



Citation: *CH v Canada Employment Insurance Commission*, 2022 SST 660

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

Decision

Appellant: C. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (451808) dated January 6, 2022 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Teleconference

Hearing date: March 22, 2022

Hearing participants: Appellant (Claimant)

Decision date: March 25, 2022

File number: GE-22-296

Decision

[1] I am dismissing the appeal, with modification to the date of disqualification.

[2] The Claimant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. This means he is disqualified from receiving Employment Insurance (EI) benefits as of August 25, 2021, for this reason.

Overview

[3] The Claimant stopped working on June 24, 2021, to attend his third year of apprenticeship training in plumbing. The training was from June 27, 2021, to July 30, 2021. When the training ended, the Claimant failed to return to work or contact his employer.

[4] On August 5, 2021, the employer received an email from the Industry Training Authority (ITA) stating that the Claimant failed his third-year training. When the employer didn't hear from the Claimant, the manager sent him a text message on August 17, 2021, asking what his plan was. The Claimant replied that he wanted to return to work but he still needed, "a couple of weeks if that's possible."

[5] A few days later, the employer requested that the Claimant contact them. When he didn't respond immediately, the employer decided to terminate his employment. The employer gave the Claimant two weeks' notice. They offered him the opportunity to work the remaining two weeks but the Claimant didn't respond. On September 29, 2021, the employer issued a Record of Employment (ROE) listing the reason for separation as dismissal.

[6] Several months later, the Commission conducted a review. On January 31, 2022, it determined that the Claimant voluntarily left his job, without just cause. It imposed a retroactive disqualification effective August 26, 2021. This decision results in a \$2,750.00 overpayment of EI benefits. The Commission maintains this decision upon reconsideration.

[7] The Claimant disagrees. He appeals to the Social Security Tribunal. He says he didn't quit his job, his employer dismissed him. He is requesting that the overpayment be removed.

Issue

[8] Did the Claimant voluntarily leave or is this a case of dismissal?

[9] If he voluntarily left, did the Claimant have just cause for leaving? If the employer dismissed him, has the Commission shown there was misconduct?

[10] Did the Commission impose the retroactive disqualification within the required time limit?

[11] Can I write off or reduce the overpayment?

Analysis

Voluntary leaving vs. Dismissal

[12] I agree with the Commission that there are cases where the evidence may make it unclear as to the cause of a Claimant's unemployment.

[13] The law has established that what I must deal with is the decision that the Commission made, not that which it might and perhaps, in an exercise of common sense, should have made.¹

[14] In this case, the Commission considered how the Claimant's job ended and imposed a disqualification. The Commission disqualified the Claimant from receiving EI benefits because it determined that he voluntarily left his job without just cause. So, the issue I must determine is whether the Claimant is disqualified from EI benefits.

[15] Parliament linked disqualifications for voluntary leaving and misconduct under sections 29 and 30 of the *Employment Insurance Act* (Act). So if I interpret the facts in a slightly different manner to conclude that the case is one of quitting (voluntary leaving)

¹ *Hamilton v. Canada (Attorney General)*, A-175-87.

rather than one of dismissal, I don't stray from the subject matter I am called upon to consider, which is a disqualification.²

The parties don't agree that the Claimant voluntarily left

[16] The law states that when determining whether a claimant voluntarily left their employment, the question to be asked is whether the claimant had a choice to stay or to leave.³

[17] I agree with the Commission that this is a case of voluntary leaving. This is because the Claimant had the choice to return to work upon completion of his apprenticeship training, but he failed to do so.

[18] The Claimant doesn't dispute that he failed to contact his employer or return to work as soon as his training ended on July 30, 2021. Nor does he dispute that his employer reached out to him on August 17, 2021, to find out what his plan was.

[19] The Claimant says that instead of returning to work at that time, he was trying to get back into school and asked for a couple more weeks off. A few days later when he didn't immediately respond to the employer's request to call them, and he hadn't reported to work, the employer ended the employment, giving him two weeks' notice. The employer then offered him the choice of working those two weeks but he simply chose not to respond.

[20] I recognize that the employer told the Commission that when the Claimant failed to return to work or immediately respond to their request, they dismissed him on August 25, 2021. The employer confirmed that the Claimant was needed at work because there were "definitely hours" for him to work.⁴

[21] After consideration of the facts, as set out above, I find the Claimant voluntarily left his job. It is reasonable to conclude that the Claimant's employment would have continued had he returned to work immediately upon completion of his apprenticeship

² See *Canada (Attorney General) v. Easson*, A-1598-92.

³ *Canada (Attorney General) v. Peace*, 2004 FCA 56.

⁴ See page GD3-22.

training. He had a second chance to return when the employer reached out to him a few weeks later. The employer confirmed that he was needed at work because they had hours for him. So, the facts support that it was the Claimant who initiated the separation from his employment when he failed to show up for work. So, this means he voluntarily left.

[22] I will now determine whether the Claimant had just cause to voluntarily leave his job when he did.

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

[23] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁵ Having a good reason for leaving a job isn't enough to prove just cause.

