



Citation: *CC v Canada Employment Insurance Commission*, 2023 SST 1650

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: C. C.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (570799) dated February 21, 2023 (issued by Service Canada)

Tribunal member: Audrey Mitchell
Type of hearing: Teleconference
Hearing date: July 18, 2023
Hearing participant: Appellant
Decision date: July 24, 2023
File number: GE-23-917

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 carpenter on March 8, 2022, 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 the Appellant could have returned to work after being off sick and looked for other work that wasn't as physically demanding. It also says he could have accepted the alternate work his employer offered him.

[6] The Appellant disagrees and states that he didn't quit his job. He says his employer terminated his employment because it perceived that his injury would prevent him from working.

Matter I have to consider first

The Appellant didn't send the Commission's reconsideration decision

[7] The Appellant has to send the Tribunal a copy of the Commission's decision with his notice of appeal.¹ He did not do so. I have a copy of the Commission's file that has this decision. So, I don't need the Appellant to send it.²

Issue

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

[9] 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 don't agree that the Appellant voluntarily left

[10] To determine if the Appellant voluntarily left his job, I must ask if he had a choice to stay or leave.³

[11] The Appellant's employer laid him off from his job. He returned to work on February 2, 2022.

[12] The Appellant's employer issued a record of employment (ROE) on August 10, 2022. The reason given for issuing the ROE is that the Appellant quit. The Commission asked the Appellant for the reason he quit his job. The Appellant said he was laid off from work and wasn't scheduled for any further shifts after March 9, 2022. He confirmed at the hearing that this is what he said to the Commission.

¹ Paragraph 24(1)(b) of the *Social Security Regulations* .

² Paragraph 3(1)(b) of the *Social Security Regulations*.

³ *Canada (AG) v. Peace*, 2004 FCA 56.

[13] In his notice of appeal, the Appellant said his employer terminated his employment. He said the employer perceived that an injury would prevent him from working.

[14] The Appellant's doctor wrote a note. It says the Appellant was unfit for work for one month starting March 12, 2022. The Appellant gave this note to his employer. He testified that he had hip pain, so his doctor wanted him to be off work.

[15] I asked the Appellant why he didn't return to work after the one month referred to in the doctor's note. He testified that in mid-April, his employer offered him work in his warehouse. But the Appellant says it was an illegal dwelling, and he didn't want to be involved with that. So, he didn't return to work.

[16] The employer told the Commission about the medical note the Appellant submitted. The employer said it expected the Appellant to return to work after being off sick. The employer said it had offered the Appellant shop work, but the Appellant wasn't interested in that. The employer issued the ROE when it found out the Appellant was working for another employer.

[17] The Appellant says he didn't know his employer had terminated his employment until he found out about the ROE the employer issued in August. He said he found this strange. He said if the employer had fired him, or he had quit, the employer should have issued the ROE in April.

[18] I find that the Appellant voluntarily left his job. Although the Appellant says his employer terminated his employment, he agreed with the Commission's evidence that his employer had offered him work, which he refused. I don't find that it matters that the employer issued the ROE after it learned that the Appellant was working for another employer.

[19] To determine if the Appellant voluntarily left her job, I have to decide if he had a choice to return to his job. I find that he did. I find that the Appellant could have returned to work after being off due to illness. And confirmed that his employer offered him work, but he refused it.

[20] Since he didn't return to his job, I find that the Appellant was the one who initiated the end of his employment. So, I find that the Appellant voluntarily left his job.

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

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

[22] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁴ Having a good reason for leaving a job isn't enough to prove just cause.

[23] 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.⁵

[24] It is up to the Appellant to prove that he had just cause.⁶ 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.

[25] A claimant has just cause for voluntarily leaving a job if they had no reasonable alternative to leaving.⁷ This includes working conditions that constitute a danger to health or safety.⁸ It also includes practices of an employer that are against the law.⁹

[26] A claimant should discuss working conditions with an employer to see if the employer can change the conditions in response to the claimant's concerns.¹⁰

⁴ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁶ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

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

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

⁹ See section 29(c)(xi) of the Act.

¹⁰ *Canada (AG) v. White*, 2011 FCA 190; *Canada (AG) v. Hernandez*, 2007 FCA 320; *Canada (AG) v. Murugaiah*, 2008 FCA 10

[27] The Appellant says he didn't return to his job because his employer offered him work on an on an illegal dwelling. He says he had no reasonable alternative to leaving at that time because he was protecting himself by refusing this work.

[28] The Commission says the Appellant didn't have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says the Appellant could have returned to work after being off sick and looked for other work that wasn't as physically demanding. It also says he could have accepted the alternate work his employer offered him.

[29] I find that the Appellant could have returned to his job after being off sick. I'm not satisfied that his saying his employer was building an illegal dwelling is enough to show that he had just cause to quit his job.

[30] In his request for reconsideration, the Appellant said his employer offered him alternate work. He said it was to work in a warehouse, renovating it into an illegal dwelling. He said he didn't feel comfortable doing work without a permit, so he declined the offer.

[31] The Appellant's wife testified at the hearing. She spoke about the Appellant's hip problems. She also testified about the employer's offer to the Appellant. She said the employer offered to have the Appellant build cabinets for the warehouse, since specializes in cabinetry. The witness confirmed that the Appellant said no to the employer.

[32] The witness's testimony is somewhat different from the Appellant's evidence. The Appellant referred to "assisting in digging a septic, installing plumbing, and [doing] electrical" without a permit as the work he declined to do. And the employer seems to confirm this. It said there was no illegal dwelling where the Appellant was asked to dig a septic and install plumbing.

[33] Since it is the Appellant who turned down the employer's offer of work, I give more weight to what he had to say about the work the employer offered. I find that his

employer offered him work that included digging for a septic system and installing plumbing.

[34] The Commission suggested to the Appellant that he could have reported the employer if he felt there was illegal activity. In its submissions, it said the Appellant hadn't provided anything to support his statement that the employer was working on an illegal dwelling. I asked the Appellant about this. He testified that it should not be up to him to take the issue to the RCMP.

[35] I accept the Appellant's evidence as fact that he was concerned that the work the employer wanted him to do wasn't legal. But I find that the Appellant could have spoken to his employer about his specific concerns before quitting. By doing so, the Appellant may have learned that the work wasn't in fact illegal.

[36] The Appellant hasn't provided supporting evidence that his employer didn't have permits for the work in the warehouse. But if he was correct, he could also have tried to persuade the employer to get the appropriate permits to proceed with the work in a way that was safe and legal. Or he could have spoken to or filed a complaint with an appropriate authority to help resolve the situation before quitting.

[37] The Appellant testified that his experience since applying for benefits and being denied has caused financial hardship for him and his family, to the point where they almost lost their home. I sympathize with the Appellant in the circumstances. However, I find that he had reasonable alternatives to leaving his job when he did, as noted above.

[38] I find that the Claimant has not shown that he had just cause to leave his job when he did.

Conclusion

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

[40] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section