



Citation: *DS v Canada Employment Insurance Commission*, 2022 SST 1343

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: D. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (472449) dated May 6, 2022 (issued by Service Canada)

Tribunal member: Susan Stapleton

Type of hearing: Teleconference

Hearing date: September 27, 2022

Hearing participant: Appellant

Decision date: October 3, 2022

File number: GE-22-1778

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant didn't have just cause because he had reasonable alternatives to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant quit his job driving a truck at a X mine on February 4, 2022. He worked on a three-week rotation, flying in and out of the jobsite. He last worked on December 15, 2021.

[4] He took a full-time Adult Literacy and Basic Education course (the course) from February 7, 2022 until June 20, 2022.

[5] He applied for EI benefits.

[6] The Canada Employment Insurance Commission (Commission) decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

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

[8] The Commission says that the Claimant had reasonable alternatives to quitting when he did. He could have stayed in his job and/or arranged for schooling that wouldn't require him to leave his job.

[9] The Claimant disagrees and says that he had to make a last-minute decision on February 4, 2022 to attend the course. It was a full-time course and it started in a few days. Classes were in the mornings and afternoons on weekdays, so he couldn't have continued working in his job while he took the course. He didn't know if his employer would have given him time off to attend the course, but thought they probably wouldn't have.

[10] He also said that his supervisor and some of his co-workers had harassed him at work on a few occasions. He said this was part of the reason he quit.

Issue

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

[12] To answer this, I first have to decide if he chose to leave his job. Then I have to decide if he had just cause for leaving.

Analysis

The Claimant voluntarily left his employment.

[13] The courts have said that to determine if a claimant voluntarily left his employment, the question to be answered is whether he had a choice to stay in his job or leave.¹

[14] The Claimant testified that he quit his job on February 4, 2022, to go to school. He said he had the choice to stay in his job. I see no evidence to contradict this. This means the Claimant voluntarily left his employment.

What it means to have just cause

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

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

[17] 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.³

[18] It is up to the Claimant to prove that he had just cause.⁴ 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.

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

² Section 30 of the *Employment Insurance Act* (Act) sets out this rule.

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

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

[19] 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 circumstances I have to look at include some set by law.⁵ After I decide which circumstances apply to the Claimant, he then has to show that there was no reasonable alternative to leaving at that time.⁶

The circumstances that existed when the Claimant quit

Referral to take a course

[20] Sometimes, the Commission (or a program the Commission authorizes) refers people to take training, a program, or a course. One of the circumstances I have to consider is whether the Commission referred the Claimant to take his course.

The parties agree that there was no referral

[21] Case law clearly says that if you quit your job just to take a course without a referral, you don't have just cause for leaving your job.⁷

[22] The parties agree that the Claimant didn't have a referral to take the course. The Claimant said in his application for benefits (GD3-3–GD3-30) that he decided on his own to take the course. He confirmed at the hearing that taking the course was a personal decision.

[23] The Claimant said that he missed his flight to work on January 5, 2022 and almost got fired for not calling to let his employer know. He wasn't fired, though, and would have returned to work on January 16, 2022. However, he tested positive for Covid-19 at the airport and had to stay home for two weeks and isolate.

[24] He said that if he hadn't quit, he would have returned to work on the next rotation, around February 9, 2022 (GD3-44).

[25] He said at the hearing that he got accepted into the course in October, 2021.

[26] On February 4, 2022, he made the decision to quit his job and take the course starting on February 7, 2022. February fourth was the final day to let the school know that he would be attending the course. He really wanted to go back to school and further his education. He didn't want to wait any longer. He felt it was a good time to take the course.

⁵ Paragraph 29(c) of the *Employment Insurance Act*.

⁶ Paragraph 29(c) of the *Employment Insurance Act*.

⁷ See *Canada (Attorney General) v Caron*, 2007 FCA 204.

[27] He said he made the decision to quit and go to school without thinking ahead or planning. His mind was on his goal of going to university one day, to become an Engineer. He feels that he should have done things the proper way. Then maybe he could have gotten EI while he took the course.

[28] He said that he could have stayed at his job if he hadn't quit to take the course.

