



Citation: *GF v Canada Employment Insurance Commission*, 2022 SST 1784

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: G. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (474587) dated May 27, 2022
(issued by Service Canada)

Tribunal member: Jillian Evans

Type of hearing: Teleconference

Hearing date: November 1, 2022

Hearing participant: Appellant

Decision date: November 17, 2022

File number: GE-22-2338

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant voluntarily left his job and hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant had reasonable alternatives to leaving his employment. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant was advised in September of 2021 that his employer was implementing a mandatory COVID-19 vaccination policy at his workplace. The policy required that the Appellant receive approved doses of a COVID-19 vaccine by no later than November 21, 2021. Employees who were not in compliance with the policy by that date would be placed on unpaid leave. If they were still not in compliance by December 31, 2021, the policy said that they would be terminated from employment.

[4] The Appellant decided not to get vaccinated. He was placed on an unpaid leave pursuant to the policy.

[5] On December 1, 2021 while on unpaid leave the Appellant resigned from his job in order to preserve his future access to retirement benefits. These benefits would have been denied to him had he been terminated for cause.¹

[6] He applied for regular EI benefits, indicating in his application that he lost his job through no fault of his own.² The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left his job without just cause and that it wasn't able to pay him benefits.

¹ GD3-27

² GD3-6

[7] The Commission maintained this position when the Appellant asked for a Reconsideration.

[8] The Appellant disputes that his departure was voluntary and argues that he had no choice but to end his employment with his employer. I have to determine both the manner in which his employment ended and whether the circumstances surrounding the end of his employment disqualify him from receiving benefits.

Matter I have to consider first

Does the Appellant wish to bring a Charter Application?

[9] In his Request for Reconsideration, the Appellant made a number of references to his view that his constitutional rights under the *Canadian Charter of Rights and Freedoms* (Charter) to life, liberty and security of the person had been violated. He relied on these arguments in support of his entitlement to EI benefits.

[10] In his Notice of Appeal the Appellant enclosed a number of documents again referencing various sections of the Charter, and indicated that they were in support of his appeal to the Tribunal.

[11] So, at the start of the hearing, I explained to the Appellant that the Tribunal only had jurisdiction to decide issues relating to the constitutional validity of sections of the *Employment Insurance Act*. I asked him to confirm whether he intended to raise such issues before the Tribunal before proceeding with the merits of his hearing.

[12] The Appellant confirmed that his position is that his employer's policy mandating that he be vaccinated in order to continue at his job violated his constitutional rights. He confirmed that his position is that the employer's actions violated the Charter.

[13] He confirmed that he was not arguing that any part of the *Employment Insurance Act* violated the constitution or the Charter.

[14] As a Member of the Tribunal, I am limited to considering whether the Act, its regulations or any part of it infringes on any of the rights guaranteed by the Charter.

[15] I confirmed with the Appellant that I cannot decide whether an employer's policy violates the constitution or whether an employer behaved in a manner contrary to the Charter.

[16] I explained that those arguments would need to be brought before a different court or tribunal. My role is limited to applying the Act.

[17] G. F. expressed frustration that I would not be able to make a decision on these questions, but understood the limits of my authority.

[18] He confirmed that for the purposes of this hearing, he would be arguing that these alleged Charter violations by his employer were circumstances that caused his relationship with his employer to end.

[19] We proceeded with the hearing on that basis.

Issues

[20] Did the Appellant voluntarily leave his employment, or was he terminated?

[21] If he left his job voluntarily, did the Appellant have just cause for doing so?

[22] If he was terminated, does the Appellant qualify for EI benefits, or was he terminated for misconduct?

Analysis

Did the Appellant voluntarily leave his job?

[23] At the hearing and in his submissions to both the Commission and the Tribunal, the Appellant referenced several times to having been "fired without cause." He stated that he did not leave his job of his own accord, he had no intention of leaving and that his employer forced him out of work.

[24] At other times during the hearing, however, and at different points in his written communications with the Commission, the Appellant referenced having resigned. He stated “I did not quit, I resigned.” He said that he was put into the position of having to resign from his job. He also told me that he resigned from the job in order to maintain his benefits in retirement. If he had allowed himself to be terminated, he would have lost those benefits.

[25] The Appellant agrees that he quit – or resigned from - his job. He made the decision to resign from his job instead of waiting to be terminated, which he knew was going to happen to him on December 31, 2021 in accordance with his employer’s policy.

[26] He disagrees, however, that his decision was “voluntary.” He argues that he was “forced” to make the decision that he did.

[27] The case law is clear: under the *Employment Insurance Act* (Act), where an employee takes the initiative in severing the employer-employee relationship, the leaving is voluntary.

[28] The Federal Court of Appeal says that the only question that needs to be answered when determining whether an employee voluntarily left their employment is: did the employee have a choice to stay or leave?³

[29] I find that the Appellant had a choice to stay at his job. It was open to him to stay at his job by choosing to comply with his employer’s mandatory vaccination policy. He chose not to comply and then took the initiative to terminate the employment relationship by resigning from his job.

[30] The Appellant may well have found the choice difficult to have to make. He may disagree with being asked to make that choice. However, I find that the Appellant was given a choice to stay or to leave, and voluntarily left his job.

³ (*Canada (Attorney General) v Peace*, 2004 FCA 56)

Did the Appellant have just cause for leaving his employment?

