



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. U. v Canada Employment Insurance Commission*, 2019 SST 1489

Tribunal File Number: GE-19-3206

BETWEEN:

B. U.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: October 10, 2019

DATE OF DECISION: October 18, 2019

DECISION

[1] I am dismissing the Claimant's appeal. The Claimant has not proven that he had just cause for quitting his job.

OVERVIEW

[2] The Claimant found a job in a warehouse with the help of an employment counsellor and an employment agency. After a few months, the employer agreed to hire the Claimant directly. The Claimant expected that the employer would pay him \$20 an hour when they hired him directly. The employer did not pay the Claimant \$20 an hour and so the Claimant quit. He applied for employment insurance benefits. The Canada Employment Insurance Commission (Commission) decided that the Claimant did not have just cause for quitting his job. The Claimant asked the Commission to review its decision. The Commission did not change its decision. The Claimant appealed to the Tribunal.

[3] I am dismissing the Claimant's appeal. The Claimant had several reasonable things he could have tried before quitting. Quitting his job was not the only reasonable thing left for the Claimant to do, given his circumstances. The Claimant has not proven that he had just cause for quitting his job.

PRELIMINARY MATTERS

[4] On his application, in conversation with the Commission, and at the hearing, the Claimant said that he quit his job. The employer agrees that the Claimant quit his job. No one involved with this appeal is arguing that the Claimant stopped working for any other reason. I am satisfied that the Claimant stopped working because he quit his job.

ISSUE

[5] Issue 1 – Does the Claimant have just cause for quitting his job?

ANALYSIS

[6] Many workers pay into the employment insurance fund. To respect the other people who pay into the employment insurance fund, if you want to receive employment insurance benefits, you should always show that you tried to avoid unemployment.¹ You must think about reasonable alternatives before you quit. Sometimes this means that you should talk to your boss or your union first if you have problems at work. Sometimes this means that you should try to find a new job before you quit.²

[7] You can only receive employment insurance benefits after you quit your job if quitting was the only reasonable thing to do in your situation. If you can prove that quitting your job was the only reasonable thing you could do, the law says that you have just cause for quitting. If you do not have just cause for quitting, you cannot receive employment insurance benefits. The law calls this a disqualification.³

Issue 1: Does the Claimant have just cause for quitting his job?

[8] There were reasonable things the Claimant could have tried before he quit. He quit before trying these reasonable alternatives. The Claimant does not have just cause for quitting.

[9] The Claimant gave many reasons for quitting his job. However, he has consistently said that the main reason he quit is because the employer did not honour its promise to pay him \$20 an hour.

[10] The Claimant started working for the employer because an employment agency and an employment counsellor with Work BC referred him to the employer. At first, the employment agency paid the Claimant and he earned \$16 an hour. The employment agency, his employment counsellor, and the employer agreed to transfer the Claimant directly to the employer. In other

¹ In *Tanguay v. Unemployment Insurance Commission*, A-1458-84, the Federal Court of Appeal says that a claimant is only justified in asking others to bear the burden of their unemployment if the circumstances excuse it.

² In its decision *Canada (Attorney General) v. White*, 2011 FCA 192, at paragraph 5, the Federal Court of Appeal says that claimants have an obligation to attempt to resolve workplace conflicts or demonstrate efforts to find other work before they quit a job.

³ This is from sections 29(c) and 30(1) of the *Employment Insurance Act*.

words, the employer agreed to hire the Claimant directly. The Claimant argues that the employer promised to increase his wage to \$20 an hour when he started working directly for the employer.

[11] The Claimant has given unclear evidence about how he made the agreement to increase his wage to \$20 an hour. He told the Commission that he talked to the employment agency and his employment counsellor about his expectation that the employer increase his wage to \$20 an hour. In another conversation with the Commission, he said that he talked to a manager about the wage increase. However, he said that the manager had already left the company by the time he started working directly for the employer. At the hearing, the Claimant said that he talked to the owner of the company. He said that the owner kept promising that his request would not fall through the cracks.

[12] The Claimant provided an email from his Work BC employment counsellor. In the email, the counsellor says that the Claimant told him that the employer had promised him \$20 an hour. The employment counsellor does not say that he was personally aware of the employer's promise to pay \$20 an hour.

[13] The Claimant also provided emails from the employment counsellor saying that they were working on transferring the Claimant to work for the employer directly. The emails do not say anything about the Claimant's wage. There is also an email from the employment agency giving the Claimant information about the job. This email says that the employer is offering \$16 an hour.