[29] He didn't ask his employer for time off to take the course before quitting. He said that he only called HR after he quit. He was told that he probably wouldn't have been approved to take the course, because of what happened with the missed flight. Also, the course was for four months, which he thinks would be too long to be away from work.

[30] He talked to the school about taking the course outside of his work hours. But it was a fulltime program and had to be taken all at once. He couldn't take it one course at a time.

Harassment

[31] The Claimant said mistreatment by his supervisor and co-workers was also part of the reason that he quit his job.

[32] He said that his supervisor and some of his co-workers had harassed him "a little bit" on a few occasions, "just for fun," making offensive comments to him that were sexual, judgmental and based on his character and body type. They also played jokes on him sometimes. He said this was part of the reason that he quit (GD3-43–GD3-45).

[33] He testified at the hearing that his employer had a policy about harassment in the workplace. It said he was supposed to report such behaviour to his supervisor, the superintendent or Human Resources (HR).

[34] He didn't report this behaviour at work because he is a quiet person and he felt that his supervisor was a good person and he didn't want to get him in trouble. He didn't want his co-workers to lose their jobs.

[35] At the hearing, the Claimant said that this mistreatment wasn't the main reason that he quit. The main reason he quit was to go back to school. If he wasn't going back to school, he wouldn't have quit when he did because of harassment at work. He added that he was thinking about quitting later on because of the mistreatment, but he planned to wait it out for a few months to a year.

[36] I find that the Claimant quit his job on February 4, 2022 to take the course starting on February 7, 2022. I accept that his supervisor and co-workers made offensive comments to him. But that was not why he quit. He confirmed that he wouldn't

have quit if he wasn't taking the course. And he would have quit his job to take the course even if he wasn't experiencing mistreatment from his supervisor and co-workers.

[37] So, the circumstances that existed when the Claimant quit his job on February 4, 2022 were that he was enrolled in a course that started on February 7, 2022. He was not referred to the course. He didn't ask his employer for time off to take the course. He experienced mistreatment by his supervisor and co-workers, but that is not why he quit.

[38] Since he didn't have a referral to take the course, the case law applies. This means he didn't have just cause for leaving his job.

Reasonable alternatives

[39] The Commission says that the Claimant didn't have just cause to leave his job because he had reasonable alternatives to leaving when he did. It says he could have stayed in his job and/or arranged for schooling that wouldn't require him to leave his job.

[40] Regarding his report of harassment, the Commission said that a reasonable alternative to leaving would have been to address his concerns with his supervisor directly. Or he could taken his concerns to the job superintendent or Human Resources to try to have the issue resolved.

[41] The Claimant says that he had no choice but to quit his job when he did, because he was taking a course that started in a few days. He couldn't continue to work at his job at the mine and take the course in his home area at the same time.

[42] I find that the Claimant had reasonable alternatives to quitting his job when he did.

[43] Staying in his job instead of taking the course was a reasonable alternative to quitting when he did. I understand that he had good reasons for leaving his job to take the course. He wanted to further his education and has a goal of going to university to become an Engineer. But it was a personal choice. Quitting to take a course isn't just cause for leaving a job.⁸

[44] Asking his employer for time off to take the course was a reasonable alternative to quitting when he did. He says that HR told him time off "probably" wouldn't have been approved. But he didn't ask HR about it until after he had already quit. He said at the hearing that he should have asked about it earlier and that maybe it would have been approved.

⁸ See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

[45] Considering together all of the circumstances that existed when the Claimant quit his job, I find that he had the reasonable alternatives to stay in his job or to ask his employer for time off to take the course.

[46] It is commendable that he wanted to further his education and advance his career goals. But, this is a personal choice, and it goes against the idea behind the EI plan.⁹

[47] EI is meant to compensate people who are unemployed through no fault of their own. Like any other insurance program, you must meet certain requirements to qualify. In this case, the Claimant does not meet these requirements because he put himself in a position of unemployment when there were reasonable alternatives to leaving his job.

[48] The Claimant did not have just cause to leave his employment. This means he is disqualified from receiving EI benefits.

Conclusion

[49] The Claimant didn't have just cause to voluntarily leave his job. This means that he is disqualified from receiving EI benefits.

[50] The appeal is dismissed.

Susan Stapleton
Member, General Division – Employment Insurance Section

⁹ See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.