Citation: *DO v Canada Employment Insurance Commission*, 2023 SST 1350

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	D. O.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (517878) dated August 19, 2022 (issued by Service Canada)

Tribunal member:	Paul Dusome
Type of hearing:	Teleconference
Hearing date:	March 22, 2023
Hearing participant:	Appellant
Decision date:	April 4, 2023
File number:	GE-22-3778

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. The Appellant 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 Appellant left his job as a purchasing coordinator on October 7, 2021, and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

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

[5] The Commission says that the Appellant had reasonable alternatives to quitting. He could have discussed his concerns and possible solutions with management. He could have requested a transfer or leave of absence. He could have looked for another job and continued working until he found a new job.

[6] The Appellant disagrees and states that he had just cause. The long commute on public transit had become too much for him. There was a toxic work environment from co-workers because he had not been vaccinated against COVID-19.

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 agrees that he quit on October 7, 2021. I see no evidence to contradict this.

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

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

[11] 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.

[12] 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]

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

[14] The Appellant says that he left his job because of the long commute between work and home, and because of the toxic work environment. The Appellant says that he had no reasonable alternative to leaving at that time because he could no longer handle the commute or the toxic work environment.

[15] The Commission says that the Appellant didn't have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says that the Appellant

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[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.

could have dealt with management to find solutions to the commute, such as carpooling or a transfer to another work location. He could have spoken to management about the toxic work environment and solutions. He could have looked for another job and remained working until he landed another job. He could have requested a leave of absence for that purpose.

[16] I find that the Appellant left his job because of the long commute and his perception of the toxic work environment. He said in testimony that there were no other issues involved in his decision to quit. I will first assess the evidence about those two issues, then determine whether the Appellant had just cause to quit.

[17] In making findings of fact, the Tribunal may be entitled to discount an appellant's later statements as compared to his earlier statements, particularly where the later statements raise new matters not mentioned in the earlier statements.[4] I will use this principle in assessing the evidence and in finding the facts.

[18] On his application for benefits, the Appellant stated that the reason that best described why he quit was "because I could not get to work anymore." He did not choose the reason, "Due to discrimination, harassment or personal conflict at work." In his request for reconsideration, the Appellant stated that the commute was a major factor. It was five hours total each day on public transit by subway and two bus routes. At the end of the reasons, he stated that the majority of employees were vaccinated. They had an issue with him because he was not vaccinated. "This created a hostile work environment." The Appellant had not previously mentioned this issue he had with other employees or the hostile work environment. The next reference the Appellant made to the work environment was in his notice of appeal. That issue had now become the main reason he quit. He referred to this as a human rights issue. Non-vaccinated workers were discriminated against. The commute was now "another minor issue." In his conversations with the Commission, the Appellant discussed the issue of commuting in detail. He never discussed the issue of a toxic work environment with the Commission, even after filing his request for reconsideration. In his testimony, the

[4] See *Cundle v Human Resources and Skills Development Canada*, 2007 FCA 364.

Appellant said that the toxic work environment had become a big factor in his decision to quit.

[19] Based on this review, I discount the importance of the toxic work environment issue. That issue was only raised much later once the Appellant had been refused EI benefits. That issue went from not being mentioned at all, to being another reason after the "major factor" of the commute, to being the main reason for quitting. Had the toxic work environment been so important to the Appellant, he would have stated that in his application and in his conversations with the Commission.

– **The commuting issue**

[20] I find that the Appellant quit because of the commuting issue.

[21] The Appellant worked for the employer from July 19, 2021, to October 7, 2021. He lived some distance away from the place of work. He did not drive. The commute to work involved one bus, the subway, then another bus. His work started at 7:30a.m. and ended at 4:30p.m., Monday to Friday. He had to leave home at 5:00a.m. and arrived home about 6:30 to 7:00p.m. His commute time did not change over the three months he worked for the employer. He lived with his parents. Because of their age and health, they relied on him.

[22] In his application for benefits, the Appellant answered questions about transportation for work. He didn't get a ride with a co-worker because none lived nearby. He did not ask if a car pool was available because none were available. That appears to be consistent with his statements to the Commission in a phone conversation on February 24, 2022. He said that he spoke to HR, who suggested he find someone to carpool with. He asked co-workers if they lived near him, but none were in his area. But that is inconsistent with evidence from the employer that the Appellant never stated any problems about his commute to work. The employer said that the Appellant was friends with many other co-workers that lived in more or less the same area as him. Carpooling might have been one option.

[23] The Appellant made other statements in his application for benefits. He stated that he did not speak to his supervisor about transportation problems, due to personal issues. In his testimony, he said the last answer was not true. He did speak to his supervisor. He did not answer "personal issues" on the application. The Appellant also testified that he did talk to his boss and to HR about the transportation issue. He did not ask about carpooling or whether any co-workers lived near him, as possible rides to work. He just said that he could not do the commute anymore. The employer's evidence is that the Appellant did not speak to it about his commute to work. He just quit one day without giving any reasons.

