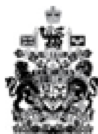

[TRANSLATION]

Citation: *SB v Canada Employment Insurance Commission*, 2023 SST 1909

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (559597) dated February 10, 2023 (issued by Service Canada)

Tribunal member:	Guillaume Brien
Type of hearing:	In person
Hearing date:	June 13, 2023
Hearing participants:	Appellant Witness
Decision date:	July 4, 2023
File number:	GE-23-717

Decision

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

[2] The Claimant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant didn't have just cause because he had reasonable alternatives to leaving. This means that he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left his job on August 20, 2022, and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant'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 have to decide whether the Claimant has proven that he had no reasonable alternative to leaving his job.

[5] The Commission says that the Claimant could have seen a doctor before leaving. He could have found another job. He could have made a labour standards complaint. He could have taken time off.

[6] The Claimant disagrees and says that the Commission didn't consider his physical and mental health, lack of experience and qualifications, and extenuating circumstances.[1]

Issue

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

[1] See GD2-5.

[8] 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

[9] I accept that the Claimant voluntarily left his job.

[10] The Claimant agrees that he left his job on August 20, 2022, when he stopped showing up for work and decided not to call his employer back.

[11] So, I accept this as fact.

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

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

[13] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[2] 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.[3]

[15] It is up to the Claimant to prove that he had just cause.[4] 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 Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

[2] Section 30 of the *Employment Insurance Act* (Act) explains this.
[3] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[4] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

– **Argument no. 1: Working conditions that constitute a danger to health or safety**

[16] At the start of the hearing, I asked the Claimant to explain his reasons for appealing the Commission's negative reconsideration decision.

[17] To begin with, he said he disagreed with the Commission's denying him benefits because—according to it—he didn't try to talk to his boss about the road safety issues associated with his vehicle.

[18] The Claimant told me that he had two bosses: F., the big boss, and his brother, P. He explained that F. was almost never there and that his brother was the one who handled the day-to-day issues. The Claimant said that he tried to discuss the situation with P. and even sent him an ultimatum letter to sort out the multiple mechanical problems with his truck.

[19] After reviewing the record and hearing the Claimant, I note that the following facts emerge from the record:

- On October 31, 2022, the Claimant explained to the Commission that his 40-foot truck was unsafe. He had to repeatedly ask his employer to fix it. He said he had to unhook his trailer just to put air in his tires, and he even had to find a mechanic once to fix the problems the employer refused to fix.[5]

- The record includes the Claimant's ultimatum email to his employer. In this July 14, 2022, email, he listed the repairs he felt his employer needed to make. He indicated that, for his own safety, he would not be making deliveries with the vehicle anymore if the repairs weren't done.[6]

[5] See GD3-15 and GD3-16.
[6] See GD3-17.

- On November 2, 2022, the employer told the Commission that the truck did need to get fixed. It said that, once it became aware of the necessary repairs, it fixed the truck during a slow week.[7]

- On November 16, 2022, the Claimant confirmed to the Commission that all the repairs had been done as requested, except for the tires on the truck. He said that three weeks had passed before the nighttime lights were fixed. He said that none of the lights around the truck worked except for the flashers.[8]

- During the reconsideration request, the Claimant told the Commission that his boss was slow getting the repairs done. He said it was only after he had sent the ultimatum letter that the employer decided to fix his delivery truck, but that it hadn't addressed all the problems with the truck before he left. Everything was unsafe, and he could not take it anymore.[9]

- At the hearing, the Claimant confirmed that all the problems with the truck had been fixed except for the tire issues and the lights that never got fixed.

[20] At the hearing, I asked the Claimant whether he had ever tried to contact the Commission des normes, de l'équité, de la santé et de la sécurité du travail [Quebec's labour standards commission] (CNESST). He said he hadn't:

- He said he didn't know he could contact them about the unsafe working conditions. He isn't the type to quit a job; he did what he thought was best.

- He also told me that the law says that vehicles that aren't up to standard should not even leave the lot.

[21] After hearing the Claimant, I find that it would have been reasonable for him to contact the CNESST about his working conditions. The fact that he says he didn't know he could contact the CNESST doesn't change the fact that this was a reasonable

[7] See GD3-22 and GD3-23.
[8] See GD3-25.
[9] See GD3-31 and GD3-32.

alternative for him. Nobody is supposed to ignore the law, and ignorance of the law isn't a reason that the law accepts for failing to find out more.

– **Argument no. 2: Mental health problem**

[22] At the hearing, the Claimant told me that his second ground of appeal was that the Commission hadn't considered the protection of his mental health. He said the safety issues discussed above put him through too much stress and too many emotions. He said he had to leave his job before he became depressed again.

[23] First, I note that the Claimant applied for regular benefits, not sickness benefits.

