Citation: *JN v Canada Employment Insurance Commission*, 2021 SST 722

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	J. N.
Representative:	Sharon Vokey
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (416405) dated March 3, 2021 (issued by Service Canada)

Tribunal member:	Raelene R. Thomas
Type of hearing:	Teleconference
Hearing date:	April 22, 2021
Hearing participant:	Appellant's Representative
Decision date:	April 27, 2021
File number:	GE-21-506

Canada

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant, J. N.

[2] The Claimant has not shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant did not have just cause because he had reasonable alternatives to leaving.

[3] This means the Claimant cannot receive employment insurance (EI) regular benefits.

Overview

[4] The Claimant was working as a deck hand when he was laid off. He asked a friend about work opportunities and was hired as a temporary deck hand on a vessel operating in another province. He worked one week on the vessel in Canadian waters. When he was told the vessel would be heading to a port in the United States he left his job. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving his job and decided that he did not have just cause for leaving. The Claimant disagrees. He says that he had just cause because he would get COVID-19 if he went to the other port, might not be able to return to Canada if he was ill, and would not be able to care for his parents when he returned to his home province.

Matters I have to consider first

[5] The Claimant was not at the hearing. A hearing can go ahead without the Claimant if he received notice of the hearing.[1] I think the Claimant got notice of the hearing because he appointed a representative to attend on his behalf. The Claimant's Representative notified the Tribunal the Claimant would not be attending and, stated at the hearing, that he was willing to proceed without the Claimant present. The hearing took place as scheduled without the Claimant.

[1] Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

[6] The Tribunal staff sent a letter to the Claimant's former employer asking if it wanted to be an added party. To be an added party the employer would have to show it had a direct interest in the appeal. As of the time of writing this decision, the employer has not replied to the letter. As there is nothing in the appeal file that indicates to me the employer has a direct interest in the appeal, I have decided not to add them as a party to this appeal.

Issue

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

[8] To decide this, I must first look at the Claimant's voluntary leaving. Then, I have to decide whether the Claimant had just cause for leaving.

Analysis

The Claimant voluntarily left his job

[9] The parties, that is the Commission and the Claimant, agree that he voluntarily left his job.

[10] I accept that the Claimant voluntarily left his job. The Claimant's Representative agreed that he left his job. I see no evidence to contradict this.

The parties do not agree that the Claimant had just cause

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

[12] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[2] Having a good reason for leaving a job is not enough to prove just cause.

[2] Section 30 of the *Employment Insurance Act* (Act) explains this.

[13] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternatives to quitting your job when you did. It says that I have to consider all the circumstances.[3]

[14] It is up to the Claimant to prove that he had just cause.[4] He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he had no reasonable alternatives to quitting his job.

[15] When I decide whether the Claimant had just cause, 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.[5] Even if I decide any of the listed circumstances apply to the Claimant, he still has to show that there were no reasonable alternatives to leaving his job.

[16] The Representative explained that the Claimant was working as a deck hand. He had been working 28 days on and 28 days off. This is called rotational work. He lives in the same community as his elderly parents. His parents' home is heated by wood. He provides support to his parents by ensuring they have wood in their home to heat it. He also drives his parents to medical appointments, which are some distance away from their home.

[17] When the COVID-19 pandemic was declared, the Claimant's home province put a number of measures in place for rotational workers. The Claimant had to self-isolate for 14 days when he returned home. Self-isolation meant that he could not have contact with anyone for those 14 days. The Claimant accommodated this by having his girlfriend move out of their house and live with his parents for the 14 days. He made arrangements for his parents to have wood to heat their home while he was self-isolating. Generally, his parents would not schedule medical appointments during those 14 days.

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[3] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[4] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[5] Section 29(c) of the *Employment Insurance Act* has a list of circumstances

[18] The Representative explained that the Claimant's former employer had a number of precautions in place as well. The employees who worked on a vessel would self-isolate as a group for a few days prior to boarding the vessel. They would be tested for COVID-19 and once results were known, they would board the vessel as a group. The Claimant had his own berth and bathroom. That vessel had cleaners.

