



Citation: *LM v Canada Employment Insurance Commission*, 2022 SST 1191

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

Decision

Appellant: L. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (456865) dated February 15, 2022 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Teleconference

Hearing date: September 14, 2022

Hearing participant: Appellant

Decision date: September 20, 2022

File number: GE-22-2280

Decision

[1] I am dismissing the appeal.

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

Overview

[3] The Claimant's last day worked was October 26, 2021. He submitted an application for regular EI benefits on November 22, 2021. He stated on his application that he was no longer working due to a shortage of work.

[4] The Commission established the benefit period effective October 31, 2021. It received a Record of Employment (ROE) from the employer indicating the Claimant was no longer working because of non-compliance with the owner's COVID-19 vaccination requirement.

[5] The Commission looked at the reasons why the Claimant stopped working. It decided that he voluntarily left his job without just cause. So it wasn't able to pay him regular EI benefits. The Commission imposed an indefinite stop payment (disqualification), effective October 31, 2021.

[6] The Claimant disagreed with the Commission and appealed to the Social Security Tribunal's General Division (appeal GE-22-1081). He says that he asked for a lay-off for personal reasons. He says he needed to be home with his spouse who was depressed. He also says if he wants to go back to work all he has to do is call his union dispatch office.

[7] The General Division member assigned to that appeal issued her decision on May 20, 2022. She found the Claimant voluntarily left his job without just cause. The Claimant appealed that decision to the Tribunal's Appeal Division.

[8] The member of the Appeal Division allowed the appeal (appeal AD-22-358). She determined the matter would go back to the General Division for reconsideration by a different member. I am that member.

Matters I must consider first

Prehearing teleconference

[9] I scheduled a prehearing teleconference for August 17, 2022. This is because the Appeal Division Member indicated the Claimant would benefit (if possible) from the Tribunal's navigation service for self-represented appellants. Navigation services are not yet available to regular EI appeals so I held the prehearing teleconference.

[10] On August 17, 2022, the Claimant appeared at the prehearing teleconference. However, the Commission failed to attend. I am satisfied the Tribunal notified the Commission of the prehearing teleconference, so I proceeded in absence of the Commission.

[11] During the prehearing teleconference, I discussed help options available to unrepresented claimants, the requirements on how to proceed at the hearing, the deadline for all documentary evidence was September 9, 2022, the method of hearing, and potential hearing dates.

Issues

[12] Did the Claimant voluntarily leave his job?

[13] If so, has he shown just cause for leaving? In other words, has he shown he had no reasonable alternative but to leave when he did?

Analysis

Voluntary Leaving

[14] The law states that when determining whether a claimant has voluntarily left their job, the question to ask is, “did the claimant have the choice to stay or to leave.”¹

[15] I find that the Claimant voluntarily left his job because he had the choice to continue working. Here is what I considered.

[16] At the hearing, the Claimant said, “Yes, I ended my employment.” He admits that he could have continued working but he chose to end his job on October 26, 2021, so he could spend time at home with his family. I will now determine whether the Claimant had just cause to voluntarily leave his job when he did.

Just cause

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

[18] 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.

[19] 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 that existed at the time you quit.³

[20] 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 it is more likely than not that his only reasonable option was to quit.⁴

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

² Section 30 of the 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.

– **Circumstances that existed when the Claimant quit**

[21] The law sets out some of the circumstances I have to look at.⁵ 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.⁶

[22] At the hearing, the Claimant explained his circumstances in detail. I have summarized those circumstances below.

- He told his boss he had some personal issues at home so he asked for a lay-off. His boss told him the company was only laying off people they don't want to keep or unvaccinated employees.
- He felt he needed to be home with his family so he told his employer to place him on the unvaccinated list. He did this so he could get a lay-off to receive EI benefits.
- His job required him to work up north, away from home. He flew into work for two weeks then flew home for one week. He flew in and out of the airport located in another city, which is approximately 90 minutes away from his home. His wife would pick him up at that airport.
- He says his wife and adult son both struggle with addiction issues. His wife has been depressed since his grandchild died in a tragic accident in 2019.
- His wife was in an accident one time when she was traveling to pick him up from the airport. So he felt it was dangerous for his wife to have to drive to pick him up from the airport.
- He says working away from home was too stressful. He was constantly worrying about the safety of his wife and son, which caused him many sleepless nights while away at work.

⁵ See section 29(c) of the Act.

⁶ See section 29(c) of the Act.

