Citation: *BU v Canada Employment Insurance Commission*, 2023 SST 1402

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	B. U.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (579156) dated April 21, 2023 (issued by Service Canada)

Tribunal member:	Amanda Pezzutto
Type of hearing:	In person
Hearing date:	September 12, 2023
Hearing participant:	Appellant
Decision date:	September 18, 2023
File number:	GE-23-1182

Decision

[1] B. U. is the Appellant. The Canada Employment Insurance Commission (Commission) says he can't get Employment Insurance (EI) benefits. The Appellant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Appellant's appeal. I find that he hasn't shown just cause for leaving his job. This is because I think he had reasonable alternatives to leaving his job, looking at his circumstances. This means he can't get EI benefits.

Overview

[3] The Appellant worked as a grocery delivery driver. His employer had a "no-contact" delivery policy because of the COVID-19 pandemic. But the Appellant felt like the employer was pressuring him to ignore the policy and have physical contact with customers. So, he quit his job and applied for EI benefits. The Commission looked at his reasons for leaving. It decided that he had quit his job without just cause, and so the Commission refused to pay EI benefits.

[4] The Commission says the Appellant doesn't have just cause for leaving his job. The Commission says he hasn't proven that the employer was pressuring him to ignore the no-contact delivery policy. And the Commission says the Appellant had reasonable alternatives to leaving his job. The Commission says he could have found a new job. The Commission says he also could have brought his concerns to upper management or the provincial workplace safety authority.

[5] The Appellant disagrees. He says the job was a risk to his health and the job duties were significantly different from what he expected. He also says his supervisor was antagonistic towards him. He says the employer forced him to make physical contact with customers, in spite of the no-contact delivery policy. He says he tried to bring his concerns to his managers and the provincial workplace safety authority, but they didn't help. He also says he looked for other work before he left.

Issue

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

[7] 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 Commission and the Appellant agree that the Appellant chose to leave his job

[8] The Commission says the Appellant stopped working because he quit. The Commission says he had a choice to stay or leave his job, and he chose to leave.

[9] The Appellant agrees. He says that he chose to leave the job.

[10] The Commission included a copy of the Appellant's resignation letter in the appeal file. In the letter, the Appellant says that he isn't going to return to the job and asks for his Record of Employment (ROE).

[11] So, the Commission and the Appellant agree that the Appellant chose to leave his job. There isn't anything in the appeal file that makes me think he stopped working for any other reason. I find that the Appellant stopped working because he quit his job. The law calls this voluntary leaving.

The Commission and the Appellant disagree about whether the Appellant had just cause

[12] The Commission and the Appellant disagree about whether the Appellant had just cause for leaving his job.

[13] 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.

[14] 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]

[15] It is up to the Appellant 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]

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

[17] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to leaving at that time.[5]

The circumstances that existed when the Appellant quit

[18] The Appellant says that there were several circumstances from the law that apply to his situation. He says:

- The working conditions were a danger to his health
- There was antagonism with his supervisor
- The employer made significant, unilateral changes to his working conditions.

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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 4.
[4] See section 29(c) of the Act.
[5] See section 29(c) of the Act.

[19] He says I should look at all of these circumstances when I decide if he had just cause for leaving his job.

[20] The Commission says that the Appellant hasn't proven that any of these circumstances existed at the time the Appellant quit his job. The Commission says the employer is more credible than the Appellant.

[21] The Appellant and the employer have given very different statements about the Appellant's working conditions. When there are different explanations of what happened, I have to decide which version is most likely. I have to consider all of the evidence and make a decision on the balance of probabilities.[6] This means I have to look at all of the evidence and decide whose statements are more credible: the Appellant or the employer's.

[22] So, I will look at each of the circumstances and decide if the Appellant has proven that they existed when he quit his job.

– I find the working conditions weren't a danger to the Appellant's health

[23] The Appellant says that the working conditions were a danger to his health. He says the employer pressured him to have physical contact with customers during the height of the COVID-19 pandemic.

[24] The Commission disagrees. The Commission says the employer has always said that they had a no-contact delivery policy.

[25] I agree with the Commission. I think the employer is more credible on this issue.

