



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CH v Canada Employment Insurance Commission*, 2020 SST 852

Tribunal File Number: GE-20-431

BETWEEN:

C. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: February 26, 2020

DATE OF DECISION: March 9, 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 benefits.

OVERVIEW

[2] C. H. is the Claimant. He was employed as a farm business consultant. The Claimant applied for employment insurance after he voluntarily left his job. He says he left because of an increased workload, despite his efforts to have the employer reduce it. He also left because the increased travel was causing him health issues. The Claimant was feeling overwhelmed and felt leaving was his only reasonable alternative.

[3] The Commission considered the reasons the Claimant left and determined that he did not have just cause to voluntarily leave his job. The Commission says that the Claimant could have sought and secured new employment prior to leaving. Alternatively, he could have accepted the employer's offer of continued employment and remain working under his own terms, just as he had from May to August 2019, and then seek employment more to his liking. The Claimant could have consulted a doctor and obtained a medical note to support he needed to leave his job when he did for medical reasons.

[4] The Claimant disagreed with the decision. He says he made reasonable efforts to work with management but the situation continued to worsen. He says he was bound by conditions of employment that did not allow him accept work in his trained profession for a period of two months following the end of his employment. The Claimant appealed to the *Social Security Tribunal* (Tribunal).

ISSUES

[5] 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?

[6] I accept that the Claimant voluntarily left his job. The Claimant agrees that he quit ¹(in other words, voluntarily left the job) on August 24, 2019. I see no evidence to contradict this.

Did the Claimant have just cause to quit his job?

[7] 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.

[8] The parties do not agree that the Claimant had just cause for voluntarily leaving the job when he did.

[9] 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.

[10] 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.

[11] When I decide that question, I have to look at all of the circumstances that existed when the Claimant quit. The circumstances I have to look at, include some set by law. After I decide which circumstances apply to the Claimant, he then has to show that there was no reasonable alternative to leaving at that time.

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.

Did the Claimant have just cause to voluntarily leave his job?

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

What were the circumstances that existed when the Claimant quit?

[13] The Claimant told the Commission that his workload grew to the capacity that he no longer had the capacity to service it. He says he asked on numerous occasions over the last two years to have his workload reduced to a previous (manageable) level. He says despite short term attempts, any clients that were removed were always replaced with larger ones. That meant his overall workload stayed unmanageable and causing undue stress.

[14] The Claimant told the Commission that the loss of support staff added to his responsibilities. And because of the commissioned nature of his compensation, the loss of these services meant loss of clients, which meant a loss of income. He says that his inability to retain his client base to the satisfaction of his employer would have affected his job security, and have damaging effects on his future employability.

[15] The Claimant told the Commission that his employer heard his concerns but ultimately disclosed that if solutions to his problem did exist, they were not to be reached in the short term. He says he maintained he could not continue under the current conditions and they entered into an agreement to bring his employment to a close.

[16] The Claimant told the Commission that his employment contract barred him from working his field for two months following the end date of his employment. Through negotiations, they agreed to compensate him for this time.

[17] The Claimant told the Commission that he did not look for work before leaving because he was too stressed worrying about his own client's needs and trying to remove himself from his situation. He was not advised by a doctor to his quit his job due to his back pain. He says there was no final incident he had just become fed up with not being able to provide the level of service to his clients. He added that his contract prohibited him from working in the industry for two months.

[18] The Claimant provided a copy of his employment contract and a letter from his chiropractor to the Commission.⁵

[19] The Claimant told the Commission that he felt he could no longer continue travelling because of his severe back pain. He says his employer B. R. did try to accommodate him and lessen his travel. He says that his work issues started about two years ago due to numerous people leaving. He says that when he spoke to his manager L. I. about what he felt was going to happen they tried to accommodate him. He agreed that he had not received any negative reports from his employer regarding his performance. He says that when he met with his employer he was told more or less there would be no change for work coming. He says that he offered to transfer the Claimant to Halifax but he refused, as there would be no difference there.

[20] The Commission spoke to the employer G. R. who said the Claimant had fallen behind in his work. He says he personally spoke to the Claimant and offered to work with him but he refused saying he was “done”. He says he was a good employer and there were no issues with his performance. He says the previous manager B. L. tried to accommodate the Claimant in all ways possible. He says they reduced his workload but maintained his wages. The employer agreed at the time the Claimant gave his resignation in May 2019, a number of employees had left, but the work was distributed accordingly. He says the situation was temporary until more people were hired. He says he feels the Claimant no longer wanted to work for the organization and quit.

