



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MN v Canada Employment Insurance Commission*, 2021 SST 152

Tribunal File Number: GE-21-27

BETWEEN:

**M. N.**

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: Amanda Pezzutto

HEARD ON: January 26, 2021

DATE OF DECISION: February 3, 2021

## **DECISION**

[1] M. N. is the Claimant. He is appealing the Canada Employment Insurance Commission's (Commission) decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. I find that the Claimant quit his job. He has not shown just cause. He had reasonable alternatives to leaving his job. He is disqualified from receiving Employment Insurance benefits.

## **OVERVIEW**

[3] The Claimant worked at a restaurant. He stopped working and applied for Employment Insurance benefits. The Commission decided that the Claimant had quit his job. The Commission decided that he did not have just cause for leaving his job. The Commission refused to pay benefits to the Claimant.

[4] The Claimant says that he did not quit his job. He says that he tried to take time off work because the employer made mistakes with his pay and tax documents.

[5] The Commission disagrees. The Commission says that the Claimant quit. The Commission says that the Claimant had reasonable alternatives to leaving his job. He could have talked to his employer if he had problems with his pay and tax documents. He could have looked for a different job.

## **ISSUE**

[6] 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 decide whether the Claimant stopped working because he voluntarily left his job. Then, I have to decide whether the Claimant had just cause for leaving.

## **ANALYSIS**

### **What is voluntary leaving?**

[7] Sometimes it is not clear whether you have quit a job or stopped working for some other reason. To make a decision about whether you quit, I must consider a very simple question: did

you have the choice to stay or to leave the job? If you had a choice, and you chose to leave the job, then you have quit your job. The *Employment Insurance Act* calls this “voluntary leaving.”<sup>1</sup>

**Did the Claimant voluntarily leave his job?**

[8] I think it is likely that the Claimant voluntarily left his job. I think he had a choice to stay or to leave his job. I think he chose to leave.

[9] The Claimant made many confusing, contradictory statements about why he stopped working. On his application for Employment Insurance benefits, he said he stopped working because he quit his job. Then, he told the Commission that he did not quit his job. He said that he took four days off and then could not return to work because his employer closed down for Covid-19. He told the Commission that he tried to return to work on March 8, but the employer had already closed.

[10] The employer told the Commission that they were still open on March 8. They said they closed because of Covid-19 on March 23 or 24. At the hearing, the Claimant agreed that the employer closed on March 23.

[11] At the hearing, the Claimant said he told the employer that he wanted to take time off work. He gave contradictory information about how many days off he wanted. At first, he said he only tried to take one week. Then, when I noted that the restaurant was still open one week after his last day of work, he said that he asked for one or two weeks off. Later in the hearing, the Claimant said that the employer told him he could return to work any time after two weeks.

[12] The Claimant also made confusing statements about whether the employer agreed to give him time off. At the hearing, he said that the employer agreed to give him time off. But he also said that the employer told him that asking for one week off work was like saying he quit. He said the employer told him that they could put quit or layoff on the ROE.

[13] The employer said the Claimant wrote a note saying that he was quitting. The employer gave the Commission a copy of this note. The note is very short. It says that the Claimant is

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<sup>1</sup> In *Canada (Attorney General) v. Peace*, 2004 FCA 56, the Federal Court of Appeal says that a claimant has voluntarily left their job if they have a choice and they choose to leave.

stopping work on March 5, 2020. The signature on the note looks very similar to the Claimant's signature on his notice of appeal and on his reconsideration request. The Claimant told the Commission that he did not sign the note. But then at the hearing, the Claimant said that he did sign the note. He said the note was about taking time off work, not quitting.

[14] The Claimant's statements about why he stopped working are contradictory. He said different things about how many days off he wanted. He said different things about when the restaurant closed because of Covid-19. He even said different things about whether it was his signature on the note. The Claimant changed his statement many times. In contrast, the employer has not changed their statement. The employer has always said that the Claimant quit. The employer's accountant also told the Commission that the Claimant quit.

[15] When there are different explanations of what happened, I have to decide which version is most likely. I have to consider all of the evidence and make a decision on the balance of probabilities.<sup>2</sup>

[16] I do not think the Claimant's statements are reliable. I do not think it is likely that he tried to take leave from work. I think the employer and the accountant are more reliable. I give their statements more weight. I think the note probably means that the Claimant is quitting, not that he is taking a vacation.

[17] I think it is likely that the Claimant chose to leave his job. I find that he stopped working because he quit, or voluntarily left, his job.

**Did the Claimant have just cause for voluntarily leaving his job?**

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

[19] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>3</sup> Having a good reason for leaving a job is not

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<sup>2</sup> The Federal Court of Appeal says that the standard of proof is the balance of probabilities for employment insurance matters in its decision *Canada (Attorney General) v. Corner*, A-18-93.

<sup>3</sup> This is set out at s 30 of the *Employment Insurance Act*.

enough to prove just cause. You have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.<sup>4</sup> It is up to the Claimant to prove this.<sup>5</sup> The Claimant has to show that it is more likely than not that he had no reasonable alternatives but to leave when he did.<sup>6</sup>

[20] 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.<sup>7</sup> 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.<sup>8</sup>

### **The circumstances that existed when the Claimant quit**

[21] The Claimant says that his employer made mistakes on his tax documents. He says they also handled the deductions from his pay incorrectly. He says that the employer might have been committing tax fraud.

