



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Z. H. v Canada Employment Insurance Commission*, 2019 SST 1521

Tribunal File Number: GE-19-3414

BETWEEN:

Z. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: November 26, 2019

DATE OF DECISION: December 6, 2019

DECISION

[1] I am dismissing the appeal. I have decided that the Claimant is not eligible for benefits because he has not shown just cause for leaving his job when he did.

OVERVIEW

[2] Z. H. is the Claimant. He applied for Employment Insurance (EI) sickness benefits. The Claimant later made a request to have his claim converted to regular benefits. The Canada Employment Insurance Commission (the Commission) refused to pay regular benefits because he voluntarily left his job. The Claimant appealed to the General Division of the *Social Security Tribunal* (Tribunal).

[3] The Claimant was employed by X until December 8, 2018, when he left due to illness. The Claimant says that he did not quit his job. He says that when he tried to return to work the employer had no work for him.

[4] The Commission contacted the employer who said the Claimant did not provide any medical notes. They said they tried to notify him that he was being put on the schedule unless he provided the proper documentation. The Claimant did not provide any documentation and he did not show up for his scheduled shifts. They determined that he abandoned his job. The employer says that the Claimant contacted them in August asking for work.

[5] The Commission decided that the Claimant left his job without “just cause” because he had reasonable alternatives to leaving.

[6] The Claimant disagrees. He says he did not quit. He says he was on a sick leave and when he tried to return the employer had no work for him.

ANALYSIS

What I must decide

Did the Claimant quit his job?

[7] Yes, I find the Claimant quit his job. I find from the evidence before me that the Claimant was the one who severed the employee/employer relationship. He did not provide his employer with medical documentation and he did not contact his employer about his not return to work following his medical leave.

[8] I am not bound by how the employer and employee characterize the grounds on which the employment was terminated and it is my function to assess the evidence and arrive at a conclusion.

[9] The Claimant says that he did not quit but rather his employer did not have any work for him.

[10] The employer told the Commission that the Claimant had left work for medical reasons. The employer says they tried to contact the Claimant to notify him that he was getting put back on the schedule unless proper medical documentation is provided. The employer says that the Claimant did not provide any documentation, he did not show up for his scheduled shifts and he abandoned his job. The employer says that the Claimant was aware he was to provide the employer with medical notes.

[11] I am entitled to accept hearsay evidence, as we are not bound by the same strict rules of evidence as are the Courts.¹ In this case the I find the evidence of the employer to be credible in that the Claimant quit his employment. I accept the employer's statements that the Claimant did not return to work following his medical leave. Nor did the Claimant contact the employer or provide medical documents to support his absence.

¹ *Canada v. Mills*, A-1873-83 FCA

Did the Claimant have just cause to quit his job

[12] No, I find that the Claimant did not have just cause to quit his job because he had reasonable alternatives available to him.

[13] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.² Having a good reason for leaving a job is not enough to prove just cause.

[14] The law says that you have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.³ It is up to the Claimant to prove this.⁴ The Claimant has to show that it is more likely than not that he had no reasonable alternatives but to leave when he did. When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant quit.

[15] The Claimant has provided several reasons why he left his job. I will now address them.

a) Contacting Employer – Shortage of Work

[16] The Claimant was approved for EI sickness benefits on December 9, 2018, and he received 15 weeks of benefits. On August 16, 2019, the Claimant requests his benefits be switched to regular benefits. The Claimant says that he became available and capable of working as of June 1, 2019.

[17] The Claimant initially told the Commission that he had called his manager and the store manager. He says they both refused to have him come back to work.

[18] The employer told the Commission that the Claimant had let them know he was going for surgery and would be off work. She said that they told the Claimant they needed a medical note

² This is set out at s 30 of the *Employment Insurance Act*.

³ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

⁴ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

but they never received it. She says they gave him the benefit of the doubt and left him on the payroll.