[21] The employer provided a copy of the Claimant’s termination letter dated May 13, 2019.⁶ In addition, a letter dated May 23, 2019, from the employer to the Claimant in response to his termination.⁷

[22] The Claimant told the Commission that he had never seen the letter⁸ dated May 23, 2019. He says the numbers the employer presented is not correct as it only represents book clients. He says that he had many dealings with off-book clients. The says the reason he gave his resignation letter on May 24, 2019, and stayed until August 24, 2019, was because he agreed to stay and close up certain clients. He says he stayed on his own terms that his employer accepted. He says

⁵ GD3-38 to GD3-49

⁶ GD3-54 to GD3-55

⁷ GD3-56 to GD3-57

⁸ GD3-56 to GD3-57

he never spoke to his employer about extending the terms past three months until he found suitable employment. He says this should not matter. He says that he did not believe things would change and he was stressed from the anticipation he would not be able to meet the expectations of his employer or his clients. He says he did not speak to his doctor if he felt he had had to leave for health reasons.

[23] The employer contacted the employer L. I. who stated that he did meet with the Claimant and they addressed his concerns. He says the Claimant's workload was reduced and was working to his own capacity, under his terms. He says the Claimant told him it was time for him to move on. He says the Claimant could have continued to work under the same conditions as he did from May to August. He says he was a valued employee and he offered him a transfer. The employer says they contacted the Claimant again and offered him a position under the same conditions that he left but he refused the offer.

[24] In his notice of appeal, the Claimant reiterated his reasons for leaving. In addition, he argues that he began to suffer severe health problems and included a letter from his physician.⁹ He says that a failure to perform his work properly resulted in being chastised by his clients, not his employer. And the nature of his work and the size of his client's concerns meant that failure to perform his duties resulted in substantial financial loss. He argues that continuing to work until he secured new employment was not a reasonable alternative. He says that his contract barred him from working in his trained profession for two months following his termination from employment.¹⁰

[25] At the hearing, the Claimant reiterated his reasons for leaving. I find that there are reasons that a person can voluntarily leave the employment.¹¹ Did the Claimant have just cause because there was:

⁹ GD2-7 to GD2-8

¹⁰ GD2-9 to GD2-19

¹¹ Paragraph 29(c) of the Employment Insurance Act

Significant changes in work duties¹²

[26] 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.

[27] The Claimant says that his increased workload had become unmanageable. He says that he brought it to the employer’s attention but the employer did not admit there was a problem. He says the issue of the workload had started two years prior and there was a time that it could have been rectified. He says in May 2019, he could no longer work like this and he gave his notice and the employer had the opportunity at that time to fix things but he did not.

[28] The Claimant says he never was given the letter from his employer¹³ but he agreed that what was in the letter they had discussed verbally. He says that the letter confirms that his employer did not recognize that a problem existed.

[29] The Claimant says that in September or October 2018, he spoke to his employer about his workload and he told them what he wanted. He says that the employer reduced his in-book clients to 95 and kept him at his out of book clients at the number he requested (he could not remember exactly what the out of book client number was). He says that in March 2019, his out of book clients began to increase as other employees left. He says that by the time he had given his notice, he had been given seven more out of book clients. He says that these were high-end clients and it would increase his workload by 2 to 3 working days.

[30] The Claimant says the numbers of clients listed by the employer are only in book clients and that he also had out of book clients. He says that the statement¹⁴ made by his employer is blatantly false. But maybe that is harsh, as they did make efforts but it was one-step forward and two steps back.

¹² Paragraph 29(c)(ix) of the Employment Insurance Act

¹³ GD3-55 to GD3-56

¹⁴ GD3-56 “FBC made ongoing good faith efforts to improve your employment conditions. We made special efforts to reduce your workload while maintaining your earnings.”

[31] The Claimant says the only solution, the employer B. L. gave him was a change of scenery with a transfer to Halifax and this was not an option for him. He says this confirmed that the employer knew the situation here would not change and thus leaving was his only option.

[32] The Claimant says that the employer was a reasonable guy and they discussed the best remedy to transition his clients. He says the employer agreed to his conditions that he would stay for three months and work at his own pace to transition clients and would not be given any new clients. He says the comment made by L. I. that he could have stayed working in these conditions is not true. He says that once he finished the existing clients there would be no more work for him to do. He says if he had stayed, it would have just gone back to the way it was.

[33] The Claimant says that about a month and half after he gave his notice his employer B. L. was let go. He says it took about a month to find a replacement. He says that on July 26, 2019, a new manager was hired G. R.. He says that he happened to come into the branch that day to drop off paperwork and had a chance meeting with him. He says the new manager asked to speak to him and said he did not know what was going on and asked to please fill him in. He says the manager asked if he would stay but he says he has already been there, so he said “no.” The Claimant says the manager made an effort but he did not believe he would be able to change things. He says the statement the manager made to the Commission makes him knowledgeable of the situation when he was not.

