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

Citation: *X v Canada Employment Insurance Commission and M. G.*, 2019 SST 1615

Tribunal File Number: GE-19-3620

BETWEEN:

X

Appellant

and

Canada Employment Insurance Commission

Respondent

and

M. G.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: December 10, 2019

DATE OF DECISION: December 11, 2019

Canada

DECISION

[1] The appeal is allowed. The Appellant (the employer) has proven that the Added Party (the claimant) had reasonable alternatives to quitting when he did. As a result, the claimant is disqualified from receipt of employment insurance (EI) benefits.

OVERVIEW

[2] The claimant quit his job as a delivery driver for X after his last day of work on May 27, 2019. He applied for EI benefits and told the Commission he quit because of dangerous working conditions. The Commission looked at the claimant's reasons for leaving his job and decided he had just cause for voluntarily leaving, so his claim was allowed. The employer asked the Commission to reconsider its decision, denying there were any safety issues and stating that the claimant quit without notice or providing a reason. On October 9, 2019, following an investigation, the Commission maintained its decision that the claimant had just cause for voluntarily leaving his employment at X.

[3] The employer appealed to the Social Security Tribunal (Tribunal), and the claimant was added as a party to the appeal.

[4] I must decide whether the employer – as the Appellant – has proven that the claimant had reasonable alternatives to leaving his job when he did. The employer denies the claimant's allegations and states the claimant had reasonable alternatives to quitting when he did. The Commission – as the Respondent in this appeal – says that the versions of events provided by the employer and the claimant are both credible and, therefore, the benefit of the doubt must be given to the claimant pursuant to subsection 49(2) of the *Employment Insurance Act* (EI Act).

[5] I find that the claimant had reasonable alternatives to quitting when he did. As a result, the claimant quit his job without just cause and is disqualified from receipt of EI benefits. This decision sets out my reasons.

ISSUE

[6] Should the claimant be disqualified from receipt of EI benefits because he voluntarily left his employment at X without just cause?

ANALYSIS

[7] There is no dispute that the claimant voluntarily left his job after his last day of work on May 27, 2019.

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

[9] The Commission approved the claimant's separation from employment on the basis that he had no reasonable alternative to leaving in the circumstances.

[10] The employer appealed the Commission's decision to the Tribunal. This means that the employer has the onus of proving that the claimant voluntarily left without just cause. To do so, the employer must demonstrate that the claimant had at least one (1) reasonable alternative to leaving when he did.

Issue 1: Did the claimant have any reasonable alternative than to leave his job because of safety concerns?

[11] The claimant submitted that he quit because of multiple safety concerns related to the maintenance of the vehicle he was driving and the employer's demands that he speed while driving in order to hurry up with his deliveries.

[12] To overturn this decision, the employer must prove that the claimant's safety concerns were not such that he had no reasonable alternative but to quit his job on May 27, 2019. To do this, the employer must demonstrate that the claimant had at least one (1) reasonable alternative to leaving the employment when he did.

[13] For the reasons set out below, I find that the employer has done so.

[14] The employer consistently told the Commission that the claimant's truck was safe and that he never forced the claimant to speed to complete his deliveries (see GD3-27, GD3-32, GD2A-2), and that the claimant never raised any concerns about the vehicles (GD3-32).

[15] The employer provided the Commission with maintenance records for the claimant's truck for the entire period of his employment between January 2018 and April 2019 (GD3-36 to GD3-46 and GD2-7 to GD2-20).

[16] At the hearing, D. B., the owner and President of X, testified that:

- All of the company's vehicles are safe and properly maintained.
- There was "nothing wrong" with the 2002 Chevrolet cargo van that the claimant drove to do his deliveries, or with the 2000 truck he occasionally had to use.
- Any time one of the company's vehicles required service, it was promptly taken care of.
- The claimant was a mechanic in a prior employment. The claimant would tell him (D. B.) that it was time for an oil change for his vehicle or that some other maintenance was required, and D. B. would arrange for it to be done immediately.
- The claimant never raised any safety concerns about the vehicle with the employer.
- He (D. B.) never asked the claimant to speed. He always told the claimant and the other delivery drivers to drive safely and stay at the limit. He made a point of reminding the claimant and the other drives to be cautious when their vehicles had a full load of heavy product.

[17] The employer had 2 witnesses testify at the hearing: S. R. and T. B. S. R. is the store manager at X and has been with the company for 5 years. T. B. is the company bookkeeper. Both S. R. and T. B. testified that they heard D. B. regularly remind drivers – including the claimant – to drive safely. They both also stated that they never heard D. B. urge the claimant or anyone else to speed or drive recklessly in order to complete deliveries on time.

