



Citation: *GV v Canada Employment Insurance Commission*, 2022 SST 1551

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

Decision

Appellant: G. V.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (461981) dated April 8, 2022 (issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference

Hearing date: July 12, 2022

Hearing participants: Appellant

Decision date: August 29, 2022

File number: GE-22-1402

Decision

[1] I am dismissing the Claimant's appeal. This decision explains why.

[2] The Claimant has not shown just cause for voluntarily leaving his employment because he had reasonable alternatives to quitting when he did. This means that he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left his job on October 4, 2021, and applied for EI regular benefits. The Canada Employment Insurance Commission (Commission) looked at his reasons for leaving. It decided that he left his job voluntarily (chose to quit) without just cause because he had reasonable alternatives to leaving. So, it could not pay him benefits.

[4] I have to decide whether the Claimant has proved that he had just cause (in other words, a reason for quitting that the law accepts). To prove just cause, he has to show that he had no reasonable alternative to quitting when he did.

[5] The Commission says instead of quitting, the Claimant could have tried to resolve the matter with his employer. It argues that he could have complained to the authorities responsible for workplace safety or stayed on at his job while looking for other work.

[6] The Claimant disagrees. He says he left because of a personal conflict with his employer. He says the employer insisted that he repair tires on a truck at the site where it had sunk in the mud, or he would be suspended. The Claimant argues that it would have been quicker and safer to repair the tire ten minutes away at the shop using a machine. He says by threatening suspension, his employer put undue pressure on him to quit.

The issue I must decide

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

[8] To answer this question, I must first look at whether the Claimant left his job voluntarily. If so, I then have to decide whether he had just cause for leaving.

Analysis

The parties agree that the Claimant voluntarily left his job

[9] I find that the Claimant voluntarily left his job. The Claimant agrees that he quit and there is no evidence to suggest otherwise, so I accept it as fact.

The parties disagree on whether the Claimant had just cause

[10] The Commission says the Claimant did not have just cause for voluntarily leaving his job when he did. The Claimant disagrees.

[11] The law says you are disqualified from receiving benefits if you left your job voluntarily and did not have just cause.¹ A good reason is not enough to show just cause. The law says you have just cause if you had no reasonable alternative to quitting.

[12] It is up to the Claimant to prove that he had just cause. He has to prove this on a balance of probabilities.² This means he has to show it is more likely than not that his only reasonable option was to quit.³

[13] When I decide whether the Claimant had just cause, I have to look at all the circumstances at the time he quit.⁴ The law sets out some of the circumstances that may show just cause.⁵ After I decide which circumstances applied to the Claimant, he still has to show that he had no reasonable alternative to quitting that day.⁶

The circumstances when the Claimant quit

What does the Claimant say?

[14] When the Claimant applied for benefits on October 27, 2021, he told the Commission that he quit his job because of personal conflict with his employer. He said the conflict began on the day he left when the employer wanted him to do a job one way

¹ S 30 of the *Employment Insurance Act* (EI Act) explains the disqualification.

² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and s 29(c) of the EI Act.

³ See *White*, above, at para 4.

⁴ See *White*, above, at para 3; and s 29(c) of the EI Act.

⁵ See the list in S 29(c) of the EI Act.

⁶ S 29(c) of the EI Act.

but he believed his way was more efficient. He said doing it the employer's way risked having the tires go flat again the next day and then he would be blamed for poor work.

[15] The Claimant said it would have been much quicker to take the tires back to the shop where there was a special machine for this type of repair. He said the tires were huge, weighing three hundred pounds, and he had to work in a foot of mud.

[16] On February 3, 2022, the Claimant told the Commission that doing the job the way the employer wanted was a safety hazard.

[17] The Claimant also told the Commission that the employer provided proper safety equipment, and there had been no recent accidents or injuries at his workplace. He said he did not explain the safety risk to his employer on the day he quit because he felt that the employer should have known the risks himself.

[18] On March 3, 2022, when the Claimant requested a reconsideration of the Commission's decision to refuse him benefits, he said his job had been causing him anxiety. He said he did not feel safe there.