[34] The Claimant says he never gave the manager a chance to see if he could change the situation. He says he was brought in to fix something that could not be fixed. He might have thought he could turn it around but he is delusional. He says that he still keeps in touch with colleagues and that they never hired seven new people.

[35] I am entitled to accept hearsay evidence, as we are not bound by the same strict rules of evidence, as are the Courts.¹⁵ In this case I find the evidence of the employer to be credible and that they did make attempts to accommodate the Claimant.

[36] I considered the Claimant’s statement that G. R. had just started and his statements to the Commission sound like he was knowledgeable about his situation. I find, on the balance of

¹⁵ *Canada v. Mills*, A-1873-83 FCA

probabilities, that by the time the Commission spoke to the manager, he would have learned of the situation at the time the Claimant left.

[37] I am of the view that the manager was, made aware, there was a situation with the Claimant because on his first day on the job he asked the Claimant to speak to him and fill him in. In addition, the manager asked the Claimant if he would stay. Therefore, I find that the new manager was making a serious effort to have the Claimant stay working. And, on the balance of probabilities would have been open to try to rectify the situation.

[38] I am not convinced that the changes to the Claimant's caseload were significant and if only the employer made them. I find from the Claimant's testimony that in September or October 2018, he asked his employer to reduce his workload. He told the employer he only wanted to have 95 in-book clients, which he agreed the employer reduced to that number. I find from the Claimant's testimony that his out of book clients remained the same until March 2019, when other colleagues began to leave. He testified that it was after March 2019, his caseload increased and by the time, he gave his notice it was up to seven clients. I find from his statements that his workload increased gradually over the three-month period therefore I am not convinced that his workload increased 2 to 3 days working days throughout the entire period from March to May 2019.

[39] I find on the balance of probabilities, the employer was able to accommodate the Claimant, which is substantiated by the employer letter¹⁶ as well as their statements to the Commission. I find that both L. I. and the new manager confirm that they were trying to accommodate the Claimant.

[40] I find the fact that the Claimant agreed to stay on for three months after he had given his notice supports that the employer was open to accommodate his reduction of workload. I am of the view that the new manager would have been open to discuss the situation with the Claimant had the Claimant provided him an opportunity. I find that the Claimant met with the new manager on July 26, 2019, and he did not leave until August 24, 2019. I find that this would have been a reasonable amount of time for the Claimant to see if his requests would be accommodated.

¹⁶ GD3-56 to GD3-57

[41] I find from the Claimant's testimony that his workload increased because of staff that had left. I find from the new manager's statements that the situation would have only been temporary until new employees were hired.

[42] I find from the Claimant's testimony that the employer had accommodated him in September or October, so on the balance of probabilities, they would have again.

[43] I find that on the balance of probabilities, and because the Claimant was not willing to give the new manager, a chance to rectify the situation he made a personal choice to leave.

Working conditions that constitute a danger to health or safety.¹⁷

[44] Where the detrimental effect on one's health is being proffered as just cause reasonable alternatives would be (a) provide medical evidence; (b) attempt to resolve the problem with his employer; and (c) attempt to find other work prior to leaving.

[45] The Claimant says that he has seen a doctor and has had an MRI. He says he is currently waiting to get into the PanAm Clinic. He says he spends a couple weeks a month out of commission because of his mobility issues. He says that in his previous job, he was expected to have long periods of travel and this comprised his health. He says that his employer initially had a plan to reduce the travel but it never happened.

[46] I considered the medical document provided by the Claimant.¹⁸ The medical note states that the Claimant was seen on July 26, 2019, at which time he was still employed, and it does say the Claimant was responding well to the treatment. It does not say he was advised to quit his job at that time.

[47] I note the document is dated October 22, 2019, which is after the Claimant left his employment. Therefore, I am giving little weight to statements that his job requires him to travel to accomplish his job tasks. And, that the Claimant's current condition and his current job environment is not conducive to a good quality of life in terms of living pain free. I also note, the

¹⁷ Paragraph 29(c)(iv) the *Employment Insurance Act*.

¹⁸ GD2-8

medical note does not indicate that the Claimant needed to quit his job on August 24, 2019, because of health issues.

[48] I find that the Claimant could have discussed his health issue with his new manager and given him a chance to resolve it.

Significant modification of terms and conditions respecting wages or salary¹⁹

[49] The Claimant says that he had significant changes to his salary. He says that his employer reduced the in-book clients and replaced them with out of book clients. He says that his compensation was drastically reduced because his commission for in book was 23.5% and 14% for out of book. He says that when his employer added more out of book clients he was expected to do more work for a less commission. He says that there would have been about a \$10,000.00 decrease in his annual salary.

