



Citation: *X v Canada Employment Insurance Commission and DR*, 2021 SST 271

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

Decision

Appellant: X

Respondent: Canada Employment Insurance Commission

Added Party: D. R.

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision dated September 21, 2018
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Videoconference

Hearing date: May 6, 2021

Hearing participants: Appellant
Added Party (Claimant)

Decision date: May 18, 2021

File number: GE-19-4305

Decision

[1] The appeal is dismissed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant had just cause because he had no reasonable alternative to leaving. This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left his job on May 8, 2018 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. They decided that he voluntarily left (or chose to quit) his job with just cause. The Appellant disagrees.

[4] I must decide whether the Claimant has proven that he had no reasonable alternative to leaving his job.

[5] The Appellant says that the Claimant could have continued to negotiate his employment agreement and discuss options before quitting.

[6] The Claimant disagrees and states that he could not stay at his job because of the toxic environment.

Matter I have to consider first

The Appellant asked for an in-person hearing

[7] The Appellant asked to have an in-person hearing. He said that a hearing by videoconference was also okay. Because of the pandemic, in-person hearings are not possible at this time. At a pre-hearing conference, the Appellant and the Claimant agreed to have the hearing by videoconference.

[8] This General Division of the Tribunal allowed the Appellant's appeal. However, the Appeal Division returned the appeal to the General Division. In arriving at this decision, I have considered the Commission's file and representations, and

documentary evidence, testimony and submissions from both proceedings before the General Division.

Issue

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

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

Analysis

The parties agree that the Claimant voluntarily left

[11] I accept that the Claimant voluntarily left his job. The Claimant agrees that he quit on May 8, 2018. I see no evidence to contradict this.

The parties don't agree that the Claimant had just cause

[12] The parties don't agree that the Claimant had just cause for voluntarily leaving his job when he did.

[13] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ Having a good reason for leaving a job isn't enough to prove just cause.

[14] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.²

[15] It is up to the Claimant to prove that he had just cause.³ He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not

¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

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

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 when the Claimant quit.

[16] The Claimant says that he left his job because of the toxic work environment and because the Appellant changes his work duties and wages. He says that the toxic environment was affecting his health.

[17] The Appellant says that the Claimant didn't have just cause, because he had reasonable alternatives to leaving when he did. Specifically, he says that the Claimant could have stayed to discuss options with them. He says that the Claimant's resignation was premature.

[18] I find that the Claimant has shown that he had just cause to leave his job when he did.

[19] The parties do not agree on the details of what happened before and after the Claimant quit his job. Their witnesses also give different versions of the work environment, the actions of the Appellant and Claimant, and how the circumstances affected the Claimant. For this reason, this decision turns on the credibility of the parties' evidence.

[20] The Claimant said that he had worked as a project manager. He states that in October 2017, his employer moved him from this job and wanted to put him in sales. The Claimant did not want to do sales due to lack of training and experience. He said he agreed to a temporary assignment to try to get business from contractors since business was slow. He also spoke of working on relationships with contractors they had worked with.

[21] The Appellant wanted to have employees sign employment agreements. The Claimant did not do so. He resigned from his job because he says the Appellant refused to negotiate the terms of the employment agreement. He feels that the Appellant wanted to get him to quit. The Claimant also told the Commission that he quit because of the toxic work environment.

[22] I find that the details the Claimant gave to the Commission are internally consistent and consistent with his testimony at the hearing. He sent the Tribunal a typed transcript of notes he took on specific dates or for time periods. He clarified at the hearing that he recorded the notes in a diary as events described occurred. I have no reason to disbelieve this. In fact, at the first hearing before the General Division, the Claimant testified that he had taken notes from the meetings he had with the Appellant.

[23] I give the Claimant's transcribed notes a lot of weight. I do so because the notes contain specific dates and time periods. In addition, the notes pre-date the adjudication of his application for benefits. I find that this lends to their credibility.

