



Citation: *NK v Canada Employment Insurance Commission*, 2023 SST 1320

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

## Decision

**Appellant:** N. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (553054) dated November 21, 2022 (issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Teleconference

**Hearing date:** February 13, 2023

**Hearing participant:** Appellant

**Decision date:** February 15, 2023

**File number:** GE-22-4221

## **Decision**

[1] The appeal is dismissed.

[2] The Appellant has not shown just cause (in other words, a reason the law accepts) for leaving his job when she did. The Appellant has not shown just cause because he had a reasonable alternative to leaving which he did not try. This means he is disqualified from receiving Employment Insurance (EI) benefits.

## **Overview**

[3] The Appellant quit his job working as a pipeline surveyor.

[4] He listed multiple reasons why he left, but he says the primary reason was due to a failure of his employer to provide necessary safety equipment.

[5] The Canada Employment Insurance Commission (Commission) decided they could not pay EI benefits to the Appellant, as they say he had a reasonable alternative to quitting he did not explore; he could have spoken to his employer about the lack of safety equipment or filed a complaint with a relevant government agency.

[6] I must decide whether the Appellant has proven he had no reasonable alternative to leaving his job.

## **Issue**

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

[8] 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 parties agree that the Appellant voluntarily left**

[9] I accept that the Appellant voluntarily left his job. The Appellant testified he quit, and his employer says he quit.<sup>1</sup> I see no evidence to contradict this.

### **The parties don't agree that the Appellant had just cause**

[10] The law says the Appellant is disqualified from receiving benefits if he left his job voluntarily and didn't have just cause.<sup>2</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[11] The law explains what it means by "just cause." The law says that for the Appellant to have just cause to he must have had no reasonable alternative to quitting at the time he quit.

[12] It is up to the Appellant to prove that he had just cause.<sup>3</sup> 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. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed at the time the Appellant quit.

### **The Appellant's job and why he left**

[13] The Appellant said that his job was surveying pipelines.

[14] He was walking approximately 10km or more a day, through fields and brush, carrying a backpack with GPS equipment and a battery, and using a locator to map where pipelines are located underground.

[15] The work was extremely physically demanding. The Appellant spent the whole day walking through fields, brush, and uneven ground, crossing streams, fences, and

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<sup>1</sup> GD03-40 as an example

<sup>2</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>3</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

running across highways, all while carrying all the heavy equipment in the middle of extreme summer heat.

[16] The Appellant said the training for his position was very shoddily done. He was never really trained on using the locator equipment, it was more a learning on the job scenario. The advice of dealing with animals was hope they don't bite you or play dead. To cross a fence they were told to use bungee cords to hold the wires together and step over, but bungee cords were never provided.

[17] However, the Appellant's greatest concern, was the lack of proper safety equipment and safety measures.

[18] The Appellant says that at the start of every work day they did a safety briefing going over the Job Hazard Analysis (JHA) form, but in reality it was just the supervisor reading briefly from the form on his laptop.

[19] Basic things were mentioned like watch where you are walking, watch out for animals, be careful going over barbwire fences, etc.

[20] The JHA form was actually mailed to the Appellant at the end of each work day, but for the first couple of days he never bothered to look at it.

[21] Once night at the hotel he decided to open the JHA form that was sent to him. When he did, he found that it listed a bunch of safety equipment such as radios, and multiple gas monitors that he was supposed to have but were never provided by the company.

[22] The Appellant says that after seeing this, and dealing with the crushing physicality of the job, and a lack of safety measures such as just having him run into the middle of a highway to take a reading rather than having any sort of traffic controls, he decided to quit.

[23] The Commission says that the Appellant quit his job without discussing the alleged dangerous working conditions with his employer and without exploring with his

employer the possibility that the nature or conditions of the work could be modified to respond to his concerns.<sup>4</sup>

[24] The Appellant agrees he did not discuss his concerns about not having the safety equipment, or lack of safety measures, with his employer. The Appellant says he is not sure who he would have brought up the issues with, as the only people he had met in-person were his supervisor in the field, and J, a project manager that he met for a bit during his first day in the field.