[22] The Claimant's explanation of his problems with his pay is confusing. He originally told the Commission that he arranged for the employer to pay half of his salary by cheque and half by cash. He told the Commission that he wanted the employer to pay him this way.

[23] In contrast, at the hearing, he said that the employer paid him this way because **they** wanted to do it this way. He said he did not know why the employer was doing this. He suggested it was because of fraud.

[24] The employer told the Commission that the Claimant asked them to pay half of his salary by cheque and the other half in cash, "under the table." They said they refused to do this.

[25] The Claimant's explanation of his problems with his 2019 T4 is also confusing. He originally told the Commission that he only worked and earned \$35,000, but the employer reported his earnings as \$70,000. However, he also told the Commission that the employer put

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<sup>4</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

<sup>5</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

<sup>6</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 4.

<sup>7</sup> Paragraph 29(c) of the *Employment Insurance Act*.

<sup>8</sup> Paragraph 29(c) of the *Employment Insurance Act*.

his full earnings on the T4, instead of just the part of his pay that he paid deductions on. At the hearing, he said that he only worked and earned \$39,000 in 2019, but he also said the ROE was correct. The ROE says that the Claimant earned about \$39,000 in six months.

[26] I am not convinced that the employer made a mistake on the Claimant's 2019 T4. The ROE says that the Claimant earned about \$39,000 in just over six months. If the ROE is correct, it means that the Claimant probably earned much more than \$39,000 in 2019. If the ROE is correct, then the 2019 T4 is probably also correct. The employer gave the Commission copies of the Claimant's January and February 2020 cheques. These cheques show the Claimant's net earnings. He earned a bit more than \$2000 on each semi-monthly paycheque. This means that he was probably on track to earn more than \$39,000 in 2020. The 2019 T4 also shows that the Claimant paid the maximum contributions for CPP and EI. I do not think it is likely that a person earning \$39,000 a year would pay the maximum CPP and EI premiums. None of the other evidence about the Claimant's pay makes it seem like the 2019 T4 is incorrect.

[27] The Claimant has the burden of proof. This means that it is the Claimant's job to prove that his employer was doing things with his pay and tax documents that were contrary to the law. I do not think the Claimant has met his burden of proof. His explanation of the problems with his pay are confusing. He has not proven that the employer made a significant mistake on his T4. Even if I believed that the employer did make a mistake on the T4, the Claimant has not shown that the employer made this mistake because of illegal practices.

[28] At the hearing, the Claimant also said that his employer did not honour their promise to help him with his taxes. He told the Commission that the employer had promised to pay his portion of his deductions directly to the Canada Revenue Agency (CRA). The Claimant's explanation of this promise seems unlikely. I do not think it is likely that any employer would promise to pay an employee's taxes or CPP and EI premiums. If the employer did make this agreement, I think it would be likely that there would be a written agreement explaining the agreement. The Claimant has not given me any copies of an agreement. He has not explained exactly how the employer was going to help him with his taxes. I do not think the Claimant's explanation is reliable.

[29] In contrast to the Claimant's confusing explanation about his problem with his pay and tax documents, the employer has a simple explanation. The employer told the Commission that the Claimant's deductions were too low for his salary. This meant that the Claimant owed a lot of money when he did his taxes. The Claimant thought this was the employer's fault. I think the employer's explanation is reasonable and I think it is likely to be true.

[30] I do not think the Claimant has shown that his employer was doing something that was against the law. I do not think the Claimant has proven that his employer broke a promise to pay his taxes or deductions for him.

### **Reasonable alternatives**

[31] I must now look at whether the Claimant had no reasonable alternative to leaving his job when he did.

[32] The Claimant has not made any arguments about reasonable alternatives because he says he did not quit his job.

[33] The Commission says that the Claimant had reasonable alternatives to leaving. He could have asked the employer to increase his deductions so he would not have such a large tax bill. He could have spoken to the employer about his problems with the tax documents and his pay. If he disagreed with the employer's practices, he could have found another job.

[34] I agree with the Commission. I think the Claimant had reasonable alternatives to leaving his job.

[35] The Claimant has not given a clear explanation of the problems with his tax documents or his paycheques. I do not think the Claimant has proven that his employer was doing anything illegal with his pay or deductions. The Claimant has not proven that the employer broke any promises about helping the Claimant with his taxes.

[36] I believe that the Claimant was angry and confused by an unexpected tax bill. I understand that he thought the employer had made a mistake on the 2019 T4. Even so, quitting his job was not the Claimant's only reasonable alternative in this situation.

[37] If the Claimant really thought the employer made a mistake on the T4, he could have asked the employer to fix it. He could have given the employer his paystubs, banking information, and paycheques to help show his real income. He could have asked the employer to increase his deductions so that he would not owe money next year. If he really disagreed with his employer's pay and accounting practices, he could have tried to find another job.

[38] The Claimant did none of these things. Instead, he left his job. At the hearing, I asked the Claimant why he thought leaving his job would help fix the problem with his taxes. The Claimant did not give me a clear answer. He could not explain how leaving his job would make the employer change the 2019 T4. I do not think the Claimant was thinking about reasonable alternatives when he left his job.

[39] I find that the Claimant had reasonable alternatives to quitting his job. He has not proven that he has just cause for voluntarily leaving his job.

## CONCLUSION

[40] I am dismissing the Claimant's appeal. This means that he is disqualified from receiving benefits.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	January 26, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. N., Appellant