



Citation: *X v Canada Employment Insurance Commission and JL*, 2023 SST 1221

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

Decision

Employer: X (Employer)

Respondent: Canada Employment Insurance Commission

Claimant: J. L. (Claimant)

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

Tribunal member: Ambrosia Varaschin

Type of hearing: Teleconference

Hearing date: August 22, 2023

Hearing participants: Employer's Representative
Claimant

Decision date: August 24, 2023

File number: GE-23-952

Decision

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

[2] The Appellant has shown that the Added Party voluntarily left his job.

[3] The Added Party hasn't shown that he had just cause for leaving his job when he did because he had reasonable alternatives to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[4] For simplicity and clarity, I will refer to the Appellant as the Employer, and the Added Party as the Claimant.

[5] The Employer says the Claimant was not laid off, he quit his job.

[6] The Claimant says he was "offered an out" by the Employer, which meant he would be given a layoff.

[7] The Canada Employment Insurance Commission (Commission) originally decided that the Claimant voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits. It later reversed this decision when the Claimant requested a reconsideration.

[8] The Employer appealed the reconsideration request. No one attended the original Social Security Tribunal (Tribunal) hearing. The Tribunal's General Division decided the Claimant quit his job without just cause. The Claimant appealed the General Division's decision to the Appeal Division. The Appeal Division sent the matter back to the General Division for a re-hearing, noting several critical gaps in evidence that were not presented by both of the Parties to the General Division.

[9] The Parties were given an opportunity to provide additional evidence prior to scheduling the hearing. No further submissions were received.¹

[10] I must decide whether the Claimant was laid off, dismissed for unsuitability, or voluntarily left his job. If I decide that he quit, I must decide if the Claimant has proven that he had no reasonable alternative to leaving his job.

Matter I have to consider first

The Employer asked me to adjourn (that is, pause) the appeal

[11] The Employer's representative was not made aware that a new appeal had been ordered or had been scheduled. The Claimant had no issue with rescheduling the hearing for a later date.

[12] So, the hearing was rescheduled.

Issue

[13] Did the Claimant voluntarily leave his job, or, was he dismissed or laid off?

[14] Is the Claimant disqualified from receiving benefits for leaving his job without just cause?

[15] To answer this, I must first address how the employment ended. If I decide that the Claimant quit, I have to decide if he had just cause for leaving.

Analysis

The parties don't agree that the Claimant voluntarily left

[16] The Employer says the Claimant quit his job.

[17] The Claimant says he was "offered an out" by the Employer, which he understood to mean he would be laid off so he could collect EI benefits.

¹ See RGD03.

[18] The burden of proof is on the Employer to show that the leaving was voluntary. Then, the burden of proof shifts to the Claimant to prove he had just cause for doing so.² The term “burden” is used to describe which party must provide sufficient proof of its position to pass the legal test.

[19] The legal test in this case is on a balance of probabilities, which means it is “more likely than not” the events occurred as described.

Did the Claimant voluntarily leave his employment?

[20] I find, on the balance of probabilities, that the Claimant voluntarily left his employment. In other words, he quit his job.

[21] The Employer hired the Claimant to be a welder fabricator. The Claimant was a 3rd year welding apprentice and thought that he would be able to get his practical hours working for the Employer. After three days, the Claimant and the Employer discussed their individual needs from the employment relationship. This conversation ended the employment relationship. The Parties don’t agree about the details of the conversation.

[22] The Claimant says that the Employer told him that he couldn’t sign off on his welding apprenticeship hours; he would need to switch trades and be an apprentice fabricator. The Claimant says that “wasting” 2 years of training and education wasn’t something he was willing to do. He says the Employer “offered him an out,” which he thought was a lay-off.

[23] The Claimant repeatedly told the Commission that there was a miscommunication and that the Employer was actually looking for fabricators, not welders. Because the Claimant was a welder, not a fabricator, the Employer called him into the office after three days and laid him off because he didn’t have the correct

² See *Green v Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v White*, 2011 FCA 190; and *Canada (Attorney General) v Patel*, 2010 FCA 95.

training.³ The Claimant told the Appeal Division that he believed if he didn't accept a lay-off he would be terminated.⁴

[24] At this hearing the Claimant made it abundantly clear that he didn't like the type of work he would need to do at a fabrication shop and was not willing to work somewhere he couldn't get apprenticeship hours. He repeated that the Employer told him they couldn't sign off on his apprenticeship hours unless he became a fabricator, and that wasn't something he was willing to do, so the Employer "offered him an out." The Claimant testified that if the Employer was willing to keep him on without switching trades, he wouldn't have stayed without being indentured.

