



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *BS v Canada Employment Insurance Commission*, 2019 SST 1716

Tribunal File Number: GE-19-2191

BETWEEN:

B. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Kimber Johnston

HEARD ON: October 9, 2019

DATE OF DECISION: October 21, 2019

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant left his job because his skill sets were not a good match, he had a 90-mile drive to work, he thought he had a job to go to in Vancouver and, for medical reasons. General dissatisfaction in the workplace does not constitute just cause for leaving a job, nor do transportation challenges known to the Appellant prior to taking the job. The Vancouver job opportunity was not presented to the Appellant by an employer and funding for the job fell through. Therefore, he does not have just cause for leaving based upon a reasonable assurance of another employment in the immediate future. Further, there is no evidence to support that the Appellant had just cause to leave his job due to medical reasons. The Appellant had the reasonable alternative of remaining in his job until he secured alternative employment. Accordingly, the Appellant did not have just cause for leaving his employment and therefore he is disqualified from receiving benefits.

PRELIMINARY MATTERS

[3] The Tribunal's Appeal Division referred this appeal to the General Division for reconsideration on July 8, 2019. On July 11, 2019 I requested the parties to provide any additional submissions or documents by August 12, 2019. The appeal originated in 2018, before the Tribunal introduced e-mail correspondence, so on July 19, 2019 I asked the Tribunal Registry to contact the Appellant to see if he would authorize communication by e-mail. On July 23, 2019 the Registry confirmed they had spoken with the Appellant and he has no e-mail. No additional submissions or documents having been received by August 12, 2019, a Notice of Hearing was sent via Canada Post on August 15, 2019 scheduling the hearing for September 16, 2019.

[4] On August 19, 2019 Canada Post left the Appellant a notice regarding where and when to pick up the hearing package. On September 9, 2019 the Tribunal Registry called the Appellant

to remind him of the hearing. He said he had not received the Notice of Hearing and that he needed more time to prepare as he was waiting on additional documentation. He requested an administrative change of the date of the hearing. He picked up the hearing package from Canada Post later in the day on September 9, 2019.

[5] A revised Notice of Hearing was sent via Canada Post on September 10, 2019 with a new hearing date of October 9, 2019. Canada Post left the Appellant a notice on September 16, 2019 regarding where and when to pick up the hearing package and he was given a final notice on September 24, 2019 to retrieve the package within 10 days. On October 4, 2019 the Tribunal Registry left a voice message with the Appellant asking him to call. The Registry Clerk's intent was to instruct the Appellant about the hearing details; however, he did not return the call. I held the hearing on October 9, 2019 and the Appellant did not appear. The Tribunal Registry informs me that the package has not been picked up by the Appellant and it has not been returned to the Tribunal. The Appellant has not provided any additional documentation to the Tribunal.

[6] Accordingly, I am rendering my decision based upon an assessment of the written evidence and submissions provided by both parties.

**ISSUES: 1. Did the Appellant voluntarily leave his employment? If yes, then:
 2. Did the Appellant have just cause for leaving his employment?**

ANALYSIS

[7] Subsection 30(1) of the *Employment Insurance Act (Act)* says that a claimant is disqualified from receiving employment insurance benefits if they left their job voluntarily and without just cause. The Commission bears the burden of proof to show that the Appellant left voluntarily. The burden then shifts to the Appellant to show he had just cause for leaving (*Green v. Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v. White*, 2011 FCA 190).

Issue 1: Did the Appellant voluntarily leave his employment?

[8] This matter is not in dispute. The Appellant's Record of Employment indicates that he

quit his job. The Appellant stated to the Commission that he quit his job. Based upon the evidence before me, I find that the Appellant voluntarily left his employment.

Issue 2: Did the Appellant have just cause for leaving his employment?

[9] Having a good reason for leaving a job is not enough to prove just cause. Section 29(c) of the *Act* says a claimant has just cause to leave if, considering all of the circumstances, they had no reasonable alternatives to quitting their job. The circumstances relating to the Appellant leaving his job are as follows.