[24] The Commission decided that the Claimant had just cause to leave his job. The Appellant asked them to reconsider their decision. The Appellant's lawyer wrote a letter detailing their position. The letter says that the Claimant "was unable to ... perform precise work (specifically estimates)". It states that this was a key aspect of the project manager position.

[25] The letter states that the Appellant asked the Claimant to do work in business development. The Claimant did this work for several months. The business experienced a slowdown. The employee agreement they were negotiating with the Claimant included a change in pay based on commission instead of salary. The letter states that the Claimant would also get estimating, accounting and project management support and a business development assistant. It says the Claimant responded by quitting his job.

[26] For reasons that follow, I find that the reason the Claimant quit his job is that he felt that the workplace was toxic, his job and wages changed, and working for the employer had a negative impact on his health.

Was the workplace toxic?

[27] The Appellant and his witnesses dispute the Claimant's assertion that the workplace was toxic. The Appellant said that the Claimant's statements about toxicity

are retroactive and that he didn't see it in the evidence. He testified that managing finances at the company is not creating a toxic environment.

[28] The first of the Appellant's witnesses said that she felt like the toxicity was coming from the Claimant. The witness said that the Claimant never spoke to her about toxicity. She added that it was like any other construction company with the stress of projects closing. The witness said that the Claimant may have said something about not liking someone's ideas, but not that he did not like the way he was being treated.

[29] In response to an unrelated question, the witness offered that she "let him have it", referring to the Claimant. She said she did so because she was sick of how he was dealing with management.

[30] The second witness said that she would not say the office environment was toxic. The Appellant asked this witness about the stresses that arose at their company. The witness responded that it was stressful when trying to secure jobs. She added that there was a lot of harassment from two employees, directed at management. She confirmed that she was not talking about the Claimant. She referred to stressful situations when employees would come to her desk and scream in her face. She said that she thought meetings were held with the owner of the company about those two employees.

[31] The Appellant's third witness testified that she never saw anything toxic in nature. She said that she had never seen the Appellant being toxic to the Claimant. She said that she did not see asking for a result or giving feedback as toxic.

[32] As noted above, the Claimant told the Commission that he quit his job because of the toxic environment. He testified that this the reason that he had no reasonable alternative to leaving his job. He gave some examples. These include the Appellant having him stay at home for three weeks in spite of saying he needed all hands on deck, yelling at meetings, speaking over him at meetings, asking him to do tasks with no training, spying, and yelling between family members.

[33] I asked the Claimant if he spoke to the Appellant about his concerns. The Claimant said that the Appellant would not entertain conversations involving criticism. He said that he spoke to the Appellant's first witness, but she responded by saying that the Appellant was not like that. He said he spoke to the Appellant's brother who asked the Claimant not to get him involved.

[34] The Claimant had two witnesses who previously worked for the Appellant. Both also provided sworn statements to the Appeal Division. The sworn statements both refer to the toxic environment that the witnesses saw.

[35] The first of the Claimant's witnesses said that the reason that she agreed to testify at the hearing is that she did not agree with how she and the Claimant were treated. She described meetings at the company as horrible and accusatory. She stated that when she started working for the Appellant, she felt appreciated, but in her last year, things went downhill.

[36] The Claimant asked the witness about a time he saw her leaving the Appellant's office crying. She said that the Appellant would belittle her. She said that he would call her into his office and ask her if she really wanted to be at the company and if she didn't care about the company.

[37] The Appellant had submitted an email that the Claimant's witness sent them when resigning from her position at the company. The Claimant asked her about the email because it gives the impression that she was very happy with the company. The witness said that if she needed a reference, she wanted to be sure she would get a good one. She stated that she researched how to leave a company professionally without burning bridges.

[38] The Appellant questioned the Claimant's witness. He asked her why this was the first time he was hearing about her concerns. The witness said that she was not in the mental state to do so before. The Appellant asked her about how the Claimant was treated. The witness said she thought that he was blindsided by the change to his job

and that he was undermined by her spying on him, which she told the Appellant that she didn't like. She said that he said that she just had to do what he was telling her to do.

