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

Citation: *I. O. v Canada Employment Insurance Commission*, 2019 SST 1483

Tribunal File Number: GE-19-3630

BETWEEN:

I. O.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: December 3, 2019

DATE OF DECISION: December 6, 2019

Canada

DECISION

[1] The appeal is dismissed. The Appellant has not proven he had just cause for voluntarily leaving his employment and is, therefore, disqualified from receipt of employment insurance benefits (EI benefits).

OVERVIEW

[2] The Appellant established a claim for EI benefits effective July 28, 2019. The Respondent, the Canada Employment Insurance Commission (Commission), imposed a disqualification on his claim because it determined he voluntarily left his job as a social care worker at X on May 5, 2019 without just cause. The Appellant denied quitting, and argued he was left with no choice but to apply for EI benefits because of a shortage of work after the employer cancelled his shifts for the entire month of May 2019. The employer advised that the Appellant's shifts were only cancelled for the week of May 5, 2019 in order to investigate a complaint about his conduct and another incident where he did not follow protocol. The Appellant refused to attend a meeting scheduled by the employer, and instead asked for his Record of Employment (ROE) and resigned. The Commission maintained the disqualification on the Appellant's claim, and he appealed to the Social Security Tribunal (Tribunal).

ISSUE

[3] Is the Appellant disqualified from receipt of EI benefits because he voluntarily left his employment at X without just cause?

ANALYSIS

[4] A claimant who voluntarily leaves their employment is disqualified from receiving EI benefits unless they can establish "just cause" for leaving: section 30 *Employment Insurance Act* (EI Act).

[5] Just cause exists where, having regard to all of the circumstances, on balance of probabilities, the claimant had no reasonable alternative to leaving the employment when they did (see *White 2011 FCA 190, Macleod 2010 FCA 301, Imram 2008 FCA 17, Astronomo A-141-97, Tanguay A-1458-84*).

[6] The initial onus is on the Commission to prove the Appellant left his employment voluntarily; once that onus is met, the burden shifts to the Appellant to prove he left for "just cause" (see *White, (supra); Patel A-274-09*).

Issue 1: Did the Appellant voluntarily leave his employment at X?

[7] Where a disqualification is being considered for voluntarily leaving an employment without just cause, I must first decide if the Appellant, in fact, voluntarily left the employment.

[8] When he applied for EI benefits, the Appellant gave his reason for separation from employment as "Shortage of Work" (GD3-8).

[9] But his Record of Employment (ROE) from X was issued as a "Quit", listing his last day of work as May 5, 2019 (see GD3-15).

[10] The Appellant denied that he quit. He told the Commission that X was a temporary employment agency and that what they did to him was "constructive dismissal" (GD3-17). He wrote:

> "I am fully aware that the employment insurance will not support me if I quit my employment voluntarily, but this is a different case scenario I didn't quit my work but work was cancelled for the entire month, I was in 'uncertainty position' when to be called back to work was unknown. This Temp agency have no steady work available for me. It was a workplace with 'uncertainty' no one can live and raise family with such unknown situation." (GD3-18)

[11] When the Commission contacted X, the employer's representative advised that the Appellant asked for his separation papers and subsequently confirmed to the employer that it was his intention to resign (see GD3-21).

[12] X provided the Commission with a copy of the Appellant's resignation E-mail sent on May 7, 2019 (see GD3-23). In this E-mail, the Appellant refers to the employer "inviting" him to a meeting as "wasting my precious time for something you could have said over the phone", and concludes:

> "I would like you to email my records of employment to me in order to apply for employment insurance before I am able to secure another employment. Just for your reminder, I have been very reliable, dedicated and indispensable assets to your agency since joining your organisation last year. I cannot sit in your office to hand me a dismissal letter for something I have done right."

[13] X wrote to the Appellant accepting his resignation on May 13, 2019 (see GD3-27).

[14] When the Commission queried the Appellant about his E-mail, he stated that he received an email from the employer indicating all of his shifts for the month of May were cancelled, so he emailed back asking for his ROE, and the employer then emailed him to let him know they were honouring his request.