[18] I give significant weight to the employer's evidence that the vehicles were safe and properly maintained. This evidence has been consistent from the outset and is supported by invoices for the maintenance of the claimant's vehicle. I also give significant weight to the

statements by D. B. and the employer's 2 witnesses about not urging the claimant to speed and about the reminders to drive safely. I find these to be credible because they make common sense in the context of a company in the business of supplying flooring to customers. Not only would the employer want to keep its own drivers safe, it would want to keep its customers happy and would not want to risk delay or damage to the products being delivered in the event of an accident caused by speeding or reckless driving.

[19] I disagree with the Commission's statement at GD3-48 that there are no factors to discount the credibility of either party. I find several reasons to discount the claimant's evidence.

[20] In his application for EI benefits, the Appellant stated that he quit his job due to dangerous working conditions and said the trucks were very run down and unsafe to drive. He wrote: "After many suggestions to the owner about repairs to the vehicles, nothing was done." (GD3-9). He also said the trucks were not being serviced properly, were old, the doors didn't close properly, there was no heat in the winter and the acceleration was not functioning (GD3-10). Yet even with this litany of complaints, he worked under these conditions from January 2018 to May 2019 – a 17-month period that covered 2 winters. It's difficult to believe things were as bad as he alleges, especially since on his application he said that he did not look for another job before leaving because he did not want to quit this job (GD3-13).

[21] When the Commission first contacted him, the claimant said he quit for safety reasons and specifically stated that the brakes on his truck were not safe (see GD3-25). He also told the Commission that he complained to the owner numerous times and nothing was done (GD3-25). But according to the invoices provided by the employer, the claimant's truck got new brakes on February 7, 2019 (see invoice at GD3-44), which was well before the claimant quit his job on May 27, 2019. This also casts doubt on the claimant's statements.

[22] In his reconsideration interview (at GD3-34 to GD3-35), the claimant reiterated that he quit because he was given an unsafe vehicle to drive. He told the Commission that he tried to address his concerns with the owner on multiple occasions, to no avail. According to the claimant, the truck had been an issue from day one, was 18 years old, had no heat, the door was so wobbly that even when it was closed you could see outside because there was no seal on it,

and the accelerator pedal and brakes had issues as well. Although the employer took the truck to a mechanic in the plaza, it was so old there was only so much they could do and he did not feel safe driving it. After D. B. got angry with him about being behind and encouraged him to speed in an unsafe vehicle, he realized the employer was unconcerned about his safety, and could not continue to work there any longer with no further recourse at work.

[23] But at the hearing, the claimant changed his story and admitted that the brakes on his vehicle were, in fact, new. He testified the issue was that the "shop" were the brakes were installed was "messy" and "a one guy operation", and he didn't believe the brakes were done properly. This new version of events also casts doubt on the claimant's allegations, as it represents a serious deviation from his earlier evidence to the Commission.

[24] By contrast, the employer's evidence remained consistent in reply. D. B. testified that the mechanics who worked on the claimant's vehicle were fully licensed, and that he had used the same mechanics for the past 20 years for both the business's trucks and his own personal vehicles. He also stated that other employees of X used the same mechanics for their personal vehicles.

[25] D. B. also disputed the claimant's version of events with respect to allegedly having urged him to speed in an unsafe vehicle. D. B. testified that when the claimant returned late from a delivery on May 27, 2019, with garbage from stops at multiple fast food establishments in the truck, he was unhappy with the claimant for being behind. He denied urging him to speed, but did emphasize the importance of getting the next delivery done that day because the contractors were on site waiting for it. According to D. B., the claimant never told the employer that he had to leave early that day to deal with his sick father – as the claimant now alleges. He simply walked off the job.

[26] I find the inconsistencies in the claimant's evidence to be significant and troubling. They not only cast doubt on the veracity of the claimant's allegations about the dangerous working conditions he supposedly had to work under, but on his true reasons for leaving the employment as well.

[27] I therefore prefer the employer's evidence and find that the claimant's safety concerns were ***not*** such that he had no reasonable alternative but to quit his job on May 27, 2019. While the claimant may well have wished to drive a newer, more comfortable vehicle, I accept the employer's evidence that the truck he was asked to drive was safe and regularly maintained. I also accept the employer's evidence that the claimant was not asked to speed or drive recklessly on his deliveries. I therefore agree with the employer's submission that a reasonable alternative would have been for the claimant to continue working at X while searching for a different job. Another reasonable alternative would have been for the claimant to communicate his scheduling needs clearly and seek accommodation from the employer rather than spontaneously walking off the job without notice. A further reasonable alternative would have been to specifically ask the employer for a different truck to drive and work with the employer to find a suitable alternate vehicle.

[28] He did not pursue any of these reasonable alternatives. As a result, the employer has proven the claimant quit the employment without just cause.

Issue 2: Did the claimant have any reasonable alternatives than to leave his job because he was demeaned by the owner?

[29] The claimant also submitted that he quit because of he felt demeaned by how D. B. treated him.