[26] The Appellant said that he worked as a grocery delivery driver. He said he often had to deliver to people who had COVID-19. He felt like the employer pressured him to have physical contact with customers. He said the employer expected him to go into

[6] The Federal Court of Appeal says that the standard of proof is the balance of probabilities for employment insurance matters in its decision *Canada (Attorney General) v. Corner*, A-18-93.

customers' homes and drop off their groceries. He felt like this put him at risk of catching COVID-19.

[27] The employer told the Commission that they had a no-contact delivery policy. They said that they expected their delivery drivers to drop off deliveries at designated spots or at the customer's front door, without making physical contact with customers. The employer told the Commission that the Appellant could have refused to complete a delivery and returned the groceries to the store if a customer asked him to come inside their home.

[28] The Appellant says he has evidence showing that the employer expected him to have physical contact with customers. But I don't think his evidence is convincing.

[29] The Appellant provided a note with a customer's delivery instructions. I agree that the customer says that they have COVID-19 in the note. But the customer tells the Appellant to leave their groceries on their front porch. So, I think this note shows that the Appellant didn't have to have any physical contact with this customer.

[30] The Appellant also described an incident with a customer at a university dormitory. He said the customer insisted that he bring the groceries to their room. He said the store manager ordered him to follow the customer's instructions.

[31] The employer agreed with the Appellant in part. The employer agreed that the customer wanted the Appellant to take the groceries into their room. But the employer told the Commission that the Appellant acted correctly when he refused to go to the customer's room. The employer said the customer was unreasonable.

[32] So, this doesn't make me think that the employer expected the Appellant to ignore the no-contact delivery policy.

[33] The Appellant said that an email from his manager shows that the employer expected him to have physical contact with customers. In the email, his employer says:

> If you can't make contact with the customer, you have to fail the delivery and move on to the next one[7]

[34] The Appellant says this proves that his employer expected him to have physical contact with customers.

[35] I disagree with the Appellant's interpretation of the employer's email. The prior paragraphs talk about the employer's expectation that drivers phone customers before leaving their groceries. I find that the rest of the email makes it clear that the employer is talking about non-physical contact when he uses the word "contact": in other words, a phone call.

[36] The Appellant also says that the employer expected him to have physical contact with customers when they discussed substitutions in the order. But I don't think the Appellant has proven that this was the employer's policy. The email from his employer explains how the employer expected drivers to phone customers to go over the substitutions in the order.

[37] So, I don't think the Appellant's evidence proves that the employer expected him to break their no-contact delivery policy.

[38] The Commission spoke to the employer several times and spoke to different employees with the company. Each person told the Commission that they had a no-contact delivery policy. I think the employer is more credible than the Appellant on this point.

[39] So, I find that the Appellant hasn't proven that the working conditions were a danger to his health. This is because he hasn't proven that the employer expected him to break their delivery policy and make physical contact with customers.

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[7] GD3-64 to GD3-66

– **The Appellant hasn't proven that he had an antagonistic relationship with his supervisor**

[40] The Appellant says his supervisor was antagonistic towards him. He says it started because he had a workplace injury about three months before his last day of work. He says his employer pressured him to return to work and then reduced his hours. He also says his employer started to blame him more often for customer complaints.

[41] I don't think the Appellant has proven that his supervisor had an antagonistic relationship with him.

[42] The Appellant and the employer agree that the Appellant had a workplace injury in October 2022. But the employer gave the Commission copies of its internal documents about the injury. These documents make me think the employer took the injury seriously and didn't pressure the Appellant to return to work.

[43] In fact, the employer's evidence shows that the Appellant didn't give the employer information about his recovery. The employer asked the Appellant to update the incident report with new information about his treatment and recovery, but the Appellant didn't reply to the employer's request.

[44] And the Appellant's supervisor texted him to ask if he was able to return to work. He didn't insist that the Appellant return before he was ready. The Appellant told the employer that he had recovered and could return to work.

[45] So, I don't think the Appellant has shown that the employer pressured him to return to work before he was ready.

[46] The Appellant also spoke about a conflict with a customer that happened about a week before he quit. The customer complained about how the Appellant had completed a delivery. But there isn't any evidence showing that the employer used this incident as an excuse to harass the Appellant or treat him poorly. The employer didn't use the incident as an excuse to discipline the Appellant and there isn't any evidence showing that the employer warned him about the incident.

