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

[TRANSLATION]

Citation: *R. F. v Canada Employment Insurance Commission*, 2019 SST 1432

Tribunal File Number: GE-19-3498

BETWEEN:

R. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: November 1, 2019

DATE OF DECISION: November 12, 2019

Canada

DECISION

[1] The appeal is allowed. R. F. (Claimant) has proved that he had just cause for voluntarily leaving his employment because he had no reasonable alternative to leaving, given the circumstances. This means that the Claimant is not disqualified from receiving benefits for leaving X.

OVERVIEW

[2] The Claimant lives in X. He worked for a company that was located near his residence. He worked during the evenings, and he earned $13.77/hour, which included a $0.50/hour premium for working nights. In late March 2018, the employer announced that the company would be moving to X during the summer of 2019. The Claimant told his supervisor that he did not want to work in X. The Claimant worked until the company closed its doors in X.

[3] The Canada Employment Insurance Commission (Commission) disqualified the Claimant from receiving Employment Insurance (EI). It found that the Claimant had left his work voluntarily without just cause because there were reasonable alternatives available to him. The Claimant is appealing that decision. He argues that he could not continue working for the company once it moved because (i) he could not commute from X to X, and (ii) he experienced a significant modification of terms and conditions respecting wages. The Claimant says that he started looking for employment even before the company moved, but he has not found employment yet.

[4] Having considered all the circumstances, I find that the Claimant has proved that he had no reasonable alternative but to leave.

PRELIMINARY MATTERS

[5] At the hearing, the Claimant submitted several documents to support his arguments. The documents consisted of case law, a personal calculation table setting out the Claimant’s actual hourly rate, text messages, Google Maps routes, public transit schedules, as well as newspaper articles.

[6] After receiving those documents, the Commission provided an additional argument.

[7] I have considered the documents that the Claimant provided at the hearing because those documents are relevant to the appeal. I have also considered the Commission's additional argument.

ISSUE

[8] I must decide whether the Claimant is disqualified from receiving benefits because he voluntarily left his employment without just cause. Therefore, I must decide whether the Claimant left his employment voluntarily. Then, I must decide whether the Claimant had just cause for voluntarily leaving his employment.

ANALYSIS

[9] Claimants are disqualified from EI benefits if they voluntarily left any employment without just cause.[1]

[10] The Commission has the burden of showing that the leaving was voluntary. Next, the burden falls on a claimant to show that they had just cause for leaving their employment.[2] The claimant's and the Commission's burden of proof is the balance of probabilities, and that means that it is more likely than not that the events happened as described.

Issue 1: Did the Claimant voluntarily leave his employment?

[11] I find that the Claimant left his employment voluntarily.

[12] The Commission argues that the Claimant voluntarily left his employment. The Claimant says that he told his employer that he would not be able to work for the company once the company moved to X. Still, the Claimant explained that he had proposed to his employer that he remain in his employment even after the move in order to work until his period of leave, which was scheduled for a few days later. However, the Claimant's car broke down on the first day that he was expected to work in X, and the Claimant was unable to get to work. The Claimant says

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[1] *Employment Insurance Act* (Act), s 30.
[2] *Green v Canada (Attorney General)*, 2012 FCA 313.

that he received an email from his employer telling him that his services would not be needed for the week. The Claimant submitted text message exchanges with his employer to support his testimony, as well as the employer's statement.[3]

[13] Despite the Claimant's proposal to work a little longer than his original resignation date, I find that the Claimant initiated the end of the relationship by clearly telling his employer that he would not follow the company in its operations in X. The Claimant's decision is the real cause of the loss of employment; therefore, I find that he voluntarily left his employment.[4]

Issue 2: Did the Claimant have just cause for voluntarily leaving because he had no reasonable alternative to leaving?

[14] I find that the Claimant had just cause for voluntarily leaving his employment.