[19] The employer told the Commission about 12 weeks later they called the Claimant and left a message. They told him that he needed to provide the medical notes and if they don't hear back from him they would be putting him back on the schedule.

[20] The employer told the Commission that the Claimant did call them to ask for his record of employment but it was weeks and weeks after he had left. She says that the Claimant did call them in August asking for work.

[21] The employer told the Commission that the Claimant clearly knew on December 9, 2018, that he had to provide a medical note. He was told to stay in contact and a note would be required to say he was safe to return to work.

[22] At the hearing, the Claimant says that he was approved to take his sick leave and he did not know he had to provide his employer with any sick notes. He says he did call in. He says he called the front desk. He says he also called a second time but he did not get a hold of his manager and she did not return his call.

[23] The Claimant says it is not true that he did not call until August. He says that he called his manager in January and then a second time but she did not answer her phone.

[24] The Claimant says that he did not see any messages in February (as stated by the employer). He asked why the employer did not send him a letter. He says that is not very professional.

[25] I asked the Claimant if he let his employer know he had no telephone service. The Claimant says that he called his employer twice and said that he was not able to receive calls but she did not return his calls.

[26] The Claimant says that he called again in April and was told his manager was on vacation. And after a month, he called again and was told he would have to speak to the General Manager. He says that was on May 30th and she told him that she has enough people.

[27] The Claimant says that his phone was out of service so he used a public phone to call his employer. I asked him how his employer was to call him back if he left a message. He says he did not say he left a message. He says his manager said they left a message and it says that on the paper that they called him. He never said he left a message.

[28] I find that the Claimant stated several times that he called his employer but they never called him back. I am of the view, that these statements the Claimant was referring to the fact that he left messages.

[29] The Claimant says that the employer is wrong when they said he did call until August. He says that he called in January.

[30] I asked the Claimant if he was prevented from going to see his employer in person when he was not able to communicate by telephone. He says that his health was not in good condition and he just thought he would go in when he felt better.

[31] I find that the Claimant's statements that he was not well enough to go in person to speak to his employer are contradictory to the fact that he said he was calling his employer to return to work. I am of the view that if he was able to go back to work, he would have been able to go to see his employer in person to discuss this.

[32] I find on the balance of probabilities that the Claimant did not contact his employer until August 2019. The Claimant provided several conflicting statements of dates and times he said he called the employer. I am giving more weight to the employer's statements that they were the ones that made the attempts to contact the Claimant. And that they provided him with the opportunity to contact them and provide medical notes to support his absence or to return to work.

[33] I accept the employer's statements that the Claimant did not contact the employer until August 2019, to ask for work and it was only at that time the employer told him they had no work for him.

[34] I find a reasonable alternative would have been to provide the medical notes and contact the employer to discuss when he would be returning to work.

b) Health reasons

[35] In his Notice of Appeal, the Claimant says he was not allowed to return to work after he was ill because of his poor medical condition. He says that his employer felt he was not able to work after his medical breakdown.

[36] The Claimant says that he did not provide his employer with any medical documents. He says that his employer agreed to his leave and he did not know he had to give a medical note to his employer.

[37] I find that the employer's evidence on the files does not support the Claimant's argument. I accept the employer's statements that the Claimant was on an approved medical leave. The employer says they told the Claimant to bring in a medical note for his time off and when he would be returning. The employer said that they gave him the benefit of the doubt and kept him on the payroll. In February they called him and left a message to provide his medical information, and that they were putting him back on the schedule.

[38] I find the fact that the employer expected the Claimant to provide medical notes to support any further absence, or for him to return to work. The Claimant admitted that he did not give his employer any notes. I do not find the Claimant to be credible as he has provided several conflicting statements throughout his testimony. Therefore, I prefer the employer's statements that the Claimant knew he was to provide the medical notes.

[39] I am not satisfied that the employer refused the Claimant to return to work because of medical reasons.

