



Citation: *HB v Canada Employment Insurance Commission*, 2023 SST 358

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

Decision

Appellant: H. B.
Representative: Craig Floden

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (437128) dated September 26,
2022 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Videoconference

Hearing date: March 23, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: March 23, 2023

File number: GE-22-3185

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant 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 Appellant was working as a truck driver. He was attacked at work by several co-workers and felt that he couldn't return to work until the employer had taken some action to deal with his attackers. The employer wanted the Appellant to provide a written statement in order to start an investigation, but eventually it just wanted to drop the issue entirely. A year later, the employer sent the Appellant a letter asking him to return to work by September 15, 2021, or they would consider him to have quit.

[4] The Appellant didn't return to work. He was traumatized by the attack. He felt that if his attackers didn't have any consequences, then he could be attacked again.

[5] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for not returning to work. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[6] The Commission says that, instead of leaving when he did, the Appellant could have given the employer a written statement about the incident, gotten a medical note and taken sick leave, and looked for another job if he felt he couldn't return to that one.

[7] The Appellant disagrees. He gave his written statement to his lawyer, but the employer wouldn't answer his lawyer's calls. He didn't get a medical note or look for another job because he was hoping the employer would resolve the situation with his co-workers and he could return to work.

Matter I have to consider first

The Appellant's appeal was returned to the General Division

[8] The Appellant first appealed his denial of EI benefits to the Tribunal's General Division in November 2021. At his hearing, he testified about an incident that occurred at work. He said that he had prepared a written statement about this incident shortly after it happened. The Tribunal member asked him to provide a copy of his written statement following the hearing, which he did.

[9] The Appellant's written statement about the incident was a bit different than his testimony. There were some details that the Appellant testified about that weren't in the written statement. The Tribunal Member decided that the written statement was a more reliable accounting of what had happened because it was written closer in time to the incident. The Member dismissed the Appellant's appeal, in part, because he didn't believe the Appellant's testimony.

[10] The Appellant appealed this decision to the Appeal Division. The Appeal Division Member found that the Appellant should have been given a chance to address the differences between his written statement and his testimony. Especially since it was an important part of the General Division Member's decision. The Appeal Division Member ordered the appeal to be returned to the General Division for a new hearing. This decision is a result of that hearing

Issue

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

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

Analysis

The Appellant voluntarily left his job

[13] I find the Appellant voluntarily left his job.

[14] To decide if the Appellant voluntarily left his job, I looked at whether he had a choice to stay or leave the job.¹

[15] The Appellant was employed as a truck driver. He had worked with the employer for eight years when he was attacked and threatened at work by two of his co-workers. Following the incidents, he had to take ten days of sick leave for quarantine and then had previously planned vacation time.

[16] When he returned to his job, he found that he was too anxious to work. He was afraid of being attacked again. The employer hadn't taken any action to resolve the issue with the co-workers, so he felt the employer wouldn't protect him from any future incidents. He told the employer he had to go home, and that he would return to work when the issue with the co-workers was resolved.

[17] In September 2021, the employer sent the Appellant a letter telling him that he had to come back to work. The letter said that if the Appellant didn't return to work by September 15, 2021, they would consider the Appellant to have quit his job.

[18] The Appellant said he didn't respond to this letter. The employer hadn't taken any steps to resolve the issue with his co-workers. And he couldn't go back to work because he was too afraid and anxious.

[19] Voluntarily leaving your job includes situations where you refuse to resume your employment.² This is the case for the Appellant. The evidence is clear that he had the choice to return to his job and didn't do so.

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

² This is set out at section 29(b.1) of the *Employment Insurance Act (Act)*.

[20] I understand that the Appellant had good reasons for not going back to work. But he had the choice to stay employed at the time that his employment ended. So, he voluntarily left his job.

The Appellant had just cause to leave his job

[21] I find the Appellant has shown that he had just cause to leave his job when he did.

[22] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.³ Having a good reason for leaving a job isn't enough to prove just cause.

[23] 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.⁴

[24] It is up to the Appellant 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.⁵

[25] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I have to look at.⁶

[26] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to leaving at that time.⁷

³ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

⁶ See section 29(c) of the Act.

⁷ See section 29(c) of the Act.

The circumstances that existed when the Appellant quit

[27] The Appellant says that the principal reason he couldn't return to his job is because he felt unsafe.

[28] In August 2020, he was attacked and threatened by two of his co-workers. He gave detailed testimony of the attacks, including that he was physically assaulted, yelled at, and threatened by one co-worker while he was out on a delivery. The co-worker blocked his exit by parking in front of his truck and then attempted to pull the Appellant out of the cab. The co-worker was yelling in his face. The Appellant was extremely shaken by this attack. He contacted his manager during the attack. After it was over, the manager told the Appellant to continue working and stop by the office after his shift.⁸

[29] At the end of the day, the manager told the Appellant to write up a statement about what had happened. The Appellant went back to his truck to finish up his paperwork for the day. Then, another co-worker pulled up beside the Appellant and started yelling at him. He threatened to beat the Appellant because of what had happened earlier with the other co-worker. The Appellant got out of his truck and walked away, but his co-worker followed him. He pushed the Appellant. The Appellant told him that was assault and then left.

