



Citation: *AG v Canada Employment Insurance Commission*, 2022 SST 1617

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

Decision

Appellant: A. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (459555) dated March 23, 2022 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing dates: August 16, 2022 and September 21, 2022

Hearing participant: Appellant

Decision date: September 22, 2022

File number: GE-22-1271

Decision

[1] The appeal is allowed.

[2] The Claimant (who is the Appellant in this appeal) has proven he had no reasonable alternative but to leave his employment at P on September 27, 2021.

[3] This means he is ***not*** disqualified from receiving employment insurance (EI) benefits for voluntarily leaving his job without just cause.

Overview

[4] The Claimant was laid off from his employment at P on April 23, 2021 and applied for regular EI benefits. In September 2021, while on claim, he received an offer of recall but refused to return to work because he was offered a demoted position. The employer then issued a Record of Employment (ROE) that said he quit his job at P after his last paid day of work on September 27, 2021. The Respondent (Commission) investigated the reason for the Claimant's separation from employment, and decided that he quit his job without just cause. The Commission imposed a disqualification on his claim for voluntarily leaving his employment without just cause. This meant he could not receive EI benefits starting from September 26, 2021¹.

[5] The Claimant asked the Commission to reconsider its decision. He said he had been demoted, the employer had intentionally caused him mental distress, and he could no longer tolerate the toxic work environment. He also said he was experiencing mental health problems as a result of the employer's conduct towards him.

[6] The Commission maintained the disqualification, and the Claimant appealed to the Social Security Tribunal (Tribunal).

[7] I must decide whether the Claimant has proven he had no reasonable alternative to leaving his job when he did.

¹ See decision letter at GD3-33.

[8] The Claimant says he declined the offer of recall because it was a significant demotion in pay and responsibilities, and because the employer was harassing him at work, which created a toxic work environment and affected his mental health. He says he had no reasonable alternative but to leave the employment.

[9] The Commission says the Claimant had a number of reasonable alternatives to quitting when he did: he could have returned to work when recalled, thereby preserving his employment; he could have consulted his doctor for medical evidence to support leaving his job; and could have secured a more suitable job before quitting.

[10] I agree with the Claimant. These are the reasons for my decision.

Issue

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

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

Analysis

Issue 1: Did the Claimant voluntarily leave his job?

[13] Yes, he did.

[14] According to the Claimant's ROE, he was employed by P until September 27, 2021, at which time the employer said that he "Quit" (GD3-16).

[15] The parties agree that the Claimant voluntarily left the job. I see no evidence to contradict this.

[16] The Claimant initiated the severance of the employment relationship when he advised the employer he would not be accepting the offer of recall. In doing so, the

Claimant refused to resume his employment at a time when the employer had work for him².

[17] I therefore find that he voluntarily left his job after his last paid day of work on September 27, 2021.

Issue 2: Did the Claimant have just cause for voluntary leaving?

[18] The parties do not agree that the Claimant had just cause for voluntarily leaving his job when he did.

[19] The law says you are disqualified from receiving EI benefits if you left your job voluntarily and didn't have just cause for doing so³.

[20] Having a good reason for leaving a job isn't enough to prove just cause.

[21] 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.

[22] It is up to the Claimant to prove that he had just cause⁴.

[23] He must 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 leave his employment on September 27, 2021.

² Section 29(b.1)(ii) of the *Employment Insurance Act* (EI Act) provides that voluntarily leaving an employment includes the refusal to resume an employment. If that happens, the voluntary leaving is deemed to occur when the employment is supposed to be resumed. In the Claimant's case, the employer made an offer of recall on September 14, 2021 and asked the Claimant to resume employment on September 24, 2021 (see GD3-29). The Claimant and the employer disagree on whether the Claimant worked for 2 days after that. The Claimant says he was still learning about the terms and conditions of the recall offer and did not work after receiving the offer. On September 28, 2021, he sent an E-mail notifying the employer he would not be returning to work. The ROE issued by the employer indicates the Claimant was paid until September 27, 2021. I will use September 27, 2021 as the date of the voluntary leaving, but for the reasons set out under Issue 2 below – I accept that the Claimant did not return to work under the offer of recall.

³ Section 30 of the EI Act.

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

[24] When I decide whether he had just cause, I have to look at all of the circumstances that existed at the time he quit⁵.