[25] The Employer's representative testified that they don't apprentice welders, they only apprentice fabricators, but they do have journeyman welders and staff who have worked for years without any trade ticket. He said they have never forced anyone to go to trade school or start an apprenticeship program. He said that they could have signed off on some welding apprenticeship hours, but only for mig and tig welding because the shop doesn't do any stick welding. He said that they had no performance issues with the Claimant, and there was no reason he couldn't have continued working at the shop if he wanted to.

[26] No evidence regarding the text message from the Claimant mentioned in the Employer's Notice of Appeal was presented.⁵

[27] The ROE states that the Claimant quit, and was completed the same month his employment ended.⁶

[28] I find, on the balance of probabilities, that the Claimant left his job because the Employer was not able to meet his apprenticeship needs.

³ See GD03-23 and GD03-42.

⁴ See *JL v Canada Employment Insurance Commission*, 2023 SST 318 at para 32.

⁵ See GD02-5.

⁶ See GD02-8.

[29] While the conversation between the Claimant and the Employer may have been understood differently by each of the parties, the evidence from both the Claimant and the Employer shows that the Claimant had no intention of remaining employed at a fabrication shop, and that the Employer had no reason to dismiss him.

What is just cause?

[30] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁷ Having a *good reason* for leaving a job isn't enough to prove *just cause*.⁸

[31] The law says that you have "just cause" if, considering all the circumstances, you had no reasonable choice but to quit your job when you did.⁹

[32] The Claimant has to prove that he had just cause.¹⁰ 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.¹¹

[33] I have to look at all of the circumstances that existed when the Claimant quit to decide if he had just cause. The law sets out some of these circumstances.¹² After I decide which circumstances apply to the Claimant, he then has to show that there was no reasonable alternative to leaving at that time.¹³

Did the Claimant have just cause?

[34] The Claimant didn't have just cause to leave his employment.

[35] The Claimant says that he left his job because the Employer couldn't indenture him as a welding apprentice. The Claimant says that he had no reasonable alternative

⁷ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁸ See *Canada (Attorney General) v Imran*, 2008 FCA 17.

⁹ See *Canada (Attorney General) v White*, 2011 FCA 190; *Canada (Attorney General) v Macleod*, 2010 FCA 301; *Canada (Attorney General) v Imran*, 2008 FCA 17; and *Astronomo v Canada (Attorney General)*, A-141-97.

¹⁰ See *Green v Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v White*, 2011 FCA 190; *Canada (Attorney General) v Patel*, 2010 FCA 95.

¹¹ See *Canada (Attorney General) v Laughland*, 2003 FCA 129.

¹² See section 29(c) of the Act.

¹³ See section 29(c) of the Act.

to leaving at that time because he would need to either switch trades or work without getting hours towards his apprenticeship.

[36] The Claimant didn't have just cause because he had reasonable alternatives to leaving when he did. I find that he could have continued to work for the Employer until he was able to find a position better suited to his apprenticeship training needs.

[37] Just because the Claimant felt that his job duties were not ideal for his long-term goals doesn't mean he is entitled to EI benefits. The fact that the Claimant felt his employment was not a good fit doesn't justify him abandoning it and making others to support him through the EI system.¹⁴

[38] Ultimately, the legal test is not whether leaving his employment is what a reasonable and prudent person would do in similar circumstances, it is whether leaving employment is the Claimant's only reasonable course of action. Reasonableness may be "good cause," but it is not necessarily "just cause." While the Claimant left his job for what he feels was a good reason, the Courts have clearly held that good cause is different from just cause. It is not sufficient for the Claimant to prove that he was quite reasonable in leaving his employment.¹⁵

Conclusion

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

[40] This means that the appeal is allowed.

Ambrosia Varaschin
Member, General Division – Employment Insurance Section

¹⁴ See *Canada (Attorney General) v Tremblay*, A-50-94.

¹⁵ See *Canada (Attorney General) v Laughland*, 2003 FCA 129; *Canada (Attorney General) v Imran*, 2008 FCA 17; *Tanguay v Unemployment Insurance Commission*, A-1458-84; and *Canada (Attorney General) v Vairumuthu*, 2009 FCA 277.