[14] The employer says that they never promised to increase the Claimant's wage to \$20 an hour.

[15] When there are different explanations of what happened, I have to decide which version is most likely. I have to consider all of the evidence and make a decision on the balance of probabilities.⁴ The employer says that they did not promise to pay the Claimant \$20 an hour. The Claimant says that the employer did promise to pay him \$20 an hour. I have decide which explanation is more likely.

⁴ The Federal Court of Appeal says that the standard of proof is the balance of probabilities for employment insurance matters in its decision *Canada (Attorney General) v. Corner*, A-18-93.

[16] I accept that the Claimant expected that the employer was going to pay him \$20 an hour. However, the Claimant has given different explanations of who he spoke to, and who promised him the wage increase. The Claimant has not provided evidence such as an employment contract or an email from the employer promising to increase his wage. Because there is no clear evidence about who the Claimant spoke to, and because there is no written evidence about the \$20 an hour wage, I find that it is likely that the employer never agreed to the Claimant's request for \$20 an hour.

[17] The Claimant said that he also quit because the workplace was not safe. He said that he fell off a ladder and injured himself when he first started working for the employer. After he quit, he reported the employer to Worksafe BC. According to the Worksafe BC report, the employer had several safety violations – they were not following Worksafe BC policies about having a health and safety committee, the first aid attendant's certification had expired, and one of the step-ladders was broken. I accept that the employer was not following Worksafe BC policies. The Claimant's concerns about workplace safety were valid.

[18] The Claimant also said that he did not get along with one of the supervisors and other employees. He said that the supervisor often said that the Claimant was not working hard. The supervisor and other employees used profanity at work. The Claimant said that he did not talk to the owner of the company about his relationship with the other workers because it was a small company. I accept that the Claimant did not get along with the supervisor and co-workers.

[19] I accept that the Claimant hoped that the employer would pay him \$20 an hour. I accept that the Claimant had valid concerns about workplace safety. I accept that he did not get along with some of his co-workers and supervisor. However, the Claimant still has to prove that leaving his job was the only reasonable thing he could do, in the circumstances.

[20] At the hearing, the Claimant said that he quit immediately after he received the first paycheque directly from the employer. He asked the employer if the paycheque came directly from the employer. However, he did not ask about his wage. He saw that the employer was not paying him \$20 an hour and so he quit.

[21] It would have been reasonable for the Claimant to talk to the employer about his wages before he quit. He could have asked if the employer made a mistake with his pay. He could have asked the employer to clarify the agreement about his wages. However, the Claimant quit before talking to the employer about his wages.

[22] The Claimant got this job with the help of an employment counsellor and an employment agency. It would have been reasonable for the Claimant to ask them for help or advice about his wage before he quit. The Claimant said that his employment counsellor had moved; however, he could have contacted Work BC to speak to another employment counsellor before he quit. The Claimant quit before talking to the employment counsellor or the employment agency.

[23] The Claimant gave contradictory evidence about whether he looked for other work before he quit. On his application and in conversation with the Commission, he said that he did not look for other work before he quit. At the hearing, he said that he misunderstood the question. He said that he did apply to other employers before he quit his job. The Claimant's explanation is not credible. On his application, he wrote that he did not look for other work before quitting because he was not planning to leave his job. I think it is likely that the Claimant's earlier statements are more accurate. I find that the Claimant did not look for other work before he quit.

[24] The Claimant was working with an employment agency and an employment counsellor. It would have been reasonable for him to ask them for help finding another job before he quit.

[25] I accept that the Claimant had valid concerns about workplace safety. However, it would have been reasonable for the Claimant to report his concerns to Worksafe BC or find other work before he quit. Furthermore, he did not quit until several months after his accident, and so he has not shown that the safety issues were so serious that he had to quit immediately.

[26] I accept that the Claimant did not get along with his supervisor and co-workers. However, it would have been reasonable for him to talk to the owner first before quitting.

[27] The Claimant had several reasonable things he could have tried before he quit. He quit his job without first taking reasonable steps to avoid unemployment. The Claimant has not proven that quitting his job was the only reasonable thing he could do, in his situation. The Claimant does not have just cause for quitting his job.

CONCLUSION

[28] I am dismissing the Claimant's appeal. The Claimant has not proven that he had just cause for quitting his job.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	October 10, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	B. U., Appellant