[25] The Claimant says he had just cause for leaving his job because the offer of recall was a demotion, and because the employer's behaviour towards him created a toxic workplace and was affecting his mental health.

[26] At the hearing, the Claimant testified that:

- He never wanted to quit.
- P laid him off "for no reason" in 2020 and again in April 2021.
- P had no intention of recalling him after either lay off because they had decided to get rid of him.
- When they called him back in September 2021, it was only after his lawyer had put P on notice that he intended to sue for wrongful dismissal and intentional infliction of mental distress⁶.
- P didn't actually want him to come back to work. They just wanted to avoid paying him anything for his lawsuit.
- He started as a sales rep with P in 2011, when it was a small operation.
- After 1 year as a sales rep, he was promoted to Assistant Manager of sales. The next year, he was promoted to Sales Manager. After that, he was promoted to Business Development Manager.
- As a manager, he had sales representatives working under him.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the EI Act.

⁶ A copy of the Claimant's draft Statement of Claim can be found starting at GD3-53.

- After 10 years of working for P, the business was “booming” because of his efforts. He was getting commissions for large sales and bringing in new clients, and his compensation was growing every year.
- At the time of his lay-offs, he was bringing in very high value clients and large orders for P.
- There are 2 owners of P. He reported directly to these individuals. They were his boss.
- The owners decided they wanted him “out” so they could save his salary and “grab” his commissions by taking the profit-generating clients he had brought in – for themselves.
- So they laid him off in May 2020 for 1.5 months. But they didn’t have his personal connection to the clients, so they brought him back to make sure he introduced them to all of his clients so they could take over when they got rid of him.
- Between July 2020 and December 2020, the two owners of P forced him to introduce them to “every single one” of his clients – either over the phone or by videoconference.
- In this way, the owners began making the connections the needed to work his clients without him.
- For most of his time at P, the workplace environment was stressful and “difficult” because of the way the 2 owners behaved. They regularly yelled and screamed at people, and they were very rude to the employees.
- For approximately 9 years prior to the lay off in May 2020, he tried to keep his head down and focus on his work. P was growing and becoming more profitable, and he wanted to keep his job.

- But in December 2020, his relationship with the two owners took a strange and unexpected turn.
- What he previously considered to be “difficult” and rude behaviour towards him “suddenly went from bad to intolerable”.
- The 2 owners started deliberately humiliating and embarrassing him at work. They also escalated their “yelling and screaming” at him at work.
- He now believes the owners had come to the point (after having him introduce them to all of his clients) where they thought they could manage without him and could save what they were paying him. So they decided to get rid of him.
- In one early instance, he was drafting his annual Christmas and New Year greeting to his clients when one of the owners came by and looked at what he had on his screen. The owner laughed loudly and “belittled” him for his wording. The owner mocked him for even sending such a thing. Yet this owner knew the Claimant did this every year, and had never made any prior comments. But this time – December 2020 – the owner openly ridiculed him in front of a group of colleagues.
- The owners knew he was “emotional” and would feel “hurt” by such events.
- Between December 2020 and his second lay off in April 2021, the owners did these types of things “hundreds of times a day” to get him to quit.
- In another instance, the owner openly started talking about the Claimant’s compensation in front of a group of co-workers. The Claimant’s annual base salary was \$52,000 at the time, and he was paid commissions on top of that. The owner loudly proclaimed in front of the group that he was “giving” the Claimant \$120,000 in salary per year.

- This was not only untrue, it was humiliating because the Claimant then had to correct him and say that his total compensation never even added up to \$120,000. The entire exchange was stressful and inappropriate, and he felt humiliated by the way the owner was “throwing this figure around” and spreading false information in front of co-workers.
- The owners also started regularly using profanity with him, which was “very condescending”.
- In yet another instance, one of the owners came out to speak to a group of sales employees and was “raging” about the drop in their sales figures – but the figures were false. The Claimant, as manager for sales, E-mailed the owner afterwards to correct him. In that same E-mail, he asked why the owner was bent on humiliating the Claimant in the tirade. The Claimant asked to have a discussion to resolve things, but it never happened.
- This escalation in ugliness towards him was new behaviour from the owners. The owners were making a point of belittling him every day.
- Also starting in December 2020, the owners suddenly became reluctant to pay his commissions. And they started to question him “on everything”.
- His clients gave him “glowing references” and were very satisfied. And he was still bringing in new clients, “even in Covid”.
- But the owners started to “outright refuse” to pay commissions on his new referrals, even though he had developed these clients himself. The owners said they did not consider these to be his clients and flatly refused to pay any commissions on these accounts.
- Between December 2020 and April 2021, the owners intentionally caused him mental distress by this new behaviour and these unilateral changes. It was negatively affecting his mental health and he felt like he “couldn’t even breathe” at work.

