



[TRANSLATION]

Citation: *DB v Canada Employment Insurance Commission*, 2023 SST 892

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

Decision

Appellant: D. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (579265) dated March 16, 2023 (issued by Service Canada)

Tribunal member: Leanne Bourassa
Type of hearing: Teleconference
Hearing date: March 31, 2023
Hearing participant: Appellant
Decision date: April 11, 2023
File number: GE-23-838

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. He didn't have just cause because he had reasonable alternatives to leaving when he did. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left his job with his first employer on August 31, 2022, to go back to work in construction. His job with his new employer ended on November 21, 2022. The Claimant applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving his job with his first employer. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[4] I have to decide whether the Claimant has proven that he had no reasonable alternative to leaving his job with his first employer.

[5] The Commission says that instead of leaving his job when he did, the Claimant could have tried to resolve his pay slip issues before leaving his first employer. It says that he didn't have reasonable assurance of another job in the immediate future.

[6] The Claimant disagrees and says that he left his first employer when he did, not because of pay issues, but because he had confirmed that he would start another job in the coming weeks.

Issue

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

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

Analysis

The parties agree that the Claimant voluntarily left his job with his first employer

[9] I accept that the Claimant voluntarily left his job. He agrees that he quit on August 31, 2022. I have no evidence to contradict this.

The parties don't agree that the Claimant had just cause for voluntarily leaving his job with his first employer

[10] The parties don't agree that the Claimant had just cause for voluntarily leaving his job on August 31, 2022.

[11] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ Having a good reason for leaving a job isn't enough to prove just cause.

[12] The law explains what it means by "just cause." It 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.²

[13] 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 that it is more likely than not that his only reasonable option was to quit.³

[14] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when he quit. The law sets out some of the circumstances I have to look at.⁴

¹ See section 30 of the *Employment Insurance Act* (Act).

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

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

⁴ See section 29(c) of the Act.

[15] 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.⁵

The circumstances that existed when the Claimant quit

[16] The Claimant says that one of the circumstances set out in the law applies. Specifically, he says that he had reasonable assurance of another job in the immediate future.

[17] I find that one of the circumstances set out in the law existed when the Claimant quit his job. He had reasonable assurance of another job in the immediate future.

[18] I am also of the view that, when he left, the Claimant was uncertain about his pay. The lack of a fixed schedule and issues with unexpected trips also caused problems with finding childcare for his daughter.

[19] The Commission found that the Claimant left his job with his first employer because he had concerns about his salary and benefits.

[20] I disagree that these concerns were the only circumstances that led him to leave his job.

– The circumstances set out in the law

[21] I find that the Claimant left his job because he had reasonable assurance of another job in the immediate future.

[22] At the hearing, the Claimant explained that, even though he wasn't satisfied with his situation with his first employer, he didn't intend to leave that job until he had confirmation of another job. When he got the attestation from his new employer, he left his job.

[23] The Commission is of the view that the Claimant didn't have a formal job offer before leaving the one he had. It explains that he only had confirmation of the opening

⁵ See section 29(c) of the Act.

of the applicant pool for construction projects and an offer conditional on the acceptance by the Commission de la Construction du Québec [Quebec Construction Commission] (CCQ).

[24] The Claimant submitted a document, dated August 31, 2022, entitled [translation] “Attestation of Employment with Guaranteed Hours.”⁶ This document confirms that the Claimant was hired as a [translation] “skilled labourer” for at least 150 hours over a period of no more than three consecutive months.

[25] This document shows that, when the Claimant left his job with his first employer, he had assurance of another job.

[26] As the Commission mentioned, I note that this document doesn’t confirm the date the Claimant started working for this new employer. But, I don’t agree that this can’t be a confirmed job offer in the immediate future.

[27] In my view, the document shows that, as of August 31, 2022, the new employer expected the Claimant to work for it. The reality of the construction industry is that the employer could not have confirmed a job if it didn’t have a project in progress, about to start. It hired people who could work on this project.

[28] It is true that there were some steps the Claimant had to take with his union and he had to wait for the CCQ’s confirmation before starting to work for the employer. Those were only administrative steps that could not have started without the employer’s signed confirmation of employment.

[29] I also note that the confirmation of employment signed by the new employer doesn’t mention any conditions the Claimant had to meet before being employed. It simply says that the hiring took place.

[30] The Claimant also submitted a document, dated August 26, 2022, entitled [translation] “Employment Guarantee.” The document explains that, in addition to his

⁶ See GD2-3.

new employer, another construction company was ready to hire him. He chose not to go to work at that company because he found that his new employer was better at communicating. But, this shows that, when he left, the Claimant had two job opportunities in the immediate future.

[31] The parties disagree because the employer told the Commission that the Claimant didn't start working until October 3, 2022. But, the Claimant provided a copy of a pay slip showing that he worked from September 18, 2022.⁷ So, I find that September 18, 2022, is the first day the Claimant worked for the employer.