[50] The Claimant says he is paid once a year when he accepts his contract. He says he would have to ask his employer to give him a breakdown for his commission throughout the year,

[51] The Claimant says that he asked his employer to reduce his in-book clients to 95 and that is where he wanted to stay. He says they made this agreement in September or October 2018, and it remained that until he left.

[52] The employer provided a breakdown²⁰ that shows the Claimants in book clients was 95, as he requested. Therefore, if the Claimant's commission was reduced, it was because he asked the in-book clients to be reduced. I also am of the view that if the Claimant received 7 more out of book clients at 14% as he stated, then on the balance of probabilities his salary would have increased.

[53] I acknowledge the Claimant says he could ask his employer to provide him with a breakdown; however I do not believe this would prove he had just cause to prove there were significant changes in respect to wages and salary because he was the one who requested his in-book clients be reduced to 95.

¹⁹ Paragraph 29(c)(vii) of the *Employment Insurance Act*.

²⁰ GD3-56

Reasonable Alternatives

[54] The Courts have stated the principle that where a claimant voluntarily leaves his employment, the burden is on him to prove that there was no reasonable alternative to leaving when he did.²¹

[55] After considering all the circumstances and the Claimant's reasons for leaving, I find he had reasonable alternatives available to him. I find from his testimony at the hearing, that on July 26, 2019, his new manager came to him and asked him to tell him what was going on and he specifically asked him to stay.

[56] I find a reasonable alternative would have been to give his new manager a chance to address the Claimant's concerns. Instead, the Claimant made a personal choice to put himself in a position of unemployment. I find the Claimant did not provide any evidence that he could not have stayed and given his manager a chance to solve his issues. Especially because the Claimant says, he loved his job and did not want to quit.

[57] I find from the facts on the file, the Claimant agreed to stay working for three months after he gave his notice. Thus, I find this would support that the working conditions were intolerable and that the Claimant could not have agreed to stay longer and try to work under the new manager.

[58] I find that if the Claimant felt he needed to leave because of his health issues, a reasonable alternative would have been to ask for a leave of absence. This would provide him to time to obtain medical advice that he needed to quit his job.

[59] I find a reasonable alternative would have been for the Claimant to have requested a medical leave and look for other suitable employment. And to have asked his employer if there was an option to have the waiting period waived because he was leaving for health reasons.

[60] I considered the Claimant's argument that he never looked for work because he had a two-month non-compete clause. And he did not see the point in applying if he could not start a

²¹ *Astronomo* (A-141-97)

job for two months to be reasonable on his part. The Claimant agreed that he would not have been prevented from doing so.

[61] I find that the Claimant did not act like a reasonable person when he decided to not look at all for work until he was finished. I find that the Claimant clearly made an assumption that you only look for work when you would be available. The Claimant could not substantiate his assumption because he admitted he never looked for work prior to leaving. I note that the Claimant's contract states that the two-month period was in place without written approval. However, the Claimant confirmed that he never asked his employer if there was an option to have the period waived.

Other Issues

[62] The Claimant says that the Commission led him to believe there were reasons that allowed him to do what he did and that he had no choice. He says that he only had one conversation with the Commission.²² He said the agent stated there was no documentation about specific incidents. He says the agent did not ask him to give a timeline and they did not address his concerns.

[63] I find from the evidence on the file, the Claimant was provided the opportunity to speak with an agent when he made his request for reconsideration. In addition, he provided the Commission with additional documentation with his request for reconsideration. The evidence on the file shows the Claimant spoke to the Commission on December 27, 2019,²³ and again January 6, 2020.²⁴ The evidence on the file supports the Claimant was provided an opportunity to provide his own evidence as well as the opportunity to rebut the statements made by his employers. I also note, by appealing the Commission's decision was the opportunity for the Claimant to provide any additional information.

[64] The Claimant says that the fact that he left a job he loved and paid him \$120,000.00+ proves leaving was his only option.

²² GD3-32

²³ GD3-51

²⁴ GD3-58

[65] I acknowledge the Claimant's situation, however, as stated earlier a claimant must prove that leaving was their only alternative, which in the case I do not find he has proven.

[66] It is not sufficient for him to prove that he was quite reasonable in leaving his employment. Reasonableness may be 'good cause,' but it is not necessarily 'just cause.' He is only justified in acting this way if, at the time he left, circumstances excused him from thus taking the risk of causing others to bear the burden of his employment."

[67] I do not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Claimant.²⁵

CONCLUSION

[68] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	February 26, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. H., Appellant

²⁵ *Canada (AG) v. Levesque*, 2001 FCA 304