[15] Just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances.[5]

[16] The Act sets out a non-exhaustive list of circumstances to be considered when determining whether a claimant had good cause for voluntarily leaving their employment.[6] However, when a claimant's situation does not fall within the circumstances listed in the Act, the claimant can still prove good cause by showing that they had no reasonable alternative to leaving, having regard to all the circumstances.[7]

[17] The Claimant argues that he had just cause for leaving his employment because

- he could not commute from X to X; and
- he experienced a significant modification of terms and conditions respecting wages.

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[3] See GD3-24.
[4] *Canada (Attorney General) v Côté*, 2006 FCA 219.
[5] Act, s 29(c).
[6] Act, s 29(c).
[7] *Canada (Attorney General) v Patel*, 2010 FCA 95.

Commute from X to X

[18] The Claimant argues that the company's move from X to X was a significant change. The Claimant says that, when his employer was in X, he worked 6 to 10 minutes from the company (about 3.2 km from his home). The Claimant explains that, with the company's move to X, he would have had to travel some 40 km for about 37 to 45 minutes. He has an old car from 2006 that is not in good condition. The Claimant maintains that he did not feel safe commuting. Furthermore, the Claimant says that the quickest route between X and X is on a very rough road.

[19] The Commission argues that the travel time between the old and new company locations is about 35 to 40 minutes, which is not a significant amount of travel time.

[20] I accept the Claimant's explanations that he did not feel safe commuting between X and X. The Claimant's testimony is supported by 2016 and 2019 newspaper articles that show that the road the Claimant would have had to drive on is [translation] "the most deadly per kilometre than any other highway in Québec."[8] I accept that that commute is even more dangerous with an old car that is not in good condition. Furthermore, I reject the Commission's argument that, under the circumstances, a change from 6 to 10 minutes of travel time to about 37 to 45 minutes is not significant. That is a significant increase in travel time. I do not see that the Claimant's decision to not work in X was simply the result of a personal choice.[9] The Claimant discussed some real obstacles to his capacity to work in X.

Significant modification of terms and conditions respecting wages

[21] The Claimant indicates that he experienced a significant modification of terms and conditions respecting wages because his employer moved. He says that, first, the employer asked him to work a day shift instead of his evening shift. The Claimant explains that, with that change, he would go from $13.77/hour to $13.27/hour because he would lose his evening shift premium of $0.50/hour. Furthermore, the Claimant says that the commute to X would cost him $50 to $60

[8] GD5 – See the November 2, 2016, *Actualité Transports* [transportation news] newspaper article.
[9] The circumstances of this case are different from the usual circumstances where claimants bring up transportation issues because they moved house. In this case, the situation is beyond the Claimant's control, that is the Claimant had nothing to do with the situation.

per week in gas alone. The Claimant says that that was a significant change in light of his earnings.

[22] The Commission notes that the reduction of the hourly rate by $0.50/hour and the extra cost of gas represent a 13% reduction of the Claimant's earnings. The Commission says that Employment Insurance pays 55% of the maximum weekly insurable earnings, which would mean a 45% reduction of his earnings. The Commission argues that the 13% reduction is not as substantial as the reduction in earnings that the Claimant would experience once he received EI.

[23] First of all, I find that the Commission's argument has no basis in law. The applicable test is not to compare the new terms and conditions respecting wages to the amounts the Claimant would get if he received EI benefits. Rather, it is necessary to assess whether the situation the Claimant described amounts to a significant modification of terms and conditions respecting wages, given the circumstances.

[24] I do not consider the reduction in the Claimant's earnings from $13.77/hour to $13.27/hour, to represent, in itself, a significant change in the Claimant's earnings. A reduction of $0.50/hour because of losing the night shift premium is not significant enough to amount to a significant modification under the Act. Furthermore, the employer indicated that the Claimant had announced his intention not to follow the company to X even before getting information on the reduction in earnings; also, the Claimant would have probably received the $0.50/hour if he had asked for it.[10]

[25] Moreover, the increase in the cost of gas by $50 to $60 per week due to the company's move is not a change in the Claimant's earnings. The cost of gas is not part of the Claimant's earnings, but expenses the Claimant incurred for going to work.