[10] The Appellant worked at a construction company from December 5, 2016 to December 31, 2016. He stated to the Commission that he left because the job was not for him, it was not his skill set and he was not getting ahead in life as he had hoped. He also indicated to the Commission that he left because he had to drive 90 miles from home to work which took a long time due to the snow. The Appellant further stated to the Commission that he was offered a job building houses in Vancouver, but that fell through because the builder could not get funding. He stated that the Vancouver job opportunity was told to him by a guy he knew, not an actual company. The employer stated to the Commission that the reason the Appellant gave for leaving was that he was moving out of province.

[11] In his Notice of Appeal to the Tribunal, the Appellant submits that he left his job due to medical reasons.

[12] I now turn to whether the Appellant had just cause for leaving his employment.

[13] As noted above, the legal test for just cause is set out in subsection 29(c) of the *Act*. I must consider a list of circumstances to determine whether the Appellant had no reasonable alternative to leaving when he did, including a reasonable assurance of another job in the immediate future (subsection 29(c)(vi) of the *Act*) and working conditions, including those dangerous to health and safety (subsection 29(c)(iv) of the *Act*).

[14] The Courts have ruled that proof of a reasonable assurance of another job requires contact with the employer regarding the job offer or, actual receipt of the job offer (*Canada (Attorney General) v. Lessard*, 2002 FCA 469). In the Appellant's case, the evidence shows the

Vancouver job opportunity was not presented to him by an actual employer nor did he receive a job offer from an employer. Rather, the Appellant became aware of a job opportunity through a guy he knew. The expectation of a job based upon an acquaintance's recommendation is not just cause for leaving employment. Further, the evidence does not support that the Vancouver job would be in the immediate future; rather, it supports that it would be delayed due to lack of funding. I therefore find that the Appellant has not shown just cause for leaving as he has failed to show that he had received a reasonable assurance of another job offer from an employer, in the immediate future.

[15] With respect to the Appellant's working conditions, the Appellant was aware of the length of the drive between home and work when he accepted the position. He cannot therefore, after starting the job, rely upon the length of the drive as just cause for leaving. Further, the Courts have generally held that transportation difficulties do not constitute just cause, even in a case involving a five-hour drive (*Canada (Attorney General) v. Desilets*, [1994] FCAD 3514-05). Also, a general dissatisfaction with the work does not constitute just cause.

[16] The case law requires claimants, in most cases, to attempt to resolve workplace concerns with their employer before taking a unilateral decision to quit (*Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Murugaiah*, 2008 FCA 10.) There is no evidence before me to support that the Appellant attempted to resolve his workplace concerns about the length of the drive and his skill sets with his employer prior to leaving. Accordingly, I find that the Appellant's working conditions relating to his transportation challenges and skill sets were not so intolerable as to constitute just cause for him leaving his employment.

[17] There is also no documentation, such as a medical certificate, to support that the Appellant consulted a doctor, prior to quitting, about conditions in the workplace which may have adversely affected his health or, that the Appellant was required to leave his job due to medical reasons. In the absence of such evidence, I therefore find that the Appellant has failed to show just cause for him leaving due to working conditions constituting a danger to his health or safety or for other medical reasons.

[18] The Commission says that the Appellant did not have just cause, because he had a reasonable alternative to leaving when he did. Specifically, that the Appellant could have

continued working and secured another job before leaving. I agree. The case law holds that remaining in employment until a new job is secured is generally a reasonable alternative to quitting (*Canada (Attorney General) v. Graham*, 2011 FCA 311). As noted above, there is insufficient evidence to show that the Appellant's working conditions were intolerable.

Accordingly, I find that the Appellant had the reasonable alternative of remaining at his job until he found alternative employment and therefore he does not have just cause for leaving his employment.

CONCLUSION

[19] I find that, based upon the evidence before me, the Appellant did not have just cause for leaving his employment and therefore he is disqualified from receiving benefits. The appeal is dismissed.

Kimber Johnston

Member, General Division - Employment Insurance Section

HEARD ON:	October 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	