[19] The Representative explained that when the Claimant was laid off from the rotational work he started to look for other work right away. He spoke to a friend to see if the friend's employer had any work. That company hired the Claimant for a five-week temporary job on a tugboat working in the Great Lakes. The claimant completed his hiring forms and flew to another province to board the vessel.

[20] The Claimant worked for five days on the tugboat as it sailed to another port. The Representative said the Claimant told her he was not aware of any steps taken by his new employer to ensure that the other workers tested negative for COVID-19. He had to share a berth and there was only one bathroom with a shower to be shared among the eight crew. The Representative said that there was no dedicated cleaning of the vessel and all crew were expected to clean up after themselves. The Claimant told the Commission that the employer provided facemasks to the crew and there were attempts to keep social distance.

[21] The Claimant told the Commission that when he was told the tugboat would be going to a port in the United States he told the captain the job was not for him. He made the decision to quit his job immediately upon learning that the vessel was going to the United States.

[22] The Claimant told the Commission that he did not feel comfortable going to the United States due to the COVID-19 pandemic. His Representative said that he was aware of the rising number of COVID-19 infections in the United States and that at that time the United States accounted for one-quarter of the world's deaths from COVID-19. The Representative said that to listen to anyone in the Claimant's home province "everyone in [the Claimant's home province] believed that if they travelled to the United States they would get COVID-19." She said that the Claimant was becoming

increasingly anxious since he started working on the tugboat to when he found out the vessel was going to a port in the United States.

[23] The Claimant told the Commission that he would have to interact with the stevedores at the port in the United States. He said if he caught COVID-19 he assumed that he would be forced by the employer to leave the vessel and he was not sure if Border Services would be allow him to return to Canada if he was infected. The Claimant expressed his concern to the Commission that he would placed in an American hospital, where his medical bills would not be paid in the same way as they would be paid if he was in Canada.

[24] The Claimant told the Commission that his understanding of the risk of COVID-19 in the United States was based on assumptions he made from news reports; he considered the entire country as a single entity and assumed that he would face significant risk working in any part of that country.

[25] When the Client was refused EI benefits, he requested reconsideration of the decision and asked for compassionate care benefits to provide care for his father. The Representative explained that the Claimant made this request based on the advice of a local provincial politician. The Claimant was not aware that by requesting compassionate care EI benefits that he would be considered not available for work. His refusal to speak to the Commission after the request for reconsideration was due to his lack of knowledge about EI and advice from another friend to wait until he consulted with the Representative. The Claimant acknowledged to the Commission that he was not seeking compassionate care benefits and that he was not aware of any illness or obligation to care for a family member at the time he left his position.

[26] The Representative argued that the Claimant had an obligation to provide care for his father and mother. The obligation involved ensuring that there was sufficient wood inside their home to provide heat and to drive them to medical appointments some distance from their home.

[27] The Representative submitted that the crux of the Claimant's issue was his fear that he might get COVID-19 and bring COVID-19 back home to his parents. She said the Claimant was convinced in his own mind that if he went to the port in the United States he would get COVID-19. The Representative said that the Claimant's fears built up during the week he was on the vessel. When the Captain told the crew that he just got a call to say they were going to the port in the United States, the Claimant saw that as the final straw. He believed that once in the port he would have to leave the vessel and interact with people on the dock. He would be handling the ropes that people on the dock handled. He expected that his visit to that port would have a very real and immediate impact on his ability to care for his father.

