



Citation: *X v Canada Employment Insurance Commission and JL*, 2022 SST 1043

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

Decision

Appellant: X

Respondent: Canada Employment Insurance Commission

Added Party: J. L.

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (476424) dated April 25, 2022
(issued by Service Canada)

Tribunal member: Bret Edwards

Type of hearing: Teleconference

Hearing date: September 15, 2022

Hearing participant: None

Decision date: September 27, 2022

File number: GE-22-1673

Decision

[1] The appeal is allowed. I agree with the Employer (Appellant).

[2] The Employer has shown that the Claimant, the Added Party, didn't have 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 a reasonable alternative to leaving. This means the Claimant is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left his job on March 11, 2021 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It initially decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[4] After the Claimant submitted a reconsideration request, the Commission reversed its initial decision and decided that the Claimant voluntarily left his job with just cause, so it was able to pay him benefits.

[5] The Employer has now appealed the Commission's reconsideration decision as they say the Claimant suddenly quit and gave no reason for it.

[6] I must decide whether the Claimant had just cause for leaving his job.

Matter I have to consider first

The Employer and Claimant weren't at the hearing

[7] The Employer and Claimant weren't at the hearing. A hearing can go ahead without the Employer and Claimant if they got the notice of hearing.¹

¹ Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

[8] I think that the Employer and Claimant got the notice of hearing because they provided the Tribunal with an email address on May 6, 2022 and May 25, 2022 respectively and consented to communication via email. The Tribunal sent hearing documents, including the notice of hearing, to those email addresses.

[9] Since I am satisfied that the Employer and Claimant received the notice of hearing, as I see no information that it wasn't successfully delivered, the hearing took place when it was scheduled, but without the Employer and Claimant.

Issues

[10] Was the Claimant laid off or did he quit?

[11] Can the Claimant be paid benefits?

[12] To answer these, I must first address why the Claimant left his job. If I decide that the Claimant quit, I then have to decide if he can be paid benefits by determining whether he had just cause for leaving his job.

Analysis

The parties don't agree that the Claimant voluntarily left

[13] The Employer says that the Claimant quit his job without giving a reason after only three days of working there. They say that they got a text from the Claimant saying he was quitting, but didn't submit it as evidence.² The Record of Employment (ROE) issued by the employer also says the Claimant quit.³

[14] The Claimant disagrees and says that he was laid off because he didn't have the right training for the job. He says that he is a welder and there was a misunderstanding when he was hired. He says he believed he was being hired as a welder when in fact

² GD2-5.

³ GD3-21.

the Employer wanted a fabricator. He says he and the Employer agreed that he would be let go after three days as a solution.⁴

[15] The Commission decided that the Claimant quit, or voluntarily his job, but didn't give any specific reason for this decision.⁵

[16] I find the Claimant voluntarily left his job. In other words, it was his choice to leave and he could have kept working.

[17] In order to determine whether the Claimant voluntarily left his employment, the question to be asked is whether he had a choice to stay or leave.⁶ I also note that in a misunderstanding between a Claimant and employer about the reason for leaving, it cannot automatically be assumed that the Claimant voluntarily left.⁷

[18] While the Claimant says he was actually laid off, he also says that this happened only after the Employer offered him the option to leave. He says that he took this option since the Employer wouldn't sign his apprentice hours like they had past apprentices and he and the Employer agreed that he wouldn't forfeit his two years of welding school to be a fabricator until he was through his third year.⁸

[19] Although the Claimant says the Employer wouldn't sign his apprentice hours and they agreed that he wouldn't forfeit his two years of welding school to be a fabricator, which led him to take the leave offer, this still doesn't imply that he had no choice but to take the offer of leaving.

[20] I note that the Claimant doesn't say that the Employer told him he had to accept the offer to leave or he would be fired and I see no evidence that would support the Claimant couldn't have kept working if he turned down such an offer.

⁴ GD3-23, GD3-42.

⁵ GD4-2.

⁶ See *Canada (Attorney General) v Peace*, 2004 FCA 56.

⁷ See *Bedard c. Canada (Proceur General)*, 2001 FCA 76.

⁸ GD6-1.

[21] I find that the Employer and Claimant's version of events both indicate that the Claimant had a choice to stay or leave. What they each say supports that it was the Claimant's choice to leave his employment as he could have either not quit or not taken the offer to leave.

[22] So, I find that, on a balance of probabilities, the Claimant had a choice on whether to stay or go, which means his leaving was voluntary.

[23] Since I find that the Claimant did voluntarily leave his employment, I now need to determine if he had just cause for doing so.

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

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

[25] The law says that the Claimant is disqualified from receiving benefits if he left his job voluntarily and didn't have just cause.⁹ Having a good reason for leaving a job isn't enough to prove just cause.

[26] The law explains what it means by "just cause." The law says that the Claimant has just cause to leave if he had no reasonable alternative to quitting his job when he did.¹⁰

[27] It is up to the Claimant to prove that he had just cause.¹¹ 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. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

⁹ Section 30 of the *Employment Insurance Act* (Act) explains this.

¹⁰ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

¹¹ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

[28] The Employer says that the Claimant suddenly quit via text message after only three days of working there. It says the Commission made a mistake in deciding the Claimant had just cause.¹²

[29] The Claimant says that he left his job because he didn't have the right skillset to work there. He says he and the Employer had a misunderstanding about the type of job he was hired for.¹³

[30] The Claimant says that he's a welder and thought he was hired to be a welder, but in fact the Employer wanted a fabricator. He says that he and the Employer met to discuss the situation after his third day of work. He says that the Employer wasn't willing to sign his welding apprenticeship hours and he didn't want to forfeit his 2 years of welding school to be a fabricator, so the Employer offered to lay him off instead. He says that he accepted this offer.¹⁴

[31] The Commission says that the Claimant had just cause for leaving. It says that his explanation for leaving work because the job was not suited to his skillset after giving it a trial period is credible.¹⁵

[32] I find that the Claimant didn't have just cause for leaving because he had two reasonable alternatives that he didn't explore.

[33] First, I find the Claimant could have kept working for the Employer while searching for and securing another job.

[34] I understand that the Claimant says that he wasn't suited for the job. But as I've previously found, the evidence supports that the Claimant had a choice to keep working for the Employer, so he could have kept working, while searching for and securing another job more to his liking.

¹² GD2-5.

¹³ GD3-23.

¹⁴ GD3-42, GD6-1.

¹⁵ GD4-2.

[35] I also understand that the Claimant says his employer wouldn't sign his welding apprenticeship hours and he didn't want to lose them. But I find there's no evidence that the Employer specifically told him or even implied that he would lose these hours if he didn't take the offer to leave.

[36] So, there is insufficient evidence to show that the Claimant would have lost his welding hours if he had kept working for the Employer while searching for and securing another job.

[37] Second, I find the Claimant could have asked the Employer about the possibility of alternative work.

[38] I note that there is no evidence from the Claimant or Employer that the Claimant ever discussed with the Employer the possibility of different work before he chose to leave voluntarily. While it's entirely possible the Employer may not have had any alternative work, this was still a reasonable option the Claimant didn't explore before he voluntarily left.

[39] Considering the circumstances that existed when the Claimant voluntarily left his job, the Claimant had reasonable alternatives to leaving when he did, for the reasons set out above.

[40] I therefore find that the Claimant didn't have just cause for leaving his job.

Conclusion

[41] I find that the Claimant is disqualified from receiving benefits.

[42] This means that the appeal is allowed.

Bret Edwards
Member, General Division – Employment Insurance Section