[39] The Claimant asked a second witness to describe the work environment at the end of his tenure with the company, namely the end of 2017/early 2018. The witness responded that it was toxic. He said that it emanated from the Appellant, who was understandably dealing with a lot of stress. He said the work environment was chaotic, with a lot of disruption, impulsiveness and open disagreement in the company.

[40] For the most part, I found that the testimony of the witnesses supported the position of the party that called them to participate in the hearing. In the case of the Appellant, the first witness is his wife, the second is his wife's niece, and the third is his sister. Because they work at a family-owned business, I find that they have an understandable interest in supporting the Appellant's position.

[41] I found the testimony of the Claimant's second witness, as I refer to him above, the most persuasive. I do so because I find that he is disinterested in the outcome of the appeal. He testified that he was not an employee of the Appellant. Rather, he said that he was a contractor whom the Appellant engaged to expand his business with new opportunities. In addition, there isn't enough evidence before me to conclude that his relationship with the Claimant went beyond a professional one. I find that the witness does not have an agenda in favour or against either party.

[42] Although he was critical of the Appellant, I found this witness' responses balanced. For example, he spoke of the Appellant dealing with a lot of stress and said that he understood this. Also, in response to a question about a company with whom the Appellant's company was trying to repair a relationship, the witness stated that in fairness, customers aren't not guilty either, suggesting that any disrepair in the relationship could have resulted from the actions of either or both companies.

[43] The Claimant asked the witness to elaborate on his statement that the Appellant's workplace was toxic. The witness said that the people in the organization could not work together to resolve and move forward to remove the stress and chaos in

the environment. He said that this was the case because of the Appellant's management style, which he viewed as autocratic.

[44] The witness gave general examples. He said that when opinions sought were different from the Appellant's, they were viewed as dissent. He spoke of disruptions in the environment including open arguments and yelling that he viewed as counter-productive. The witness said that he found the inability to resolve this as systemic toxicity.

[45] The Appellant questioned the witness on his testimony. Some of the areas he covered were the witness' background, training, difference in treatment of family versus non-family members and toxicity. In response to a final question, the witness said that the Claimant had asked him to testify to what he had observed while working with the Appellant. I did not find that the witness' testimony under cross-examination damaged the credibility of the details in his affidavit or testimony.

[46] Overall, I find that the environment in which the Claimant worked was difficult, if not toxic. In the last several months of the Claimant's employment with the Appellant, the Appellant's business had slowed down. This led them to have to make some difficult changes. I find it more likely than not that the stresses that resulted caused management and employees to act differently than normal.

[47] One of the examples the Claimant gave to demonstrate the toxic environment was speaking over him at meetings. In listening to testimony, particularly from the first hearing of the General Division, I note that this occurred. This was the case both with the Appellant and his witness cutting in when the Claimant testified, and the Appellant and his witness speaking over each other. This lends credibility to the Claimant's example.

[48] I note the testimony of the Appellant's witness referring to employees screaming in her face. I find this is somewhat consistent with the Claimant and his second witness referring to open disagreements in the office. Whether justified or not, the Appellant's

first witness said that she “let [the Claimant] have it”. In his closing statement, the Appellant said that if he raised his voice at the Claimant, it was very rare.

[49] Again, I give more weight to the Claimant’s second witness referred to above than to the Appellant’s witnesses. I find that possibly as a result of the stress of the slow down at the company, the environment was chaotic, one in which yelling and open arguments occurred. I am persuaded that working in this kind of environment, given the effects on Claimant’s physical and mental health that I’ll review later, was intolerable for the Claimant.

Was there a significant modification in wages?

[50] I find that there was a significant modification in the Claimant’s wages.

[51] The Commission submits that on April 25, 2018, the Claimant experienced a significant and unilateral modification in the terms and conditions respecting his wages. They say that this is of the type referred to in the law.