[15] The employer denies that the Appellant's shifts for the entire month of May were cancelled. The employer provided further details about the events leading up to the Appellant's resignation during an interview with the Commission (see GD3-29):

- The Appellant had been working at a specific location. On May 5, 2019 there was an incident at that location which involved him.
- Then a second location advised the employer of another incident and said they would rather the Appellant not be scheduled for that location.
- After being notified of 2 incidents, the Appellant's shifts for the balance of the week were cancelled in order for the employer to investigate.
- They sent an E-mail to the Appellant asking him to come in for a meeting about the incidents in order to see if additional training was required or if there were any mitigating circumstances.
- The Appellant acknowledged the request for a meeting in his responding E-mail on May 7, 2019 (at GD3-23), but refused to attend the meeting and asked for his ROE so he could apply for EI benefits.
- The employer only cancelled his shifts for that one week in order to start the investigation.
- The Appellant was scheduled for 11-hour shifts on May 13th, 14th, 15th and 16th, but he himself cancelled those shifts.

- Had the Appellant come to the meeting and discussed the issue with the employer, he potentially could have returned to work that same week.
- The employer's investigation could have been resolved during the meeting, but the Appellant chose not to attend. He didn't give the employer a chance to resolve the situation in order for him to continue working.

[16] In his reconsideration interview (at GD3-37 to GD3-38), the Appellant told the Commission that the employer was lying about only cancelling his shifts for the week, but said he had deleted the employer's E-mail about that. When asked why he did not attend the meeting or participate in the investigation, the Appellant stated that if he did not resign the employer would have dismissed him. He advised that temporary employment agencies exploit their workers and only care about pleasing their clients.

[17] In the employer's reconsideration interview (at GD3-39), X's representative told the Commission they had no intention of dismissing the Appellant at the meeting. They had not issued any prior warnings to the Appellant and just wanted to speak to him and determine whether he needed additional training. Had he attended the meeting instead of quitting, he could have been restored for the same week and offered shift work at another location.

[18] The Appellant testified at the hearing as follows:

- He did not quit.
- He knows he can't get EI benefits if he quits.
- The employer violated his rights by cancelling his shifts.
- There was nothing for him to live on because there was no shift the next day.
- He did not intend the May 7, 2019 E-mail to be his resignation.
- The employer cancelled his shifts for the entire month, so there was a shortage of work.
- With no shift the next day or the next week, he had nothing to live on and had to apply for EI benefits.
- His separation from employment was due to a shortage of work.

[19] I find that the Appellant voluntarily left his employment at X after his last day of work on May 5, 2019.

[20] I give significant weight to the “Quit” ROE. The Appellant asked for it on May 7, 2019 and it was issued on May 17, 2019, contemporaneously with the separation from employment and long before the Appellant applied for EI benefits on August 1, 2019 or was disqualified from receipt of benefits on September 23, 2019.

[21] I also prefer the statements by the representatives from X. The employer consistently referred to the Appellant resigning and asking for his ROE in order to apply for EI benefits, and this evidence is corroborated by the Appellant’s E-mail on May 7, 2019. While the Appellant testified that he did not intend for this E-mail to be his resignation, it is not possible to ignore the plain meaning of the words used by the Appellant in his E-mail and their sequence: after refusing to meet with the employer, he then wrote:

> “I would like you to email my records of employment to me in order to apply for employment insurance before I am able to secure another employment.” (GD3-23)

It was open to the Appellant to dispute the employer’s interpretation of this as notice of resignation, but there is no evidence he challenged the letter the employer sent on May 13, 2019 accepting this resignation.

[22] Although the Appellant denies quitting, there can be no mistaking the impact of his decision not to attend the meeting requested by the employer and to instead request his ROE with the explicit intention of applying for EI benefits while he looked for a different job. This conduct led to the separation from employment and was clearly initiated by the Appellant.

[23] I therefore find that the Appellant voluntarily left his employment with X after his last day of work on May 5, 2019.

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

[24] It is up to the Appellant to prove he had just cause for voluntarily leaving his employment at X.

