Citation: *FP v Canada Employment Insurance Commission*, 2023 SST 1156

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	F. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (566531) dated February 16, 2023 (issued by Service Canada)

Tribunal member:	Gary Conrad
Type of hearing:	Teleconference
Hearing date:	June 14, 2023
Hearing participant:	Appellant
Decision date:	June 27, 2023
File number:	GE-23-928

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't proven, on a balance of probabilities, that he had just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant didn't have just cause because he had a reasonable alternative to leaving. This means he cannot be paid the Employment Insurance (EI) benefits he is requesting.

Overview

[3] The Appellant quit his job in July 2022.

[4] The Appellant says he quit because the job was a danger to his health and safety. He says that he was doing roadwork and was forced to work outside in extreme heat, he says this led to him getting heat stroke twice.

[5] He says his employer was also forcing the truck drivers to underreport their working hours in the logbooks. This resulted in them working more hours than legally allowed so they were overworked and falling asleep while driving. The Appellant says this was a great risk to his health and safety.

[6] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. They decided that he voluntarily left (or chose to quit) his job without just cause, because he had reasonable alternatives to leaving.

[7] The Commission says that the Appellant has never explained how the falsified logbooks impacted him directly, and he told them that he never communicated his concerns to his employer.

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

Issue

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

[10] To answer this, I must first address the Appellant's voluntary leaving. Then I must decide whether the Appellant had just cause for leaving.

Analysis

Did the Appellant voluntarily leave?

[11] I accept that the Appellant voluntarily left his job. He says that he quit and sent in his two-weeks notice and I see nothing that would make me doubt this.

[12] While the Appellant testified that he was told after he had sent in his two-week notice to go home and not bother coming back, this does not change the fact his leaving was voluntary, as this incident occurred after he had already chosen to quit.

Did the Appellant have just cause for his voluntary leaving?

[13] The law says that the Appellant is disqualified from receiving benefits if he left his job voluntarily and didn't have just cause.[1] Having a good reason for leaving a job isn't enough to prove just cause.

[14] The law explains what it means by "just cause." The law says that in order for the Appellant to have just cause, he must have had no reasonable alternative to quitting his job when he did.[2]

[15] It is up to the Appellant to prove that he had just cause.[3] 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

[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 3.

just cause, I have to look at all of the circumstances that existed when the Appellant quit.

Why the Appellant quit

[16] The Appellant says that he quit due to an accumulation of things, all of which contributed to creating an unsafe workplace.[4]

- **The Appellant's job**

[17] The Appellant says that he had been working at his seasonal employment for approximately 15 years. He worked doing line painting on roads and doing what was called handwork. Handwork is creating turning arrows and other signs and symbols on the road surface besides the painted lines.

[18] The Appellant's primary job was to drive in a lead truck with lights and a large sign informing people driving down the road of the upcoming line painting.

[19] He says he also did a lot of extra work helping to refill the paint truck and other physical tasks as the gentlemen whose job it would actually be to do these tasks were rather elderly, so he wanted to help them out.

[20] The Appellant says that just last year he had started doing much more handwork. This involved mixing a plasticized product and pouring it into templates to create the turning arrows and other markers on the road which were not painted lines.

[21] He says that previously he did very little handwork being on the painting crew, but his employer was losing painting contracts so, in order to ensure the painting crews were still working consistently, they were asked to do an increasing amount of handwork.

---

[4] I would note the Appellant raised a few other issues than those listed here that he says created an unsafe working environment, but these were issues he says he learned about well after he had quit, while taking a safety course, so they were not issues he was aware of at the time he quit, so they cannot be used for just cause.

- **Working in extreme heat**

[22] The Appellant says that doing this handwork involved being outside standing on the asphalt for hours on end and the temperature could be above 30°C. He says that twice last year he ended up getting heatstroke so bad he started throwing up and had to go sit in the air-conditioned truck to recover.[5]

[23] He says he spoke to his boss about this, and was told there was nothing they could do, they could not work at night or stop working when it got hot as they needed to get the work done.

[24] He says he spoke to the safety officer who said there was nothing they could do, other than make sure the Appellant had water and salt tablets. He says that water and salt tablets where never supplied to him.

[25] He says he kept escalating this issue all the way up to the Vice-president of the company but none of the managers was interested in doing anything, all they wanted to do was get the work done so they could make money.

- **Unsafe driving**

[26] The Appellant also said that his employer was forcing other employees who were truck drivers to lie on their logbooks about the hours they worked, so that they could work extra hours since there is a cap on the hours a person is allowed to work driving a truck.