[52] The Claimant said that while working as a project manager, he was working 40 to 60 hours a week, earning \$43 per hour plus 9.6% vacation pay and benefits. He stated that under the employment agreement the Appellant wanted him to sign, he would earn \$1,500 bi-weekly inclusive of vacation pay with a minimum of 24 hours per week. He said that benefits would continue only at the discretion of the office.

[53] The Appellant’s first witness confirmed to the Commission that the Claimant’s salary was \$43 per hour for five days a week. She said that they offered the Claimant a sales position at \$31.75 per hour for three days a week. I asked her at the hearing how many employees were asked to take the pay cuts of the same magnitude of the Claimant. She said probably three. This is consistent with information the Appellant sent the Commission.

[54] The witness said that at the time they were negotiating employment agreements, they had between 20 and 30 employees. She testified that some family members did

not take any pay to make sure employees were paid. She also said that three family members were willing to take a pay cut.

[55] If the Claimant worked 40 hours per week at \$43 per hour, he would make \$1,720 plus 9% vacation pay, for a total of \$1,875 (rounded). If he had accepted the Appellant's offer, exclusive of commission, he would make \$762. This is a little more than a 59% reduction in pay. In spite of the possibility of commissions, I find that this is significant.

Was there a significant change in work duties?

[56] I find that there was a significant change in the Claimant's work duties.

[57] The Commission submits that the Appellant unilaterally changed the Claimant's position from project manager to a sales position. They say that this occurred on April 25, 2018, and that it is of the type referred to in the law.

[58] Both the Claimant and the Appellant confirm that the Claimant worked as a project manager from 2014. The Claimant testified about the duties he performed as project manager. He said that in October 2017, the Appellant's brother asked him to move to a sales position, but he said no. He stated that he agreed to a special project repairing relationships with mechanical contractors. The Claimant said that he understood that once the special project was done, he would return to his project management role, but this didn't happen.

[59] The Appellant's first witness told the Commission that they offered the Claimant a sales position. This is the position at the reduced wage. The Appellant confirmed that the new position involved sales in the business development department. He stated that they had meetings about the strategy to get clients to make sure that they got some sales so that they would have projects to do.

[60] I accept the Appellant's testimony that the Claimant was effectively doing business development or sales from October 2017. I also accept the Claimant's testimony that he understood that he would return to his project management role,

meaning that the special project was temporary. However, I find from the attachment to the Appellant's request for reconsideration, the Appellant's statements to the Commission, and testimony at the hearing, that the employment agreement would formalize the change in work duties for Claimant to sales from project management.

[61] From the evidence before me, I understand the sales duties in the business development department to involve contacting past and potential clients to bring in business for the company. The Claimant testified that he had no training or experience with sales. I do not find the duties about which he testified as project manager involve sales.

[62] The Appellant testified that as a project manager, they intended that the Claimant continue the field work that he had been doing previously. He said that he was a field supervisor, a lead person on a project. From this description, I find that the change in work duties from project management to sales is significant.

Did the Claimant's work for the employer in the last several months affect his health?

[63] When testifying about what made him quit his job, the Claimant testified that he had to consider his health. Throughout his evidence, he made statements about not eating, not sleeping, and learning after the fact that his blood pressure was "out of sight". He said that since he quit his job, his blood pressure is under control.

[64] The Claimant's two daughters testified as witnesses at the hearing. They spoke to what they observed and attributed to the Claimant's experiences at work.

[65] The Appellant submitted that the testimony of these two witnesses is irrelevant. He said that their testimony was opinion, without evidence linking the Claimant's health concerns to the company.

[66] I found the testimony of the Claimant's daughters was both relevant and helpful. I note in particular that both witnesses made statements acknowledging that they could not speak to what happened inside the company. They said they would speak about how what happened affected the Claimant's health.

[67] Both witnesses testified to changes they observed in the Claimant within the last months of his work for the Appellant. These changes included personality change, stress headaches, anxiety, depression, erratic sleep schedule, and a decrease in appetite. They contrasted what they saw in the last months of the Claimant's job with his usual demeanour, even when he previously faced a serious health issue and when his wife passed away.