[25] The Appellant will have just cause for leaving if, considering all of the circumstances, he had no reasonable alternatives to quitting when he did.

[26] The Appellant says he had just cause for leaving his employment because of a shortage of work created when his employer cancelled his shifts for the entire month of May, leaving him with nothing to live on.

[27] The Commission says the Appellant did not have just cause because he had reasonable alternatives to leaving when he did. Specifically, it says the Appellant could have attended the meeting requested by the employer and provided his version of events for the incidents under investigation; or he could have requested alternate work at one of the employer's other client's.

[28] I find that the Appellant had reasonable alternatives to leaving his job at X after his last paid day of work on May 5, 2019.

[29] There is an obligation on employment insurance claimants to try to resolve workplace issues with their employer or seek alternative employment before making a unilateral decision to quit a job.

[30] The Appellant told the Commission that he had no other choice than to apply for EI benefits after his shifts for the month of May were cancelled and there was no guarantee he would be called back to work anytime soon (see letter at GD3-17). He said he asked for his ROE because the employer would not give him any work, although he had been working full-time up to May 4, 2019 (see GD3-28). He considered the cancellation of his shifts to be a shortage of work and felt he had no other choice than to apply for EI benefits until he could "fully secure full-time employment" (GD3-35). X is a "temp agency" and had "no steady work available" for him (GD3-36).

[31] In his reconsideration interview (at GD3-37 to GD3-38), the Appellant told the Commission that he worked for X for 8 months, during which time his hours fluctuated and he averaged 30 or more hours of work per week. When asked why he did not go to the meeting requested by the employer, the Appellant said he was not happy the employer cancelled his shifts. He also said that temporary agencies exploit their workers, calling them for work at night, morning, evening and even when they are in bed.

[32] The employer denies cancelling the Appellant's shifts for the entire month of May, and provided a very different version of events, as set out in paragraphs 11, 12, 13, 15 and 17.

[33] In his testimony, the Appellant stated that X was a "temporary agency", there was "no guarantee of a job", and he could be called to work at any time of the day. He reiterated that there was a shortage of work because his shifts were cancelled for an entire month and, with no shift the next day or the next week, he had "nothing to rely on" and had to apply for EI benefits. He stated:

> "If my shifts are cancelled, it is my duty and my right as a Canadian citizen to apply for employment insurance so I can have something to fall back on before I am able to get a full-time employment."

[34] He also stated that the employer "purposely violated" his rights by cancelling his shifts and leaving him with nothing to live on because there was "no next day shift". He believes the employer wants him to "suffer" and "stand by" waiting for a job; and he had to "look for an alternative to take care of my family and myself". He thinks it is his "right" to apply for EI benefits when there was a shortage of work because his shifts were cancelled and the job was not full-time but just an on-call position.

[35] When asked why he refused to go to the meeting requested by the employer, the Appellant stated: "I didn't want to go because she cancelled all my shifts." He felt "a lot of animosity" towards the employer at that time because he was being punished by the cancellation of his shifts when the employer knew he was "a family man" and would have nothing to live on. He was "emotional" and "upset". The way the Appellant "looked at it", there was no reason for the cancellation of his shifts and no reason for the meeting.

[36] For the reasons set out in Issue 1 above, I give greater weight to the employer's evidence with respect to the cancelation of the Appellant's shifts, and prefer the employer's evidence that the Appellant's shifts were only cancelled for the week of May 5th and not the entire month.

[37] The Appellant does not dispute that the employer asked him to attend a meeting as part of its investigation into 2 incidents he was involved in. It makes sense that the employer would

cancel the Appellant's shifts in the immediate short term in order to conduct its investigation. While the Appellant was offended by the very fact that he was under investigation, it was nonetheless incumbent on him to protect his employment by keeping the lines of communication with the employer open. Instead, he made the precipitous decision to leave the employment altogether. I find that a reasonable alternative would have been to preserve the employment relationship by attending the meeting requested by the employer and by participating in the investigation in order to clear the air, resolve the issue and return to work as soon as possible.

