



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. B. v Canada Employment Insurance Commission*, 2019 SST 1514

Tribunal File Number: GE-19-3925

BETWEEN:

J. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: December 18, 2019

DATE OF DECISION: December 28, 2019

DECISION

[1] The appeal is dismissed. This means that the Claimant cannot receive employment insurance benefits.

OVERVIEW

[2] J. B. is the Claimant. He was employed as a mould maker. He says he quit because of harassment and bullying against himself and his co-workers. And also because of unsafe working conditions with dangerous chemicals. The Claimant says he made a complaint to WorkSafeBC after he left.

[3] The Claimant applied for employment insurance benefits (EI). The Commission looked at the Claimant's reasons for leaving and decided that he voluntarily left his employment without just cause, so it was unable to pay him benefits.

[4] The Commission says that the Claimant could have addressed his concerns about the perceived workplace harassment and bullying with the Human Resources Department of the employer. He could have submitted his concerns to WorkSafeBC about the safety conditions at his workplace prior to leaving and waiting for the investigation to conclude. Or he could have sought and secured alternate employment prior to quitting.

[5] The Claimant disagrees with the Commission and says that he quit his job for two reasons. He says the indirectly harassment policy makes him afraid, uncomfortable and angry at work. He says that there is unsafe working conditions and he submitted a complaint to WorkSafeBC about the working conditions on October 16, 2019. The Claimant appealed to the *Social Security Tribunal* (Tribunal).

[6] I must decide whether the Claimant has proven that he had no reasonable alternatives for leaving his job.

ISSUES

[7] I must decide whether the Claimant is disqualified from being paid benefits because he voluntarily left his job without just cause. To do this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

ANALYSIS

Did the Claimant quit his job?

[8] Yes, I find that the Claimant quit his job. The Claimant agrees that he made the decision to quit. I accept that the Claimant voluntarily left his job because he was the one that made the choice to leave.¹

Did the Claimant have just cause to quit his job?

[9] No, I find the Claimant did not have just cause to quit his employment. I find that the Claimant leaving was not his only reasonable alternative.

[10] 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.

[11] 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.

¹ Canada (Attorney General) v. Peace, 2004 FCA 56

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.

[12] The Claimant says that he is a mould maker and works with highly toxic chemicals. He says that he has no ventilation at his workplace and he is subjected to working 8 hours a day. He says he is provided with a mask and gloves but this is the minimal safety equipment.

[13] The Claimant says that the chemicals have caused him mental health issues and has changed his personality. He says it has also caused him to have a bad memory.

[14] The Claimant says that he spoke to his supervisor about the toxic working environment and needing better ventilation but was told it was too expensive to change. He says he brought up his safety concerns with Human Resources, the former controller and his manager but nothing was ever done.

[15] The Claimant says on the day he quit his co-worker came to him crying because the supervisor was harassing her. He said he became angry and went to the supervisor about how he was treating the co-worker. He says that he could no longer take how the supervisor was treating his co-workers so he sent an email saying he was quitting.

[16] The Claimant says that he tried to make the workplace friendlier and that he was pretty much left on his own, but it was the way the supervisor treated his co-workers that made him angry. He says this made him in a bad mood and he knows now he went about leaving in the wrong way. He says that this decision has left him in a very poor financial position.

[17] The Claimant says that he did not make the right decision by quitting. He says that the toxic chemicals have caused him brain damage and he had issues with his personality. He says that he quit in haste and made a mistake. He says he was making \$20.00 an hour and he loved his job.

[18] The Claimant confirmed to me that the complaint he made to WorkSafeBC on the day he left was not for himself, but on behalf of the co-worker that had come to him crying. He says he did not know about WorkSafeBC until the day he quit.

[19] The Claimant confirmed to me that he did not have any medical documentation to support that his brain damage and personality change was caused by the toxic chemicals. He says that he never saw a doctor while he was working.

[20] He says that now his doctor was not willing to put give him such documentation. He says he recently filed a complaint with WorkSafeBC, regarding his health issues as it related to the toxic working conditions.⁵

[21] The Claimant says that after he handed he sent in his email resignation⁶ he was contacted by the Human Resources and a time was set up that she would call him. He says he missed the call because he was talking to WorkSafeBC and she never called him back for 10 days. He says he had emails to support his attempts to contact the human resources manager again.⁷

[22] The employer told the Commission that the Claimant quit. She says the Claimant clocked out and never returned. She says she reached out to him and scheduled a call on September 19, 2019, at 4:00 PM but he never called her, and he has not contacted her since. She says the Claimant had put in an email that he had complained to Jacob about the bullying but she was not aware of any safety concerns. She suggested to call the manager of the plant.

[23] The manager told the Commission the Claimant sent him a resignation letter by email. He says that he went down to speak to the Claimant but he had already gone. He says on the same day he left the Claimant had filed a harassment complaint with WorkSafeBC on behalf of his co-worker. He says that the co-worker did not have a complaint and wanted nothing to do with it. He says he did not receive a WorkSafeBC complaint about safety.

[24] The manager says that the Claimant was provided with a personal protection mask to wear while working with the chemical. He says that the previous safety and human resources employee looked into the issue of ventilation and the company is planning on making some changes. He says that the changes are not required by WorkSafeBC. He says that inspections have been done, with the most recent one on August 7, 2019. He says they did receive three orders regarding the management of the safety program and reports and all have been dealt with and orders closed on August 16, 2019. He says there were no issues with the ventilation or the use of chemicals.