[68] One of the witnesses was overseas at the time. She testified that she was terrified that she would get a telephone call from the other witness saying that the Claimant had had a heart attack. Her fear was that she would not be able to get home because of the nine-hour flight it would take for her to get home. She noted that there was a great weight lifted off the Claimant's shoulders when he decided to resign. She said he got "perkier", his moods improved, the anxiousness disappeared and he started eating better.

[69] I agree with the Appellant that there is no documentary evidence before me that links the Claimant's stress and other stated impacts to the last months of his work with the Appellant. However, I note that two of the Appellant's witnesses also observed that he was not happy.

[70] I find that the Claimant's witnesses do have an interest in the outcome of the Claimant's appeal because they are his daughters. However, I found their testimony to be balanced and straightforward. They acknowledged positive aspects of the Claimant's work for the Appellant. For example, one testified that the Claimant had been perfectly happy to stay with the company until he retired. The other acknowledged that in the 30 years that the Claimant worked for the Appellant, there had been times of compassion and friendship.

[71] The Claimant asked the other two witnesses who had worked with the Appellant if they noticed changes in his health. One testified that she noticed a change for the worse. She did not give any details. The other witness said that he noticed stress in the Claimant's face and body language. He also mentioned visual fatigue and dramatic changes in his eating habits.

[72] In the context of telling the Commission that he quit his job because of the toxic environment, the Claimant said that he was not sleeping and dreaded going to work. He referred to loss of sleep, anxiety and depression in evidence before the Appeal Division. He testified under oath to what he was experiencing as far as his health is concerned. Given the consistency in this evidence, and in particular the testimony of his two daughters, I have no reason to disbelieve that in his last months working for the Appellant the Claimant's health got worse. I also accept as fact that his level of stress was worse in his last months of work for the Appellant than when his wife passed away and improved after he quit.

Were there alternatives to quitting?

[73] The Commission's position is that the Appellant made it clear to the Claimant that he had to accept the employment agreement as offered. They say that as a result, the Claimant could not pursue any reasonable alternatives.

[74] Although I have arrived at the same conclusion, I do not agree completely with the Commission based on the evidence. I find that the cumulative effects of the significant changes in his work duties and wages, plus the work environment and the effect on the Claimant's mental and physical health made the situation intolerable for him.

[75] The Appellant submitted that the Claimant could have stayed to negotiate the employment agreement. He said that the Claimant could also have requested a leave of absence, or sought counselling.

[76] I find it reasonable that the Claimant would conclude that the Appellant did not really want to negotiate the employment agreement. I do not find that the Appellant was transparent with the Claimant through the transition to the proposed business development duties.

[77] For example, the Claimant said that when he agreed to take on the special project working directly with existing clients, the Appellant had a family member take over his responsibilities.

[78] The Appellant testified that he did not recall if someone had been assigned to take over the Claimant's project manager duties. He then said that he thought that his sister's husband started doing a little bit of project management at a later time because he could do estimating and was comfortable dealing with people. I note that at the first hearing before the General Division, the Appellant said that his sister's husband was just helping out in project management.

[79] The Commission asked the Appellant's first witness if someone had taken over the Claimant's position. She said no. Then at the first hearing before the General Division, she agreed with the Appellant that his sister's husband was just helping out.

[80] The letter that the Appellant's lawyer sent the Commission states that in October 2017, the Appellant chose to promote another employee to the position the Claimant had done. It says that this other employee was able to do estimating and other tasks. This supports the Claimant's statement to the Commission that the Appellant gave his project management job to one of the family members.

[81] I find the three accounts from the Appellant, his lawyer and witness are inconsistent. For this reason, I give more weight to the Claimant's statement about someone replacing him.

[82] The letter from the Appellant's lawyer said that the Claimant could not do estimating, and this was a key aspect of the project manager job. In response to a question from the Commission, the Appellant's lawyer added that the Claimant was overwhelmed by the work and was complaining regularly, he was rude and abrupt with customers, and there was not enough work to keep him employed in that role.