[25] The Claimant says he was not aware of any Occupational Health and Safety person to contact at his employer, and he was not interesting in trying to start a war with his employer over these issues.

### **Whether the Claimant has just cause**

[26] I find that the physical issues the Appellant raised do not provide him with just cause for leaving his employment. He says he was aware from the advertisement for the job and from the interview for the job that he would be working outside and walking through fields and such all day. I find that while he might not have liked the physical aspect of the job, (walking through fields, and crossing streams, jumping fences and dealing with animals) these were not unexpected parts of the job and in fact are to be expected based on the job he accepted.

[27] I further find the subpar training does not provide just cause for the Appellant quitting his job. I can understand it would be annoying to not be fully trained on using the equipment, but he was learning on the job, and his employer seem fined with his performance as the Appellant never mentioned his employer ever punishing him for his lack of knowledge with operating the equipment.

[28] However, the issues he raised with the lack of safety equipment and the behaviour when he was working on the highway are highly concerning.

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<sup>4</sup> GD04-4

[29] The Appellant is correct that the JHA form clearly states that required safety equipment for his job includes an H2S monitor, radio, and a 4 Gas Monitor.<sup>5</sup> I can accept that these devices were not provided to the Appellant by the company as he took photos of his equipment to show his friends what he was carrying around and none of those devices appear in the photos.<sup>6</sup>

[30] I also agree with the Appellant that it is concerning that his employer would have him run out into the middle of the highway to take a reading without any sort of signage or traffic control.

[31] I find that the Appellant not being provided with the safety equipment that his employer stated was necessary for the job in the JHA form, and being asked to perform readings in the middle of uncontrolled traffic, represents working conditions that were a danger to his health and safety.

[32] However, I cannot find he had just cause for leaving because he had a reasonable alternative to quitting that he did not explore. That reasonable alternative was raising these issues with his employer.

[33] I find it was reasonable for him to raise these issues with his employer, either through his supervisor in the field, or the project manager (J) he met on day one,<sup>7</sup> or, since he had his cellphone with him, to email or text the manager who hired him, or to email or text the other project manager he was dealing with during his orientation.<sup>8</sup>

[34] I note the Appellant testified that when he told his supervisor he was quitting, his supervisor asked him to speak to J, which further shows he was, at a minimum, able to speak to his supervisor and J about the issues he had with not being provided the safety equipment mentioned in the JHA and how working on the highway was handled.

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<sup>5</sup> GD02-16

<sup>6</sup> GD09-3 to GD09-6

<sup>7</sup> See GD06-2 where he says that the employee J was a project manager whom he met on his first day in the field.

<sup>8</sup> See GD06-2 where A is stated as another project manager and A's title of Project Manager can be seen on GD06-9

[35] It may very well be that his employer would have ignored the issues he raised, but this cannot be known for certain, since the Appellant never raised the issues with them.

[36] I would note that the Federal Court of Appeal has said that in dangerous working conditions an appellant raising concerns over those working conditions with the employer is a reasonable alternative.<sup>9</sup>

[37] Since, taking into account all the circumstances, I have found that the Appellant had a reasonable alternative to quitting, one which he did not explore, this means he does not have just cause for his voluntary leaving.<sup>10</sup>

## **Conclusion**

[38] The appeal is dismissed.

[39] I find that the Appellant has not proven he had just cause for leaving. This means he is disqualified from benefits, in other words he cannot be paid EI benefits.

Gary Conrad

Member, General Division – Employment Insurance Section

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<sup>9</sup> Canada (Attorney General) v Hernandez, 2007 FCA 320

<sup>10</sup> See Canada (Attorney General) v White, 2011 FCA 190