



Citation: *CD v Canada Employment Insurance Commission*, 2022 SST 494

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

Decision

Appellant: C. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (445509) dated January 7, 2022 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing date: April 19, 2022

Hearing participant: Appellant

Decision date: April 20, 2022

File number: GE-22-558

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] On September 7, 2021, the Appellant renewed a claim for regular EI benefits¹. He said that he quit his job at X (X). 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 cause². This meant he could not receive EI benefits.

[4] The Appellant asked the Commission to reconsider its decision. He said he did not quit his job voluntarily. On September 1, 2021, the employer told him that he wasn't a good fit for the job and he believed they were going to terminate him. He asked if he could be laid off or resign instead, because he didn't want a dismissal on his record in case he wanted to apply for a different job at X in the future. The employer permitted him to resign and even assisted him with drafting his resignation. He did not look for another job prior to resigning.

[5] The employer told the Commission that they were not going to terminate the Appellant, and were supporting him with additional training and coaching when he quit for personal reasons.

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

¹ The Appellant's initial claim for EI benefits was effective as of May 3, 2021.

² The disqualification was imposed as of August 29, 2021, which was the renewal date of his claim.

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

[8] The Appellant says he quit because the employer was going to terminate him and he didn't want a dismissal on his record because he thought it would prejudice his chances of being re-hired by X at a later date.

[9] The employer admitted that the Appellant was having job performance issues, but denied that they were planning to terminate him. They said he left voluntarily to deal with "domestic affairs"³.

[10] The Commission says the Appellant had reasonable alternatives to quitting: he could have continued working or he could have asked for a leave of absence to resolve any domestic issues he was having.

[11] For the reasons set out below, I agree with the Commission.

Issue

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

[13] 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?

[14] The Appellant agrees that he quit, but denies that he did so *voluntarily*.

[15] He testified that:

- He had no intention of quitting his job at X.

³ See GD3-19. In his resignation letter, the Appellant referred to "domestic affairs".

- He had worked for X for the past 4 years, providing customer service in different departments, for various accounts.
- He had been laid off a few times during that 4-year period – usually when a department moved or an account closed. But then he was re-hired again in another department.
- Prior to his last lay-off, he worked as a customer service representative on the Petro Canada account. Then he was laid off.
- When he was re-hired by X in March 2021, he was assigned to the Nissan account.
- This was a very different type of customer service.
- Previously, he had been helping Petro Canada customers log into their accounts and redeem points and incentives.
- But with the Nissan customers, his role became far more technical. He had to provide technical information to customers about vehicle recalls and other motor vehicle issues of a mechanical and technical nature.
- He was not familiar with this at all, and was putting customers on hold for longer and longer periods of time while he tried to research the answers to their questions.
- Putting customers on long holds was not up to X's "standards". This was the cause of his performance issues.
- The employer was training him, but he was finding the nature of the role to be "too difficult" for him.
- The employer was also "adding things on" to his training, and assigning him additional tasks to the ones he was hired for. Then he would have to do additional training.
- He found that he "couldn't keep up".
- Things were "OK" when he was hired, but later on it became too much for him to cope with. He couldn't handle it.
- He did get extra training for the month of August 2021.
- He was not applying for any other jobs, even though he was having difficulty with this job and had been put back on training again.

- On September 1, 2021, his Team Lead and the Human Resources (HR) representative called him in for a meeting. They said he was not a good fit for the job and was going to be terminated.
- He said that terminating his services “wouldn’t look nice”.
- He asked to be moved to another department, “but they said, ‘No, we are going to terminate your services’.”
- He asked for a lay-off, but they weren’t giving him this option.
- So he asked them, “What I should do?” The HR representative said, “You can resign.”
- He asked if resigning would jeopardize his chances of being re-hired by X in a different, less technical job down the road. The HR representative said it wouldn’t jeopardize any future job possibilities with X.
- So he said he would quit, and the HR representative said, “OK, we will not terminate your services.”
- The HR representative told him to deal with his Team Leader, who would tell him what to do to resign.
- The Team Leader said he was going to send the Appellant a note on the company’s “internal internet connection” about his resignation.
- He just copied that note and sent it back to the Team Leader. That was his resignation.
- He trusted the employer to guide him and advise him. He trusted that what they told him was in his best interest.
- “They are my superiors, so I followed their instructions.”
- He did not apply for any jobs before quitting because he had no intention of quitting prior to the meeting on September 1, 2021.
- The employer wasn’t offering him any further training for his current role, or any other training to do a different role.
- The HR representative said he was terminated effective immediately – as of September 1, 2021.

