Citation: *GM v Canada Employment Insurance Commission*, 2022 SST 878

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

# Decision

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| **Appellant:** | G. M. |
| **Respondent:** | Canada Employment Insurance Commission |

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| **Decision under appeal:** | Canada Employment Insurance Commission reconsideration decision (447152) dated March 9, 2022 (issued by Service Canada) |

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| **Tribunal member:** | Sylvie Charron |
| **Type of hearing:** | In person |
| **Hearing date:** | July 7, 2022 |
| **Hearing participant:** | Appellant |
| **Decision date:** | August 25, 2022 |
| **File number:** | GE-22-1284 |

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant had just cause because he had no reasonable alternative to leaving. This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

## Overview

[3] The Appellant left his job on September 24, 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 safety concerns with the employer, or filed a complaint with the provincial health and safety regulator. The Appellant could also have looked for another job before quitting.

[6] The Appellant disagrees and says that he brought his concerns about job safety to management on many occasions, to no avail. He believes that there is no point in complaining to the Labour Board, as the company has been around for many years. He admits that he did not look for another job before leaving; as a result, he was off work for about two months.

# Matter I have to consider first

## I will accept the documents sent in after the hearing

[7] At the hearing, the Appellant informed me that he had photographs of the work site where he claims a cave-in occurred; this is what made him quit his job the next day. I viewed the photos on the Appellant's phone at the hearing. He agreed to send them in to add to the file, and I accepted. They are now part of the evidence and coded GD6.

# Issue

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

[9] 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

[10] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on September 24, 2021. I see no evidence to contradict this.

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

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

[12] 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.

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

[13] 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]

[14] 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]

[15] 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]

[16] 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

[17] The Appellant says that at least two of the circumstances set out in the law apply. Specifically, he says that the working conditions were a significant danger to his health and safety, and that some of the employer’s practices were contrary to law.

[18] The Appellant told the Commission that his employer did not provide the workers with adequate supplies, equipment and tools to do their jobs safely. There was an insufficient supply of safety masks, goggles, gloves, earplugs. The employer did not offer a refresher course on safety.

[19] Upon further fact-finding by the Commission during the reconsideration process, the Appellant said that his co-workers were inexperienced, untrained and unqualified, and that his employer did not provide safety training. This was why he felt that his working conditions were unsafe and he felt as if his life was in danger. This was affecting his mental health.

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[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 4.
[4] See section 29(c) of the Act.
[5] See section 29(c) of the Act.

[20] At the hearing, the Appellant admitted that he did not consult his doctor about his anxiety and difficulty sleeping.

[21] Furthermore, the Appellant felt that the employer failed to comply with safety regulations, for example, for removing asbestos safely.

[22] Finally, the Appellant recounted a final incident which was the immediate cause of his resignation. He was caught in a cave-in and he was convinced that his life was in danger.

[23] At the hearing, the Appellant testified that there were safety issues at his job sites. He resented having to work with incompetent people, such as students or co-op personnel. This meant that he had to get out of his machine (he is an excavator and operates a backhoe) and go into the hole to help the other workers, without safety equipment. He felt he was doing everyone's job, without masks or goggles. They were never offered a safety course.

[24] The Appellant admits he is already nervous on the job; if people around him don't know what they're doing, it's even worse.

[25] The Appellant testified that his former company did not have a Health and Safety committee to which he could report the problems.

[26] When a trench collapsed on him, that was the last straw and he quit the next day.

[27] The Appellant submitted photographs of the collapsed trench. They show a job site where there are two trench boxes barely at level with the sides of the trench, and what appears to be a cave-in at the top of the trench. The Appellant testified that the yellow object at the front of the photo is a jumping jack that is 5 feet high; it is buried in sand. The Appellant states that this is what made him feel very unsafe and he quit the next day.

[28] I note that when talking to a Commission representative on January 28, 2022, the Appellant had stated that he had asked for 2 trench boxes for the job site and the

employer only ordered one.[6] However it is clear from the photographs that the Appellant submitted that there were 2 trench boxes.

[29] When advised of the Appellant's allegations, the employer said that the Appellant had attendance issues and would have been fired had it not been for their great need for his services. The employer stated that the Appellant threatened to leave any time attendance was brought up. It was also said that the Appellant never brought up safety concerns. The employer also indicated to the Commission that the Ontario Ministry of Labour are on the job site every day to oversee operations. Furthermore, the employer said that they were unaware of any incident or cave-in as described by the Appellant.[7]

[30] At the hearing, I questioned the Appellant on his attendance record. He stated that he was always in attendance except on some Mondays when he had to accompany his mother to medical appointments. He explained that he would call or text in advance to warn of his lateness or his non-attendance. He explained that having no siblings, he has full responsibility for taking care of his mother.

