Citation: *CW v Canada Employment Insurance Commission*, 2022 SST 492

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	C. W.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (444641) dated January 7, 2022 (issued by Service Canada)

Tribunal member:	Teresa M. Day
Type of hearing:	Teleconference
Hearing date:	March 29, 2022
Hearing participant:	Appellant
Decision date:	April 1, 2022
File number:	GE-22-442

Decision

[1] The appeal is dismissed.

[2] The Appellant is disqualified from receipt of employment insurance (EI) benefits because he has not shown just cause for voluntarily leaving his job.

Overview

[3] The Appellant applied for regular EI benefits. On his application, he said that he quit his job at X (the dealership) on August 31, 2021. The Commission investigated the reason for his separation from employment, and decided that he quit his job without just cause. The Commission imposed a disqualification on his claim for voluntarily leaving his employment without just cause. This meant he could not receive EI benefits.

[4] The Appellant asked the Commission to reconsider its decision. He said that the job had become very stressful and he could no longer cope. He didn't raise any concerns with the employer because they live in a small town and he didn't want to cause any hard feelings. So he said he was retiring.

[5] The Commission maintained the disqualification, and the Appellant appealed to the Social Security Tribunal (Tribunal).

[6] I must decide whether the Appellant has proven he had no reasonable alternative to leaving his job when he did.

[7] The Appellant says he quit because the pressure of the job got to be too much for him.

[8] The Commission says the Appellant had a number of reasonable alternatives to quitting: he could have spoken to his manager and given the employer a chance to rectify the problem, thereby allowing him to keep his job; he could have consulted his doctor for medical evidence to support leaving his job; he could have asked for time off or a medical leave of absence; and he could have secured more suitable employment before quitting.

[9] I am sympathetic to the Appellant's situation. But for the reasons set out below, I must agree with the Commission.

Issue

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

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

Analysis

Issue 1: Did the Appellant voluntarily leave his job?

[12] According to the Appellant's ROE, he was employed as a parts consultant at the dealership until August 31, 2021, at which time the employer said that he "Quit/Voluntary retirement" (GD3-20).

[13] The parties agree that the Appellant quit (in other words, voluntarily left the job). I see no evidence to contradict this.

[14] The Appellant initiated the severance of the employment relationship when he advised the employer that he would be retiring effective August 31, 2021, at a time when the employer still had work for him. I therefore find that he voluntarily left his job after his last day of work on August 31, 2021.

Issue 2: Did the Appellant have just cause for voluntary leaving?

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

[16] The law says you are disqualified from receiving EI benefits if you left your job voluntarily and didn't have just cause for doing so[1].

[1] Section 30 of the *Employment Insurance Act* (EI Act).

[17] Having a good reason for leaving a job isn't enough to prove just cause.

[18] 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 also says that you have to consider all of the circumstances[2].

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

[20] He must prove this on a balance of probabilities. This means that he has to show it is more likely than not that his only reasonable option was to leave his employment on August 31, 2021.

[21] When I decide whether he had just cause, I have to look at all of the circumstances that existed at the time he quit.

[22] The Appellant says he had just cause for leaving his job because he was given additional duties and the job got to be too stressful for him to handle.

[23] The Appellant testified that:

- He told the employer that he was taking voluntary retirement because he didn't know how to tell his General Manager (GM) that he was going to leave.
- He didn't want to go in there and say 'I quit.'
- He hadn't planned on retiring until age 60. He is only turning 57.
- He planned to work at the dealership for another 4 years, but "the pressure of the job got to be too much".
- The reason he never "complained or anything" to the GM is because he lives in a very small town "and I'm not going to go in there and rant and rave and cause a

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

scene". This is because he "sees these people every day uptown" and still has to deal with the dealership for his own auto needs.

- *"I have to be able to show my face in there."*

- So he said he was going to retire – instead of "storming out there because things were getting out of hand".

- He felt overwhelmed with the amount of work he had to do because the parts manager, "C.", was not often at this desk or available to help[4]. C. might be at work 3 hours out of 8.

- This left a "tremendous amount of work on my plate", dealing with 5 technicians in the back shop, 3 people in the service office, and other matters.

- He talked to other staff members about this. The dealership is very small and the departments are close together, and people were aware that C. was "never there".

- "C. is an alcoholic". He "would fall off the wagon" and not come in for 3 or 4 days at time.