[16] The employer has denied the Appellant's version of events. The same HR representative that the Appellant testified told him he was terminated "effective immediately" on September 1, 2021" - told the Commission that the Appellant was not going to be terminated, and was being supported with training and coaching. She said he quit on September 1, 2021 for personal reasons, and X issued his ROE accordingly.

[17] I asked the Appellant about why the employer's version of events differed from his? He said there was "some misunderstanding between me and my employer". He insisted that he had no intention of quitting his job, and only quit because the HR representative said that if he didn't quit, they would terminate him.

[18] I asked the Appellant about what he told the Commission during the reconsideration process. He said that, on September 1, 2021, he was told that he wasn't a good fit for the job. And he believed that meant he was being fired, although he acknowledged that he wasn't specifically told he that he was going to be fired and did not receive a dismissal letter⁴. I contrasted this with what he said at the hearing, namely that, on September 1, 2021, he was told he was terminated effective immediately. He answered that:

- He had been receiving extra training in August 2021.
- But during this time, he was also "perturbed" because his sister had died (on August 13, 2021), and it was very upsetting for the whole family⁵.
- Then on September 1, 2021, his Team Leader said the Appellant needed to speak with HR because the Team Leader found he was not fit for the job.
- He asked the Team Leader what was going to happen.
- The Team Leader said, "Maybe you will be terminated".
- In the meeting with the HR representative, she said they were going to terminate his services.
- He asked if he could be put into another department, or given a lay-off, or if he "had to resign".

⁴ See GD3-34.

⁵ At GD3-13, the Appellant told the Commission that he had let the employer know that his sister was in a coma. She passed away on August 13, 2021.

- She said he could resign if he wanted to.
- He asked what would happen if he resigned.
- She said they would not then terminate his services.
- He asked if resigning would jeopardize his chance of future employment with X.
- She said No.
- So that's what he decided to do.

[19] I asked the Appellant why he didn't ask the employer for a leave of absence to mourn his sister's passing, and then return to work when he might be better able to focus on the training and the tasks involved in his job? He said he didn't know he could have asked for a leave of absence, "It didn't cross my mind." He said that the employer had sympathized with him about the death in his family, but never said he could take a leave of absence. If they'd told him about this option, he would have "definitely" have taken it.

[20] The Commission says the employer's version of events is more credible. I agree.

[21] I give greatest weight to the Appellant's statements to the Commission during the reconsideration process that he was **not** specifically told that he was, in fact, fired or even that he was going to be fired, but instead assumed that he was going to be terminated because of the employer's comment that he was not a good fit for the job. This is because the reconsideration agent closely questioned the Appellant on this point and the Appellant's answers were given in response to simple, direct questions. They were also given prior to the negative reconsideration decision on his claim.

[22] When I questioned him about whether he was, in fact, terminated on September 1, 2021, he said the HR representative told him he would "have to leave the office right now and go". If that were the case, why didn't he give this very specific statement to the reconsideration agent? When I questioned him about why he changed his answer, he responded: "She said, 'your services will be terminated because we find you not fit for the job'." He told her he would be applying again to X when another job came up, and the termination would not look good, so she said he could resign. He asked the Tribunal to

grant him EI benefits because there has been a “misunderstanding” between him and the employer. He asked the Tribunal to “pardon” him if he has “made any mistakes”.

[23] The Appellant’s argument is that the employer initiated the severance of the employment relationship on September 1, 2021 by telling him that he was going to be terminated because he was not a good fit for the job. He then asked for the chance to quit instead, because he didn’t want a dismissal on his record.

[24] I do not find this argument to be persuasive. There is no credible evidence that the Appellant was terminated on September 1, 2021. He was not given a written notice of termination. Yet he claims the employer gave him an ultimatum on September 1, 2021: quit or be fired. When he asked the employer to confirm this for purposes of this appeal (see GD3-28 to GD3-32), they declined to do so⁶.

[25] The Appellant’s decision to quit, although apparently spontaneous, was a deliberate act undertaken on the basis of two (2) of his own personal assumptions: that he was likely going to be terminated in the near future given his struggles with the job, and that quitting would look better than being terminated.

[26] I find that it was the Appellant who initiated the severance of the employment relationship when he chose to resign his employment on September 1, 2021. I further find that he did so voluntarily because he chose to act pre-emptively and in a way he believed would be to his advantage.

⁶ According to the ROE, the Appellant’s first day worked was March 23, 2021. This means that by September 1, 2021, he may have been outside of the typical 3-month probationary period that employers utilize to evaluate whether a new employee is a proper fit for a job and can terminate the employee without providing any notice or pay-in-lieu of notice. X may have extended this period with the additional training given to the Appellant, in which case it was open to them to terminate the Appellant without notice on September 1, 2021 and issue the ROE on that basis. There would have been no need to give the Appellant such an ultimatum, and they could simply have issued the ROE on the basis that the probationary period had expired and he was found not suited to the job. But the employer unequivocally told the Commission that they had no intention to terminate the Appellant on September 1, 2021. I cannot ignore this evidence.