[26] Although I accept that the company's move to X meant extra costs for the Claimant (which I will take into account when I consider all of the circumstances), that increase in

[10] GD3-24.

work-related costs does not amount to a change in terms and conditions respecting wages under the Act.[11]

Reasonable alternatives

[27] I am of the view that, given the circumstances, the Claimant had no reasonable alternative but to leave his employment. The Commission argues that the Claimant should have taken advantage of the following reasonable alternatives instead of leaving his employment:

- taking public transit;
- carpooling with co-workers;
- continuing to use his car to get to work until he found other employment.

[28] I reject the Commission's argument that the Claimant should have carpooled or taken public transit to get to work in X.

[29] The Claimant submitted the train schedule and the route for getting from his place to the train and from the train to his employer. The Commission stated in its additional argument that the schedule showed that public transit was available because the Claimant would have worked from 8:00 a.m. to 4:30 p.m.

[30] I do not accept the Commission's argument. I find that it is not practical for the Claimant to commute by public transit. The evidence that the Claimant submitted shows that the journey to work one-way would have taken him 1 hour and 45 minutes and included a long walk. Furthermore, the Claimant would not have been able to make it on time for the start of his 8:00 a.m. shift, even if he took the first train of the day.

[31] Also, carpooling was not a reasonable alternative. The Claimant explained that his landlord also worked for the company and that she commuted by car. However, she worked in the offices, and she had the flexibility to sometimes work from home. The Claimant also

[11] See section 29(c)(vii) of the Act.

explained that schedule differences made carpooling difficult with co-workers. Sometimes, co-workers are called to work overtime or shifts are cut short with changes in production.

[32] I accept the Claimant's testimony. He was honest in his explanations. Furthermore, the Claimant's Record of Employment supports his testimony on the point that he did not have a predictable schedule that allowed him to carpool regularly.

[33] Finally, I reject the Commission's argument that a reasonable alternative for the Claimant was to continue working in X until he found other employment. The Commission argues that car accidents on the road between X and X were mainly in the winter. The Commission says that the Claimant would have been able to commute while waiting to find other employment because it was during the summer months.

[34] The Claimant testified that, before working for X in X, he worked for a company in X. He worked from November 2017 to March 2018. He commuted from X to X. He earned around $16/hour in that position. However, because of the dangerous road between X and X, the Claimant left that employment to accept the job with X, despite the pay cut. He explains that, in March 2018, the dangerous driving conditions were central to his decision to leave his employment in X. The Claimant made that decision to leave, even though spring had arrived.

[35] I accept the Claimant's testimony about his earlier experiences of driving on the road from X to X. His testimony was sincere. He accurately described his experiences on the roads between the two towns and the reasons for not commuting. I do not accept the Commission's argument that the Claimant should have continued to make the journey because it was during the summer months. The newspaper articles as well as the Claimant's testimony indicate how dangerous that road is for several reasons that do not have to do with the weather (for example, the fact that there are many trucks and that it is a two-way road).

[36] Furthermore, I find that the fact that the Claimant was unable to get to work on the first day of operations in X (that is, on July 8, 2019) because his car broke down shows that commuting, even for a short period, was not a reasonable alternative, given the circumstances.

[37] Lastly, I accept the Claimant's testimony about his efforts to find employment from March 2019 onward. The Claimant explains that he applied and actively looked for employment. The Claimant described the efforts he made to find employment as well as the difficulties he had when applying because he is 60 years old.

[38] I am of the view that, having regard to all of the following circumstances:

- the dangers of the road between X and X;
- the Claimant's earlier experience on that road;
- the condition of the Claimant's car;
- the difficulties getting to X by other means than by car;
- the extra cost of gas; and
- the Claimant's efforts to find employment,

the Claimant had no reasonable alternative but to leave his employment.

CONCLUSION

[39] The appeal is allowed.

Christianna Scott
Member, General Division – Employment Insurance Section

HEARD ON:	November 1, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	R. F., Appellant Kim Bouchard (counsel), Representative for the Appellant