- He consulted his family doctor, who referred him to a psychiatrist.
- The psychiatrist never said he had to quit his job. The advice was 'talk to the employer and try to resolve these things or find another job'.
- Then in April 2021, P laid him off.
- There was no communication whatsoever with P for over 4 months - until the Claimant's lawyer put them on notice he was going to sue them for wrongful dismissal and intentional infliction of mental distress.
- After that, P called him back to work in September 2021.
- But when they did, it was a demotion.
- The recall offer said he would go from being the Sales Manager to an "inside sales representative".
- An inside sales rep is the lowest sales role there is. It is even lower than the role he started in 10 years earlier.
- An inside sales rep is not a management role, and it meant he would be below the sales reps who had been working under him.
- It also meant he would only be dealing with P's "inside clients" and would not be allowed to "go out and get other clients" that he could earn commissions for.
- And it meant he would not be entitled to the commissions on orders from the clients he had prior to the lay-off. The clients he had built over 10 years of employment with P.
- His base salary annual base salary would still be \$52,000 – but that would be it. There would be no opportunity to earn commissions.
- This demotion represented a significant drop in his compensation.

- His commission earnings had gone up in 2020 – even though he’d been laid off for 1.5 months that year. They had gone up “even more” in 2021. Now he would be limited to the \$52,000 base salary.
- It was an insult.
- The owners knew he’d never accept this lower position or compensation.
- And he knew he couldn’t continue to be treated like this, couldn’t continue to experience the mental health problems he had developed, and couldn’t accept such a big drop in earnings.
- He had no choice but to turn down the offer of recall, and told the employer he would not be returning to work.
- So they got their wish. He was no longer working for P and the owners now had all of his clients and commissions – without having to pay him anything.

[27] I asked the Claimant if he started looking for another job after the problems with the owners started escalating in December 2020? Or after his lay-off in April 2021? He said that:

- The employment contract he originally signed with P contained a “6-month non-compete clause”, so he had to be conscious of that.
- It was also “Covid time” and difficult to look for work. There also weren’t any jobs to be found.
- But he did start looking around in December 2020, and has E-mail records of his job search efforts.
- After he declined the recall on September 28, 2021, he found a new job starting in November 2021.

- But like his witnesses (see paragraphs 30 and 31 below), he also found out that he had been getting a “bad” reference from P and this had been hindering his job prospects since he was laid off.

[28] I agreed to accept evidence of the Claimant’s job search efforts starting from December 2020. The Claimant submitted 478 pages of job search evidence on August 19, 2022 (at GD15 and GD15A), and a copy was provided to the Commission.

[29] The Claimant also had 2 witnesses give evidence in support of his appeal (MM⁷) and (RS⁸). These witnesses provided written statements (which the Claimant filed prior to the hearing at GD12-4 and GD12-5, respectively), and testified at the hearing.

[30] MM testified that:

- She worked for the 2 owners of P for approximately 15 years, before leaving in May 2020. For 9 of those years she was a co-worker of the Claimant.
- The Claimant is a very calm, respectful and helpful co-worker.
- The P workplace was “a toxic environment” and the behaviour of the 2 owners was “ridiculous”. Their typical way of dealing with employees was to yell and scream and use profanity. They regularly confronted an employee in front of all the other employees – even though there was a conference room that could have been used for privacy. This was humiliating for the employee involved and upsetting to the rest of the staff.
- Whenever an employee objected to such treatment, the owners had a standard answer: ‘You know where the door is.’
- Everybody at P just wanted to keep their jobs, so they kept their heads down and just walked away.

⁷ M. M.

⁸ R. S.

