



Citation: *ES v Canada Employment Insurance Commission*, 2021 SST 929

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

Decision

Appellant: E. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (437526) dated November 4, 2021 (issued by Service Canada)

Tribunal member: Sylvie Charron
Type of hearing: Teleconference
Hearing date: December 9, 2021
Hearing participant: Appellant
Decision date: December 30, 2021
File number: GE-21-2272

Decision

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

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

Overview

[3] The Appellant left his job by resigning on July 29, 2021 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

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

[5] The Commission says that, instead of leaving when he did, the Appellant could have discussed his situation with his employer and the concerns he had for his safety. He could have discussed the possible health concerns more fully with his doctor to properly assess whether the workplace would in fact have been unsafe. Another possibility would have been to go back to the workplace and consider the accommodation of a closed office that he had been granted, instead of demanding to work from home.

[6] The Appellant disagrees and says that before leaving on sick leave in March 2020 he had made a complaint for discrimination based on disability and for psychological harassment against his employer. Later, he was threatened with termination for not disclosing his vaccination status. Furthermore, he was not accommodated when he asked to work from home as he felt the work environment was unsafe. The Appellant then found out that during his absence, his work was done by someone else; he decided to quit as he did not trust his employer.

I will accept the documents sent in after the hearing

[7] At the hearing the Appellant indicated that his brother, a physician, had sent a letter to his employer to support his request to work from home. I indicated that I would accept a copy of this document post-hearing; it was coded as GD7-1 to 3.

Issue

Is the Appellant disqualified from receiving benefits because he voluntarily left his job without just cause?

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

Analysis

The parties agree that the Appellant voluntarily left

[9] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on July 29, 2021. I see no evidence to contradict this.

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

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

[11] 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.

[12] 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

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.

[13] It is up to the Appellant to prove that he had just cause. 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.³

[14] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I have to look at.⁴

[15] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to leaving at that time.⁵

The circumstances that existed when the Appellant quit

[16] The Appellant says that at least three of the circumstances set out in the law apply. Specifically, he says that there were significant changes in his work duties, he was being psychologically harassed, and he was discriminated against because of a handicap. He also claims that his employer has practices that are contrary to law. In his view, these circumstances created a poisonous atmosphere and he did not feel safe to return to the workplace.

[17] At the hearing, the Appellant testified that about two years before his sick leave in March 2020, his employer had slowly reduced his work duties. The Appellant believes that this is because he had asked to leave a few hours before quitting time on certain days to accompany his mother to her cancer treatments. The Appellant testified that he started a proceeding before the Labour Commission for constructive dismissal; this process is ongoing.

[18] Although the Appellant stated these facts in a letter to Service Canada (GD3-38), there is no evidence of the practices that could prove constructive dismissal. The allegations are not documented in the file in any way. There are no examples of what

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

⁴ See section 29(c) of the Act.

⁵ See section 29(c) of the Act.

duty was diminished or taken away, or what changes the employer implemented that might have resulted in less work for the Appellant.

[19] I find that the Appellant has not proven that it is more likely than not that his employer was trying to constructively dismiss him by reducing his work duties.

[20] The Appellant also alleges that he was discriminated against because of a handicap. First, there has to be evidence of a handicap. In this case, there is medical evidence that the Appellant was undergoing treatment for a cardiac condition; a medical certificate dated March 14, 2020 confirms this and that his sick leave would extend until April 13, 2020. (GD3-26)

[21] A further medical certificate dated April 15, 2021, indicates that the Appellant is unfit to work outside the house during the current COVID-19 pandemic because of his medical condition. (GD3-27)

[22] Another medical certificate dated June 22, 2021, says that the Appellant is still unfit to work outside the home because of underlying health concerns, but states that the Appellant could work from home. (GD3-28). I find that this indicates that the only concern is the possibility of infection with COVID-19 if the Appellant were to venture outside the home; it does not point to a disability that would prevent the Appellant from working.

[23] On September 20, 2020, a different physician completed another medical certificate. This one lists the medical conditions for which the Appellant is being treated. Overall, there is nothing serious and the doctor states that the Appellant's situation is stable. This doctor also recommends working from home, as infection with COVID-19 could be more serious for this patient than for another without the underlying conditions. (GD3-20)

[24] This same physician issued yet another medical certificate on June 16, 2021. It is basically is a carbon copy of the earlier one, with the addition of the sentence: "Once 2 weeks have passed following his second COVID-19 vaccine, he will be able to return to work in person". (GD3-30). Given that the treating physician agrees that vaccination

provides enough protection for the Appellant to return to work in person, I find that there is no evidence that disability or medical conditions preclude a return to work in person in this case.