[83] I asked the Appellant about the statement in the Commission's file that the Claimant could not perform estimates to his satisfaction. He said that it was not that the Claimant was not capable, but they had not gotten to the point of him doing estimates. I put to the Appellant the statement in the letter that said that the Claimant "was unable to perform ... estimates". The Appellant said this is correct, and went on to say that they

did not feel the Claimant was ready to get into the estimation role. I do not find that the two statements are consistent.

[84] I asked the Appellant about another statement in the letter. It said that training for estimation was supposed to happen after the initial training for the project management position, but the Claimant did not finish the first part of the training. I did not find the Appellant's response direct. The Appellant did not address whether the Claimant finished the first part of the training. Rather, he suggested that he did not train the Claimant to do estimating because the Claimant was insubordinate.

[85] The Claimant told the Commission that he did not do estimates because he never got training even though he asked for it. I find from the Appellant's indirect response noted above that the Claimant's statement is true. Based on this, I do not accept that the Appellant told the Claimant that he was unable to fulfil the duties of project manager as stated in the letter from his lawyer. I find that the Appellant was not transparent with the Claimant in the move from his project management position to the temporary special project, which then led to the more permanent change in the draft employment agreement to a sales position.

[86] The Appellant sent the Commission a copy of the draft employment agreement. The Appellant used the draft to negotiate changes to the Claimant's job. The Appellant and a witness testified that the draft was their intellectual property. They state that for this reason and because it was in draft form and not yet ready, they could not allow the Claimant to take it to his lawyer for review. The Appellant said that they told the Claimant that he could bring his lawyer to the workplace to review it.

[87] When questioning one of his witnesses, the Appellant said that he believed that they told the Claimant that he could take the draft agreement to his brother, who is a lawyer, for review. The witness responded that the Claimant was allowed to take the draft agreement out of the workplace as long as he would not take it to a competitor. I clarified the response with the witness. The witness reiterated the response she gave to the Appellant.

[88] It's not clear why the Appellant first said that they could not let the Claimant take the draft agreement to a lawyer, and then suggested that told him he could. Given the inconsistency, I give more weight to the Claimant's statement that the Appellant would not let him take a copy of the draft agreement to his lawyer for review.

[89] The Appellant said the Claimant could have brought a lawyer to the office for the review. However, I find the refusal to allow the Claimant to take a copy lacks transparency. I note that the last clause of the employment agreement refers to the opportunity to seek legal advice on the meaning of its provisions. I do not find the Appellant's statement about intellectual property reasonable since the draft does not include any details from the company that shared their agreement.

[90] The draft employment agreement has a typed effective date of April 23, 2018, and a hand written effective date of April 25, 2018. I asked the Appellant and one of his witnesses about this. The Appellant said that the agreement was a starting point to getting to a contract. He said that the Claimant decided to cut the meeting short. The witness, who is the one who handwrote the date, testified that the effective date had to change to April 25, 2018 because there needed to be changes.

[91] .Since April 25, 2018 is the last day the Claimant met with the Appellant and his team to discuss the agreement, I find it likely that it was at least close to a final version. I find that the witness' testimony supports that they thought that changes could be made so that the employment agreement would be effective on April 25, 2018.

[92] I find it reasonable that given the lack of transparency the Claimant did not believe that the main terms of the draft agreement were negotiable. I find this even though the Appellant's evidence is that the draft agreement was negotiable.

[93] I do not find that Claimant taking a leave of absence or getting counselling would have addressed the circumstances that made working for the Appellant intolerable for him. Rather, I find it likely that may only have helped the Claimant's mental and physical health in the short term without changing what I have found affected his health.

[94] I find, based on the above, that the Claimant had no reasonable alternative but to quit his job when he did.

Conclusion

[95] I find that the Claimant isn't disqualified from receiving benefits.

[96] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section