[19] At his hearing on July 12, 2022, the Claimant said he did not only quit because of the conflict on his last day. He said he had arranged for the use of a company truck in exchange for covering all service calls outside working hours. At first he did not mind doing the calls but he says it started to bother him when the employer began to dock his pay \$100 a week to cover the gas. This meant that he got no overtime pay.⁷

[20] The Claimant also testified that the employer's outburst on the last day surprised him; the employer was usually not like that. The Claimant says he knew the employer needed to keep him so he thought the threat of suspension meant a day or two at home. He did not think it meant dismissal.

[21] But the Claimant said at that point, it was a matter of self-respect and integrity not to give in to the employer's threats. He said he realized that day that the employer did not care about his safety and was treating him like a dog by making him work in the heat and

⁷ The Claimant said he kept no record of the service calls he made.

mud. The Claimant says he could not go along with the employer charging the client for four or five hours to do a manual repair when it would only take an hour back at the shop.

[22] Later in the hearing, the Claimant said he had never been happy at his job because the employer had always been abusive. The Claimant said the employer was like a dictator who wanted everything done his way. Finally, the Claimant said the employer had acted like a savage on the last day and this caused him trauma that he still feels.

What does the Commission say?

[23] The Commission relied on the employer's statements when deciding to disentitle the Claimant.

[24] The employer told the Commission that the Claimant threatened to quit if he had to finish the job at the work site. The employer said there were no safety issues; he provided all the proper safety equipment and another worker finished the job with no problem after the Claimant quit. The employer said the tires were only the size of car tires and he told the Claimant to fix them on site on a dry surface since they had already been removed.

My findings

[25] I find that the circumstances on the day the Claimant quit were that he had a row with his employer that escalated. The employer issued an ultimatum that the Claimant would be suspended if he did not follow orders on how and where to complete the job.

[26] I doubt some of the employer's statements. He tried to minimize the Claimant's concerns by telling the Commission that the tires were only the size of car tires.

[27] However, the Claimant's task was to change the tires on a forklift, which is an industrial vehicle. The evidence does not show exactly how big the tires were that he had to repair on October 4, 2011. But the photos he submitted after the hearing suggest that they were, more likely than not, larger and heavier than car tires.⁸

[28] This makes me doubt the employer's credibility.

⁸ See GD3-4 to GD3-5.

[29] Despite their size and weight, the Claimant managed to remove the tires. So, the dispute was over whether he repaired them on site or at the shop ten minutes away.

[30] Since the employer lacks credibility on the size of the tires, I doubt the credibility of his statement that the Claimant is the one who made threats by saying he would quit. I find it more likely than not that the employer threatened the Claimant with suspension using his authority as the owner of the company. The employer had all the power in this situation.

[31] However, I also have concerns about the reliability of some of the Claimant's statements since his earlier and later statements do not match.

[32] For example, on his application for benefits on October 24, 2021, the Claimant reported that he had to work in one foot of mud. When he spoke to the Commission several months later on February 3, 2022, he reported three feet of mud. This is a significant difference. It suggests an element of exaggeration.

[33] As well, the Claimant did not mention safety issues on his application. The only risk he reported was that the tire repairs would not last. But on February 3, 2022, he said for the first time that fixing the tires in the mud was a safety hazard. On March 3, 2022, he said for the first time that his job had caused him anxiety over his safety.

[34] At the Claimant's hearing on July 12, 2022, he first said the way the employer treated him on his last day surprised him because the employer was not usually like that. Later in the hearing, he said the employer had always been abusive. By the end of the hearing, he reported that the employer's abuse was so severe that it caused him lasting trauma.

[35] The Claimant said his mother completed the application form for him so it was her mistake not to include safety concerns or overtime issues, not his.

[36] But I find it unlikely that the Claimant's mother would have completed the form without knowing why he quit. The form shows that he had her assistance but he is the one who attested to the truth of the information submitted.