- The Appellant got a text message from the GM while he was off on holiday in 2019 asking him to come in and cover for C. because C. was "unavailable". In 2017, he got a text message while on holiday asking for some computer passwords because C. was "drunk" and not there.

- It there was a customer C. didn't want to deal with, he would just "get up and leave" and the Appellant would have to deal with the customer. It happened a lot and got to be "quite overwhelming".

- The problems with C. had been going on "for years".

[4] The Appellant said there were only 2 of them in the parts department, himself and C..

- The GM had “a couple of conversations with C.”, but “nothing was ever done about it”.

- About a year before he quit, the receptionist quit and the employer decided not to hire a new one. Since the parts counter was right there by the receptionist counter, “we (the Appellant and C.) were asked to take over more of the phone call duties”.

- But within a month of the receptionist quitting, the employer moved the warranty administrator out of her office in the service department and put her at the reception desk. The GM then called the Appellant and C. into his office and said they would now have to “cover off more in the service department”. But this was primarily directed at the Appellant, because he had worked in the service department during his first 2 years at the dealership.

- The GM didn’t really ask them. They weren’t given a choice to do it

- This meant he was going to have to work in 2 departments – his regular job in the parts department, and “covering off” in the service department. And it was “all free, gratis”. He wasn’t going to get paid “any extra” to do this.

- His hours (8am to 5pm, with 1 hour for lunch between 12noon and 1pm) didn’t change, but he had additional responsibilities and stress.

- He did this for 10 or 11 months, and then decided he couldn’t do it anymore. It was too much stress and too overwhelming.

- There was no final incident. There was just too much pressure and he was left to do too many things, especially after he was given the added task of having to cover in the service department. He was upset coming home every day and his wife finally said ‘you have to get out of there for your own health’.

- He had no intention of retiring for another 4 years. He wants to work and he’s starting a new job in May 2022.

- There was a lot of staff turnover in the 13 years that he worked at the dealership. This shows “the amount of stress in the building”.

- He didn’t go to the GM to discuss his workload concerns or talk about the stress he was experiencing - because he “didn’t want to cause any waves”. There was enough going on in the dealership, especially when Covid hit and ¾ of the staff had to be laid off.

- *“It was one other thing that I didn’t want to lay on the GM’s plate.”*

- The GM had already taken a medical leave from the dealership shortly after he first started, and was “still dealing with that added stress”.

- *“I didn’t want to add any more stress on the situation, and I didn’t want to cause any hard feelings with anybody there because I have to deal with those people on a daily basis”.*

- He didn’t ask for a leave of absence or some time off because he didn’t think it would have happened. C. was so unreliable and the employer didn’t do anything about that, “so I figured there was nothing that I could do”.

- He didn’t think saying anything would help, so he just “grinned and bared everything” and came into work and did his job as best he could. But eventually he felt too overwhelmed “and could not do that job properly and to its full potential anymore”.

- He was not actively applying for jobs prior to quitting, but he had been keeping an eye out for positions on the SaskJobs website. Nothing came up until February 2022, when he applied for the job he will be starting on May 1, 2022.

- He never went to a doctor about how he was feeling. He got the odd headache from it, so he came home and “took some painkillers” and dealt with it that way.

- He dealt with everything “all on my own until it got to be too much to handle and I had to leave”.

A) Did the Appellant have just cause for leaving his job because of a change in duties?

[24] The law says that an employee has just cause where there are significant changes in work duties and the employee has no reasonable alternative to leaving the employment[5].

[25] I find that such circumstances did not exist for the Appellant.

[26] The court has said that if the terms and conditions of the employment are ***significantly*** altered, a claimant may have just cause for leaving their position[6]. The court has found just cause where the employer acted unilaterally in a manner which ***fundamentally alters*** the terms of the employment as they existed prior to separation[7].

[27] I must consider the following questions[8]: does the Appellant's version of the facts support a finding that there were significant changes in work duties within the meaning of the law, and, if so, was there no reasonable alternative but to quit on August 31, 2021?

[28] The Appellant worked for the dealership for 13 years before quitting. He spent the first 2 years in the service department, and then he was moved to the parts department, where he worked for 10 years. Then, approximately 1 year before he quit, he and his direct manager, C., were asked to "cover off" some additional duties because of staff turnover. Specifically, there was about 1 month when they had to "cover off" reception duties, and then 10 or 11 months when they had to help cover for the warranty administrator in the service department while she was moved up to reception. Since the Appellant had experience in the service department, this fell mainly to him.

[29] There was no change in the Appellant's schedule, the hours he was expected to work, or his wages.

