



Citation: *PA v Canada Employment Insurance Commission*, 2023 SST 1254

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: P. A.
Representative: L. A.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (553294) dated December 12,
2022 (issued by Service Canada)

Tribunal member: Mark Leonard
Type of hearing: Teleconference
Hearing date: July 31, 2023
Hearing participants:
Decision date: August 8, 2023
File number: GE-23-165

Decision

[1] The appeal is dismissed.

[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 on August 5, 2022. He applied for EI benefits and 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 couldn't pay him benefits.

[4] The Appellant submits that he quit his job because when his marriage ended, he wanted to move far away from the situation. He decided to move from Mississauga to St. Catharines where he could rent a room from his brother. He says it was too long a journey to commute daily from his new residence to his old employer. He added that finding other accommodation in his work area was too expensive.

[5] The Commission says that the Appellant could have stayed nearer to his work and remained employed instead of relocating farther away. It adds that the Appellant could have looked for work in his new area of residence before quitting.

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

Matter I must consider first.

Neither the Appellant nor his Designated Representative attended the hearing.

[7] Both the Appellant and his Designated Representative attended the first scheduled teleconference hearing on July 19, 2023. At that time, I determined that the Appellant needed an interpreter, and I did not open the hearing. I informed the Appellant and his representative that I would reschedule the hearing as soon as possible with an interpreter.

[8] The Appellant and his Designated Representative were sent an e-mail notification to the representative's e-mail address on July 19, 2023, detailing July 31, 2023, at 10:00 A.M., as the new scheduled time and date for the hearing. The Tribunal called the Appellant using the Designated Representative's telephone number on July 24, 2023. The Tribunal spent six minutes on the phone confirming the time, date and how to join the teleconference hearing. The Tribunal representative recorded that "they" did not have any questions and "they" confirmed "their" intention to attend the hearing.

[9] On July 31, 2023, by 10:00 A.M., neither the Appellant nor his Designated Representative called into the hearing. After 10 minutes, I contacted the Tribunal and requested they attempt to contact the Appellant. The Tribunal reported that there was no communication from the Appellant or his Designated Representative conveying any issues with attending the hearing, and that it tried twice to call the Appellant but only reached voice mail.

[10] A hearing can go ahead without the Appellant if the Appellant got the notice of hearing.¹ I think that the Appellant and the Designated Representative got the notice of hearing because an e-mail was sent to the e-mail address provided for both the Appellant and the Designated Representative on July 19, 2023, detailing the time and date of the teleconference hearing. Further, the Tribunal called the Appellant on July 24,

¹ Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

2023, at the number provided for the Designated Representative, and confirmed the hearing time and date with them.

[11] I note that the e-mail address provided on the Notice of Appeal belongs to the Appellant's representative. All correspondence was sent to that e-mail address. The Appellant provided the Designated Representatives telephone number, and it was that number that the Tribunal called to confirm the July 31, 2023, hearing date and time.

[12] I am satisfied that both the Appellant and his Designated Representative received notice of the hearing on July 31, 2023. There was no explanation provided for not attending the hearing, so, the hearing took place when it was scheduled, but without the Appellant or his Designated Representative.

Issue

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

[14] To answer this, I must first address the Appellant's voluntary leaving. I then must decide whether the Appellant had just cause for leaving when he did.

Analysis

Did the Appellant voluntarily leave his employment?

[15] A claimant who voluntarily leaves employment without just cause is disqualified from receiving benefits.² The legal test for voluntary leaving is quite simple: Did the employee have a choice to stay or to leave?³ The onus to prove that a claimant left their job voluntarily rests with the Commission.

[16] I find that the Appellant voluntarily left his job. The Appellant told the Commission that he quit his job because he had to move due to his marital breakdown. He told the Commission that he moved to St. Catharines from Mississauga and that it was too long

² See Section 30 of the *Employment Insurance Act*.

³ See (*Canada (A.G.) v. Peace*, 2004 FCA 56)

a journey to commute to his old job. He also told them that he gave his employer three weeks' notice of his intention to leave. In his submissions, the Appellant admitted that he quit his job.

[17] The Appellant's Employer confirmed to the Commission that the Appellant had quit. It told the Commission that the Appellant had provided written notice on July 25, 2022, that he would be leaving, and his last day would be August 5, 2022.

[18] Based on the submissions in the file, I am satisfied that the Commission has proven that the Appellant voluntarily quit his job. He had a choice to stay or leave and he elected to leave.

[19] Now I must turn my attention to whether the Appellant had just cause for leaving his employment when he did.

Does the Appellant have just cause to leave his employment?

[20] I find that the Appellant had not shown that he had just cause for leaving his employment when he did.

[21] 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.

[22] 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 must consider all the circumstances.⁵

[23] It is up to the Appellant to prove that he had just cause.⁶ He must prove this on a balance of probabilities. This means that he must show that it is more likely than not that

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.

his only reasonable option was to quit. When I decide whether the Appellant had just cause, I must look at all the circumstances that existed when the Appellant quit.

[24] The Appellant submitted in his request for reconsideration that due to his marital breakdown he wanted to move as far away as possible from the situation. His brother offered to help him and let him move into a property the brother owns in St. Catharines. The Appellant tried commuting but decided to quit his job because of the distance, gas prices, and wear and tear on his vehicle and because the commute caused him exhaustion. He also noted that his age, health, and mental stability as contributing factors to his decision to quit. He submitted that during the month of August 2022, he lacked support and was not mentally stable. He says he had no choice but to give up his job.