- Everybody wanted to leave, but there weren't a lot of opportunities.
- In her case, they let her go "without severance or anything" after 15 years – after she had a disagreement with one of the owners. They told her she could go and get another job if she didn't like the decision she had objected to.
- Then she was terminated.
- And after that, they put out "a bad word" as her reference, so she couldn't get a job for a very long time. She discovered the owners had given her a very bad reference after she had been on "multiple interviews" with an employer and not been hired. She contacted the employer to ask why, and they said her reference from P was "bad".
- This is how the owners are. They are vindictive. In addition to getting rid of an employee through humiliation and without paying proper severance, they give the employee a very bad reference so the person can't get a job anywhere.

[31] RS testified that:

- She worked as a graphic designer for P for 2 years – from 2014 to 2016.
- The Claimant was the "Marketing Manager" during that time, and she worked closely with him.
- She enjoyed working with the Claimant and the clients, but the workplace environment was "not friendly".
- Although she didn't personally have much interaction with the 2 owners, she observed their "abusive behaviour" towards the Claimant and MM. She saw "the shouting" and "all that happened".
- But everyone just wanted to keep their jobs.

- In 2016, she was laid off “out of the blue”. One of the owners “just told me not to come in the next day”.
- They told her it was due to a shortage of work, but she knew that was not the case. One of her co-workers told her there was no shortage of work.
- She didn’t get her accumulated vacation pay or any termination pay when she was laid off – even though what they did was effectively a termination.
- She was “lucky” that her next employer never asked for a reference from P.

[32] I reviewed the Commission’s representations at GD10 with the Claimant and asked him to respond to the Commission’s concerns. I also asked him:

- a) Why did he initially tell P that he would return to work if the toxic workplace was toxic⁹? He answered that:
- After he was laid off in April 2021, he heard nothing from P.
 - He applied to “many companies”¹⁰ but had no luck.
 - Eventually, he consulted a lawyer about his rights. His lawyer sent P a letter on August 12, 2021 notifying them the Claimant intended to sue for wrongful dismissal and intentional infliction of mental distress.
 - The offer of recall arrived on September 14, 2021¹¹.
 - He recognized that it was a “lesser position” but on September 23, 2021, he “said yes”¹² because he had to feed his family and had not found another job yet.

⁹ The Claimant’s initial response to the recall can be found in the E-mail exchange at GD3-73 to GD3-75.

¹⁰ The Claimant referred to his job search evidence at GD15.

¹¹ See GD3-29.

¹² See GD3-30.

- But the situation with the commissions for his existing roster of clients wasn't initially clear. They were still discussing the terms of the recall.
- His return to work date was set for Friday, September 24, 2021.
- But over the next 2 days, the owners started giving him pieces of information about his new role. They said he would be working from home – not in the office. They said he would have to use his own computer – they would not allow him to use his computer from work. They said he would have to use his own phone – they would not return his work cellphone. They said his first task would be to develop a business plan – but they would not allow him access to the client list or any of the other tools and information he would need to prepare a business plan.
- Then they told him he would not be earning any commissions at all – even on his own clients.
- By September 27, 2021, it was clear to him from the way the owners were interacting with him that they intended to continue to humiliate him and isolate him. Their attitude towards him hadn't changed. If anything, it had gotten worse. He couldn't go back to even worse humiliation than before – he just couldn't do it.
- He told the owners this was a demotion and the situation with his commissions was unacceptable. But they didn't address either issue.
- He realized they had just made the offer of recall to avoid the lawsuit his lawyer had threatened to bring.
- And he saw he was being set up to fail. So he changed his response and, on September 28, 2021, told them he would not be returning to work after all¹³.

¹³ See GD3-73.

- He disputes the ROE and adamantly maintains he never did any work under the offer of recall.

b) What efforts did he make to resolve the antagonistic employer-employee relations? He answered that:

- He did speak to the owners about their behaviour “many times”, but the response was always the same - to deflect and suggest he could go elsewhere.
- He also sent E-mails attempting to defuse and resolve things, and these are included in his Notice of Appeal (GD2).
- By April 2021, the owners just refused to dialogue with him because they wanted him to leave. There was no hope of resolving anything.
- Then they laid him off.
- But before that, the owners had been openly recruiting a new employee to replace him. They were using a “recruitment company” and the interviews were “happening in front of me”.
- “As soon as” the Claimant declined the recall, a new employee went into the role right away. This was a savings of approximately \$30,000 for P. The owners were never going to change their true desire to get rid of the Claimant.

c) Why couldn't he accept the recall and work until he found another, more suitable job? He answered that:

- The demotion was insulting and humiliating. As an inside sales representative, he would be a level below the position he started at 10 years earlier, which was a commissioned sales rep.

