



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *X v Canada Employment Insurance Commission and LP*, 2020 SST 1682
Tribunal File Number: GE-20-1511

BETWEEN:

X

Appellant

and

Canada Employment Insurance Commission

Respondent
(Commission)

and

L. P.

Added Party
(Claimant)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: June 17, 2020

DATE OF DECISION: June 18, 2020

DECISION

[1] The Appellant's appeal is allowed. The Claimant has not shown just cause because he had reasonable alternatives to leaving his job when he did. This means he is disqualified from receiving benefits.

OVERVIEW

[2] The Claimant stopped working as a plant manager for the employer ("A1 Blasting Mats") on September 9, 2019, and applied for Employment Insurance (EI) benefits on December 10, 2019. The Commission looked at the Claimant's reasons for leaving and decided he had just cause for voluntarily leaving his employment. The Commission allowed the claim without imposing a disqualification.

[3] The employer requested a reconsideration of the Commission's decision. The Commission maintained this was a case of equally balanced statements from the employer and the Claimant, because there was no evidence from either party which would give more weight to the statements provided. The Commission gave the benefit of the doubt to the Claimant's version and maintained their initial decision.

[4] The employer (now the Appellant) disagrees with the Commission's decision. The Appellant's representative says the statements from the employer and Claimant were not equally balanced, because the Claimant could not substantiate his allegations of harassment against the Appellant. The Appellant's representative further submitted the Claimant did not have just cause for voluntarily leaving his employment.

THE CLAIMANT (ADDED PARTY) DID NOT ATTEND THE HEARING

[5] The Claimant (Added Party) did not attend the hearing at the scheduled time. After waiting approximately 10-minutes, the Claimant was contacted by telephone to see if he wished to attend the hearing or request an adjournment. The Claimant indicated he did not receive a Notice of Hearing, but did not wish to participate in the hearing anyway. The Claimant was asked if he wished an adjournment and a new hearing date. The Claimant stated he was not interested in attending any hearing. The Claimant was then asked to contact the Tribunal and provide a

statement for the record about not wishing to attend a hearing. The Claimant contacted the Tribunal on the day of the hearing and stated that he was aware there was a hearing that day, but did not wish to participate and be involved. The Claimant's statement was recorded on a "Telephone Log" which is now on the file.

[6] A hearing is allowed to go ahead without the Claimant if the Claimant was given the notice of the hearing.¹The Claimant confirmed he was aware there was a hearing on June 17, 2020, but did not wish to be involved. I think the Claimant received verbal notice of hearing, because he confirmed he was aware of the hearing on June 17, 2020. So, the hearing proceeded on June 17, 2020, but without the Claimant.

ISSUE

[7] I must decide whether the Claimant is disqualified from being paid benefits because he voluntarily left his job without just cause. To do this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

ANALYSIS

Did the Claimant voluntarily leave his job?

[8] I find the Claimant voluntarily left his job for the following reasons:

[9] First: The Claimant's supervisor (D. B./Witness) testified that the Claimant called him on September 9, 2019, and told him that he was resigning because he missed his wife and children. D. B. testified that he and S. D. (Finance and Administration) called the Claimant later that evening and spoke with him. D. B. testified the Claimant explained that he was leaving his job because he wanted to go back home. On this matter, I prefer the testimony of the Witness (D. B.) over the Claimant's statement that he did quit his job because the statements from the Witness were consistent, detailed, and plausible.

[10] Second: The Claimant's statements about not leaving his employment were inconsistent and lacked credibility. For example, the Claimant's initial statement to the Commission in his

¹ Section 12 of the *Social Security Tribunal Regulations*.

application for benefits was that he quit his job (GD3-8). The Claimant then told the Commission on December 19, 2019, that he did not quit this job (GD3-21). The Claimant next indicated to the Commission on January 13, 2020, that he left his job because he was bullied (GD3-22 to 23). As cited above, I prefer the statements from D. B. (Witness) on this matter because his sworn testimony remained consistent, detailed, and plausible

The Appellant disputes that the Claimant had just cause for voluntarily leaving

[11] The parties do not agree that the Claimant had just cause for voluntarily leaving the job when he did.

[12] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.² Having a good reason for leaving a job is not enough to prove just cause. You have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.³ It is up to the Claimant to prove this.⁴ The Claimant has to show that it is more likely than not that he had no reasonable alternatives but to leave when he did.⁵

[13] When I decide that question, I have to look at all of the circumstances that existed when the Claimant quit. The circumstances I have to look at include some set by law.⁶ After I decide which circumstances apply to the Claimant, he then has to show that there was no reasonable alternative to leaving at that time.⁷

The circumstances that existed when the Claimant quit

[14] The Claimant states that one of the circumstances set out in the law applies in his case. Specifically, the Claimant states he was harassed by the employer (K. F./Vice-President for Global Sales).