[27] The Appellant says that he did not have to complete any logbooks, so he was not forced to lie on a logbook, but the other employees being forced to lie and work extra hours was impacting his health and safety. He says that due to the other employees working more hours than they should, whenever they would be driving back from a job the truck drivers would be falling asleep.

---

[5] GD03-17

[28] He says that he would be in the passenger seat as they were driving to a job or back from a job and he would have to wake the driver up as they started to drift off.

[29] He says that he asked to drive his supervisor's truck once, so that he did not have to worry about the driver falling asleep, but his supervisor did not like to have someone else drive and the Appellant says it did not go well, so he just had to content himself with making sure the drivers did not fall asleep.

[30] The Appellant says he went to file a complaint with the transportation regulator but they told him until they received three complaints about a company there was nothing they could do.

[31] He says that he never spoke to anyone at the company about the employees lying on their logbooks because it was the company making them do it, so it would be pointless to raise it with the company.

- **Danger to health and safety**

[32] Every job has different working environments and working conditions. Sometimes, these conditions are just inherently risky or dangerous, such as working as a firefighter. However, these inherent risks in a job do not mean a person can quit, citing those risks, and have just cause for leaving.

[33] If a person is aware of these inherent risks and accepts these risks by taking the job, they cannot then say that it was these risks that created a dangerous working environment any more than a firefighter can say he had to quit his job because it involved running into burning buildings.

[34] In the Appellant's case, working outside, during the summer heat, on asphalt, creates inherent risks. Risks which he was well aware of and accepted as he continued to return to the job year after year for over a decade.

[35] I understand his argument that it was worse in the last year having to do more handwork, but I find this still does not create a situation where the working conditions or

environment would exceed the inherent risks in the position the Appellant accepted year after year.

[36] As the Appellant was aware of these risks it is up to him to manage them by taking the necessary steps required to perform his work.

[37] Further, while the Appellant mentioned two incidents of heatstroke, he also said that he solved the problem by going into an air-conditioned truck to cool down.[6] I find if an air-conditioned truck is available to cooldown in, for the odd time the heat may become unbearable for the Appellant, his working environment does not present a danger to his health and safety due to the heat exposure.

[38] When it comes to the issue of the truck drivers falsifying their logbooks, I don't find the Appellant's testimony on this issue credible.

[39] He says that the drivers falsifying their logbooks had been ongoing for years, and that when electronic logbooks came out the employer told the drivers how to falsify those as well. I find that if this was the case, it is not credible that the Appellant accepted it for years, continuously returning to the job, but suddenly in the Summer of 2022, it created a situation where it was a danger to his health and safety such that he had no alternative to quit.

[40] I also do not find it credible that his employer was engaged in a mass conspiracy with all its drivers and multiple people in management, to fake the driver's logbooks. It is just not believable this would occur and that everyone would simply go along with it

[41] I also do not find his testimony credible that he attempted to report the drivers falsifying their logbooks to a transportation regulator but was told by the regulator that they would not do anything until there was at least three complaints. I do not find it credible that a safety organization, being told of severe safety violations by a mass of drivers at the Appellant's employer, would simply dismiss the issue because there were not enough complaints.

---

[6] GD03-17

[42] So, I find that the Appellant has not convinced me that, on the balance of probabilities, he was facing dangers to his health and safety. The circumstances he was facing were not different than those he had faced in the past and he continued to work despite them.

Reasonable alternatives

[43] I find that, considering all the circumstances that existed at the time the Appellant quit, he had reasonable alternatives to quitting.

[44] I find the Appellant had the reasonable alternative to quitting of continuing to work until he had secured an alternative job.

[45] This is a reasonable alternative because one, the Appellant was looking for work prior to quitting, but had not secured a job at the time he quit, and two, he had given two weeks notice.

[46] I asked him why he would be willing to continue to work for a further two weeks if he felt the working conditions were such a danger to his health and safety. He testified that if his employer had asked to do something unsafe during those two weeks, He would have refused to do it. I find this shows it was reasonable for the Appellant to continue working until he found a new job, as he felt it was reasonable for him to continue working. This also leads into the Appellant’s other reasonable alternative.

[47] I find that the Appellant had the reasonable alternative to quitting of refusing to do any work he felt was unsafe. This is a reasonable alternative as the Appellant testified that this was exactly what he was going to do during his two week notice period if he was asked to do something he felt was unsafe, showing it was an option available to him.

[48] I can understand the Appellant may have disliked working in the heat and the extra handwork, but, since he had reasonable alternatives to leaving at the time he quit, this means he does not have just cause.

Conclusion

[49] The appeal is dismissed.

[50] The Appellant had reasonable alternatives to quitting, this means he does not have just cause for his voluntary leaving.

Gary Conrad
Member, General Division – Employment Insurance Section