- The demotion was just a continuation of the harassment, abuse and mental distress the owners had been inflicting on him since December 2020.
- He was not given the tools to do the task they were asking him to do on recall, namely prepare a business plan (as he has already testified to above).
- If he took the job and “went down to inside sales rep”, how could he have applied for – or seriously been considered for – a job at his true level, which was a manager? It took him 10 years to work up to the level of Business Development Manager at P, and it was not acceptable to him to take a position that would mean he would have to start all over again in his next job.
- As it turned out, he did get a management-level job in November 2021, and this is because on his resume he was able to say his last job was as a Business Development Manager – not as an inside sales rep.

[33] I accept the Claimant’s testimony at the hearing as credible in its entirety. It was forthright, logical and detailed. It was also consistent with what he told the Commission throughout its investigations, and amply supported by the testimony of his witnesses and the documentary evidence he submitted for this appeal. And he answered all of my questions directly and completely, even when challenged.

[34] I give less weight to the evidence the Commission obtained from the employer. It appears to be a selective sampling of information. It also appears to have been proffered with a view to avoiding any liability in connection with the cessation of Claimant’s employment rather than to giving a fulsome picture of the employment relationship and why it ended.

A) Did the Claimant have just cause for leaving his job because he was demoted?

[35] Yes, he did.

[36] The law says that an employee has just cause where there are significant changes to the terms and conditions of employment respecting wages or salary¹⁴ or significant changes in work duties¹⁵ - and the employee has no reasonable alternative to leaving the employment.

[37] The law also says that there is just cause if the employer puts undue pressure on an employee to leave their employment and the employee has no reasonable alternative but to do so¹⁶.

[38] I find that all of these circumstances existed for the Appellant as of September 27, 2021.

Significant Changes to Compensation and Duties

[39] The court has said that if the terms and conditions of the employment are ***significantly*** altered, a claimant may have just cause for leaving their position¹⁷. The court has found just cause where the employer acted unilaterally in a manner which ***fundamentally alters*** the terms of the employment as they existed prior to separation¹⁸.

[40] I must consider the following questions¹⁹: does the Appellant's version of the facts support a finding that there were significant changes in his compensation and duties within the meaning of the law, and, if so, was there no reasonable alternative but to quit on September 27, 2021?

¹⁴ Paragraph 29(c)(vii) of the EI Act.

¹⁵ Paragraph 29(c)(ix) of the EI Act.

¹⁶ Paragraph 29(c)(xiii) of the EI Act.

¹⁷ See *Lapointe v. C.E.I.C.*, A-133-95 (FCA).

¹⁸ See *Lapointe, supra*, and *Horslen v. C.E.I.C.*, A-517-94 (FCA)

¹⁹ This was set out by the court in *Chaoui* 2005 FCA 66.

[41] When he was first separated from his employment due to the lay-off in April 2021, the Claimant was a manager²⁰ with sales representatives working under him. His compensation was made up of a base salary of \$52,000 plus commissions earned on sales. According to his T4's, he had \$71,381.89 in employment income for 2019²¹ and \$76,100.76 in 2020²².

[42] The employer did not recall him to the same position or compensation. Instead, P offered him the lowest entry level sales position, namely as an inside sales representative – a position that was below that of the employees who worked under him at the time of his lay off²³. And his compensation would be limited to a salary of \$52,000, with no opportunity to earn commissions. These were not minor changes. They were very important changes, well outside the norm for an employee in the Claimant's position.

[43] Both the year-over-year change in compensation (from \$76,000 to \$52,000) ***and*** the change in the nature of the position (from Business Development Manager to inside sales representative) were unilaterally imposed by the employer and fundamentally altered the terms and conditions of the Claimant's employment at P.

[44] I do not accept the Commission's submissions that the Claimant could have returned to work under the offer of recall and continued looking for a different job – or that he could have attempted to resolve these issues with the owners. I agree with the Claimant that these involuntary and extreme changes to the terms and conditions of his employment were a continuation of isolating and humiliating behaviour by the owners that was ultimately intended to force the Claimant to leave his job. I see no evidence

²⁰ His testimony that he was the Business Development Manager for P is supported by his business cards (at GD2-39 and GD2-40), the contact information on his E-mails (for example, see GD2-42 from 2015), including E-mails he exchanged with the owners of P prior to his lay off 2021 (for example, see GD2-41),

²¹ See GD2-56.