[38] Unsatisfactory working conditions will only constitute just cause for leaving employment where they are so manifestly intolerable that the Appellant had no other choice but to leave. While the Appellant didn't like the fact that he was being asked to attend a meeting as part of an investigation into his conduct, this was the first incident in his 8 months on the job and not indicative of conditions in the workplace that could be considered manifestly intolerable. A reasonable alternative to leaving the employment would have been to attend the meeting, participate in the investigation, resolve the issue and continue working at X while looking for another job. This is especially the case given the employer's evidence that there were no prior warnings issued to the Appellant, they had no intention of dismissing him, and the purpose of the investigation was to see if the Appellant would benefit from additional training (see GD3-39). The fact that he did not do so is indicative of the Appellant's lack of interest in preserving this employment.

[39] The Appellant pursued none of these reasonable alternatives.

[40] I also cannot ignore the Appellant's various statements to the Commission and in his testimony that he did not enjoy working for X and, in particular, did not appreciate being called for work on short notice or at odd hours. The Appellant's statements that temporary agencies are exploitive and no guarantee of work are further evidence of his unhappiness in his employment at X. A decision to leave a job for personal reasons, such as a negative interaction with management, scheduling preferences or not finding the job to be the right fit (as described by the Appellant), may well be ***good cause*** for leaving an employment. But the Federal Court of Appeal has clearly held that ***good cause*** for quitting a job is not the same as the statutory requirement for **"just cause"** (*Laughland 203 FCA 129*); and that it is possible for a claimant to

have ***good cause*** for leaving their employment, but not **"just cause"** within the meaning of section 29 of the EI Act (*Vairumuthu 2009 FCA 277*).

[41] I find that the Appellant made a personal decision to separate from his employment at X. While I acknowledge the Appellant's dislike of how his work was scheduled and his desire to find full-time employment outside of a temporary employment agency, he cannot expect those who contribute to the employment insurance fund to bear the costs of his unilateral decision to leave his employment in an attempt to do so. I find that a reasonable alternative to leaving would have been to attend the meeting requested by the employer and participate in the investigation in order to resolve the issue and return to work as soon as possible, or to continue working at X until he obtained suitable employment elsewhere. The Appellant failed to pursue either of these reasonable alternatives and, therefore, has failed to prove that he was left with no reasonable alternative but to leave his employment.

[42] I therefore find that the Appellant did not prove he had just cause for leaving this employment.

Issue 3: Is the Appellant entitled to EI benefits because he cannot look for work without getting some money?

[43] In his letter to the Commission on September 3, 2019, the Appellant stated that he could not participate in an active search for work without receiving EI benefits (at GD3-17).

[44] In his request for reconsideration, the Appellant reiterated that he would not be able to look for work daily "without getting some money" (GD3-32).

[45] The Appellant testified that he needs EI benefits in order to look for full-time employment.

[46] He also testified that he has faced a "financial crunch" since he was disqualified from receipt of EI benefits, and that his house and family "are in jeopardy" because he had "nothing to live on". He asks the Tribunal to grant him EI benefits because he remains unemployed and cannot continue to live like this. The Appellant stated:

> "It is my right, based on Canada's Employment Insurance Act to get support when all my shifts are cancelled and there is a shortage of work."

[47] The Tribunal acknowledges the Appellant's disappointment at not receiving EI benefits. However, it is not enough to be out of work or to be in need of financial assistance. The Appellant must satisfy the statutory requirements in the EI Act in order to receive EI benefits. After considering all the Appellant's circumstances and reasons for leaving his job at X, I find the Appellant has not proven he had just cause for leaving this employment. As a result, he is disqualified from receipt of EI benefits pursuant to section 30 of the EI Act.

CONCLUSION

[48] The Appellant had reasonable alternatives to leaving his job at X after his last paid day of work on May 5, 2019. He did not avail himself of these reasonable alternatives and, therefore, has not proven that he had just cause for voluntarily leaving the employment.

[49] I find that the Appellant is disqualified from receiving EI benefits as of July 28, 2019.

[50] The appeal is dismissed.

Teresa M. Day

Member, General Division - Employment Insurance Section

HEARD ON:	December 3, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	I. O., Appellant