[32] The Claimant also said that when he left his job with his first employer, he expected to work almost right away. His experience also led him to believe that the CQQ's confirmation would take only a few days, not weeks.⁸

[33] So, I am of the view that, when the Claimant voluntarily left, he had reasonable assurance of another job in the immediate future.

– **Other circumstances**

[34] I am also of the view that the Claimant had some disagreements with his employer about his pay slips.

[35] Also, his work site and schedule with his first employer varied from day to day, making it difficult for him to make childcare arrangements for his daughter which made him feel bad.

[36] The Claimant told the Commission that he was upset that he hadn't received a paper pay slip that would allow him to validate the amounts he had been paid by the employer. He was also unhappy with the irregular work schedule, which also affected his ability to properly meet his obligations to his daughter.

⁷ See GD8-29.

⁸ In the past, as a contractor's son, he had been approved quickly which may have led him to have unreasonable expectations.

[37] He said that he expected \$19 per hour and didn't know if the deposits to his bank account reflected his hours worked. He says that employees could access the pay slips only by using software he says he never had an access code for.

[38] The Claimant added that the lack of a fixed schedule and commuting from one work site to another meant that he was never sure he would be back home to pick up his daughter and care for her when she was with him.

[39] While I accept that the Claimant didn't leave his job just for these reasons, I find that those circumstances existed when he left. I also note that the Claimant confirmed that he considered his employment with the first employer to be only temporary until he had the opportunity to return to construction work.

The Claimant had reasonable alternatives

[40] Case law in a similar case leads me to find that the Claimant had reasonable alternatives to leaving his first job on August 31, 2023 [sic].

[41] The Claimant says that he had no reasonable alternatives, since his first employer would not pay him right away, and once he found another job, he expected to start working at any moment.

[42] The Commission disagrees and says that the Claimant could have resolved his access issue with the payroll department before leaving his first job. He also could have waited until his new employer called him before leaving his first job.

[43] I agree with the Commission that the Claimant could have discussed his access to information about his earnings with his employer. He alleges that he never had an access code for the payroll software. The employer seems to have told the Commission that the Claimant never told it he had problems accessing the payroll system.

[44] From his statements at the hearing, I am not satisfied that the Claimant wanted to resolve the issue with his pay slips. Instead, he decided to find another job that would allow him to leave his first employer for a construction job.

[45] The Commission says that it wasn't urgent for the Claimant to leave his job before resolving the problems with his employer. It argues that the new employer's project hadn't started when he left and that he could have waited for the CCQ to confirm it and for his new employer to call before leaving his first job.

[46] The Commission also says that the hiring attestation indicates that the Claimant was going to work for the new employer for at least 150 hours over a period of no more than three months. It says that the position isn't equivalent to the one the Claimant was leaving.

[47] I considered that, on August 31, 2022, the Claimant had a hiring attestation from his new employer and that he expected to start work shortly. But, I must note that that attestation confirmed only 150 hours of work over three months and didn't mention the start date of that period.

[48] So, I have to conclude that the Claimant left an indeterminate full-time job for a job that guaranteed only 150 hours of work. So, when he left, the Claimant risked being unemployed when he finished his 150 hours with the new employer.

[49] This situation is similar to the facts described by the Federal Court in one of its decisions.⁹ In this case, the Court found that for a job deemed seasonal, its duration has to be considered when deciding whether leaving is the only reasonable alternative.

[50] As in the case cited in the previous paragraph, I am of the view that the Claimant left his job with his first employer to improve his situation. His new job offered him a higher salary and the chance to access other construction job opportunities, while giving him the chance to complete the project he was hired for.

[51] The Claimant's new job wasn't strictly seasonal, but it only guaranteed 150 hours of work. By accepting this position, the Claimant risked being unemployed in the not too distant future.

⁹ See *Canada (Attorney General) v Langlois*, 2008 FCA 18.

[52] The Court has already explained that it is the responsibility of an insured person not to put themselves in a situation where they are at risk of being unemployed.¹⁰ By leaving his permanent job for a job that guarantees a limited number of hours of work, the Claimant risked being unemployed once the 150 hours were over.

[53] The Claimant submitted documents that show that he worked several weeks for the new employer. This doesn't change the fact that, when he left his first job, he didn't know if he would work more than 150 hours for the new employer.

[54] While his desire to improve his situation is commendable and understandable, case law leads me to find that the Claimant had reasonable alternatives to voluntarily leaving his job on August 31, 2022. He could have tried to resolve his pay issues with his first employer or he could have waited until his new employer had the necessary approvals to start its project and called him to work.

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

[56] This means that the Claimant didn't have just cause for leaving his job.

Conclusion

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

[58] This means that the appeal is dismissed.

Leanne Bourassa
Member, General Division – Employment Insurance Section

¹⁰ See *Tanguay v Canada (Unemployment Insurance Commission)*, [1985] F.C.J. No. 910 (C.A.).