[30] To overturn this decision, the employer must prove that the claimant was not demeaned or harassed by the employer such that he had no reasonable alternative but to quit his job on May 27, 2019. To do this, the employer must demonstrate that the claimant had at least one (1) reasonable alternative to leaving the employment when he did.

[31] For the reasons set out below, I find that the employer has done so.

[32] On his application for EI benefits, the claimant stated that he was "belittled and compared to other staff" (GD3-9). Yet he continued to work at X from January 2018 to May 2019 – a 17-month period, and said that he didn't look for another job before leaving because he did not want to quit this job (GD3-13). It's difficult to believe that things were as bad as the claimant subsequently alleged, or that this was really a reason for his departure. This is especially the

case given that when the Commission first contacted him, the claimant stated that he quit for safety reasons and made no mention of D. B.'s behaviour (see GD3-25).

[33] But after the employer filed a Request for Reconsideration of the decision to pay EI benefits to the claimant, the claimant told the Commission that D. B. accused him of being too slow and made fun of him, and compared him to other staff and said "you are good for nothing" (GD3-34).

[34] In the letter the claimant filed in response to the employer's appeal (GD7), he described D. B. as "pushy", and referred to D. B. as "harassing" him about taking time off to take his father to the hospital. He stated that D. B. was "always huffing and puffing", which caused the claimant "a great deal of stress" (GD7-2). The claimant also stated he was "extremely offended" by D. B.'s "insulting" comments to the Commission about the claimant being "lazy" and taking advantage of the employment insurance "system" (GD7-3). The claimant then went on to list a number of other issues he had with D. B., namely:

- D. B.'s lack of concern and failure to file a WSIB form when the claimant fell during a delivery in early 2019 (GD7-3).
- The lack of a mezzanine railing, and being called "a suck" by D. B. for refusing to go on the mezzanine at X (GD7-3).
- Receiving pay cheques late because of D. B.'s "lengthy vacations" (GD7-4).

[35] The employer consistently told the Commission that the claimant walked off the job and never provided a reason for quitting (GD3-27, GD3-31, GD3-32). When the Commission advised D. B. about the claimant's allegations, D. B. denied that he ever belittled the claimant or compared him to other staff (GD3-32).

[36] In his testimony at the hearing, D. B. denied that he ever ridiculed or belittled the claimant. The employer's witnesses, S. R. and T. B., both testified that they never heard D. B. belittling or harassing the claimant.

[37] The claimant testified at the hearing that on May 27, 2019 he was sent on a delivery that was too far away for him to get back in time to get back in time to attend to his father, who was ill. When he returned from that delivery, D. B. told him to "hurry up" to make the final delivery, even though he had told D. B. about his need get back to his father. The claimant stated this was the "final incident". He said that the pressure to hurry up had been going on from January 2019, that the trucks had issues with "wobbly" fenders and doors, and he "just had enough".

[38] I disagree with the Commission's statement at GD3-48 that there are no factors to discount the credibility of either party. I find several reasons to discount the claimant's evidence.

[39] The fact that the claimant only detailed his allegations about being demeaned by D. B. ***after*** the employer challenged the Commission's decision to pay the claimant EI benefits is troubling. So is the fact that he worked for D. B. for 17 months and never looked for alternate work during this period, and even stated on his application for EI benefits that he didn't want to quit this job.

[40] The claimant's letter at GD7 also makes it clear that he had a number of compelling personal reasons for leaving the employment, including the need to care for his father, who was very sick at the time and passed away approximately a month after the claimant quit.

[41] The inconsistencies in the claimant's evidence and his personal reasons for leaving his employment cast doubt on the claimant's allegations about D. B.'s behaviour and the claimant's true reasons for quitting.

[42] I therefore prefer the employer's consistent evidence and find that the claimant's experience of being demeaned in the workplace was not such that he had no reasonable alternative but to quit his job on May 27, 2019. While the claimant may well have wished he had a more considerate boss or a job with greater flexibility so he could attend to his ailing father, I accept D. B.'s evidence that he did not belittle or demean the claimant. I therefore agree with the employer's submission that a reasonable alternative would have been for the claimant to continue working at X while searching for a different job. Another reasonable alternative would

have been for the claimant to communicate his scheduling needs clearly and seek accommodation from the employer rather than spontaneously walking off the job without notice.

[43] He did not pursue either of these reasonable alternatives. As a result, the employer has proven the claimant quit the employment without just cause.

CONCLUSION

[44] I find that the Appellant employer has proven that the claimant had reasonable alternatives to quitting his job at X after his last day of work on May 27, 2019.

[45] Because the claimant did not pursue any of these reasonable alternatives, he did not have just cause for voluntarily leaving this employment and is disqualified from receipt of EI benefits.

[46] The appeal is allowed.

Teresa M. Day

Member, General Division - Employment Insurance Section

HEARD ON:	December 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	X., Appellant M. G., Added Party