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[5] Paragraph 29(c)(ix) of the EI Act.
[6] See *Lapointe v. C.E.I.C.*, A-133-95 (FCA).
[7] See *Lapointe, supra*, and *Horslen v. C.E.I.C.*, A-517-94 (FCA)
[8] This was set out by the court in *Chaoui* 2005 FCA 66.

[30] The word “significant” in paragraph 29(c)(ix) of the EI Act requires the change initiated by the employer to be something of importance, something outside of the norm. Minor changes in duties will not constitute just cause for leaving an employment. And a claimant who accepts (or acquiesces to) the change in working conditions, but afterwards decides to leave, will likely no longer have just cause for leaving[9]

[31] The Appellant’s additional duties during the last 10 or 11 months of his employment do not qualify as “significant” because they did not change the nature of his supporting role at the dealership. He was still responding to employee and customer enquiries. And by his own admission, he never objected to performing the additional duties. While he may have thought he should have been paid more for doing so, he also never asked for a raise. It does not appear from his actions that he objected to the new duties.

[32] I therefore find that the Appellant has not proven that he experienced a significant change in his work duties at the dealership.

[33] I also find that he had reasonable alternatives to quitting in response to the change in his duties.

[34] While the change in duties meant the Appellant had to support an expanded roster of queries from employees and customers, his response – namely to quit after 10 or 11 months of doing so – was not reasonable. This is especially the case given that the Appellant was a long-standing employee and on good terms with the GM at the dealership[10].

[35] There are many cases from the court imposing an obligation on EI claimants to try to resolve workplace issues with their employer, or to seek alternative employment, before making a unilateral decision to quit a job[11]. I cannot ignore this obligation.

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[9] See *CUBs 12080,17461, 16064, 27933* and *33231*.
[10] The Appellant testified that they were friends.
[11] Consider the analysis in *White, supra*.

[36] A reasonable alternative to quitting would have been for the Appellant to speak with the GM when he realized the workload was becoming too heavy and the resulting stress was starting to become overwhelming. After asking the Appellant and C. to cover off reception, the employer determined that the dealership needed an employee on reception and addressed the problem by moving the warranty administrator to the front desk. It was incumbent on the Appellant to give the employer a head's up that this solution was also turning out to be problematic and allow the GM a chance to rectify the situation.

[37] A further reasonable alternative to quitting would have been for the Appellant to continue working until he found suitable alternative employment elsewhere – especially since he had been handling the new duties for nearly a year already.

[38] The Appellant pursued none of these reasonable alternatives.

[39] I therefore find that the Appellant has not met the onus on him to prove he experienced significant changes to his work duties such that he had no reasonable alternative but to quit his job on August 31, 2021. This means he has not proven just cause for leaving his job because of significant changes in his work duties.

B) Did the Appellant have just cause for leaving his job because of working conditions that were a danger to his health?

[40] The law says that a claimant who experiences working conditions that constitute a danger to health or safety has just cause for leaving if they had no reasonable alternative but to quit[12] .

[41] I find that such circumstances did not exist for the Appellant.

[12] Paragraph 29(c)(iv) of the EI Act.

[42] Where the detrimental effect on a claimant's health is being proffered as just cause, the claimant must usually: (a) provide medical evidence[13]; (b) attempt to resolve the problem with the employer[14]; and (c) attempt to find other work prior to leaving[15].

[43] I accept the Appellant's testimony that he was feeling overwhelmed and stressed at the time he quit. But he does not have a doctor's note or any contemporaneous medical evidence to support that his job at the dealership was endangering his health and/or that he needed to leave his job for medical reasons. By his own admission, he did not consult a doctor and treated his occasional headaches with over-the-counter medication. If, as his wife suggested, he needed to leave his job for the sake of his health, then it was incumbent on him to consult a doctor prior to quitting.

[44] Similarly, the Appellant did not attempt to resolve his workload issues (the cause of his stress) with the employer or actively look for work prior to quitting.

[45] I therefore find that the Appellant has not proven that he experienced working conditions that were a danger to his health such that he had no reasonable alternative but to leave his job at the dealership on August 31, 2021.

[46] I find that a reasonable alternative to quitting would have been to consult his doctor about the potential need for a leave of absence or to quit his job for medical reasons. I also find that the reasonable alternatives set out in paragraphs 33 to 37 above also apply to this argument.

[47] The Appellant pursued none of these reasonable alternatives.