²² See GD2-55.

²³ And also below the position the Claimant had started at 10 years previously, as shown by the Sales Representative Contract signed by the Claimant on October 3, 2011 (starting at GD2-34), which was a sales position that included commissions on revenues generated by his sales. The Claimant testified that an inside sales rep is the most basic position possible, and is strictly limited to supporting existing or original accounts for a business.

that the Claimant had any chance of resolving the issues, and it is not reasonable to require him to endure further on-going abusive behaviour by the owners.

[45] I therefore find the Claimant has proven that he experienced significant changes to his compensation and duties such that he had no reasonable alternative but to refuse the offer of recall on September 27, 2021.

[46] This means he is not disqualified from receiving EI benefits.

[47] Having come to this conclusion, it is not necessary for me to make any other findings. But I will complete the analysis of the other circumstances raised by the Claimant.

Undue Pressure to Leave

[48] Where an employer is making working conditions for a claimant so stressful that it is likely the claimant would leave the employment, just cause is found²⁴.

[49] I must consider the following questions: does the Claimant's version of the facts support a finding that there was undue pressure by the employer to leave within the meaning of the law, and, if so, was there no reasonable alternative but to quit on September 27, 2021?

[50] The Claimant's testimony, which I have accepted as credible, shows that the owners of P were not interested in continuing to employ him. But they didn't have just cause to terminate him. He was still bringing in new clients and his compensation showed his sales commissions were increasing year over year. So the owners had to send a message to the Claimant: "If you don't like it here, then leave."

[51] They communicated this message in numerous ways. They asked him to facilitate the establishment of their own independent relationships with his clients, they openly interviewed candidates for his position, they escalated what was previously merely rude behavior to a campaign of humiliating behaviour, and they stopped paying

²⁴ CUB 50475.

him commissions on new clients. When the Claimant hadn't left by April 2021, they laid him off and ceased all communication until he threatened to sue them for wrongful dismissal and mental distress. To avoid this, they made an offer of recall that went back to the original message: "If you don't like it here, then leave", by seriously demoting him.

[52] The Claimant quite reasonably viewed the behaviour and actions of the owners as significant and undue pressure to leave his job. It therefore cannot be said that his decision to decline the recall was in any way precipitous. Rather, it was the only response to what had become an impossible scenario for him.

[53] I therefore find that the Claimant was subject to undue pressure to leave his job at P and that continuing to work while seeking other employment was not a reasonable alternative for the Claimant in the circumstances.

[54] This means the Claimant has proven that he experienced undue pressure to leave his job such that he had no reasonable alternative but to decline the offer of recall on September 27, 2021.

[55] This means he is not disqualified from receiving EI benefits.

B) Did the Appellant have just cause for leaving his job because of the toxic work environment?

[56] Yes, he did.

[57] The law says that a claimant who experiences working conditions that constitute a danger to health or safety has just cause for leaving if they had no reasonable alternative but to quit²⁵.

[58] I find that such circumstances did not exist for the Appellant²⁶.

²⁵ Paragraph 29(c)(iv) of the EI Act.

²⁶ Where the detrimental effect on a claimant's health is being proffered as just cause, the claimant must usually: (a) provide medical evidence (*CUB 11045*); (b) attempt to resolve the problem with the employer

[59] But the law also says that a claimant who experiences harassment has just cause for leaving if they had no reasonable alternative but to quit²⁷.

[60] And it says that unsatisfactory working conditions will constitute just cause for quitting where they are so ***manifestly intolerable*** that the Claimant had no other choice but to leave²⁸.

[61] I find that both of these circumstances existed for the Appellant.

Harassment by the Owners

[62] The term “harassment” is not defined in the EI Act. But the concept of harassment in the form of workplace bullying is usually seen as acts or verbal comments that could mentally hurt, embarrass or isolate a person in the workplace. It often involves repeated incidents or a pattern of behavior that is intended to intimidate, offend, degrade or humiliate a particular person or group of people. A review of the jurisprudence where the Umpires have found just cause for harassment under paragraph 29(c)(i) of the EI Act contemplates numerous such incidents and/or a pattern of such behavior over a period of time²⁹.