[30] The Appellant gave compelling testimony about how these attacks had affected him. He was traumatized. He couldn't sleep. He started having anxiety attacks. He provided several medical notes that support he is still experiencing high levels of anxiety related to this incident.⁹

[31] The co-worker who had physically attacked him was involved with a notorious criminal gang. He was also the Appellant's union representative. He felt the employer and the union would protect the co-worker. He was afraid that he would somehow be

⁸ The Appellant provided slightly differing accounts of the incidents that occurred that day. One account was in a written statement dated August 18, 2020 (GD08-6 to GD08-9). The other account was repeated by the Appellant in his conversations with the Commission, his request for reconsideration, his Notice of Appeal, and his testimony in both General Division hearings. The Appellant explained why his written account was missing some information at this hearing. His explanation was reasonable and his testimony was credible. So, I accept his testimony about these events without reservation.

⁹ See RGD03-5 to RGD03-9 and RGD08-3 to RGD08-4.

blamed for the incident. He was afraid that he might be attacked again. He thought this was definitely going to happen if the employer didn't take any action to reprimand the attackers.

[32] The Appellant had to take some sick leave and then had a previously planned vacation. He returned to work on September 4, 2020, but it didn't last long. He had an anxiety attack shortly after he arrived. He was alone at the terminal preparing his truck for the day and started to panic that he might be ambushed. He was friends with two of his supervisors at work and they had told him privately to watch his back. That the attacker could come back while the Appellant was alone in the yard and there wouldn't be anyone around to help him.

[33] The Appellant called his manager and told him that he had to stop working. He said that he couldn't return to work until the issue with his co-workers was resolved. He meant that the employer had to take some action to calm the co-workers down or discipline them. Whatever it would take to mean they wouldn't go after the Appellant again.

[34] The employer and the union Vice President had asked the Appellant to provide a written statement about the incidents. The Appellant was reluctant to do so because he felt the employer and the union would take his co-worker's side. He wanted to be sure the evidence about the incident was going to be fair. He didn't want the co-worker to read his statement first and then write something up after that. That would give him the ability to change his account based on what the Appellant had said.

[35] The Appellant wrote up his statement and hired a lawyer. He asked the lawyer to give the statement to the employer once the employer had also received the co-worker's statement. This way neither party could see the other's statement first.

[36] The Appellant's lawyer tried to contact the employer, but the employer refused to answer his calls and didn't return any messages. The Appellant asked the employer to speak with his lawyer, but the employer still wouldn't do it. Eventually, the employer told

him they wouldn't be proceeding with any investigation into the incident. They wanted the Appellant to forget about it and just return to work.

[37] The Appellant felt he couldn't return to work. He didn't feel safe. The employer hadn't taken any action to protect him from the co-workers who had attacked him. And he was still traumatized by the incidents that had occurred. His mental health was negatively affected by the thought of working in those conditions again.

The Appellant had no reasonable alternative

[38] The Commission says that the Appellant didn't have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says he could have given the employer a written statement about the incidents that occurred. He could also have given the employer the medical notes showing that he couldn't return to work and taken sick leave from work. Finally, he could have looked for another job before he left.

[39] The Appellant says these were not reasonable alternatives for the following reasons.

[40] First, he had made numerous good faith attempts to give his employer his written statement. He wanted to ensure the employer followed a fair process, so he gave his statement to his lawyer. He asked his lawyer to pass it along to the employer, once the co-worker's statement was also received.

[41] The Appellant's lawyer contacted the employer numerous times, but the employer refused to take his calls and wouldn't call him back. The Appellant asked the employer to talk to his lawyer and get this resolved, but the employer wouldn't do so and wouldn't explain why.

[42] The Appellant and his lawyer spoke to the union's Vice President to try to reach a resolution. The Vice President told the Appellant's lawyer that he would get an impartial party to review the incident. The lawyer would give the union the Appellant's statement once the Vice President found someone. The Vice President said he would contact the Appellant when that happened. But, he never contacted the Appellant about it again.

[43] The employer eventually told the Appellant that they wouldn't do an investigation of the incidents at all. They told the Appellant that he should forget about it and return to work.

[44] Overall, the Appellant says that he tried to provide a written statement through his lawyer but the employer dropped the investigation, anyway, so it was not a reasonable alternative to him leaving.

[45] Second, the Appellant believed he would be returning to his job as soon as the employer resolved the issue with his co-workers. He didn't ask for a medical leave of absence or look for another job because he was waiting for the employer to take steps towards that resolution. It was only in September 2021, when the employer informed him that they were dropping the investigation, that the Appellant realized that he wouldn't be able to return to work.

[46] The Appellant gave credible and uncontested testimony about the anxiety and other health symptoms he has experienced as a result of being attacked at work. This was supported by several medical notes he provided, as well as an assessment by his counsellor. Therefore, I accept the Appellant was experiencing mental and physical health issues because of being attacked at work.

[47] I also find it credible that the Appellant was unable to return to his job because of the fear that he could be attacked again. This was a reasonable fear as there is no evidence the employer took steps to discipline the attackers, despite its zero-tolerance Violence Policy.¹⁰ For this reason, I find that returning to his job was not a reasonable option for the Appellant because the working conditions made him unsafe and had a negative impact on his mental health.

[48] When I consider all of the Appellant's circumstances, I find that he had no reasonable alternatives to leaving his job when he did. This means the Appellant had just cause to voluntarily leave his job.

¹⁰ See GD03-27 and GD02-14 to GD02-18.

Conclusion

[49] I find that the Appellant isn't disqualified from receiving benefits.

[50] This means that the appeal is allowed.

Catherine Shaw
Member, General Division – Employment Insurance Section