



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *E. G. v Canada Employment Insurance Commission*, 2019 SST 1672

Tribunal File Number: GE-19-3680

BETWEEN:

**E. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Christopher Pike

HEARD ON: November 26, 2019

DATE OF DECISION: November 29, 2019

## **DECISION**

[1] The appeal is dismissed. The result is that the Appellant (Claimant) is disqualified from receiving employment insurance (EI) benefits because he has not proven that he had just cause quitting his job. These reasons explain why.

## **OVERVIEW**

[2] The Claimant worked at a hardware store. In late June 2019, his manager took him to task for failing to chase a shoplifter. The Claimant did not believe it was safe to do so. On July 6, 2019 the Claimant discovered a new co-worker putting her name his sales receipts. This meant she would get the commission on those sales instead of him. He also caught her doing this to another employee. The Claimant and his co-worker exchanged heated words about this. The Claimant's manager told him he did not want to hear anything about the incident when he tried to report it on July 8, 2019. The Claimant immediately resigned.

[3] The Canada Employment Insurance Commission (Commission) assessed the Claimant's circumstances and decided that he quit his job without showing just cause as defined in the *Employment Insurance Act*. The Commission upheld this decision on reconsideration. The Claimant appealed this decision to the Tribunal.

## **ISSUES**

[4] I have to decide if the Claimant had just cause under the *Employment Insurance Act* to leave his job. This takes two steps. First I have to see if he chose to leave his job, then I have to see if he had just cause for leaving.

## **ANALYSIS**

[5] When a claimant quits their job without just cause, the law says they cannot receive EI benefits.<sup>1</sup>

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<sup>1</sup> *Employment Insurance Act*, section 30(1) disqualifies a claimant from receiving EI benefits in these circumstances.

### **The Claimant voluntarily left his employment**

[6] I accept that the Claimant voluntarily left his job. He said he quit effective July 12, 2019. I see no evidence to contradict this.

### **The Claimant did not have just cause to voluntarily leave his employment**

[7] The law says that a claimant had just cause to leave a job if they had no reasonable alternatives to quitting.<sup>2</sup> It is up to claimants to prove this.<sup>3</sup> When I look for just cause, I have to look at the claimant's circumstances at the time they quit.

[8] The Commission says that the Claimant had a reasonable alternative to quitting. It says he could have tried resolve the issue with his co-worker. It also says that I should not give the Claimant's safety concerns great weight. The Commission says he raised these concerns only to strengthen his case after it told him he could not receive EI benefits.

[9] The Claimant described two thefts from the store in the month before he quit. He said the store's owners did not care about security and this made him feel unsafe. He also said felt more unsafe after the second theft. This was because manager said he should have chased the shoplifter. He also said he felt bullied and harassed by his co-worker after she changed the sales receipts. He said he no choice but to quit when his manager refused to address his concerns about these issues. He told me these circumstances show just cause for quitting.

#### *The Claimant was not harassed or bullied*

[10] The Claimant said in his application for EI benefits that N harassed and bullied him. The law says that if a claimant is harassed at work, they may have just cause to quit.<sup>4</sup>

[11] The Claimant told me that the store paid employees a commission. He said if he was entitled to a commission, he had to write his name on the sales receipt. He said he caught one of his co-workers, N, changing receipts so that she would get the commission instead of him. He said he also saw N do this with receipts for another employee. The Claimant said he spoke to N

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<sup>2</sup> *Canada (Attorney General) v White*, 2011 FCA 190 and section 29(c) of the *Employment Insurance Act* explain this.

<sup>3</sup> At paragraph 3 *Canada (Attorney General) v White*, 2011 FCA 190 says that you have to show it is more probable than not that you had no reasonable alternative.

<sup>4</sup> Section 29(c)(i) of the *Employment Insurance Act* says sexual or other harassment may show just cause.

about this. In his Notice of Appeal, the Claimant said, “I did not act a gentleman that particular day and I guess I should have or could have acted in a more appropriate manner”. He also said he was upset and got into an argument with N. Later in the day, he said N told him to f\*\*\* off.

[12] The Claimant’s evidence tells me that he and N both gave as good as they got in their argument. The Claimant says N bullied him. If that is so, he bullied her too.

