



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. M. v Canada Employment Insurance Commission*, 2020 SST 165

Tribunal File Number: GE-19-4413

BETWEEN:

R. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

HEARD ON: January 27, 2020

DATE OF DECISION: January 29, 2020

DECISION

[1] The appeal is dismissed. The Claimant has not shown just cause because he had reasonable alternatives to leaving his job when he did. This means he is disqualified from receiving employment insurance (EI) benefits.

OVERVIEW

[2] The Claimant left his job and applied for EI benefits. He stated in his application for benefits that his reasons for leaving his job were not work related. He had to go to the United States immediately to see his sick father. He was depressed and could not think straight.

[3] 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 asked his employer for a leave of absence or time off to deal with his personal issues.

[5] The Claimant disagrees and states that he had valid reasons for leaving due to his overall health and well-being. He needed to quit his work of full-time night shifts because it gave him too much anxiety and sleeplessness that led to depression and an inability to think properly. He was not coping well with the demands of his work and personal life. At that particular moment, leaving his job was his only reasonable choice.

ADJOURNMENT REQUESTED AT THE HEARING

[6] The Claimant attended the hearing. However, it was discovered almost immediately that the Claimant did not receive a complete appeal docket. I recommended the hearing be adjourned in order to give me time to ensure the Claimant received a complete appeal docket. I also wanted the Claimant to have time to read and understand the information. The hearing was rescheduled for a few days later. The Claimant confirmed at the second hearing that he did receive the appeal docket and did have an opportunity to read it.

WHAT I MUST DECIDE

[7] I must decide whether the Claimant is disqualified from being paid benefits because he voluntarily left his job without just cause.

REASONS FOR MY DECISION

[8] I must first address whether the Claimant voluntarily left his employment. I then have to decide whether the Claimant had just cause for leaving.

[9] I accept that the Claimant voluntarily left his job. The Claimant agrees that he quit on August 9, 2019. I see no evidence to contradict this.

The Claimant did not prove just cause to leave his job

[10] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause¹. 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 did². It is up to the Claimant to prove this³. 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.

[12] The Claimant says that he left his employment because he was not thinking straight as he was having marital problems, and at the same time, his father was sick with an infection. In the request for the Commission to reconsider its decision, he said that he needed to quit his job of full-time night shifts because it gave him high anxiety and sleeplessness, that led to depression and an inability to think straight.

¹ This is set out at s 30 of the *Employment Insurance Act* (EI Act).

² This is set out at s 29(c) of the EI Act.

³ This is explained in the Federal Court of Appeal (FCA) decision *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

[13] The Claimant told the Commission the following:

- His last day of work was August 6, 2019. He left for the United States on August 9, 2019, and returned on September 11, 2019;
- He did not speak to his employer about his situation and just quit;
- His father was hospitalized for about three weeks from August 9, 2019. His sister was the primary caregiver;
- He did not speak to his doctor before quitting;
- He did not ask his employer for a schedule change from night shifts;
- He did not ask his employer for vacation time or a leave of absence;
- He did not try to find another job before quitting.

[14] The Claimant told me that he had worked for this employer since 2011. He said that after the first year, he requested the night shift because he and his wife have a special needs child. His wife works either 7:00a.m. to 3:00p.m. or 3:00p.m. to 11:00p.m. Working the night shift was better for his family's situation.

[15] The Claimant told me that his last day of work was August 6, 2019. He called in sick to work on August 7, and August 8, 2019. On August 9, 2019, he left the country to visit his father. While he was waiting at the airport, he sent his supervisor a text message that he was quitting his job. The supervisor responded clarifying that he was quitting his job. The Claimant confirmed by texting, "yes".

[16] The Claimant told me that he did not ask for a schedule change because he did not have any problems with the schedule. He explained he lost his grandmother in 2018. When his dad became so sick, he spoke to him and that took a lot from him. It was also summer break, so his children were home during the day and this prevented him from getting enough sleep during the day. He discussed with his wife about going to visit his dad, and this caused an argument because his wife needed him at home to help with the children. He was not thinking straight, he was really arguing with his wife, and he thought he would just quit here. He told me that at the time he left the country, he was not sure he was coming back.

[17] The Claimant stated in his request for reconsideration that he returned to Canada rested with a clear mind, and he contacted his employer but they were not hiring. He told me that he had a good relationship with his supervisor, and he really regrets what he did. He said it is not reasonable what he did, but he was not thinking straight that day. He was just thinking that he wanted to go and see his family in the United States.

[18] The Commission says that the Claimant did not have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says that the Claimant could have remained working and asked his employer for a leave of absence or time off for medical reasons.

[19] I agree with the Commission. I recognize that the Claimant was dealing with a lot of personal issues. However, the Federal Court of Appeal has held that a decision to leave employment for purely personal reasons, such as wanting to visit family, may be a good reason for leaving, but reasonableness is not the same as just cause⁴.

[20] The Claimant was working the night shift but did not find that to be a problem. He was unable to sleep during the day because he was worried about his dad and his children were home from school for the summer. He was also arguing with his wife. This led him to feel stressed and anxious and possibly depressed. These are personal reasons for wanting to leave his job.

[21] I find that the Claimant has not shown that he had just cause to leave his job because he had other reasonable alternatives to leaving his job when he did. The Record of Employment shows the Claimant was given vacation pay on separation from employment. This shows me that he had the reasonable alternative of asking for vacation time instead of quitting his job.

[22] The Claimant stated that he had a good relationship with his employer, but he did not tell his employer about his situation. From this, the Claimant had the reasonable alternative of speaking with his employer and asking for a leave of absence to visit with his father.

[23] The Claimant felt that he was anxious and depressed and not thinking straight. He said in his notice of appeal that he did not know how to cope well with the demands of his work and personal life and he felt overwhelmed. I understand the Claimant's situation and I sympathize,

⁴ This is explained in the FCA decision *Canada (Attorney General) v. Laughland*, 2003 FCA 129.

but the Claimant had the reasonable alternative of speaking with his doctor and requesting a medical leave of absence.

[24] The EI system was put in place to assist workers who, for reasons beyond their control, find themselves unemployed. It is not to provide benefits to those who create their own unemployment when they had other reasonable alternatives to doing so. The Claimant's reasons for leaving his job were not beyond his control.

[25] The Claimant submitted that he is in deep need to support his family financially as he has been unemployed since August. Unfortunately, I am unable to rewrite the law or interpret it differently than its plain meaning⁵. Financial need is not a factor I can consider.

[26] Considering the circumstances that existed at the time the Claimant voluntarily left his job, he had the reasonable alternative of discussing his situation with his doctor and his employer, and requesting vacation time off or a medical leave of absence.

[27] Since the Claimant had other alternatives available to him, he did not show just cause for leaving his job.

CONCLUSION

[28] I find that the Claimant is disqualified from receiving benefits. This means that the appeal is dismissed.

K. Wallocha

Member, General Division - Employment Insurance Section

HEARD ON:	January 27, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. M., Appellant

⁵ This is explained in the FCA decision *Canada (Attorney General) v. Knee*, 2011 FCA 301.