



Citation: *MH v Canada Employment Insurance Commission*, 2022 SST 874

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

Decision

Appellant (Claimant): N. H. c/o M. H.

Respondent (Commission): Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (462526) dated March 30, 2022 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference

Hearing date: July 26, 2022

Hearing participants: Witness and Representative (Mr. N. H.)

Decision date: July 27, 2022

File number: GE-22-1559

Decision

[1] The appeal is allowed.

[2] The Claimant has shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant 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 Claimant left his job at "X" on August 6, 2021. The Claimant was already on a claim for regular EI benefits starting October 4, 2020. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause. The Commission then imposed an indefinite disqualification on the Claimant effective August 1, 2021. This disqualification caused the Claimant to have an overpayment of \$2,800.00.

[4] The Claimant died on May 17, 2022. On July 6, 2022, the Claimant's brother (Mr. N. H.) was formally advised by the Tribunal he could proceed as the Claimant's representative in the appeal.

[5] I have to decide whether the Claimant has proven that he had no reasonable alternative to leaving his job.

[6] The Commission says that, instead of leaving when he did, the Claimant could have could have consulted a doctor to see if it was safe for him to work in the employer's kitchen.

[7] The Claimant's representative disagrees and says the Claimant didn't quit his job. The Claimant's representative says the Claimant declined to work under unsafe conditions. He further says that owing to heat and poor ventilation in the kitchen the Claimant suffered from headaches, fatigue, and a rash.

Matters I have to consider first

[8] During a Pre-Hearing Conference on July 6, 2022, the Claimant's brother (Mr. H.) asked if he could proceed as the Claimant's representative and provide oral testimony as a Witness. I advised Mr. H. that he could act as a representative and Witness. Specifically, I advised the Claimant's representative that we would start with the evidence portion of the hearing and then proceed to oral submissions.

[9] Before the hearing commenced on July 26, 2022, the Claimant's representative indicated that his camera wasn't functioning for the videoconference hearing. I suggested that we proceed with a teleconference hearing. The Claimant's representative agreed to proceed with a teleconference hearing.

Issue

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

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

Analysis

The parties don't agree that the Claimant voluntarily left

[12] The Claimant's representative submitted that the Claimant didn't quit his job, but declined to work under unsafe conditions. The Commission says the Claimant quit his job on August 6, 2021.

[13] I realize the Claimant didn't submit a formal resignation letter. I further recognize the Claimant's representative argued that the Claimant would have returned to the employer if the unsafe working conditions were resolved. Still, the Claimant made a personal decision to stop working at his job on August 6, 2021. As a result, I accept the Claimant voluntarily left his job.

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

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

[15] 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.

[16] 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

[17] 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 quit.³

[18] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit. The law sets out some of the circumstances I have to look at.⁴

[19] After I decide which circumstances apply to the Claimant, he then has to show that he had no reasonable alternative to leaving at that time.⁵

The circumstances that existed when the Claimant quit

[20] The Witness says one of the circumstances set out in the law applies in this case. Specifically, the Witness says the Claimant's working conditions constituted a danger to health and safety.

[21] I accept the testimony from the Witness on this matter, because his statements were forthright and consistent with the Claimant's statements to the Commission in the

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

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.

Appeal Record. In short, the kitchen where the Claimant worked lacked proper ventilation and the excessive heat (and fumes) affected the Claimant's health. I realize the Commission submitted that the Claimant's original statement that he left his job because the kitchen was too hot for him at his age was "more credible" than his statement that he quit due to the ventilation being broken. Nevertheless, the excessive heat in the kitchen and the poor ventilation were interrelated. In other words, the poor ventilation (or ventilation that didn't work) caused the excessive heat and fumes.

[22] I further recognize the Commission argued that the employer's statement that it was illegal to have a broken ventilation "seemed credible." However, I prefer the Witness testimony that the ventilation system in the employer's kitchen wasn't properly functioning, because he spoke directly to the Claimant about this problem several times in June 2021 and July 2021. Furthermore, the Witness testimony on this matter was plausible and forthright.

[23] In summary, the circumstances that existed when the Claimant quit were that his workplace conditions were unsafe and affected his personal health.

The Claimant had no reasonable alternative

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

[25] The Claimant's representative says the Claimant had no reasonable alternative, because he was experiencing health problems from unsafe working conditions.

[26] The Commission disagrees and says the Claimant could have consulted a doctor to see if it was safe for him to work in the employer's kitchen.

[27] I find the Claimant had no reasonable alternative to leaving, because he was suffering medical problems from the poor ventilation in the employer's kitchen. Specifically, the Claimant was experiencing serious fatigue, headaches, and a rash. I realize the Commission argued that the Claimant could have consulted a doctor to see if it was safe to work in the employer's kitchen. However, the Claimant didn't have access

to a doctor at that the time (August 2021). Furthermore, the Claimant was hospitalized two-months after he left his job and diagnosed with neurocognitive disorder.

Additional Testimony from the Commission

[28] I realize the Commission further submitted that the Claimant could have called the labour board to look into the problem with the ventilation. However, I accept as credible the Witness testimony that the Claimant didn't think contacting the labour board was his responsibility. I accept the Witness testimony on this matter, because his statements were plausible and forthright. In short, I simply cannot conclude that contacting the labour board was a reasonable alternative for the Claimant owing to his limited communication skills and his medical problems at the time.

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

[30] This means the Claimant had just cause for leaving his job.

Conclusion

[31] I find the Claimant isn't disqualified from receiving benefits.

[32] This means the appeal is allowed.

Gerry McCarthy

Member, General Division – Employment Insurance Section