[37] Claimants are entitled to give new evidence up to and including their hearing. But initial statements are generally given more weight than those made after the Commission first refuses benefits.⁹

[38] As well, the Claimant made his first statements soon after he quit. His memory would, more likely than not, have been clearer at that point than months later.

[39] So, I find that the Claimant did not show that his reasons for quitting his job on October 4, 2021, included safety concerns. He confirmed that the employer had given him the proper safety equipment. He did not mention safety concerns until months after he quit. I find it more likely than not that he would have checked the “dangerous working conditions” box when he first applied for benefits if that had really been why he quit.

[40] I also find that the Claimant did not show he quit because he was no longer happy about forgoing overtime pay in exchange for use of a company vehicle. “Excessive overtime” is another option he did not choose on his application to explain why he quit.¹⁰

[41] As well, the Claimant said he had not been looking for other work since he enjoyed his job and had no plans to leave on the day he quit before he argued with his employer.

[42] For these reasons, I give more weight to the Claimant’s earlier statements that on the day he quit, it was a heat-of-the-moment decision following an argument with his employer. So, the circumstances that day were that the employer insisted he continue working in the heat and mud and threatened him with a suspension, adding fuel to the fire.

The Claimant had reasonable alternatives

[43] I agree with the Commission that the Claimant still had reasonable alternatives to leaving his job when he did given the circumstances on the day he quit.

[44] The Claimant says he had no reasonable alternative since he felt pressured to quit when the employer threatened him with dismissal. He says he thought the employer was threatening a day or two of suspension rather than dismissal because he knew the

⁹ *Bellefleur v Canada (Attorney General)*, 2008 FCA 13.

¹⁰ See GD3-10.

employer needed him. But he argues that no one should have to work with threats hanging over them and it was a question of his self-respect and integrity.

[45] The Commission says the Claimant had reasonable alternatives to quitting. It says he could have brought his safety concerns to the relevant authorities. He could have tried to resolve his issues with the employer. Or, he could have first looked for other work.

[46] Case law says that claimants have to speak to their employers before quitting.¹¹ Arguing in the heat of the moment is not the same as trying to resolve a conflict.

[47] I agree that threats are not appropriate in the workplace. But claimants have a responsibility not to risk making themselves unemployed and dependent on benefits. They have a responsibility to try to resolve issues with their employer before quitting.

[48] Considering the circumstances when the Claimant quit, I find that he had two reasonable alternatives to leaving when he did.

[49] I do not find that making a safety complaint would have been a reasonable alternative in this case because that process takes time. The flare-up of the conflict and the Claimant's impulsive reaction were both spur of the moment occurrences.

[50] But I find that the Claimant could have tried to resolve his conflict with the employer with a quiet conversation back at the shop after tempers had cooled. After all, this is the first and only conflict that he reported having with his employer. He could also have tried to stay on at his job while looking for other work.

[51] The Claimant's testimony that the employer has since tried to rehire him supports the argument that he had reasonable alternatives to quitting. The Claimant says he got a message that the employer was committed to addressing his issues. This suggests that the employer would have wanted him to stay on once the row was over.

[52] Since he had reasonable alternatives, the Claimant has not shown that he had just cause for voluntarily leaving his job on October 4, 2021. By not trying either of these

¹¹ *Canada (Attorney General) v Murugaiah*, 2008 FCA 10.

reasonable alternatives before he quit, he turned the risk of unemployment into a certainty. So, he is disentitled from receiving EI benefits.

[53] I sympathize with the Claimant's situation but I have to apply the law as it is written.¹² You may be in a tough work situation with a difficult boss but in most cases, to get EI benefits you have to show that you tried all reasonable alternatives to leaving before you quit.

Conclusion

[54] I find that the Claimant is disqualified from receiving benefits because he had reasonable alternatives to quitting his job when he did.

[55] This means that I have to dismiss the Claimant's appeal.

Lilian Klein

Member, General Division – Employment Insurance Section

¹² *Canada (Attorney General) v Knee*, 2011 FCA 301.