



[TRANSLATION]

Citation: *AL v Canada Employment Insurance Commission*, 2023 SST 1444

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: A. L.
Representative: Jean-Sébastien Deslauriers

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (464997) dated April 1, 2022 (issued by Service Canada)

Tribunal member: Leanne Bourassa

Type of hearing: Videoconference
Hearing date: November 21, 2022
Hearing participants: Appellant
Appellant's representative

Decision date: June 2, 2023
File number: GE-22-1520

Decision

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

[2] The Appellant 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. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant worked as a mechanic in a workplace in northern Canada. He left his job and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the reasons for his separation from employment and decided that he was let go.

[4] The Appellant asked the Commission to reconsider. The Commission changed its mind; it decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

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

[6] The Commission says that, instead of leaving his job when he did, the Claimant could have looked for a job before leaving, asked for time off to deal with the situation before choosing to leave, or talked to a health professional about his son's situation.

[7] The Claimant disagrees and says that, because of his schedule, which was 14 days on in the North, 7 days off at home, he wasn't able to be there for his son, who was having behavioural problems in school. He had to leave his job to care for his son.

Issue

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

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

Analysis

The parties agree that the Claimant voluntarily left

[10] I accept that the Claimant voluntarily left his job. The Claimant agrees that he quit, and his last day of work was November 2, 2021.

[11] I note that the Commission initially denied the Appellant benefits because he was let go. The Commission notes that he stopped working for his employer because he wasn't complying with the airline's new vaccination requirements to get to the work site.

[12] When reconsidering the file, the Commission got confirmation from the Appellant and his employer that the latter didn't require staff to get vaccinated against COVID-19. The airline required vaccination, but when his job ended, there was a grace period and the Appellant was complying with the requirement to provide proof of a molecular test to travel by air.

[13] In addition, the Claimant confirmed that, even before vaccination issues became relevant, he had already told his employer, in early October 2021, that he would leave his job.

[14] I note that there are two Records of Employment (ROEs) on file. The first says that the Claimant wasn't complying with the airline's new vaccination requirements to get to work. The second replaced the first and says that it was issued for [translation] "family reasons."

[15] I find that the second ROE better reflects the situation than the first. Although the ROE wasn't amended until after the Commission had initially denied benefits, I note that the employer explained, in response to the Commission's questions, that the Claimant had left his job to care for his son.

[16] I also note that, according to the information provided by the employer, when the Claimant's job ended, the policy for air travel was that workers could travel if they provided proof of a valid COVID-19 molecular test taken within 72 hours before boarding. The Claimant and the employer agree that the Claimant complied with this requirement on November 2, 2021.

[17] The Claimant testified that he told his employer in early October that he was going to [translation] "finish the next run" and not come back after that. I believe him. Although the requirement to get vaccinated came into effect during the same period, I see that the Claimant still intended to leave his job in the North, away from his family, at that time. His job ended at his request.

The parties don't agree that the Claimant had just cause

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

[19] 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.

[20] 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 you have to consider all the circumstances.²

[21] 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

¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

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.

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

[23] 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

[24] The Claimant says that one of the circumstances set out in the law applies to him. Specifically, he needed to leave his job to care for his son, who was having behavioural problems in school.

[25] The Claimant explains that, before he started working for the employer on August 17, 2021, he had shared custody of his teenage son. His son would spend one week at his place and the following week at his mother's.

[26] After he started working for the employer at the X site in X, his work schedule was 14 days on and 7 days off at home. It would take a day to travel to the work site and get back. So, he was away for about 16 days straight. During his absence, his son lived with his mother.

[27] The Claimant testified that, after he started working at the X site on August 17, 2021, the mother told him that their son had been having unusual behavioural problems in school since the beginning of the school year. He was kicked out of class two to three times a week. He seemed on the verge of being kicked out of his sports-study program. He seemed to have a difficult relationship with his stepfather.

[28] The Appellant explains that, in mid-October 2021, he told his boss that he was only going to make one other trip to the X site. He wanted to be more present for his son. His last day of work was November 2, 2021.

⁴ See section 29(c) of the Act.

⁵ See section 29(c) of the Act.

[29] The Claimant submitted a document from his son's school showing the dates he was kicked out of class. I note that this document shows that he was kicked out of class seven times between October 14, 2021, and November 11, 2021.

[30] I note the Claimant's testimony that, when he decided to leave his job, his union representative had noted a change in his attitude, which was usually positive. The Claimant was saying that his sense of powerlessness was affecting his work.

[31] The Commission says that the Claimant hasn't shown that he had an obligation to care for his child. He admits that his former partner was around and available to care for their child. The Claimant had a desire to be there for his son, not an obligation. This means that it was a personal choice, and personal choices don't amount to just cause as defined in the *Employment Insurance Act*.

