



Citation: *AN v Canada Employment Insurance Commission*, 2022 SST 132

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

Decision

Appellant: A. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (441791) dated December 9, 2021 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: January 11, 2022, and February 16, 2022

Hearing participant: No one attended the hearing

Decision date: February 21, 2022

File number: GE-21-2538

Decision

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

[2] The Claimant voluntarily left his job. He hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant didn't have just cause because he had reasonable alternatives to leaving. So he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant stopped working on November 4, 2020. He applied for regular EI benefits on November 23, 2020.

[4] On his application form, the Claimant said his employer dismissed him. But his record of employment said he quit.

[5] In October 2021, the Canada Employment Insurance Commission (Commission) considered the discrepancy between his application form and the record of employment.¹

[6] The Commission decided that the Claimant voluntarily left (or chose to quit) his job without just cause. This meant the Claimant was disqualified from receiving EI benefits. Since the Commission had already paid him benefits, it asked him to repay them.

[7] The Claimant appealed the Commission's decision to the Tribunal. He wants his EI benefits reinstated from October 26, 2021, to December 21, 2021. He also wants his benefit period extended because he says it's impossible to find a job in the current economic climate.

¹ See page GD3-17

[8] I can only hear appeals about decisions that the Commission has already reconsidered.

[9] In the Claimant's case, the Commission has reconsidered its decision about voluntarily leaving. There is no reconsideration decision about the Claimant's benefit period in the file.

[10] So the issue I have to decide is whether the Claimant voluntarily left his job without just cause. I don't have the authority to look at whether his benefit period can be extended.

Matter I have to consider first

The Claimant wasn't at the hearing

[11] A hearing can go ahead without the Claimant if the Claimant had notice of the hearing.²

[12] The Claimant wasn't at the hearing on January 11, 2022. The notice of hearing was emailed to the Claimant. The Tribunal tried to contact the Claimant without success. Even though there was no indication in the file that the email wasn't received, I wasn't satisfied that he had received the email.

[13] I scheduled another hearing for February 16, 2022. This notice of hearing was sent by both email and courier.

[14] I am satisfied that the Claimant got notice of the February 16, 2022 hearing because:

- there is no indication in the file that the email with the notice of hearing wasn't delivered

² Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

- the email was sent to the email address provided by the Claimant in his notice of appeal
- documents in the file show that the notice of hearing was successfully delivered to the Claimant by Purolator.

[15] So, the hearing took place when it was scheduled, but without the Claimant.

Issue

[16] The questions I have to answer are:

- Did the Claimant voluntarily leave his job?
- If so, did he have just cause to do so?

Analysis

The evidence

[17] There is conflicting evidence in the file. For instance, the employer wrote that the Claimant abandoned his job, but the Claimant says the employer knew why he wasn't at work.

[18] So before I can decide the issue in this appeal, I have to decide which evidence I prefer.

– What the Claimant says

[19] In his notice of appeal, the Claimant wrote:

- He had COVID-19 symptoms.
- He had to quarantine for two weeks, from November 4, 2020, to November 18, 2020.
- He tried to call the employer's hotline but there was no answer, not even a ring.

- He told his boss that he couldn't work for two weeks and that the hotline was down.
- His boss said okay, and told him to return to work for his next shift after the quarantine.
- Two days before his quarantine ended, on November 16, 2020, he received a termination letter.
- Contrary to what the termination letter says, the employer didn't try to contact him.
- When his quarantine ended on November 18, 2020, he went to see his employer.
- His employer apologized for his termination but said the paperwork was final.
- His employer agreed to put the Claimant was laid off on his record of employment.

[20] In his application for benefits, the Claimant selected that he was dismissed because his employer considered him unsuitable for the work he was hired to do. The application form indicates that the employer didn't explain why he wasn't suitable for the work.

[21] In his reconsideration request, the Claimant wrote:

- He didn't quit his job.
- He was laid off/fired on the grounds that he didn't show up for work.
- He was sick for two weeks.
- He tried to call the hotline but couldn't get through.
- He told his co-worker instead so that the information could get through.