² This is set out at s 30 of the *Employment Insurance Act*.

³ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

⁴ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

⁵ *Canada (Attorney General) v White*, 2011 FCA 190, at para 4.

⁶ Paragraph 29(c) of the *Employment Insurance Act*.

⁷ Paragraph 29(c) of the *Employment Insurance Act*.

[15] I find the Claimant's circumstance of harassment would not fall within the parameters of the law⁸ for the following reasons.

[16] First: The Witness (K. F.) testified that he did not harass the Claimant. K. F. testified that he was only infrequently at the plant where the Claimant worked, because he worked remotely from home and commuting to the plant could take up to four or five hours especially with construction. K. F. further testified that the statements from the Claimant that he was bullied were "categorically false" (GD3-22). On this matter, I prefer the statements from the Witness (K. F.) because he provided sworn testimony that was direct, detailed, consistent, and plausible.

[17] Second: The Ministry of Labour (dated January 31, 2020) addressed the Claimant's allegation of harassment against the Appellant and stated there was no evidence to support the Claimant was reprised against for participating in a protected activity (GD6-14).

[18] Third: The "Harassment Investigation Claim" by a third-party investigator ("Peninsula") reported on December 23, 2020, that there were no incidents of corroborated harassment from K. F. or any other management eyewitness. The report further indicated that the apparent frustration the Claimant had with K. F.'s urgent documentation requests would fall within a minor disagreement (GD2-190 to 191).

[19] I do recognize the Claimant stated in the Appeal file that the work atmosphere with employer (the Appellant) was stressful and "unpleasant" for him and his mental health was suffering and he was unable to continue working for the employer (GD3-24). I will consider these circumstances when I decide if the Claimant had just cause for leaving his employment.

Reasonable alternatives

[20] I must now look at whether the Claimant had no reasonable alternatives to leaving his job when he did. The Claimant says he did not have any, because his complaints were disregarded by

⁸ Paragraph 29(c) of the *Employment Insurance Act*.

the employer (D. B. and S. D.). The Claimant further says he could not request a transfer, because there were no other locations to be transferred to with the employer.

[21] The Appellant disagrees and says that the Claimant's allegations of harassment were unsubstantiated and he did not have just cause for leaving his job.

[22] I find the Claimant had reasonable alternatives to leaving his job for the following reasons:

[23] First: The Claimant could have secured other employment prior to quitting his job. I realize the Claimant indicated that his mental health was suffering owing to a stressful work environment. Nevertheless, I cannot conclude the Claimant's work environment was so intolerable that he had to leave his job when he did.

[24] Second: The Claimant could have raised his concerns about K. F. to his supervisor D. B. before he quit his job. I recognize the Claimant told the Commission that he spoke to D. B. and S. D. about K. F., but his complaints were disregarded. However, D. B. testified that the Claimant never spoke to him about any harassment or bullying before quitting. D. B. further testified that the Claimant was on a management committee that would meet weekly and he could have raised any concerns at that time. On this matter, I prefer the testimony from the Witness (D. B.) that the Claimant did not raise any issue about harassment or bullying prior to quitting his job because his statements were forthright and consistent.

[25] Third: The Claimant could have inquired about a leave of absence or medical leave with the employer. I recognize the Claimant told the Commission that his workplace was not unionized. Still, the Claimant had the reasonable alternative of at least inquiring about a leave of absence or providing the employer (the Appellant) with medical documentation that supported a medical leave.

Additional statements from the Claimant

[26] I do realize the Claimant told the Commission that the employer (the Appellant) was not telling the truth, but he could not prove anything. However, the Claimant made the decision not to attend the hearing where he would have had an opportunity to testify and provide a rebuttal to the Witness Testimony and the submissions from the Appellant's representative. I recognize the

Claimant was displeased and frustrated with the employer. Nevertheless, I must apply the legal test for voluntarily leaving an employment to the evidence. In short, I cannot ignore or circumvent the law even for sympathetic reasons.⁹

[27] Considering the circumstances that existed at the time that the Claimant voluntarily left, he had the reasonable alternative of securing other employment prior to quitting, raising his concerns with the supervisor (D. B.), or inquiring about a leave of absence or medical leave. This means the Claimant did not have just cause for leaving his job.

CONCLUSION

[28] The appeal from the employer (the Appellant) is allowed. I find that the Claimant is disqualified from receiving benefits.

Gerry McCarthy

Member, General Division - Employment Insurance Section

HEARD ON:	June 17, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Lachelle Arevalo, Representative for the Appellant D. B. (Witness for the Appellant) K. F. (Witness for the Appellant)

⁹ *Attorney General of Canada v. Knee*, 2011 FCA 301