[24] The Appellant spoke to the Commission before it made its initial decision. He said that he quit because of transportation issues. He was never late for work. He just gave up. He couldn't do it anymore. He wasn't able to function due to lack of sleep. He confirmed that information in a later conversation with the Commission. He spoke to the Commission after he made his request for reconsideration. He confirmed that he quit because the commute was too long. He could no longer handle it.

– **The toxic work environment issue**

[25] I find that the evidence does not support the existence of a toxic work environment. I do accept that the Appellant perceived that there was such an environment. I do not accept that such an environment existed.

[26] The evidence on this issue is not strong. The issue is not mentioned until the Appellant's request for reconsideration, after the initial decision to deny benefits. There is no mention of this issue in the conversations the Appellant had with the Commission before and after his request for reconsideration. In the request for reconsideration, commuting is a major factor. The hostile work environment is mentioned, but no details are given. He did give details to support the commuting issue. In his notice of appeal, the Appellant said that co-workers were not OK with him not being vaccinated against COVID-19 for health reasons. He had his own office, so could work in isolation. They were not OK with that either. The atmosphere was very hostile and became toxic. The bulk of the Appellant's evidence on a toxic work environment comes from his testimony.

[27] The Appellant's testimony on this issue was brief. He said his co-workers did not respond to him when he asked for information. They resisted him in doing his job. The reason was that he had not been vaccinated against COVID-19. His co-workers had been vaccinated. He said that he mentioned all the issues with the Commission when he spoke with them. There is no record of that in the Commission's evidence on file.

[28] This testimony about the co-workers being non-responsive and resistant is not consistent with the Appellant's statement to the Commission that he did ask other employees if they lived near him, though none did. He said he also offered to pay for rides, but that wasn't an option. If the work environment was as hostile and toxic as the Appellant claims he would be reluctant to ask his vaccinated co-workers to share a car ride with an unvaccinated person. The Appellant's testimony about asking other employees about getting a ride is inconsistent with the application. In the application, he stated "no, none live nearby," to the question whether he attempted to get a ride with a co-worker. He also stated that he did not investigate if a car pool was available because "none available".

[29] The Appellant testified that he spoke to the employer about this issue. The employer did not respond and offered no solution. That is inconsistent with the employer's evidence that he never spoke to it about the commuting issue, not any other issues. The Appellant made no mention of toxic work environment or hostile work atmosphere in its conversations with the Commission.

[30] The Appellant testified that he raised all of the issues for quitting with the Commission employee he spoke to (MC). That is not reflected in the notes of those conversations. Nor does the toxic work environment appear in the notes of other Commission employees he spoke to, MD prior to the initial decision, or SW after the request for reconsideration.

– **The just cause issue**

[31] I find that the Appellant did not have just cause for quitting when he did. Though he had good cause in his own view of the matter, that is not the same as just cause for EI purposes.

[32] There is an obligation on employees, in most cases, to try to resolve workplace conflicts with an employer or to demonstrate efforts to seek alternative employment before making a unilateral decision to quit a job.[5] Remaining in employment until a new job is secured is, without more, generally a reasonable alternative to taking a unilateral decision to quit a job.[6]

[33] With respect to the Appellant attempting to resolve workplace conflicts, I have found above that the Appellant failed to prove that he did attempt this in relation to the conflict arising from the perceived toxic work environment.

[34] With respect to staying in the job until a new job is secured, the Appellant testified that he did not search for a new job before he quit. He testified that he could not use his computer at work to job search. He could not leave work to attend a job interview. He did not ask for a leave of absence which would have allowed him to look for work and attend interviews. He did look for work after he quit. But that was too late for assessing whether there was just cause at the time he did quit.

[35] With respect to quitting because the commute was too much for the Appellant, that does not amount to just cause. He testified that it was not rational to leave a good job. But he couldn't stay with the commuting time involved. He was 51 and can't do now what he could do at age 21. That may be a good cause for quitting for the Appellant. But it is not just cause for EI purposes. Just cause requires that there is no reasonable alternative in all the circumstances to quitting when the person quits. The Appellant had worked for this employer in the past. He had the same commuting distance as in the past. He knew in advance what the commute would require. At the time he quit, he had worked for the employer for about two and one-half months. The failure to find a ride to work with a co-worker by itself was not just cause. Other options needed to be explored to justify a conclusion that there was no reasonable alternative to quitting when he did.

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[5] See *Canada (Attorney General) v White*, 2011 FCA 190.
[6] See *Canada (Attorney General) v Graham,* 2011 FCA 311.

[36] In those circumstances, a reasonable alternative would have been to continue working for the employer, while looking for work outside his work hours, or during a leave of absence. If he did not take a leave of absence, he could try to arrange any job interviews either outside work hours, or over the internet during his lunch or other breaks at work.

Conclusion

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

[38] This means that the appeal is dismissed.

Paul Dusome

Member, General Division – Employment Insurance Section