[40] I am also not satisfied that the Claimant was not able to work because of medical reasons. He testified that he was not able to return to work because he had to care for his father. I find that on the balance of probabilities, if he was able to drive his father to appointments, care for his father's personal needs, more likely than not, would have been able to work. I also note that

when the Claimant made his application for regular benefits in August 2019, he did declare he was capable and available for work as of June 1, 2019.

[41] I find that if the Claimant was not able to work for health reasons, a reasonable alternative would have been for the Claimant to obtain medical documentation or to discuss his situation with his employer.

c) Care for his father

[42] At the hearing, the Claimant brought up several new reasons. He says he was not able to return to work because he had to care for his father. He says that his employer agreed to his sick leave. He says that his father was diagnosed with stage 4 lung cancer and he had to take care of him. He says he had to take him to doctor appointments. He says he needed to care for his personal needs as well.

[43] A person will have just cause to leave if there is an obligation to care for a child or a member of the immediate family but they still must prove they exhausted all reasonable alternatives before becoming unemployed.

[44] I sympathize with the Claimant's family situation but I believe that the Claimant had not proven he exhausted all reasonable alternatives. I find that if the Claimant could have called his employer or went to see the employer in person and discuss his family situation and request a time off to care for his father.

d) Significant Changes in Work Duties

[45] At the hearing the Claimant now says that his job duties had changed. He says when he was first hired he was to change prices. He said later on he was given an unrelated job of moving goods. He says that the price changing was a light-duty job and moving goods was more labour intensive.

[46] Where the terms and conditions are significantly altered; a claimant will have just cause for leaving that position. The word "significant" has been interpreted as "something of import, something above the normal." In considering whether the changes constitute just cause, these changes must originate with the employer.

[47] I asked the Claimant if he had spoken to his employer about the changes but he said he did not. I asked him if he called employment standards or any other outside agency if he felt that his duties had changed, he said he had not. He says that he was scared he would lose his job.

[48] I am not convinced that the Claimant can have just cause to leave his job because there were significant changes in his work duties. The Claimant testified that he did not speak to his employer, which would have been a reasonable thing to do. And if he felt he could not speak to his employer, he was not prevented from contacting an outside agency.

e) Refusal to Pay for Overtime Work

[49] At the hearing, the Claimant now raises the argument that he was forced to work overtime and was not paid for it. He says that he worked about 10 hours of overtime a month.

[50] The Claimant says that he never spoke to his employer because he was afraid to complain and lose his job.

[51] I asked the Claimant if he did not speak to his employer, why he did not contact employment standards. He says that he thought he had gotten a lump sum payment and he had a job.

[52] I am not satisfied that the Claimant's argument can be supported. He provided conflicting statements that he was not paid overtime, but then later he received a lump sum payment.

[53] As this issue was only raised at the hearing, I do find there is any evidence to support that he was not being paid for the work he was doing.

[54] I find that the Claimant did have reasonable alternatives available to him. I find that the Claimant could have spoken to his employer, or contacted employment standards to discuss his overtime issue.

[55] I asked the Claimant why he never brought up the issues of his changes in duties and not being paid overtime with the Commission. He told me that his English was not good and he did not know how to communicate because he does not know how to write in English.

[56] I am not satisfied that the Claimant was prevented in any way from being able to convey his other reasons to the Commission. The evidence on the file shows that the Claimant was able to verbally convey his initial reasons for quitting to the Commission.⁵ He was not required to put anything in writing.

[57] I am of the view; the Claimant was given the opportunity to tell the Commission why he did not return to work. I prefer his initial statements to hold more weight than ones that are provided after being denied EI benefits.

[58] After considering all the circumstances, I find that the Claimant did not have just cause to voluntarily leave his job.

CONCLUSION

[59] The appeal is dismissed.

Teresa Jaenen
Member, General Division - Employment Insurance Section

HEARD ON:	November 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Z. H., Appellant

⁵ GD-30