[47] Finally, the copies of text messages and emails between the Appellant and his employer don't show me that the Appellant's supervisor was antagonistic towards the Appellant. I think the tone of these messages are professional and sometimes cordial. The Appellant hasn't given me copies of any messages that show his supervisor behaved in an antagonistic way towards him.

[48] So, I don't think the Appellant has proven that there was antagonism with his supervisor.

– **The Appellant hasn't proven that his employer made significant changes to his working conditions**

[49] The Appellant says that his employer made significant, unilateral changes to his working conditions. This is because the Appellant says he expected the employer to respect the no-contact delivery policy. But he says the employer changed the working conditions when they expected him to make physical contact with customers during his deliveries.

[50] The employer has always said they had a no-contact delivery policy. They told the Commission that they didn't expect the Appellant to enter a customer's home or have physical contact with customer.

[51] The Commission says the employer is more reliable and I agree. I find that the Appellant hasn't proven that the employer changed his working conditions. I don't think the Appellant has proven that the employer expected him to ignore the no-contact delivery policy.

[52] I have already explained why I don't think the Appellant has proven that his working conditions were a danger to his health. I understand that the Appellant says the employer expected him to ignore the no-contact delivery policy. But the employer has always said that they expected delivery drivers to follow the no-contact delivery policy. I think the employer is more credible on this point.

[53] And so, for the same reasons, I don't think the Appellant has proven that the employer changed his working conditions. This is because I don't think the Appellant

has proven that the employer expected him to have physical contact with customers, in spite of the no-contact delivery policy.

– **What circumstances will I consider when I look at whether the Appellant had reasonable alternatives to leaving his job?**

[54] The Appellant says I should consider the following circumstances when I look at whether he had reasonable alternatives to leaving his job:

- The working conditions were a danger to his health
- There was antagonism with his supervisor
- The employer made significant, unilateral changes to his working conditions.

[55] I have looked at each of these circumstances. But I don't think the Appellant has proven that any of these circumstances existed at the time he left his job.

[56] So, I won't consider any of these circumstances when I decide if the Appellant had reasonable alternatives to leaving his job.

The Appellant had reasonable alternatives

[57] Now, I must look at whether the Appellant had reasonable alternatives to leaving his job at the time he quit.

[58] The Appellant says that tried all reasonable alternatives before he left. He says he talked to his manager and supervisor. He says he looked for other work. And he says he called the provincial workplace safety agency before he quit.

[59] The Commission disagrees. The Commission says he could have brought his concerns to a higher level of management. The Commission also says he could have made a complaint to the provincial workplace safety agency or he could have found a new job before he quit.

[60] I agree with the Commission. I don't think the Appellant has proven that leaving his job was the only reasonable thing left he could do, considering his circumstances.

[61] I don’t think the Appellant has proven that the employer expected him to ignore the no-contact delivery policy and have physical contact with customers. But even so, if the Appellant felt like his manager was pressuring him, I think it would have been reasonable for him to bring his concerns to a higher level of management.

[62] The employer told the Commission that they had a separate labour relations department. They said that making a complaint to the labour relations department automatically created a ticket and that the employer had to investigate any complaint made this way.

[63] So, I find that making a complaint to the labour relations department or bringing his concerns to upper management were reasonable alternatives available to the Appellant. He could have tried these steps before deciding to leave his job.

[64] At the hearing, the Appellant said he called the provincial workplace safety agency the week before he quit. He said the agent discouraged him from making a formal complaint. He said the agent told him that they were too backlogged.

[65] But I think it would have been reasonable for the Appellant to follow the formal complaint process. I also think it would have been reasonable for the Appellant to call the workplace safety agency sooner than a week before he decided to quit.

[66] The Appellant also says he looked for work before he quit. But I think it would have been reasonable for him to remain in his job until he had found a new job. This is especially true because I don’t think the Appellant has proven that the employer expected him to break its no-contact delivery policy.

[67] So, I think the Appellant had reasonable alternatives to leaving his job at the time he quit. He hasn’t proven that leaving his job was the only reasonable thing left he could do, considering his circumstances. This means he hasn’t proven that he had just cause for leaving his job.

Conclusion

[68] I am dismissing the Appellant's appeal. He hasn't proven that leaving his job was his only reasonable alternative. So, he hasn't proven that he had just cause for leaving his job. This means he can't get EI benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section