- This last period of work was a tough go for him. He says he was always worrying about the safety of his wife and son. His wife was depressed and just needed him to be home.
- He had originally planned to return to work in the spring of 2022 but the stress in his life has remained. So he is only available to work in the city where he resides.
- He says he is feeling pretty beat up after having to fight for his EI benefits. So he says the thought of being out of town now is troubling for him.
- He has not discussed his stress with his doctor. He says work is not an issue because working is easy for him. The problem is being out of town, which causes him stress. He doesn't sleep properly when at work because he is constantly worrying about the safety of his family.
- The Claimant confirmed that at the time he stopped working, there was still work available. So now says he could have continued working if he wanted to because he was fully vaccinated.
- He agrees he made a choice to stop working as of October 26, 2021, because it was stressful for him to be away. He says he needed to be home to ensure the safety of his family.

[23] There is no provision in the Act for a claimant to prove just cause for leaving employment because of stress stemming from personal issues. The health problem relied upon to establish just cause, must be specific rather than a general stress-related condition, and must be supported by medical evidence.⁷

[24] The Act provides a circumstance where there is an obligation to care for a child or member of the immediate family. I accept the Claimant's testimony that his wife and son are dealing with addiction and mental health issues. But when asked to explain

⁷ See CUB 18965.

what care he was providing for them, the Claimant replied, “my presence – I’m here for them.”

[25] When I asked him to provide details of the care he is providing, the Claimant said he is providing care by checking to make sure his son is still alive each morning. Whether or not “being present” is considered providing care to his family, the law says the Claimant still has to show he had no reasonable alternative but to quit his job when he did.

– **Reasonable alternatives**

[26] When considering all of the evidence, I find the Claimant had reasonable alternatives to ending his employment when he did. Here is what I considered.

[27] I recognize that the Claimant wouldn’t be entitled to EI benefits if he took a voluntary leave of absence. So, this may not have been a reasonable alternative for the Claimant because he says he needed to support his family.

[28] Upon further review of the Commission’s submissions, the Claimant disagrees that he should have asked for a leave of absence. He says he can go back to work anytime he wants. All he has to do is call his union hall and they will dispatch him to work out of town. This is supported by the letter he provided from his union stating they would be happy to send him up north to work should he become available to work out of town.⁸

[29] I agree with the Commission when it states another alternative was for the Claimant to continue working until he secured another job closer to his home.

[30] I recognize that the Claimant said it wasn’t safe for his wife to pick him up at the airport during the winter months and she already had an accident. But a reasonable alternative would have been for him to make different arrangements for transportation to and from the airport such as taking a taxi, bus, car-pooling, or making arrangements to

⁸ See page RGD02.

leave his vehicle at or near the airport while he is out of town working so he could drive himself home.

[31] Another reasonable alternative would have been for the Claimant to explore the possibility of taking sick leave and/or applying for EI sickness benefits if he was too stressed to continue working. At first, the Claimant said he knew this would be his last time working up north. Then he said he had planned to return to work in the spring but hasn't returned because his stress hasn't left. So a reasonable alternative would have been for him to discuss his stress levels with his doctor and follow his doctor's direction.

[32] The Claimant says he hasn't seen a doctor about his stress levels. He also said he is "old school" and doesn't like to tell anyone about his problems. This supports the fact that he made a personal choice to quit his job when he did.

[33] The evidence supports a finding that the Claimant made a personal choice to stop work on October 26, 2021. I recognize he says his responsibility was to be home with his family so he is only available to work in the city where he resides. Although a personal choice may constitute good cause, it doesn't prove just cause for leaving employment and causing others to bear the burden of the Claimant's unemployment.⁹

[34] I sympathize with the Claimant given the circumstances he presented. But my decision is not based on fairness or financial hardship. Instead, my decision is based on the facts before me and the application of the law. There are no exceptions and no room for discretion. I can't interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.¹⁰

[35] When I consider the Claimant's circumstances individually or cumulatively, I find that he had reasonable alternatives to leaving when he did. This means the Claimant didn't have just cause for leaving his job when he did. So he is disqualified from receiving regular EI benefits.

⁹ See *Canada (Attorney General) v White*, 2011 FCA 190; *Tanguay v Canada (Unemployment Insurance Commission)*, A-1458-84.

¹⁰ *Canada (Attorney General) v Knee*, 2011 FCA 301.

Conclusion

[36] The appeal is dismissed. The Claimant voluntarily left his job without just cause as defined by the Act.

Linda Bell

Member, General Division – Employment Insurance Section