[48] I therefore find that the Appellant has not met the onus on him to prove he experienced working conditions that were endangering his health such that he had no reasonable alternative but to quit his job on August 31, 2021. This means he has not proven just cause for leaving his job for health reasons.

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[13] *CUB 11045*
[14] See *Hernandez* 2007 FCA 320 and *CUB 21817*
[15] See *Murugaiah* 2008 FCA 10 and *CUBs 18965* and *27787.*

C) Did the Appellant have just cause for leaving because his workplace had become intolerable?

[49] Unsatisfactory working conditions will only constitute just cause for quitting where they are so ***manifestly intolerable*** that the Appellant had no other choice but to leave[16]. Once again, there is a high obligation on a claimant to seek solutions to intolerable conditions before leaving[17].

[50] I find that such circumstances did not exist for the Appellant.

[51] I acknowledge that the Appellant was tired of covering for his alcoholic supervisor, C., and that he was unhappy about having to "cover off" for the warranty administrator in service when she was moved to the reception desk – especially with no extra pay. But these are not conditions in the workplace that could be considered manifestly intolerable. The Appellant had been covering for C. "for years", and helping out in service for 10 or 11 months. There was no final incident, just a gradual awareness that the job was becoming too much for him.

[52] Yet the Appellant failed to take any steps to alleviate these unsatisfactory working conditions.

[53] He was reluctant to tell the employer the truth about why he was leaving. He decided to say he was retiring rather than "cause any waves" by explaining that he was feeling stressed and overwhelmed by the job. He wanted to maintain cordial relations with the people at the dealership because they lived in a small town and he would continue to see them regularly.

[54] I acknowledge the Appellant's personal reasons for using retirement as his excuse for quitting his job. But I cannot ignore that he voluntarily put himself into a position of unemployment without taking steps to first preserve that employment.

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[16] See *CUBs 16704, 12767*, and 11890.
[17] See *CUBs 57005, 57605, 57628, 69200, 69227, 71573*, and *71645*.

[55] A reasonable alternative would have been for the Appellant to speak with the GM and alert him to how stressed he was feeling, and give the employer a chance to look into options to resolve his concerns. The fact that he did not allow the employer to address the issues is indicative of the Appellant's lack of interest in preserving this employment.

[56] A decision to leave a job for personal reasons, such as a negative situation with an alcoholic colleague or feeling overworked and underpaid (as described by the Appellant), may well be ***good cause*** for leaving an employment. But the Federal Court of Appeal has clearly held that good cause for quitting a job is not the same as the statutory requirement for **"just cause"**[18]; and that it is possible for a claimant to have good cause for leaving their employment, but not "just cause" within the meaning of the law[19].

[57] The Federal Court of Appeal has also clearly held that leaving one's employment to improve one's situation – be it the nature of the work, the pay, or other lifestyle factors – does not constitute just cause within the meaning of the law[20].

[58] I find that the Appellant made a personal decision to leave his employment at the dealership.

[59] While I acknowledge the Appellant's desire to reduce his workload and remove himself from a stressful situation with C., he cannot expect those who contribute to the employment insurance fund to bear the costs of his unilateral decision to leave his employment in an attempt to do so.

[60] A reasonable alternative to leaving would have been to alert the GM to his concerns and allow the employer the opportunity to resolve his concerns. Another

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[18] See *Laughland* 203 FCA 129
[19] See *Vairumuthu* 2009 FCA 277
[20] See *Langevin* 2001 FCA 163, *Astronomo* A-141-97, *Tremblay* A-50-94, *Martel* A-169-92, *Graham* 2001 FCA 311, *Lapointe* 2009 FCA 147, and *Langlois* 2008 FCA 18.

reasonable alternative would have been to continue working at the dealership until he found suitable employment elsewhere.

[61] The Appellant failed to pursue either of these reasonable alternatives.

[62] I therefore find that the Appellant has not met the onus on him to prove that he was experiencing working conditions that were so manifestly intolerable that he had no reasonable alternative but to quit his job on August 31, 2021. This means he has not proven just cause for leaving his job because his workplace had become intolerable.

Conclusion

[63] The Appellant had reasonable alternatives to leaving his job at the dealership on August 31, 2021. He did not avail himself of these reasonable alternatives and, therefore, has not proven he had just cause for voluntarily leaving his employment.

[64] This means he is disqualified from receipt of EI benefits.

[65] The appeal is dismissed.

Teresa M. Day
Member, General Division – Employment Insurance Section