle available for him to drive. He also could have contacted the employer to ensure that they were aware that he wished to return to work when he had a vehicle to drive. The Claimant could also have contacted the labour board or an outside agency with respect to his safety concerns. In his response to the Tribunal's questions, the Claimant stated that he did not contact the labour board until April 25, 2019. I find that the Claimant voluntarily left his employment and has not proven that he had no reasonable alternatives to leaving when he did.

CONCLUSION

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

Melanie Petrunia
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Questions and answers
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