[25] I note that on April 22, 2020, the Appellant's brother, a physician, had also written a medical note to ask the Appellant's employer to consider allowing the Appellant to work from home. He confirms that the Appellant has health conditions that could lead to serious outcomes should he contract COVID-19, and it would be preferable to maintain isolation "even though he is well, healthy and capable of working". (GD7-2)

[26] I find that it is more likely than not that the totality of the medical evidence leads to the following conclusions:

- Despite his stable medical conditions, the Appellant is healthy and capable of working;
- Once he has received two doses of a vaccine, he is fit to return to work in person.

[27] I am mindful of the following evidence:

- The employer stated that all the employees working on-site in the factory are vaccinated; (GD3-24)
- The employer also indicated that they have sufficient PPE for all employees in the factory; this would be provided to the Appellant (GD3-24) and
- The employer offered to have the Appellant work by himself in a closed office to minimize interactions with other staff. (GD3-24)
- The employer insists that all employees attend work in person at the factory, whatever their duties.

[28] I also note the following:

- The Appellant refused to provide proof of vaccination to his employer, saying that he was not required to show such proof. Although the employer has stated that all the other employees are vaccinated and have shown proof of this, the Appellant says that he is not aware of anyone else's status, as no one is required to show proof of vaccination in Quebec.
- The Appellant refused the offer of a closed office because there would be a possibility of meeting other employees in the kitchen, in the washroom or in the hallways, for example.
- In the end, the Appellant refused to return to work, saying that he did not feel safe. (GD3-31)
- The Appellant always insists that he must work from home, given his medical issues and the fact that his duties as Webmaster are performed online.

[29] I also note that there is absolutely no evidence in the file of any outbreaks of COVID-19 in the employer's premises, or any reason to disbelieve the employer's assertions that everyone is vaccinated.

[30] Given all of the above, I find that the Appellant did not want to return to work in person; he seems fully convinced that it is his right to work from home. He consistently maintained that his job of Webmaster could be handled from home. His employer consistently maintained that all employees must work from the factory.

[31] In testimony, the Appellant added that the employer cancelled his health insurance in June 2020 as his sick leave persisted. This was immediately reversed when the employer found out that this was illegal. The Appellant states that it just adds to a pattern of discrimination.

[32] Finally, the Appellant testified that at some point during his leave he found out that someone else was doing his job; that did not sit well with him. He decided to quit.

[33] I find that generally, it is accepted that an employee's health concerns can provide just cause for leaving a job. However, in the present case, I find no evidence of working conditions that would endanger the Appellant's health, especially if he works in a closed office, uses PPE if he has to wander around the factory, and is vaccinated, same as all his fellow employees. The job is not hazardous to the Appellant's health in the stated circumstances. While I understand that the Appellant has concerns, given his health conditions, such concerns have to be reasonable. Here, they are not. The Appellant has no pressing health issue that prevents him from returning to the workplace. Rather, he wants to work from home. The health risk outlined in his first medical certificates, while real, has been much diminished by vaccination in the entire workplace. This has been confirmed by the medical certificate on June 16, 2021; the employee was declared fit to return to work in person fourteen days after his second dose. This is when he decided to quit.

[34] Overall, the medical evidence proves that while the Appellant was unfit for work outside the home for the first months of his leave of absence for sickness, he was eventually cleared to go back to work in person. The Appellant did not attempt to discuss anything with his employer; he just decided to quit when he did, saying he did not trust his employer. There is no evidence that the Appellant attempted to find another job before quitting.

[35] In testimony, the Appellant also stated that the employer had practises that were contrary to law. No firm evidence was offered and there is nothing in the file to substantiate this allegation. I find that the Appellant does not have just cause under this circumstance.

The Appellant had reasonable alternatives to leaving when he did

[36] After considering all of the above circumstances, I find that the Appellant did not have *just cause* to leave his job when he did. I find that the Appellant had reasonable alternatives to quitting, such as discussing the matter with his employer, or going back to work in person with the accommodation of a closed office and determine whether the factory was safe, or even looking for another job and then quitting.

[37] The Appellant simply decided unilaterally that this workplace was not safe for him. He wanted to work from home. He quit without exhausting all reasonable alternatives soon after his doctor stated that he could return to the workplace after his second dose of vaccination.

[38] Considering the circumstances that existed when the Appellant quit, the Appellant had reasonable alternatives to leaving when he did, for the reasons set out above.

[39] This means the Appellant didn't have just cause for leaving his job.

Conclusion

[40] I find that the Appellant is disqualified from receiving EI benefits.

[41] This means that the appeal is dismissed.

Sylvie Charron
Member, General Division – Employment Insurance Section