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

[TRANSLATION]

Citation: *M. G. v Canada Employment Insurance Commission*, 2019 SST 1668

Tribunal File Number: GE-19-2995

BETWEEN:

M. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: September 26, 2019

DATE OF DECISION: November 6, 2019

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant had been working in packaging for X for nearly a year when he asked his employer for two weeks of vacation. He states that his request was granted verbally and that he therefore took his leave starting April 1, 2019. The following Monday, the employer called the Appellant to its office to ask him to sign a form regarding his vacation and inform him that only one of the two weeks had been granted.

[3] The employer submits that the Appellant's two weeks had not officially been granted and that it informed the Appellant that he had to work starting April 8, 2019, otherwise he would be considered to have resigned.

[4] The Appellant did not show up for work the week of April 8, 2019. The Canada Employment Insurance Commission determined that the Appellant had voluntarily left his employment without just cause within the meaning of the *Employment Insurance Act* (Act). As a result, no benefits were paid.

[5] The Appellant submits that he did not leave his employment and that he simply took his vacation that had been approved by the employer.

[6] I find that the Appellant's vacation was not approved and that he made the choice not to go to work as requested by his employer. I find that the Appellant had reasonable alternatives available to him and that he chose not to go to work, therefore causing his termination of employment.

ISSUES

[7] The Tribunal must decide the following issues:

a) Did the Appellant voluntarily leave his employment?

b) If so, did he have no reasonable alternative to leaving given the circumstances?

ANALYSIS

[8] I must decide whether the Appellant is entitled to receive Employment Insurance benefits under section 30 of the Act. To do so, I must first determine whether the Appellant voluntarily left his employment. If the answer is yes, I will then have to determine whether he had just cause for leaving his employment.

Issue 1: Did the Appellant voluntarily leave his employment?

[9] The parties in this file disagree about who initiated the termination of employment. The Appellant submits that he never resigned or left his employment, but that he was dismissed. The employer states that the Appellant left his employment by taking an unauthorized leave. The Commission preferred the employer's version. I have to decide. The burden was first on the Commission to prove that the Appellant had left his employment.[1]

[10] For the reasons below, I find that the Appellant voluntarily left his employment.

[11] It is accepted that, on March 28, 2019, the Appellant asked his supervisor C. whether he could take two weeks of vacation starting the following Monday. It was an expected vacation request because the collective agreement states that the vacation period is from May 1 to April 30. Therefore, the Appellant theoretically had to [translation] "borrow" vacation because he had less than one year of seniority.

[12] Both parties also accept that the Appellant took his first week of vacation from April 1 to 5, 2019. The employer called him into work the morning of Monday, April 8. During the meeting, the Appellant was informed that his second week of vacation was not approved because of operational needs and that he had to come into work that day for his regular shift beginning at 2:00 p.m.[2] A discussion followed between the Appellant, C., L., and F. about the Appellant's vacation, in which the Appellant stated that his two weeks had been approved and that he was

[1] *Green v Canada (Attorney General)*, 2012 FCA 313.
[2] The Appellant usually worked from 2:00 p.m. to 10:15 p.m., Monday to Friday.

therefore on vacation for the rest of the week. The employer maintained that the second week of vacation was not approved and that, if he did not show up for work, he would be considered to have resigned.

[13] The Appellant left the meeting and did not show up for work for the rest of the week. The employer terminated the Appellant's employment on April 11, 2019, by applying the collective agreement.[3]

[14] Based on the evidence, I accept that the Appellant made the unilateral decision to not show up for work the week of April 8 to 12, 2019, when his employer had informed him that he was expected to work his usual shift.

[15] To determine whether the Appellant voluntarily left his employment, I asked myself the fundamental question as to whether the Appellant had the choice or not to remain employed. On the balance of probabilities, I find that, yes, he could have easily remained employed if he had wanted to. No one forced him to leave. He chose to ignore his employer's decision not to grant him the second week of vacation he had requested. The evidence shows that he also left deliberately because his employer had made it clear that, if he did not show up for work, he would lose his employment. Furthermore, the Appellant admitted and confirmed the fact that he ignored his employer's request.

[16] The Appellant disputes the idea that he allegedly left his employment because, in his view, he only took his vacation that had already been approved. I cannot accept the Appellant's position. First, I am of the opinion that his vacation was not approved as he claims. The employer's evidence is more convincing than that of the Appellant. Although the employer may sometimes authorize vacation verbally, I am not satisfied that the Appellant obtained verbal approval for his vacation.

[17] While the employer's policy and the collective agreement[4] state that an employee must submit their vacation request two weeks in advance, the Appellant made his request only two

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[3] Section 12.05(e) of the collective agreement states that an employee loses their employment if they do not show up for work for three consecutive days without a valid reason.
[4] Section 20.05(a) of the collective agreement (GD3-38).

days in advance. The Appellant says that his supervisor told him that she had no problem granting the request if L. and F. did not have a problem with it.[5] He then ran into L. and F. in the hallway, asked them, and they responded that, if C. was okay with it, so were they. According to him, his vacation was therefore approved. He finished his week, and the following Monday (April 1), he considered himself on vacation and did not show up for work.