[28] I accept that the Claimant does provide support for his parents, however, I find that the Claimant has not established that he left his job because he had an obligation to care for his parents. The Representative explained that the Claimant's previous employment was for 28 days on and 28 days off. In his former employment, he was required to self-isolate for 14 days upon his return home. He and his girlfriend arranged for him to self-isolate alone in their home while she lived with his parents. During the 14-day self-isolation period he was able to ensure they had wood for their heating without making contact with them. Their medical appointments were scheduled during the remaining 14 days off. This evidence tells me that the Claimant was able to be away from his parents for up to 42 days without their care being impacted.[6] There is no evidence that the Claimant would not be able to continue to support his parents as he had before once he left the 5-week temporary job on the tugboat. Had he completed the five weeks he would be expected to self-isolate for 14-days when he returned home. The 14-day self-isolation period applied whether he sailed in Canadian or international waters. There is no evidence that there was change in the amount or type of support or care he was required to provide to his parents. He also told the Commission that caring for his father did not influence his decision to leave his job. As a result, I find that, on a

[6] 28 days away working plus 14 days of self-isolation equals 42 days

balance of probabilities, the Claimant has not established that he left his job due to an obligation to care for his parents.

[29] The Representative submitted that the Claimant's working conditions constituted a danger to the Claimant's health and safety in that he might catch COVID-19 while working on the vessel or working in port. She explained that in his former employment prior to boarding those vessels, he would isolate in a hotel with all the other crew, be tested for COVID-19 prior to embarking and if he had a negative result he would board the vessel. That did not happen on the tugboat. The Claimant provided pictures of the tugboat to the Commission. The Representative said that these pictures were meant to show the condition of the vessel and that the common areas in the kitchen, toilet and shower could not be cleaned.

[30] The Representative also said that the requirement to interact with people in the United States when that country had one-quarter of the worlds' deaths from COVID-19 constituted a danger to the Claimant's health and safety. The Claimant told the Commission that his concerns about getting COVID-19 if he went to a port located in the United States were based on news reports from that country. He did not look for information about COVID-19 in that particular port.

[31] The Claimant told the Commission that he did not discuss his concerns with the Captain. He said that he never complained about the condition of the boat. The Claimant told the Commission that contracting COVID-19 and being required to remain in the United States was a scenario that he imagined. The Representative said the Claimant did not tell the Captain about the care his parents required but he did tell the Captain that he had elderly parents that he did not want to bring COVID-19 back to them.

[32] The Representative said there was a fine line between talking about COVID-19 and asking to be accommodated. The Claimant did not ask the Captain what safety precautions would be in place with regard to COVID-19 when they went to the port in the United States. The Representative said that the Claimant did not ask to be accommodated for two reasons. First, he knew would not be able to be housed on the

boat in his own berth or have his own bathroom because the boat did not have those facilities. Second, this was the first time he worked for this company. He did not expect, given his length of service and the fact that he was hired for five weeks, that he would be accommodated. The Representative said that the Claimant did not contact any regulatory authority with his concerns about COVID-19 precautions or being accommodated. The Claimant told the Commission that he did not speak to a doctor about his concerns with COVID-19.

[33] The Representative submitted that the Claimant had simply not investigated the requirements of the job on the tugboat. The requirement that he had to travel to ports located in the United States, the sharing of berths and the bathroom, the fact that there were no dedicated cleaners on the vessel all made the job unsuitable for the Claimant. He should not be penalized because he took the first job that was offered after he was laid off.

[34] The Representative said that the requirement to travel to the United States was not a part of the Claimant's employment contract. She said that he was asked in the hiring forms if he had a passport. It is common for persons working on boats to carry their passports as they might sail into international waters. I noted to the Representative, the Claimant acknowledged understanding that international travel would likely be a requirement when he accepted the position.[7] The Representative says that the Claimant knew it was a possibility that the boat would go to the United States but he did not believe that it would. With a five-week contract he thought the vessel would remain in local waters. She said the Claimant did not think the requirement for a passport would mean that the vessel would be docking in the United States. The Representative submitted that the employment was not suitable for the Claimant because the risk factor of contracting COVID-19 was too high given his situation.

[35] The Commission says the Claimant did not have just cause for leaving his job because he did not exhaust all reasonable alternatives prior to leaving. Specifically, it

[7] See page GD3-30 in the appeal file

says the Claimant could have not made the personal choice to leave his employment for no employment, or that he could have remained in the employment until he found new employment that was more to his liking. The Commission also noted that the Claimant did not discuss his concerns with the boat's condition or docking in a port in the United States with his employer and he did not discuss his concerns about contracting COVID-19 with a doctor prior to leaving his job.