[32] While I am not bound by the decisions of other Tribunal members, I have read decisions from my colleagues dealing with similar situations to guide my assessment of the circumstances in this case.

[33] It should be noted that, in those cases, the Tribunal members found that the obligation to care for a child isn't just a choice or desire to be more present for the child, but a need that can't otherwise be met.⁶

[34] Despite the Appellant's very admirable desire to intervene for his son's well-being, I find that he hasn't shown that he had an obligation to care for his son. So, even if his son's situation could have benefited from his intervention, I can't find that this is a circumstance that may amount to just cause for voluntarily leaving.

[35] I also find that the Claimant felt that his worrying about his son's situation was affecting his behaviour and his ability to do his job. But, I have no evidence that he was

⁶ See, for example, *LB v Canada Employment Insurance Commission*, 2022 SST 777; *LM v Canada Employment Insurance Commission*, 2022 SST 1191; and *Canada Employment Insurance Commission v RH*, 2020 SST 149.

diagnosed with depression or any other medical condition that prevented him from continuing to work.

[36] I also see no evidence that the employer was unhappy with the Claimant's work. So, his leaving was motivated purely by a personal choice and a sense of wanting to be there for his son.

[37] I have carefully considered the fact that, if he had stayed on with his employer, the Claimant would have had difficulty getting to the X site, since he wasn't vaccinated. This is because, when he left, the airline required proof of vaccination to travel. Ultimately, I find that this isn't relevant to my decision in this case, since the Claimant was able to comply with the requirements imposed by airlines when he left. We can't assume what the situation would have been later, so I can't make any relevant findings on how the restrictions affected his decision to leave his job.

The Claimant had reasonable alternatives

[38] I also have to determine whether the Claimant had no reasonable alternative to leaving his job when he did.

[39] I find that the Claimant had reasonable alternatives to leaving his job in November 2021.

[40] The Claimant says that his only choice was to be there for his son because, based on his own experience, if his son's behavioural problems weren't dealt with before he was kicked out of the sports-study program, there would have been consequences for his future. Based on his own experience, he had to be there for his son if he didn't want him to end up in the same situation as him.

[41] The Commission disagrees and says that the Claimant could have looked for other work before leaving his job, asked his employer for unpaid leave, or sought help from a health professional.

[42] I agree with the Commission.

[43] The Claimant worked 14 days at the X site and was home for 7 days. I accept his testimony that it took a day to travel between his home and the work site, so he was actually home for only 5 days. I also note that he had custody of his son when he was home.

[44] However, this shows that he had five days at home to try to find a suitable job closer to home. I recognize that he said he had spoken with his union representative to find out whether there was work in his area. But, these discussions seem to have happened after he left his job. He had the opportunity to look for and find a new job before leaving his job.

[45] In addition, I can't ignore the fact that the Claimant's son is a teenager. There is no evidence that he is unable to understand the consequences of his own actions or that he had a diagnosis that prevented him from understanding intervention from adults in positions of authority other than his parents.

[46] Even before the Appellant started working at a site far from his home, he shared custody of his son with his mother. So, the child's mother was already very present for him, even though she may have appreciated the Claimant's support. The father's absence didn't mean that the son didn't have access to a responsible adult in his life.

[47] The Claimant also testified that he was able to contact his son's teacher one of the times he was back home. The teacher explained that the Claimant's child was at risk of being kicked out of the sports-study program. The Claimant didn't say that an intervention plan involving the parents or specialized support was proposed or provided during that conversation. He also didn't ask for either before he left his job.

[48] Since the Claimant's sense of powerlessness over his son's situation seems to have affected his mental health, he also could have seen a doctor to see whether he should ask for time off for medical reasons.

[49] Lastly, I note that, during discussions with the Commission, the employer confirmed that, because he was unionized, the Claimant could have asked for unpaid

leave instead of leaving his job permanently. There is no evidence that the Claimant explored this option. There is no indication that he discussed any accommodations or solutions with his employer that would have allowed him to stay at his job while helping to deal with his son's situation.

[50] In my view, the Claimant decided to prioritize his son's well-being over his job. That decision is commendable, and his presence seems to have had the desired effect on his son's well-being.

[51] However, I have to find that the Claimant had reasonable alternatives that would not have resulted in his unemployment. So, I have no choice but to find that he didn't have just cause under the law for leaving his job.

[52] Given the circumstances that existed when the Claimant handed in his resignation and left his job, he had reasonable alternatives to leaving his job, for the reasons I mentioned.

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

Conclusion

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

[55] This means that the appeal is dismissed.

Leanne Bourassa
Member, General Division – Employment Insurance Section