[24] 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.⁶

[25] It is up to the Claimant 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 leave.⁷

The circumstances that existed when the Claimant left

[26] The Claimant doesn't dispute that he failed to return to work or contact his employer once he completed his third-year apprenticeship training. He admits that it was "irresponsible" of him not to contact his employer. He says he was "bummed out" that he failed his third year so he was fixated on trying to get back into school as soon as possible.

⁵ Section 30 of the Act explains this.

⁶ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁷ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

[27] The Claimant explained how he had been working for the same employer when he attended his second year apprenticeship training. He says that as soon as he completed his second year training, he contacted his manager and they decided he would return to work the following week. When asked why he didn't contact his employer when he finished his third year of training, the Claimant repeated that he was "bummed out" and chose to get his training booked before returning to work.

[28] The Claimant says he was trying to get back into training as soon as possible. He didn't want to return to work without having a date to tell his employer. When asked what he would have done if he got back into training on a date that didn't work for his employer, the Claimant said he would choose to attend his training and reconsider his employment.

[29] The Claimant confirms that he didn't want to return to work when his employer contacted him August 17, 2021. He says that he needed more time to keep trying to get into another training course and to get a battery for his car. Later in the hearing, he contradicted this statement when he said he would have found a way to get to work had he known his employer needed him.

Reasonable alternatives

[30] In my view, the circumstances presented by the Claimant, whether considered individually or cumulatively, do not amount to just cause within the meaning of the Act. This is because the Claimant had reasonable alternatives to leaving his job when he did.

[31] I agree with the Commission that a reasonable alternative would have been for the Claimant to contact his employer and inform them of his status, as soon as his training ended. He could have returned to work upon completion of his course and looked for available courses on-line after work. He also could have returned to work when the employer contacted him on August 17, 2021.

[32] The law has held that in cases where a claimant is absent from work for a long time without permission, they are considered to have voluntarily left, without just cause.⁸

[33] I recognize that the Claimant has made a personal choice to try to complete his apprenticeship training before the ITA separates the plumbing and gas-fitting tickets. Although such a personal choice may constitute good cause, it doesn't meet the requirements to prove just cause for leaving employment and causing others to bear the burden of his unemployment.⁹

[34] I disagree with the Commission's determination that the disqualification is effective August 22, 2021. I find the effective date of the disqualification is August 25, 2021, for the following reasons.

[35] The undisputed evidence is that the employer told the Claimant they were parting ways during their August 25, 2021, telephone conversation. They offered the Claimant a chance to work two more weeks but he failed to respond. The last day they paid him based on the ROE is August 25, 2021. So I find as fact that the separation of employment occurred on August 25, 2021.

[36] I wish to clarify that if I had determined that this situation was a dismissal, which I have not, the facts would have supported a finding that the Claimant lost his employment due to misconduct. This would also result a disqualification from regular EI benefits. The Claimant's actions were wilful, when he chose not to report to work or inform his employer of his absence. This was a conscious and deliberate choice. The Claimant knew or ought to have known that he owed a duty to his employer to report to work or to notify them once he completed his training, as he had done in the past. In addition to being considered voluntary leaving, without just cause, the law also states that failing to notify an employer of an absence constitutes misconduct.¹⁰

⁸ See CUBs 16217, 36997.

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

¹⁰ *Canada (Attorney General) v. Lemire*, 2010 FCA 314.

Retroactive Disqualification

[37] The law states that the Commission can reconsider a claim for EI benefits up to 36 months (3 years) after the benefits were paid.¹¹ If the Commission is of the opinion that the claimant made a false or misleading statement or representation then they may reconsider a claim within 72 months (6 years).¹²

[38] It is understandable that the Claimant wishes that the Commission had reviewed the reasons why his employment ended sooner. If it had, the overpayment amount may have been less. However, this is not evidence that the Commission erred in their review.

[39] In this case, the Claimant collected regular EI benefits starting from August 1, 2021. Based on the documents on file, the Commission began their review on October 21, 2021. The Commission notified the Claimant of the retroactive disqualification on January 31, 2022, which is within the allowable 36-month period to amend claims.¹³ Therefore, I find the Commission didn't err in the review of his claims.

Write off or reduce the overpayment of benefits

[40] The law states that a claimant is responsible (liable) to repay EI benefits that they are not entitled to receive.¹⁴

[41] I don't have the authority to reduce or waive the overpayment.¹⁵ That authority rests with the Commission. I also don't have the authority to order the Commission to waive an overpayment.

[42] I sympathize with the Claimant given the circumstances he presented. My decision is not based on fairness or financial hardship. Instead, my decision is based on the facts before me and the application of the EI law. There are no exceptions and no

¹¹ See subsection 52(1) of the Act.

¹² See subsection 52(5) of the Act.

¹³ See page GD3-40.

¹⁴ See section 43 of the Act.

¹⁵ See sections 112.1 and 113 of the Act.

room for discretion. I can't interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.¹⁶

Conclusion

[43] The appeal is dismissed, with modification to the effective date of disqualification.

[44] The Claimant voluntarily left his job without just cause. This means he is disqualified from receiving regular EI benefits as of August 25, 2021, for this reason.

Linda Bell

Member, General Division – Employment Insurance Section

¹⁶ *Canada (Attorney General) v Knee*, 2011 FCA 301.