[36] Just cause is not the same as a good reason. The question is not whether it was reasonable for the claimant to leave his employment, but rather whether leaving his employment was the only reasonable course of action open to him, having regard to all the circumstances.[8]

[37] The Claimant was not required to secure employment prior to leaving his job. Instead, a claimant has an obligation, in most cases, to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job.[9] In the Claimant's case, his decision to leave his job was made immediately after he was told the vessel would be going to a port in the United States. The Representative said there was no opportunity for the Claimant to look for work while he was on the vessel. The Claimant was on the vessel for five days. He had concerns about contracting COVID-19 and the overall cleanliness of the vessel. The Claimant told the Commission he had been looking for work since he was laid off. However, there is no evidence the Claimant looked for work before he decided to leave his job. As a result, I find the Claimant did not exhaust this reasonable alternative prior to leaving his job.

[38] The Representative said that the job was not suitable because the Claimant could not be accommodated with a private bunk and bath and he would have to dock in the United States. After he was denied EI benefits, he provided photographs to the Commission to demonstrate that the vessel could not be cleaned. I think that it would have been reasonable for the Claimant to bring his concerns about the cleanliness of the vessel to the Captain. He told the Commission, and the Representative confirmed,

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[8] *Canada (Attorney General) v. Imran*, 2008 FCA 17; *Canada (Attorney General) v. Laughland*, 2003 FCA 12

[9] *Canada (Attorney General) v White,* 2011 FCA 190

that he did not do so. As a result, I find that the Claimant did not exhaust this reasonable alternative prior to leaving his job.

[39] Consideration must be given to whether the fact that the Appellant voluntarily left his employment as a result of fears he had of dangerous conditions at his work was the only reasonable alternative.[10]

[40] I recognize that the Claimant had a firm belief that if he was on a vessel that docked in the United States he would contract COVID-19. I also recognize that his fears of contracting COVID-19 were magnified by his belief that he would pass on COVID-19 to his elderly parents when he returned home. However, these concerns were based on what could happen if he were to travel to a port in the United States. He assumed that the rate of infection and the rate of deaths in the United States, as a whole and as reported in the news media, guaranteed he would get COVID-19. He also imagined scenarios where, having caught COVID-19 he would have to remain in the United States and be refused re-entry to Canada. I am sympathetic to the anxiety the Claimant experienced while working on the tugboat. However, there is no evidence that catching COVID-19 would be a certainty or that the way he was expected to perform his job once he docked in the port in the United States was unsafe. The Claimant had performed the same work in a Canadian port and there would be no change in duties when he reached the port in the United States.

[41] I think that it would have been reasonable for the Claimant to discuss his concerns about getting COVID-19 with the Captain to see what safety protocols would be in place or to see if he could be accommodated. I recognize that the Claimant may have thought that he would not be accommodated given that he was hired for five weeks and was new to the company. However, by not discussing his concerns and requesting accommodation the Claimant has failed to make some attempt to resolve the

[10] *Canada (Attorney General) v. Hernandez,* 2007 FCA 320

conflict in his workplace.[11] This means the Claimant did not exhaust this reasonable alternative prior to leaving his job.

[42] I find that the Claimant has not proven that, having regard to all the circumstances, he had no reasonable alternatives to leaving his employment when he did. It would have been reasonable for the Claimant to look for other work prior to leaving his job. It also would have been reasonable for the Claimant to speak to the Captain about the cleanliness of the vessel, or to discuss with the Captain his concerns about catching COVID-19 in the port located in the United States to see if he could be accommodated prior to leaving his job. He did not take any of these actions. Accordingly, I find the Claimant's decision to leave his employment does not meet the test of just cause to voluntarily leave employment as required by the *Employment Insurance Act* and case law described above.

Conclusion

[43] The appeal is dismissed.

Raelene R. Thomas

Member, General Division – Employment Insurance Section

[11] The claimant has an obligation, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job. (*Canada (Attorney General) v. White*, 2011 FCA 190)