[63] The Tribunal’s Appeal Division has considered the issue of workplace harassment and set out a series of “key principles”³⁰ to guide me when determining whether a claimant has been harassed. The guiding principles are:

(see *Hernandez* 2007 FCA 320 and *CUB 21817*²⁶; and (c) attempt to find other work prior to leaving (see *Murugaiah* 2008 FCA 10 and *CUBs 18965* and *27787*). I accept the Appellant’s testimony that he was feeling overwhelmed and stressed at the time he declined the recall. But he does not have a doctor’s note or any contemporaneous medical evidence to support that his job was endangering his health and/or that he needed to decline the recall and/or leave his job for medical reasons. He therefore does not meet the onus for proving he experienced working conditions that were endangering his health such that he had no reasonable alternative but to refuse the offer of recall on September 27, 2021. This means he has not proven just cause on the basis of health concerns.

²⁷ Paragraph 29(c)(i) of the EI Act.

²⁸ See *CUBs 16704, 12767, and 11890*. Although there is a high obligation on a claimant to seek solutions to intolerable conditions before leaving: See *CUBs 57005, 57605, 57628, 69200, 69227, 71573, and 71645*.

²⁹ *CUBs 55611, 56604, and 57338*.

³⁰ *ND v. CEIC*, 2019 SST 1262, at paragraph 34.

- a) harassers can act alone or with others, and do not have to be in supervisory or managerial positions;
- b) harassment can take many forms, including actions, conduct comments, intimidation and threats;
- c) sometimes, a single incident will be enough to constitute harassment; and
- d) there is a focus on the alleged harasser, and whether that person knew or should reasonably have known that their behaviour would cause offence, embarrassment, humiliation, or other psychological or physical injury to the other person.

[64] The circumstances described by the Claimant fall squarely within the jurisprudence for harassment for purposes of paragraph 29(c)(i) of the EI Act.

[65] The Claimant experienced verbal comments and actions that were intended to humiliate him and isolate him in the workplace. The individuals involved were not only his direct supervisors, they were the owners of the business that employed him. There was an on-going pattern of abusive behaviour starting in December 2020, culminating in a final – typical – incident: the insult of the demotion on recall. And the harassers should reasonably have known their behaviour was offensive and causing psychological stress to the Claimant.

[66] I therefore find that the Claimant experienced harassment within the meaning of the law because he was subject to an on-going pattern of insulting and humiliating acts by his supervisors, who knew or should reasonably have known that this conduct would cause offence, embarrassment and other psychological injury to the Claimant.

[67] I further find that the harassment experienced by the Claimant was just cause for leaving the job when he did by declining the offer of recall. Given that the abusive behaviour was coming from the owners of the business, there was no one he could go to with his concerns. And it is not reasonable to expect the Appellant to continue to endure this level of escalating hostility when there was no avenue for recourse or relief.

[68] Having no reasonable alternatives, the Claimant had just cause for declining the recall when he did. This means he is not disqualified from receiving EI benefits.

Manifestly Intolerable Working Conditions

[69] In his testimony, the Claimant described how the owners of P manipulated him for the client contacts he had developed, exploited him by refusing to pay valid commissions, and routinely humiliated him front of co-workers. He was almost at the limit of what he could cope with after sticking it out from December 2020 until he was laid off in April 2021. But when the full implications of the demotion in the offer of recall were revealed between September 24 and 27, 2021, he knew definitely that he could not return to work under such conditions. I accept his testimony that the workplace environment had become genuinely intolerable for him at that point.

[70] For the reasons set out in paragraph 67 above, I further find the Claimant had no reasonable alternatives to leaving and, therefore, had just cause for declining the recall when he did.

[71] I therefore find that the Claimant has met the onus of proving that he was experiencing working conditions that were so manifestly intolerable that he had no reasonable alternative but to decline the offer of recall on September 27, 2021. This means he has proven just cause for leaving his job because his workplace had become intolerable.

[72] And it means he is not disqualified from receiving EI benefits.

Conclusion

[73] The Claimant has proven he had no reasonable alternative but to decline the offer of recall on September 27, 2021.

[74] This means he had just cause for voluntarily leaving his employment and, accordingly, is **not** disqualified from receipt of EI benefits for doing so.

[75] The Commission must remove the disqualification imposed on his claim for EI benefits as of September 26, 2021.

[76] The appeal is allowed.

Teresa M. Day
Member, General Division – Employment Insurance Section