[25] The Appellant told the Commission that he left his job because he experienced a marital breakdown. In August 2022, he decided to separate from his partner. He was living in Mississauga, Ontario and working in Guelph, Ontario at the time. He arranged with his brother to move to St., Catharines, Ontario, where his brother had accommodation available for him. He confirmed to the Commission that he moved to St. Catharines on August 1, 2022, but did not sell his home in Mississauga until August 19, 2022.

[26] The Appellant told the Commission that he did not consider commuting to his old job because it took too long. He explained that he did commute from St. Catharines to his old employment in Guelph for a total of four days from August 1, 2022, to August 4, 2022. He suggested it took him twice as long to get to work than it had when he lived in Mississauga.

[27] He also confirmed that he did not look for other accommodation in Mississauga or near his work area. He did not request a leave of absence because the distance was not going to change. He did not consider carpooling because he says the time of the journey would remain the same. The record shows that the Appellant did ask about a transfer but within the organization there was only the possibility to transfer to a difference shift or line.

[28] The Appellant did not seek other employment prior to quitting his job.

[29] The Commission says that the Appellant didn't have just cause, because he failed to exhaust all reasonable alternatives to leaving when he did. It says that the Appellant had sold a house and that it would have been reasonable and affordable for the Appellant to have stayed near his work area and maintained his employment. Or, it adds, he could have sought alternate employment in his preferred new location prior to quitting his job.

[30] Another alternative was to seek and accept a transfer. It offered that given the Appellant's desire to get far away for his situation, he could have accepted a job with the employer in Windsor, Ontario to maintain his employment.

[31] It says that by electing to move to St. Catharines, the Appellant willingly placed himself in a position that made it difficult to maintain his employment. It says that the Appellant has not shown just cause because he had reasonable alternatives to quitting when he did.

[32] The *Employment Insurance Act* (Act) details circumstances that may allow for a finding of just cause to leave an employment.⁷

[33] I empathize with the Appellant's circumstances, however, his decision to move to another location farther from his Employer because of his marital breakdown does not support a finding of just cause to leave his job. It is not a recognized circumstance within the Act.

[34] Regardless of the Appellant's circumstances, he must still demonstrate that he had no reasonable alternative to leaving when he did.

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

Reasonable Alternatives.

[35] I find that the Appellant had reasonable alternatives to leaving his job when he did.

[36] The Appellant chose to quit his job and move to St. Catharines, a distance he found too far to travel to maintain his employment in Guelph. A reasonable alternative would have been to find accommodation in Mississauga or closer to his Employer and maintained his employment.

[37] The Appellant suggested to the Commission that he could not afford it. I am not convinced by that argument. The Appellant stated that he sold a home. Even assuming that it was a jointly owned, and he had to wait until the sale was complete, the Appellant would still have netted proceeds from that sale that could be used for accommodation. Further, by continuing to work, he would have had the means to pay for accommodation while he awaited the proceeds from the sale of the home.

[38] The Appellant stated that the journey was too long between St. Catharines and Guelph to commute daily.

[39] In fact, within the "*Golden Horseshoe*," the commute described by the Appellant is considered a reasonable commuting pattern. Many individuals travel similar and even greater distances to maintain employment. To mitigate the strain and costs of such commuting, some choose to carpool.

[40] I am satisfied that the Appellant could have commuted from St. Catharines to Guelph and maintained his employment for at least a short period of time until he could find other employment closer to his new residence or found accommodation closer to Guelph. There were possible solutions that could have mitigated his concerns with the commute but he chose not to explore those options

[41] I am not satisfied that the Appellant had the option to transfer to Windsor. The employer confirmed to the Commission that it would have considered a leave of absence for the Appellant but that there was no transfer available to him.

[42] Lastly, the Appellant provided a copy of a doctor's note wherein it is noted that the Appellant was found to be unfit for work. The date on the note is not entirely clear but I am satisfied it reads December 24, 2022. The Appellant noted his mental health concerns in his submissions stating that he was mentally unstable. However, there is no previous medical note that suggests the Appellant was not fit to work at the time he left his employment in August 2022.

[43] I gather that the Appellant submits this note to further support that he had no reasonable choice but to leave his employment because he was experiencing mental health concerns.

[44] Even if the Appellant had been ill and unfit for work when he quit, it would not be considered just cause to voluntarily leave his employment. The reasonable alternative would have been to request sick leave or take a medical leave of absence and preserve his job to return to.

[45] Essentially, the Appellant made a personal decision to move to St. Catharines then quit his job because it was too far to travel to work. He either did not explore, or discounted reasonable alternatives that would have allowed him to maintain his employment. The move was clearly beneficial to him given his circumstances. But those circumstances do not support a finding of just cause to leave his employment.

[46] Considering all the circumstances, and the fact that the Appellant had reasonable alternatives to leaving his employment, the Appellant has not shown just cause for leaving his employment when he did.

Conclusion

[47] I find that the Appellant is disqualified from receiving benefits because he has not shown just cause for leaving an employment when he did.

[48] This means that the appeal is dismissed.

Mark Leonard
Member, General Division – Employment Insurance Section