– **What the other evidence says**

[22] The Commission tried to contact the employer. The employer did not return the Commission's calls.³

[23] The record of employment says that the Claimant quit.⁴

[24] In the termination letter dated November 16, 2020, the employer wrote:

- It had not seen or heard from the Claimant since November 4, 2020.
- It made several attempts to reach the Claimant by phone and email.
- The Claimant didn't return the employer's calls.
- The Claimant didn't tell the employer why he was absent from work.
- The Claimant didn't call the hotline as per its attendance policy.
- The employer assumed the Claimant had abandoned his position.
- His last day was November 16, 2020.

[25] The termination letter was sent by email.

– **Evidence I prefer**

[26] I find that the employer's termination letter is more reliable evidence than what the Claimant has written.

[27] The Claimant's statements are not reliable because they are inconsistent.

Examples of his inconsistent statements include:

- Whom he told he was sick. In the reconsideration request form, he said he told his co-worker. In his notice of appeal, he said he told his boss.

³ See Supplementary Record of Claim on page GD3-26.

⁴ See record of employment on page GD4-14.

- Why he was dismissed. In his application form, he said he was dismissed because the employer didn't find him suited for the job. In his reconsideration request and notice of appeal, he said he was dismissed on the grounds that he didn't show up for work.

[28] I couldn't ask the Claimant about these inconsistencies because he didn't attend the hearing.

[29] I prefer the termination letter because:

- It is only contradicted by the Claimant's inconsistent statements.
- The Claimant hasn't provided any compelling evidence that would call into question the statements made in the termination letter. For example, there are no call logs showing the Claimant tried to call the employer about his absence.
- The record of employment is in line with what the employer wrote in the termination letter.

What it means to voluntarily leave a job

[30] The law says that when I decide if the Claimant voluntarily left his job, I have to consider whether he had the choice to stay or to leave.⁵ If he had the choice to stay and did not, then he voluntarily left his job.

[31] The Commission has to prove that it is more likely than not that the Claimant voluntarily left his job.

– The Claimant voluntarily left his job

[32] I find on a balance of probabilities that the Claimant voluntarily left by abandoning his job. He did this by not attending work for two weeks, not notifying his employer about his absence, and not responding to the employer's efforts to contact him.

⁵ The court said this in *Canada (Attorney General) v Peace*, 2004 FCA 56.

[33] My finding is supported by the Claimant's inaction when he received the termination letter by email on November 16, 2020. I find it likely that if the Claimant had wanted to preserve his job, he would have contacted the employer as soon as he received the November 16, 2020 termination letter. A person wanting to keep their job would have, at the bare minimum, responded to the email, and asked for a chance to explain the situation. But the Claimant chose to wait two days before contacting the employer. His delay shows a lack of interest in trying to keep his job.

What it means to have just cause

[34] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁶ Having a good reason for leaving a job isn't enough to prove just cause.

[35] 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.⁷

[36] It is up to the Claimant to prove that he had just cause.⁸ 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 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.

[37] The parties agree that the Claimant didn't show up for work. The dispute is about whether the Claimant notified the employer about his absence, and whether the employer approved his absence.

[38] The Claimant says he told the employer he was in quarantine and his absence was approved.

⁶ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁷ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁸ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

[39] The Commission says the Claimant abandoned his job by not showing up for work.

[40] As I prefer the termination letter to the Claimant's statements, I find it is more likely than not that the Claimant didn't tell his employer that he wouldn't be at work, and didn't respond to the employer's efforts to contact him.

– **The Claimant had reasonable alternatives**

[41] I find that the Claimant had reasonable alternatives to abandoning his job. They were:

- Asking the employer for time off, either by telephone or email. The Claimant hasn't provided any compelling evidence that he contacted the employer. For example, there are no call logs or emails in the file showing he contacted the employer.
- Answering and responding to the employer's telephone calls and emails. The Claimant says he didn't receive any calls or emails. But based on the termination letter and the employer's apparent refusal to accept the Claimant's explanation, I find it more likely than not that the employer made the efforts it said it did to contact the Claimant.

[42] Because the Claimant had reasonable alternatives to leaving, he didn't have just cause to do so.

Conclusion

[43] The Claimant voluntarily left his job without just cause. This means he is disqualified from receiving benefits.

[44] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section