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

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

[28] The law says you are disqualified from receiving EI benefits if you left your job voluntarily and didn't have just cause for doing so⁷.

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

[30] 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 circumstances⁸.

[31] It is up to the Appellant to prove that he had just cause⁹.

[32] 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 September 1, 2021.

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

[34] The Appellant says he had just cause for leaving his job because he was going to be terminated and did not want a termination on his record of employment.

A) Did the Appellant have just cause for leaving his job because of undue pressure by the employer to leave?

[35] The law says that an employee has just cause where the employer puts undue pressure on the employee to quit and the employee has no reasonable alternative to leaving the employment¹⁰.

⁷ Section 30 of the *Employment Insurance Act* (EI Act).

⁸ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the EI Act.

⁹ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

¹⁰ Paragraph 29(c)(xiii) of the EI Act.

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

[37] There is no evidence that the employer was deliberately making working conditions so unbearable that it was likely the Appellant would quit. There is also no evidence that the employer pressured or tricked the Appellant into resigning. And a negative performance review or disciplinary action on the part of the employer, no matter how stressful, does not constitute just cause for leaving¹¹.

[38] The meeting on September 1, 2021, after a month of additional training, appears to have been intended to provide feedback to the Appellant. He took the feedback to mean he was going to be terminated because he was not a fit for the job. But the employer's evidence directly contradicts this interpretation. And by the Appellant's own admissions, he was finding the job itself too difficult and could not cope with his duties. He was struggling with his sister's death at the time. I can accept that he may not have intended to quit prior to the September 1, 2021 meeting. But given all of the circumstances at that time, it is certainly possible that the meeting brought that option into focus for him. For these reasons, and the reasons set out under Issue 1 above, the Appellant has not proven that his separation from employment was directed by or at the behest of X.

[39] I therefore find that the Appellant has not proven that he experienced undue pressure by X to leave his employment.

[40] I also find that he had a reasonable alternative to quitting.

[41] I agree with the Commission that the Appellant could have continued working. The meeting with the Team Lead and the HR representative on September 1, 2021 may have been a signal to the Appellant that X was not interested in continuing to employ him in this particular job. But they stopped short of actually terminating him. A reasonable alternative in the circumstances would have been for the Appellant to continue working work and **immediately** start looking for other, more suitable employment.

¹¹ See the decision of this Tribunal in *R.L. v. C.E.I.C., 2016, SSTADEI 518*.

[42] There are many cases from the court imposing an obligation on EI claimants to seek alternative employment, before making a unilateral decision to quit a job¹². I cannot ignore this obligation, or the fact that the Appellant voluntarily put himself into a position of unemployment without first trying to find another job.

[43] The Appellant did not pursue this reasonable alternative.

[44] I therefore find that the Appellant has not met the onus on him to prove he experienced undue pressure by the employer such that he had no reasonable alternative but to quit his job on September 1, 2021. This means he has not proven just cause for leaving his job.

B) Did the Appellant have just cause for leaving because of personal issues?

[45] A decision to leave a job for personal reasons, such as feeling unsuited to the job and overwhelmed by the work (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**”¹³; 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 law¹⁴.

[46] 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 law¹⁵.

[47] I find that the Appellant made a personal decision to leave his employment at X. He knew he was not suited to the Nissan account, as the job was too technical for him and he could not keep up with the training. He believed termination was unavoidable and decided to resign instead - to avoid a potential blemish on his record. I acknowledge the Appellant’s desire to remove himself from a stressful situation at X. But he cannot expect those who

¹² Consider the analysis in *White, supra*.

¹³ See *Laughland* 203 FCA 129

¹⁴ See *Vairumuthu* 2009 FCA 277

¹⁵ 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.

contribute to the employment insurance fund to bear the costs of his unilateral decision to leave his employment in an attempt to do so.

[48] A reasonable alternative to leaving would have been to continue working and immediately start looking for other, more suitable employment elsewhere.

[49] The Appellant failed to pursue this reasonable alternative.

[50] I therefore find that the Appellant has not met the onus on him to prove that his personal issues were such that he had no reasonable alternative but to quit his job on September 1, 2021. This means he has not proven just cause for leaving his job.

Conclusion

[51] The Appellant had a reasonable alternative to leaving his job at X on September 1, 2021. He did not avail himself of this reasonable alternative and, therefore, has not proven he had just cause for voluntarily leaving his employment.

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

[53] The appeal is dismissed.

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