



Citation: *BH v Canada Employment Insurance Commission*, 2022 SST 946

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

Decision

Appellant: B. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (460951) dated March 17, 2022
(issued by Service Canada)

Tribunal member: Leanne Bourassa

Decision date: June 3, 2022

File number: GE-22-1205

Introduction

[1] The Appellant worked at a work site in Fort McMurray and lived in Calgary. He was required to fly in and fly out for his job. He refused to be vaccinated against COVID-19. Because of this, he was not able to board a plane to get to the job site. He was unable to continue working, so he applied for Employment Insurance (EI) benefits. The Respondent refused his claim for benefits because he had left his employment voluntarily while other alternatives were available to him.

Issue

[2] The Tribunal must decide whether the appeal should be summarily dismissed.

The law

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[4] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[5] Subsection 30(2) of the *Employment Insurance Act* states that a claimant is disqualified from receiving benefits if they lost their employment because they voluntarily left their employment without just cause.

Evidence

[6] The Appellant's Application for EI benefits shows that his last day of work was on November 29, 2021. He says that the end of his employment was because of a shortage of work.

[7] The Record of Employment in the file states that the record was issued because the Appellant "quit" and would not be returning to his job as a security guard.

[8] A “Staffing Transaction Form” in the file, signed by the Appellant’s manager on November 24, 2021, says that the Appellant resigned from his job. The explanation was that he “Resigned his position at [worksite] Site”

[9] The file also contains a letter dated November 7, 2021, signed by the Appellant. This letter says “As of November 30th, 2021, I will no longer be returning to work at [employer].” A handwritten note, initialled by the Appellant, says that “Reason is [Appellant] is not allowed on the plane due Covid 19 policy.”

[10] The Respondent’s notes from conversations with the Appellant’s employer show that the Appellant initiated the separation from employment when he sent in a resignation letter. Since the worksite was fly in, fly out, the Appellant would have had to have his vaccinations to fly, which he did not. The Appellant did not ask to be transferred to another site and arrangements could have been made had he asked.

[11] The Respondent’s notes from conversations with the Appellant show that the Appellant refuses to be vaccinated against Covid-19 and because of that, he was not able to board the plane to get to the worksite. He put shortage of work on his application because there were no other jobs with his employer that he could do without vaccination. He said his manager wrote the resignation letter that he signed. The Appellant also confirmed that he did not ask for any exemptions, accommodations or transfers from his employer in order to keep his job.

Submissions

[12] The Appellant submitted that he lost his job because he refused to be vaccinated. He was not allowed on the plane and to work due to Covid 19 policy. He was forced to leave because of the vaccination rules.

[13] The Respondent submitted that the Appellant provided a signed letter to his employer, which shows he initiated the separation of employment, which amounts to voluntary leaving. He failed to exhaust all reasonable alternative prior to leaving. A reasonable alternative would have been to ask for a transfer to a new location that did

not require vaccination. Although a new location may have paid him less, he could have stayed in employment until he found another job that was more suitable to him.

Analysis

[14] When determining if a claimant left their job voluntarily, the burden is on the Commission (in this case the Respondent) to establish that the claimant left the job voluntarily. To decide if an employee left voluntarily, the question to be asked is whether the employee had a choice of whether to stay or to leave.¹

[15] In this case, the letter of resignation and the employer's statements to the Respondent confirm that the Appellant initiated the end of employment. His employer did not ask him to leave, despite the fact he was not vaccinated. The choice to not be vaccinated in order to comply with travel rules, to sign the letter of resignation and to say he was not returning to work was the Appellant's.

[16] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.² 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.³

[17] It is up to the Appellant to prove that he had just cause. He has to show that it is more likely than not that his only reasonable option was to quit.⁴

[18] The parties agree that the employer would have required the Appellant to be vaccinated by November 30, 2021 to continue working on the site the Appellant was assigned to. It is also clear that the Appellant was not going to be vaccinated.

¹ *Canada (Attorney General) v. Peace*, 2004 FCA 56

² Section 30 of the *Employment Insurance Act* (Act) explains this.

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

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

[19] The Appellant was free to refuse to be vaccinated. However, he is not free from the consequences of that choice. In this case, his decision not to be vaccinated impeded his ability to travel and therefore to get to his worksite.

[20] Even if the Appellant did not want to get the vaccination, there were other options available to him to try and stay employed. From the Respondent's notes, I see he could have asked his employer to be moved to another site that did not require vaccination. He could have sought out a medical or other exemption from being vaccinated. He could have asked about a position with his employer in Calgary, so he would not have to fly to get to the worksite. The Appellant told the Respondent he did not ask his employer for anything.

[21] From the evidence in the file, I see that it was the Appellant who told his employer he would not return to work. The Appellant's employer was not seeking to terminate his employment. So, the Respondent has met its burden of showing the choice to leave was the Appellant's.

[22] I also see that the Appellant did not take any steps to try to keep working, despite his refusal to be vaccinated. I see that there were alternatives available to the Appellant that may have allowed him to remain employed. I see that the Appellant did not explore any of those reasonable alternatives. So, the Appellant has failed to demonstrate that in the circumstances there were no reasonable alternatives to leaving his job available to him.

[23] On May 13, 2022, the Appellant was sent a letter advising him of the intention to summarily dismiss this appeal and inviting him to provide any further evidence. In response to this letter, the Appellant sent in arguments against the government policies during the Covid-19 pandemic. No further evidence was provided that would change the facts in this case.

[24] Since there is evidence that the Appellant chose to end his employment rather than considering any of the reasonable alternatives available to him, I see no reasonable chance of success for the Appellant. Therefore I must dismiss the appeal.

Conclusion

[25] The Tribunal finds that the appeal has no reasonable chance of success; therefore the appeal is summarily dismissed.

Leanne Bourassa
Member, General Division – Employment Insurance Section