[18] I agree with the Commission that the Appellant never received an official response to his vacation request. He had short informal exchanges with his supervisor and then with the human resources manager and factor manager. Although the reactions seemed positive to him, it is clear from the evidence that no one formally confirmed his vacation. The evidence shows that the supervisor contacted the Appellant on Thursday, April 4, 2019, to clarify its response to the vacation request. She also asked him to come by the office the following Monday morning. I find that, if the employer had clearly granted the Appellant two weeks of vacation, the supervisor would not have contacted the Appellant in the middle of his vacation. Because everything was done quickly and the Appellant decided unilaterally to take his vacation starting Monday, April 1, 2019, I find it plausible that the supervisor wanted to talk to the Appellant to set the record straight and make sure that everyone was on the same wavelength. The supervisor stated that she had told the Appellant on April 4, 2019, that only one week had been granted. The Appellant does not remember this bit of the conversation.

[19] Second, regardless of whether the Appellant's vacation was approved, the fact remains that he was formally advised that he would break the employment relationship if he did not show up for work on April 8, 2019. Therefore, he chose to ignore the employer's direction and initiated his own termination of employment because he knew the consequences associated with his decision not to show up for work for more than three days.

[20] Based on all the evidence, and on a balance of probabilities, I find that the Appellant left his employment voluntarily and caused the certainty of unemployment that he experienced, which is contrary to his obligations as a claimant.

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[5] L. C. is the factory manager, and F. M. is the human resources business partner.

Issue 2: Did the Appellant have no reasonable alternative to leaving given the circumstances?

[21] The second question that must be analyzed is whether the Appellant had just cause for leaving his employment. Generally, a person who voluntarily leaves their employment is not entitled to Employment Insurance benefits. The Federal Court of Appeal has stated on many occasions that, for there to be just cause for leaving under the Act, it must be proven that there was no reasonable alternative to leaving having regard to all the circumstances.[6] In *Hernandez*, Judge Létourneau states that, along with the exceptions cited in section 29 of the Act, it is essential to consider whether voluntarily leaving an employment is the only reasonable alterative and that failing to do so constitutes an error of law.[7]

[22] For the following reasons, I find that the Appellant has failed to show that he had no reasonable alternative to leaving given the circumstances.

[23] In this case, the Appellant did not attempt to justify his voluntary leaving because he argued only that he had not voluntarily left his employment.

[24] I find that when the Appellant's employer informed him that it was refusing his second week of vacation, his leaving was not the only reasonable alternative given the circumstances. Although I can understand the Appellant's frustration if he was under the impression that his two weeks were approved, I still find that a reasonable alternative would have been to show up for his shift at 2:00 p.m. on April 8, as requested by his employer. Another reasonable alternative would have been to ask his union for help in disputing the employer's refusal. He did not do this. In a unionized environment like that of the employer, the Appellant had access to a union representative to dispute various decisions by the employer. However, this must be part of a defined process, which is not necessarily fast. Instead, the Appellant decided to take justice into his own hands, which was not a reasonable alternative in my opinion.

[25] The Appellant refers to his mother who had a medical condition requiring his presence. I have no doubt that this is true. However, that does not mean that the Appellant had no reasonable

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[6] *Canada (Attorney General) v Patel*, 2010 FCA 95; *Bell*, A-450-95; *Landry*, A-1210-92.
[7] *Canada (Attorney General) v Hernandez*, 2007 FCA 320.

alternative. He could have told his employer about this situation and asked for unpaid leave, compassionate care leave, and/or provided the employer with a medical note to justify his absence. This is especially true if the real reason for not being able to go to work was the Appellant's mother. In that case, it is not vacation he needed, but rather leave authorized by the Act for that purpose.

[26] I find that by ignoring these reasonable alternatives available to him, the Appellant acted on a whim without thinking of the consequences his absence could have on his employment. That is certainly not a reasonable alternative in my opinion.

[27] The Appellant submits that the Appellant could have provided a medical note attesting to his mother's condition if the employer had asked him. I find that the Appellant showed poor judgement. If an employee requires some type of leave, it is up to them to justify their request and provide the necessary proof. In this case, the employer indicates that it did not receive a request and therefore could not process such a request.

[28] I find that, not only did the employer require the Appellant to show up for his shift on April 8, 2019, it also informed him of the consequences of an absence of more than three days in accordance with the collective agreement. The Appellant's disregard for the employer in granting himself a week of vacation when the employer clearly expected him to work was unreasonable. Therefore, leaving was not the only reasonable alternative in his case.

CONCLUSION

[29] The appeal is dismissed. This means that the Appellant is not entitled to receive benefits.

Lucie Leduc
Member, General Division – Employment Insurance Section

HEARD ON:	September 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. G., Appellant Yvan Bousquet, Representative for the Appellant