⁵ GD7-12 to GD7-14

⁶ GD3-32

⁷ GD7-1 to GD7-4

[25] The Claimant provided an email confirmation regarding his harassment complaint he filed with WorkSafeBC on September 16, 2019.⁸

[26] The Claimant has raised his reasons why he left the employment. As there are reasons that provide just cause to voluntary leave,⁹ I will address them now.

a) sexual or other harassment¹⁰

[27] In this case, the issue is “other harassment” and CUB 58913 persuades me. In order to prove that the manner in which others behaved towards a claimant constitutes harassment within the meaning of the Act, claimants must demonstrate that the behaviour did more than make them feel uncomfortable; the behaviour in question must have perturbed them in the sense that they felt plagued, bedeviled or badgered. This was also supported by the courts.¹¹

[28] I find from the Claimant’s testimony that it was, not himself that was being harassed but that of a co-worker. The Claimant also confirmed that he filed a complaint with WorkSafeBC on behalf of his co-worker and not for himself.

[29] I also considered the employer’s evidence to be credible and that the co-worker, the Claimant filed the complaint for, was not being harassed because she did not want anything to do with the complaint. I find the evidence of the email sent to the Claimant from WorkSafeBC confirmed that their investigation resulted in no finding of harassment or bullying.¹²

[30] I find from the Claimant’s statements to the Commission and his testimony at the hearing that he was not being harassed or bullied. Therefore, I do not find the Claimant has just cause to leave his employment due to harassment.

⁸ GD3-31

⁹ Paragraph 29(c) of the *Employment Insurance Act*

¹⁰ Paragraph 29(c)(i) of the *Employment Insurance Act*

¹¹ FCA A-472-03 *Alcutis v The Attorney General of Canada*

¹² GD7-6 “I am accepting the employers bullying and harassment investigation and have talked to one of your contacts you provided me.”

[31] I find that the Claimant had reasonable alternatives available to him. I find from email evidence on the file, the Human Resources made efforts to speak to the Claimant immediately after he had quit. I find the email correspondence shows that the Claimant made no efforts to discuss harassment issues any further but rather was asking for his record of employment. I find that the email correspondence dated September 20th and 23rd was responded to by the employer and would have provided the Claimant further opportunity to further speak about his concerns.

[32] I find that the email correspondence the Claimant provided after the hearing¹³ shows that he never made any further attempts to speak to his employer about his reasons for leaving until November 4, 2019.

[33] I find a reasonable alternative to leaving would have been to bring up his concerns regarding the bullying and harassment to the human resources department and provide them with the opportunity to address the issue. And he could have waited for WorkSafeBC to review his complaint and wait for a response from them. I find that because the Claimant was not the one being harassed or bullied it would have been reasonable for him to stay working until he was able to find more suitable employment.

b) working conditions that constitute a danger to health or safety¹⁴

[34] Where one alleges unsafe conditions as a reason for leaving employment, there must be ample evidence to support the contention. The Claimant has the onus of establishing the existence of intolerable working conditions or detrimental health effects as the reason for leaving the employment. The Claimant also has an obligation to take measures to attempt to remedy the situation by, for example, putting his concerns to his employer or if he was not satisfied then contacting an outside agency.

¹³ GD7-1 to GD7-

¹⁴ Paragraph 29(c)(iv) of the *Employment Insurance Act*

[35] I find from the evidence on the file that the Claimant did speak with his employer regarding the poor ventilation and chemicals. I accept the employer's evidence as credible that they were in a planning stage to make some changes but it was not something that was mandatory with WorkSafeBC. The employer also stated that an inspection has occurred on August 7, 2019, and there were not orders given regarding the chemicals or ventilation issues.

[36] I find from Claimant's statements made in his Notice of Appeal that he did not file a complaint with WorkSafeBC regarding safety issues until after he had quit. He stated that he filed a complaint on October 16, 2019; however, I find there is conflicting evidence that would support the Claimant did not file a complaint until November 22, 2019.

[37] I find the evidence of the email correspondence with WorkSafeBC would indicate they were not aware of the complaint until November 21, 2019.¹⁵

[38] I find from the email evidence from WorkSafeBC that they did inspect the worksite on November 27, 2019, and were requesting information from the employer. A follow-up email states that as of November 30, 2019, no order had been issued.

[39] I find that a reasonable alternative would have been to file a complaint with WorkSafeBC before he quit and let them perform an investigation. The evidence on the file shows that the Claimant had worked in this environment for more than six years. Therefore, on the balance of probabilities, the working conditions would not have been so intolerable that he could not have stayed working until the investigation was completed.

[40] I considered the Claimant's testimony that the chemicals have caused him to have mental health issues and he has experienced changes to his personality. However, the Claimant was not able to provide me with any evidence to support that he needed to quit his job because of his health issues. He confirmed that he did not seek any medical advice prior to quitting, and since he did, he said his doctor would not provide him with any documentation to confirm this is the case.

¹⁵ GD7-5 I am not aware that you filed a claim. I will be following up on the issues with the chemicals that we spoke about.

[41] I acknowledge that the Claimant had made two injury claims dated November 22, 2019, and December 13, 2019, with WorkSafeBC. However, both claims were made after he quit. I find a reasonable alternative would have been to have sought medical advice prior to quitting.

[42] I sympathize with the Claimant's situation and that he realizes that he made a mistake when he quit in haste and this decision had put in a very difficult position. Unfortunately, I am bound to apply the law as it is written. I have no jurisdiction to change the law nor its application no matter how sympathetic, the circumstances.¹⁶

[43] I find, after considering all the circumstances, the Claimant had several reasonable alternatives available to him, which he failed to exhaust.

CONCLUSION

[44] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	December 18, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. B., Appellant

¹⁶ *Canada (Attorney General) v. Knee*, 2011 FCA 301