



Citation: *AM v Canada Employment Insurance Commission*, 2022 SST 254

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

Decision

Appellant: A. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (448405) dated January 20, 2022 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference

Hearing date: March 30, 2022

Hearing participants: Appellant

Decision date: March 31, 2022

File number: GE-22-626

Decision

[1] The appeal is dismissed.

[2] The Claimant 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. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant gave notice to his employer ("X") that he was leaving his job in approximately mid-July 2021. The Claimant had previously established a claim for EI benefits on June 8, 2021. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving his job. 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 must decide whether the Claimant has proven that he had no reasonable alternative to leaving his job.

[5] The Commission says the Claimant could have could have requested a leave of absence from the employer.

[6] The Claimant disagrees and says he thought that leaving the summer program job was an unofficial leave of absence.

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 have to decide whether the Claimant had just cause for leaving.

Analysis

The parties agree that the Claimant voluntarily left

[9] I accept that the Claimant voluntarily left his job. The Claimant confirmed during the hearing that he did contact the employer in approximately mid-July 2021 and gave his notice that he was leaving. I see no evidence to contradict the Claimant didn't voluntarily leave his job.

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

[10] The parties don't agree that the Claimant 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

[13] 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 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.

[14] The Claimant says that he left his job because he injured his back on July 9, 2021, and wasn't able to perform the duties of his job. The Claimant says he had no reasonable alternative to leaving when he did, because he wasn't able to perform the duties of his job as a Child Care Attendant in the summer program.

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.

[15] The Commission says the Claimant didn't have just cause because he had reasonable alternatives to leaving when he did. Specifically, the Commission says the Claimant could have requested a leave of absence or accepted the offer of several weeks off to recover from his injury.

[16] I find the Claimant had reasonable alternatives to leaving for the following reasons:

[17] First: The Claimant could have requested a leave of absence from the employer until he was able to return to work. I realize the Claimant testified that he thought he was on an "unofficial leave of absence." However, the Claimant confirmed that he did leave a message with the employer sometime in mid-July 2021 and indicated: "Please consider this my notice that I cannot return to the summer program, because of my chronic back pain" (GD3-27). On this matter, I'm unable to accept the Claimant's argument that he thought he was on a leave of absence when he told the employer he wasn't returning to the summer program job because of his back pain.

[18] Second: The Claimant could have obtained a doctor's note about his medical condition and inquired about converting his EI regular claim to sickness benefits. I recognize the Claimant did attend a chiropractor for treatment. Nevertheless, the Claimant confirmed he didn't consult a doctor about obtaining a medical note for the employer or consider converting his EI regular claim to sickness benefits.

[19] Third: The Claimant could have secured lighter or sedentary employment before providing his notice to the employer. I realize the Claimant had a back injury and initially wasn't mobile after an accident on July 9, 2021. However, the Claimant testified that his condition started to improve over the summer of 2021. Specifically, the Claimant testified he was "hundred percent" by the week of August 20, 2021. Under the circumstances, the Claimant had the reasonable alternative of taking a leave of absence and securing lighter employment before he voluntarily left his job.

Additional Testimony from the Claimant

[20] I recognize the Claimant testified that even though the employer hired an extra staff member to handle a special needs child in the summer program, they still weren't equipped for the situation without assistance from other staff (including himself). I do realize the employer's workplace was challenging. Nevertheless, the Claimant explained that after working four-days in the summer program he injured his back at home on Friday July 9, 2021. The Claimant indicated he reported his situation to the employer and could not attend work at that point. Nevertheless, the Claimant had the reasonable alternative of requesting a leave of absence from the employer.

Furthermore, the Claimant could have consulted a doctor about obtaining a note for a medical leave or consider converting his EI regular claim to sickness benefits.

[21] I also realize the Claimant explained that by the week of August 20, 2021, his back condition had improved and he was "hundred percent." However, the Claimant indicated that the employer had replaced him in the summer program. On this matter, I wish to emphasize that the Claimant had already provided his notice of leaving to the employer sometime in mid-July 2021. Furthermore, the employer issued the Claimant's Record of Employment on July 15, 2021, and indicated his last day paid was July 8, 2021 (GD3-12)

Conclusion

[22] I find that the Claimant is disqualified from receiving benefits.

[23] This means that the appeal is dismissed

Gerry McCarthy

Member, General Division – Employment Insurance Section