



Citation: *DA v Canada Employment Insurance Commission*, 2021 SST 206

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: D. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (413944) dated January 19, 2021
(issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Videoconference

Hearing date: April 27, 2021

Hearing participants: D. A., Appellant

Decision date: May 6, 2021

File number: GE-21-363

Decision

[1] I am dismissing the appeal.

[2] I agree with the Commission that the Claimant did not have just cause for leaving his job after one day of work because he had reasonable alternatives to leaving. That means he is disqualified from receiving Employment Insurance (EI) regular benefits.

Overview

[3] The Claimant began a job as a brick labourer for a concrete company on December 13, 2017. He quit the same day and applied for EI regular benefits.¹ The Canada Employment Insurance Commission (Commission) looked at his reasons for leaving. It decided that he voluntarily left (chose to quit) his job without just cause, in other words, without a reason that the law accepts. As a result, it could not pay him regular benefits.

[4] The Commission says that the Claimant had reasonable alternatives to quitting his job. It says he could have spoken to his boss to request accommodations and could have stayed on at work until he found another job.

[5] The Claimant disagrees. He says the job was beyond his physical capabilities and his co-workers ridiculed him when he could not keep up.

[6] The Commission has already refused the Claimant's request. He now appeals the matter to the Social Security Tribunal's General Division.

Issue

[7] Is the Claimant disqualified from receiving benefits because he voluntarily left his job without just cause?

[8] To answer this, I must first address the Claimant's voluntary leaving. I then must decide whether he had just cause for leaving.

¹ The Commission did not send the Claimant a reconsideration decision letter so he only discovered the disqualification in December 2020, when he received a Notice of Debt. That is why I allowed his late appeal on March 1, 2021.

Analysis

The parties agree that the Claimant voluntarily left his job

[9] I accept that the Claimant left voluntarily. After first testifying that he did not even know he was employed, he agreed that he quit on December 13, 2017. I see no evidence to contradict this.²

The Commission argues that the Claimant did not have just cause

[10] The Commission says the Claimant did not have just cause for voluntarily leaving his job when he did. The Claimant disputes this finding.

[11] The law says you are disqualified from receiving benefits if you left your job voluntarily and did not have just cause.³ Having a good reason for leaving is not enough to prove just cause.

[12] The law explains what it means by “just cause.” The law says you have just cause to leave your job if you had no reasonable alternative to quitting when you did.

[13] It is up to the Claimant to prove he had just cause.⁴ He has to prove this on a balance of probabilities, which means he has to show it is more likely than not that his only reasonable option was to quit. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed at the time he quit.⁵

[14] The Claimant says he left his job because he saw right away that it was not for him. He argues that he had no reasonable alternative to leaving because he had to carry four bricks at a time and his co-workers laughed at him when he said he could only carry two. He says he could already see from one day on the job that the working environment was bad because the other workers ridiculed him.

[15] The Claimant originally said he did not speak to his employer before he quit because he saw no point. He said he did not like overhearing the supervisor ask the

² His Record of Employment shows he worked and was paid for one day of insurable employment.

³ S 30 of the *Employment Insurance Act* (Act) explains this.

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

⁵ *White*, see above; and section 29(c) of the Act.

lead hand, “are you putting him to work because we have to make money out of him”?⁶
The Claimant says that is when he “realized that they are forcing me to work.”⁷

[16] The Claimant now says he asked the employer before he quit if there was any easier work he could do. He argues that the employer advised him to look for lighter work elsewhere.

[17] The Commission says the Claimant did not have just cause to quit because he had reasonable alternatives to leaving his job. Specifically, it argues that he could have asked the employer for modified duties based on his physical capabilities. The Commission says it gives more weight to the Claimant’s earlier declaration that he did not speak to his employer before quitting because he made that declaration in writing, confirmed it verbally and only changed it after his benefits were first refused.

[18] I also give more weight to the Claimant’s earlier statements, since he made them nearer to the time he quit when, more likely than not, his memory would be most accurate. He also testified that he had not realized the consequences of his earlier statements on his entitlement to benefits. Based on that testimony, I find it more likely than not that he modified his statements after the Commission refused him benefits to fit what he thought he should have said.

[19] The Claimant’s job was as a brick labourer for a concrete company. He says the work was not what he expected but general labour for this type of company would likely require hard manual labour. I find that he quit because the job was harder than he expected and he thought his co-workers were ridiculing him. So, when the Claimant went to the employer to say he was quitting, I find it more likely than not that he had already decided to leave.

[20] The Commission, preferring the Claimant’s earlier statements that he had not asked for easier work before quitting, says making that request would have been a reasonable alternative to leaving.

⁶ GD3-28.

⁷ GD3-28.

[21] The Commission says the Claimant had another reasonable alternative: continuing to work until he found a new job. The Commission says he did not show the situation was so “unbearable” that he could not give the job a proper chance.

The Claimant had reasonable alternatives to quitting his job

[22] The Claimant did not have to prove that the job was “unbearable,” but he did have to show he had no reasonable alternatives to quitting on his first day of work. I agree with the Commission’s submission that trying out the job for more than a day would have been a reasonable alternative to quitting right away without taking the time to think it over first.

[23] Bringing up concerns about the work environment would also have been a reasonable alternative to quitting right away. The employer might have addressed this issue if the Claimant had raised these concerns but I do not see any evidence that he did that. This is consistent with his earlier declarations that he saw no point speaking to his employer before he quit because nothing would change.

[24] The Claimant relies for evidence on his email to the employer asking the company to change the reason for leaving documented on the ROE. I find the email inconclusive evidence for the following reason. In his email, the Claimant said he brought up the other workers’ conduct before he quit but the employer did not corroborate that account. In its reply, the employer gave no details on what they had discussed two years previously on the day he quit.

[25] Giving the employer the chance to improve the work environment would have been a reasonable alternative to quitting before the company could investigate the matter. I find that the Claimant did not give the employer that chance.

[26] Claimants for EI benefits have an obligation not to risk unemployment.⁸ The Claimant took that risk that when he quit without first trying all reasonable alternatives to leaving his job.

⁸ *Canada (Attorney General) v. Langlois*, 2008 FCA 18.

Conclusion

[27] The appeal is dismissed. The Claimant is disqualified from receiving regular EI benefits because he had reasonable alternatives to quitting his job. This means that he did not show just cause for voluntarily leaving his employment.

Lilian Klein

Member, General Division – Employment Insurance Section