[31] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁴

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

[33] 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 I have to consider all the circumstances.⁵

[34] It is up to the Appellant to prove that he had just cause for leaving. 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.⁶

[35] When I decide whether the Appellant had just cause, the law sets out some of the circumstances I have to look at.⁷ I have to look at these, along with all of the circumstances that existed when he resigned from his job.

[36] After I decide the circumstances that apply to G. F., he then has to show that he had no reasonable alternative to leaving at that time.⁸

The circumstances that existed when the Claimant quit

[37] The Appellant suggests that a number of circumstances existed that amount to just cause for leaving his job.

[38] The Appellant says that he was discriminated against by his employer. He says that by imposing a vaccine mandate, his employer was acting in a threatening and coercive manner towards him and that this was unjust.

⁴ Section 30 of the *Employment Insurance Act* (Act) explains this.

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

⁶ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

⁷ See section 29(c) of the Act.

⁸ See section 29(c) of the Act.

[39] He says that in the face of this discrimination, it was reasonable for him to quit.

[40] The Appellant also says that his employer unilaterally added a condition to his employment contract that did not exist when he was first hired. He says that this change – adding the requirement that he be vaccinated against COVID-19 – was unjust and essentially forced him to resign.

[41] G. F. also says that by bringing in the mandatory vaccination policy his employer was breaking the law. He says that the policy violated both his collective agreement and the Charter. He says that these breaches forced him to resign.

[42] Finally, the Appellant also explained that under the terms of his employment, he would have lost retirement benefits if he had been terminated from his job for cause. In order to protect his retirement benefits, he had to choose to resign. He does not feel, however, that the decision to resign was made freely in those circumstances.

[43] The Appellant says that in all of these circumstances, he had no reasonable alternative but to quit his job when he did.

[44] When asked why he did not look for other work prior to resigning from his job, the Appellant said that he was waiting to find out the result of an injunction that had been sought by his union that would have allowed him to remain unvaccinated at work. He did not learn that the injunction had been unsuccessful until approximately November 15th, 2021, days before he would have been placed on unpaid leave. This did not give him enough time to find another job.

[45] The Commission disagrees with the Appellant's position that he had no reasonable alternative other than to quit.

[46] It says that there is no evidence that he was discriminated against.

[47] Section 29(c)(iii) of the Act does say that an employee will have just cause for voluntarily leaving a job if they experienced "discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act. However, the Commission argues that there is no indication that the Appellant faced discrimination on

any of the enumerated grounds of: race; national or ethnic origin; colour; religion; age; sex; sexual orientation; gender identity or expression; marital status; family status; genetic characteristics; disability; or pardoned or suspended conviction. Personal beliefs and vaccination status are not prohibited grounds.

[48] The Commission also says that the employer's vaccination policy did not amount to a significant change in the Appellant's work duties or wages like those contemplated by sections 29(c)(vii) and (ix) of the Act. The vaccine policy did not affect his duties, job description, working hours or wages.

[49] Finally the Commission says that the Appellant's decision to resign from his job in order to protect or maintain a financial benefit is does not meet the legal test for just cause.

[50] I find as follows:

- a) With respect to the Appellant's argument that he was discriminated against, I agree with the Commission. There is no evidence that the Appellant suffered any discrimination at the hands of his employer under any of the enumerated grounds.
- b) With respect to the Appellant's submissions that his employer's arbitrary decision to unilaterally impose a new vaccination policy fundamentally changed the terms of his employment, I disagree. His employer implemented a vaccination policy in response to the COVID-19 pandemic based on the needs of the company. This did not change the Appellant's working environment, hours, duties or pay.
- c) I also disagree with the Appellant's argument that the employer engaged in illegal behaviours that forced him to quit. The Charter grants rights to everyone in Canada. But the Charter applies to governments only, not to individuals or businesses. Policies created by private individuals or businesses are not laws created by governments. They are not subject to review under the Charter. The Tribunal therefore has no authority to rule on the Claimant's Charter claim about the Policy in this appeal.

d) With respect to the Appellant's position that the policy is not legal because it breaches his collective agreement, this is something best left to a labour board or tribunal. I do not have the authority to make any rulings on this private, negotiated contract.

I am not a labour board arbitrator and the Appellant would have to make his arguments about the collective agreement and its potential violation to another body. I understand that the Appellant has a grievance pending, with a hearing scheduled for March of 2023. Compliance with a collective agreement must be arbitrated under the terms of that agreement.

The Appellant had reasonable alternatives to resigning from his job.

[51] Considering the circumstances that existed when the Appellant quit, he had reasonable alternatives to leaving when he did. I find that he did not exhaust all possible alternatives before deciding to leave his job. He had first been advised of the vaccine requirement in September 2021, and by no later than October 15, 2021 was clearly told that if he did not comply with the policy he would face termination with cause.⁹

[52] I find that it would have been reasonable for the Appellant to look for other work while awaiting the outcome of the injunction efforts.

[53] I also find that the Appellant had ample opportunity to comply with his employer's vaccination policy had he decided to do so. He could have avoided quitting by complying with the policy. The Appellant could have chosen to get vaccinated. He decided not to, but I find that this does not amount to having no reasonable alternative to leaving his job.

[54] Having considered all of the circumstances, the Appellant had reasonable alternatives to leaving his job. This means the Appellant didn't have just cause for leaving his job.

⁹ GD3-48

Conclusion

[55] I find that the Appellant is disqualified from receiving benefits.

[56] This means that the appeal is dismissed.

Jillian Evans

Member, General Division – Employment Insurance Section