[31] He further explained that when his mother had a heart attack, he was at the hospital and texted his boss at 3:00 in the morning to say he would be missing work. He was afraid that he would forget with all that was going on. His boss told him never to text in the middle of the night again.

[32] Finally the Appellant testified that all his former co-workers have now left the former employer's workplace; the place was like a revolving door. He reiterated that his former employer did not seem to care for the safety of the employees, and he likes to feel safe. He also emphasized that it's the employer's duty to keep employees safe and he never felt as if this was taken seriously.

[33] I prefer the Appellant's evidence to that given to the Commission by the employer. The Appellant testified clearly, calmly and credibly. He never changed his explanations from what he had written in his Notice of Appeal or what he related to the

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[6] See GD3-31
[7] See GD3-33

Commission. It was clear that the safety situation on the job site was affecting him greatly and that the situation came to a head on the day of the cave-in, when he felt he had no alternative but to quit.

[34] I also find it significant that the Appellant admits he quit without even having another job to go to. It is evident that it was done as a reaction to what he perceived as a life-threatening situation. I find that if you believe that your life is in danger, it is not reasonable to expect one to stay in that situation while looking for another job.

[35] I find it suspicious that the employer would not know of a cave-in on the job site, even if it wasn't a major one, especially if Ministry of Labour personnel were on site daily as claimed.

[36] Given all of the above, I am satisfied that the Appellant has proven that that the conditions on the job site constituted a danger to health and safety of the employees, as outlined in s. 29 (c) (iv) of the Act.

[37] However, I also find that there is insufficient evidence for me to conclude that the employer's general practices were contrary to the law. For instance, there is no direct evidence as to the requirements for safety equipment on the job site for a company the size of the employer's, or the reasons why Ministry of Labour personnel might determine that daily attendance at a job site was a requirement, or the schedule for safety training for such work or the requirement for a Health and Safety Committee.

[38] I therefore find that s. 29 (c) (xi) is not engaged.

[39] The circumstances that existed when the Appellant quit were that a cave-in occurred on the job site where the Appellant was working. The Appellant testified that he was buried in 4 feet of sand and was convinced that his life was in danger. This was a triggering event for the Appellant who testified that he had repeatedly indicated to the employer that there were serious security issues on the job sites, to no avail. The Appellant honestly stated that he had not looked for another job before quitting. When he quit, it was in reaction to the cave-in that occurred the day before.

[40] At the hearing, the Appellant testified that he had found a new job and was working since February 28, 2022. The new company is a larger company and more focused on safety. The Appellant was sent to follow a safety course and showed me a card attesting to his certification.

## The Appellant had no reasonable alternative

[41] I must now look at whether the Appellant had no reasonable alternative to leaving his job when he did.

[42] The Appellant says that he had no reasonable alternative because he sincerely felt that his life was in danger when he was subject to being buried in 4 feet of sand and earth in a trench that they were digging. He quit the next day in reaction to that event.

[43] The Appellant felt at that point that since he had already informed the employer many times that there were safety issues and his warnings were ignored, and that he did not appreciate being in the cave-in, he felt he had no reasonable alternative but to quit.

[44] The Commission disagrees and says that the Appellant could have:

- talked to the employer about his concerns or
- complained to the provincial health and safety regulator or
- looked for other employment before quitting.

[45] I find that as already explained above, the Appellant had brought up his concerns with the employer to no avail. It is not a reasonable alternative to simply do it again, especially after a serious incident on the job site that proves the point that there were safety issues.

[46] The Appellant stated at the hearing that he did not keep a log of issues that were of concern as regards safety. He is more comfortable just texting or phoning. He did not

feel it would lead anywhere to phone the Labour Board, as the company he worked for had been around since the 1970s and nothing had ever been done.

[47] I find that this was not a reasonable alternative at the time the Appellant quit. The cave-in had already occurred and there was nothing the Labour Board could do to diminish the Appellant's anxiety at the time he quit.

[48] Finally, the alternative of looking for another job before quitting was not a reasonable one at the time. The Appellant quit in reaction to an event; this event was at a point in time and unforeseen; there is no way the Appellant could have anticipated reacting the way he did and attempt to find another job beforehand.

[49] Considering all the circumstances that existed when the Appellant quit, the Appellant had no reasonable alternative to leaving when he did, for the reasons set out above.

[50] This means the Appellant had just cause for leaving his job.

## Conclusion

[51] I find that the Appellant isn't disqualified from receiving benefits.

[52] This means that the appeal is allowed.

Sylvie Charron

Member, General Division – Employment Insurance Section