



[TRANSLATION]

Citation: *LV v Canada Employment Insurance Commission*, 2023 SST 1930

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: L. V.
Representative: L. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (595340) dated July 28, 2023 (issued by Service Canada)

Tribunal member: Jacques Bouchard

Type of hearing: Videoconference
Hearing date: November 21, 2023
Hearing participants: L. V.
L. P. (representative)

Decision date: November 21, 2023
File number: GE-23-2402

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant had just cause because he had no reasonable alternative to leaving. This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant stopped working as a janitorial employee on September 6, 2023, because of a shortage of work. He received EI regular benefits until December 24, 2023. An investigation by the Canada Employment Insurance Commission (Commission) revealed the Appellant worked for another janitorial company on September 26 but left his job that same day, unhappy with the working conditions. The Commission looked at his reasons for leaving and decided that he voluntarily left his job without just cause within the meaning of the Act, so it wasn't able to pay him benefits.

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

[5] The Commission says that, instead of leaving his job when he did, the Appellant could have talked to a supervisor to change his duties to reflect his expectations. The Commission adds that another alternative would have been to secure another job before leaving.

[6] The Appellant disagrees and says that, when he was hired, the company promised him that he would do the same type of janitorial work as with his previous employer. He points out that he had been performing janitorial work for the previous contractor for over 10 months and that the new contractor promised him that his duties would be the same. He says that he gave it a shot on September 26, 2023, but that the employer wanted him to perform different duties that were nothing like they had agreed.

He says that he discussed the situation but that the new employer was unreceptive to his complaints.

[7] The Appellant wants to be entitled to EI benefits, pointing out that the working conditions weren't as described. He says that the employer knowingly changed his duties without consulting him, breaking the relationship of trust.

[8] The Tribunal has to decide whether the Appellant has shown that the conditions of employment were met and whether he tried to resolve the situation with his employer. Did he have no reasonable alternative to leaving, and should he have secured another job before leaving?

[9] In deciding these issues, the Tribunal keeps in mind that the Appellant was trying to continue in the same job but with two different employers, the first employer having lost a janitorial contract to a second contractor. The Appellant clearly wanted to continue performing the same type of janitorial work he had been doing for the previous 10 months in a big-box store.

Issue

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

[11] 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

[12] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on September 26, 2023. I see no evidence to contradict this.

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

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

[14] 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.

[15] 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

[16] 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

[17] 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

[18] 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

[19] The Appellant says that one of the circumstances set out in the law applies. Specifically, there was a significant change in his work duties.

[20] As mentioned, the Appellant was trying to continue in the same job after a change in contractors. The verbal agreement with the new management was that the

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.

Appellant would have the same duties as in the previous 10 months, namely general cleaning of the big-box store, floor cleaning, mopping, etc. Contrary to the initial agreement, on his first day of trying out the job, he was asked to wash the dishes and help in the kitchen, on the pretext that they were related duties.

[21] The Tribunal finds that the Appellant's testimony is credible and shows some attachment to the janitorial work he was doing. The Tribunal understands that the Appellant was receiving EI regular benefits when he tried to go back to work for the new contractor. Clearly, he genuinely wanted to get back to doing work he enjoyed.

[22] The Tribunal also understands that the Appellant was asked to perform duties that were significantly different from his old duties.

[23] The Tribunal also keeps in mind that the new contractor was fully aware of the Appellant's expectations and made no effort to discuss the conditions of employment with him again. Although the agreement was verbal, it is clear that the Appellant wanted the same job description as before.

The Appellant had no reasonable alternative

[24] I must now look at whether the Appellant had no reasonable alternative to leaving his job when he did.

[25] The Appellant says that he had no reasonable alternative because, on day one, his duties were different, and the employer was unwilling to talk.

[26] The Commission disagrees and says that the Appellant could have talked to other company supervisors or secured another job before leaving. In its view, the duties he was asked to perform were related to his janitorial duties.

[27] I find that the Appellant had no choice but to leave because the relationship of trust with the employer was broken on his first day of trying out the job, and that he tried to keep the same duties as promised, but that the conditions of employment had been significantly changed to include completely new activities for him.

[28] Given the circumstances that existed when the Appellant quit, the Appellant had no reasonable alternative to leaving his job, for the reasons set out above.

[29] This means that the Appellant had just cause for leaving his job.

Conclusion

[30] I find that the Appellant isn't disqualified from receiving benefits.

[31] This means that the appeal is allowed.

Jacques Bouchard
Member, General Division – Employment Insurance Section