[24] Second, a review of the record shows the following:

- On October 31, 2022, the Claimant told the Commission that he didn't see a doctor before leaving his job.[10] So, he didn't file a medical certificate.
- On November 2, 2022, the employer told the Commission that it wasn't aware of the Claimant's mental health issues.[11]
- In his reconsideration request to the Commission, the Claimant wrote that the Commission didn't want to acknowledge his mental health history (depression).[12]
- During the reconsideration request, the Claimant confirmed that he was a little depressed but that he would have become even more depressed if he had continued in his job. He had to protect his health. But when he left, he hadn't seen a doctor. He said that he hadn't been on medication for a year but that he still needed to be careful about his health.[13]

[10] See GD3-15 and GD3-16.
[11] See GD3-22 and GD3-23.
[12] See GD3-28.
[13] See GD3-32.

- At the hearing, the Claimant confirmed that he never discussed his mental health issues with his employer. He said that, at the time, he had just stopped taking his medication. He mentioned coming from a family with a hard father who taught him that a man doesn't show his weaknesses.

[25] At the hearing, I asked the Claimant to explain why he hadn't seen a doctor before leaving his job. He gave the following explanation:

- He finds it unfair that the Commission doesn't believe him. He knows himself. The Commission trusts a medical certificate but not the word of a human being.
- It was hard to get a doctor's appointment. The wait times were very long.
- When asked why he didn't go to the ER, the Claimant said he had a family doctor, that he was in a situation where he had to resolve the issue quickly, and that he didn't want to go to the hospital for a medical certificate.
- The Claimant told me that he saw a doctor two or three weeks before the hearing. He left with a medical certificate for depression. He told me he didn't even know he was depressed.

[26] After hearing the Claimant, I find that a reasonable alternative would have been for him to see a doctor to get a medical certificate before unilaterally leaving his job. He isn't a doctor and can't validly self-diagnose. He could have gone to the ER if his problems were urgent. He even told me that he had to resolve the issue quickly. Having a family doctor doesn't stop you from going to the hospital in an emergency. The fact that the Claimant got a medical certificate two or three weeks before the hearing—in other words, in late May 2023—doesn't prove that he was depressed nine months earlier, on August 20, 2022, when he chose to voluntarily leave his job and apply for EI regular benefits.

[27] On June 12, 2023, a day before his hearing, the Claimant submitted three documents signed by his family doctor:

- A first medical certificate, dated March 15, 2023, confirms that the Claimant is known to have chronic pain and persistent depressive disorder. He was seen in September 2021 and then in October 2022. After hearing him describe the symptoms he had in June 2022 and July 2022, the doctor wrote: [translation] "[I]t seems he was in a depressive phase. This might well have affected his ability to work."[14]

  I find that the Claimant saw his family doctor almost two months after he left his job. The doctor wasn't able to confirm what symptoms the Claimant had before or when he quit. The doctor used the conditional ([translation] "it seems" and "might have") in his medical certificate.

- In a letter dated May 23, 2023, the same family doctor wrote: [translation] "I am forced to admit that his depressive symptoms may have relapsed in July 2022."[15]

  Again, this letter was issued nine months after the Claimant voluntarily left his job. The conditional was still used ([translation] "may have"). This letter can't change the facts of the case.

- Lastly, the Claimant submitted a medical certificate from the same family doctor, who diagnosed him with major depressive disorder and a complete inability to work from May 23, 2023, to June 20, 2023.

  This letter has nothing to do with the Claimant's voluntary leaving on August 20, 2022. Nor does it explain why the Claimant could not see a doctor before leaving his job.

[14] See GD6-2.
[15] See GD6-3.

[28] After reviewing the medical documents on file, I find that they can't prove, on a balance of probabilities, that the Claimant was unable to see a doctor before he left his job. He testified that this wasn't the first time that he stopped working because of depression. The medical certificates mentioned were issued several weeks after he voluntarily left, and the first two use the conditional to describe **possible** symptoms that weren't diagnosed by his family doctor during the relevant period. If the Claimant was sick when he voluntarily left, he should have applied for sickness benefits.

[29] So, I find that a reasonable alternative for the Claimant would have been to see a doctor to get a medical certificate before voluntarily leaving his job.

– **Argument no. 3: Ignorance of the law**

[30] As a third and final ground of appeal, the Claimant explained to me that he had never left a job in his entire life. He said he was never taught how to quit a job. He said he left his job because he could not take it anymore.

[31] As discussed above, ignorance of the law isn't a valid ground of appeal. In a case involving voluntary leaving, the claimant has to prove, on a balance of probabilities, that they had no reasonable alternative to voluntarily leaving their job when they did. The law applies to all claimants equally.

[32] If the Claimant didn't know how to leave his job, it would have been reasonable for him to call the Commission. He also could have called a lawyer. It was up to him to find out more.

[33] After thoroughly analyzing the record, I find that there were several reasonable alternatives open to the Claimant when he decided to voluntarily leave his job. For example, he could have contacted the CNESST. He could have seen a doctor. He could have called the Commission or a lawyer to learn about his rights.

Conclusion

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

[35] This means that the appeal is dismissed.

Guillaume Brien

Member, General Division – Employment Insurance Section