[13] Bullying happens when someone tries to harm or intimidate a person they think is vulnerable. The Claimant’s evidence does not tell me N tried to harm him because she thought he was vulnerable.

[14] The *Employment Insurance Act* does not define harassment. Harassment is defined in the human rights context as repetitious actions which violate the dignity of an individual and create a hostile or poisoned work environment.<sup>5</sup>

[15] What N did was not harassment. The two incidents were only hours apart. N did not attack the Claimant’s dignity. She responded in kind to the Claimant’s conduct; conduct that he said was inappropriate.

[16] The Claimant told me that when he tried to report the incident to his manager on July 8, 2019. His manager told him he had already discussed the issue with N and did not want to hear anything more. He said he told his manager he quit. They agreed he would work until July 12, 2019.

[17] The Commission says that the Claimant had the reasonable alternative of reaching out to N to resolve the incident between them and stay employed at the store. I agree. This was a reasonable alternative he should have tried.

*The Claimant needed to do more to address his safety concerns*

[18] The law says that if a claimant is subjected to unsafe working conditions, they may have just cause to quit.<sup>6</sup>

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<sup>5</sup> *Siddoo v. International Longshoremen’s and Warehousemen’s Union, Local 502*, 2015 CHRT 21 set out this definition of harassment.

[19] The Commission said I should give the evidence about the Claimant's safety concerns little weight because he did not mention them when he filed his claim.<sup>7</sup> I think this overstates the position. The law says I have to consider and weigh all the evidence and explain the weight I give it.<sup>8</sup>

[20] The Claimant told me that the store has no security system. He also said that the surveillance cameras at the store do not work.

[21] The Claimant told me about the theft of a lawnmower. He said it was set out near the parking lot at the start of the day. It was not secured in any way. He said someone drove up, put it in their car, and left.

[22] The Claimant said this was an example of the store's owner's not caring about security. He did not tell me that he raised any concerns with management about this incident after it happened.

[23] The Claimant also described the theft of a range hood. He said he followed the shoplifter out of the store and tried verbally to stop him. He told me when the shoplifter started to run, he did not chase him. He said he did not think it was safe to do this. He thought the shoplifter might pull a knife or a gun on him.

[24] The Claimant told me that he and his manager had an argument about this. He said the manager insisted he should have chased the shoplifter. The Claimant insisted it was not safe to do that. He also said that he can produce three witnesses to confirm the substance of what the manager said. But the manager told the Commission that he did not expect employees to chase shoplifters.

[25] The Claimant gave me his evidence in a clear and forthright manner. He gave me no reason to doubt him. What he told me is consistent with what he told the Commission once he

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<sup>6</sup> Section 29(c)(iv) of the *Employment Insurance Act* says unsafe working conditions that constitute a danger to health or safety may show just cause.

<sup>7</sup> The Commission says *Levesque v Canada Employment Insurance Commission*, A-557-96 requires this result.

<sup>8</sup> *Oberde Bellefleur OP Clinique Dentaire O. Bellefleur (Employer) v. Attorney General of Canada*, 2008 FCA 13 explains why I should do this.

decided to bring up his security concerns. For these reasons, I accept the Claimant's evidence about the argument between him and his manager after the range hood was stolen.

[26] I also accept that the manager told Commission he did not expect employees to chase shoplifters. I think what he told the Commission shows that the manager said things in the heat of the moment that he reconsidered afterwards.

[27] I do not have to decide if these conditions were unsafe. I have to decide if the Claimant tried the reasonable alternatives to avoid quitting over safety concerns.

[28] The Claimant did not tell me about efforts to bring up his safety concerns with his manager after the argument he described. If he had tried to do this, he and his manager could have taken a calmer and more measured approach to the issue. This was a reasonable alternative he should have tried.

### **CONCLUSION**

[29] The Claimant's evidence tells me that he had the reasonable alternative of trying to resolve his differences with N. The evidence also tells me that he had the reasonable alternative of asking his manager to reconsider his security concerns after they argued about chasing shoplifters. The appeal is dismissed.

Christopher Pike

Member, General Division - Employment Insurance Section

HEARD ON:	November 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. G., Appellant