



Citation: *RP v Canada Employment Insurance Commission*, 2023 SST 1798

# **Social Security Tribunal of Canada**

## **General Division – Employment Insurance Section**

### **Decision**

**Appellant:**

R. P.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (589244) dated May 18, 2023  
(issued by Service Canada)

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**Tribunal member:**

Bret Edwards

**Type of hearing:**

Teleconference

**Hearing date:**

September 13, 2023

**Hearing participant:**

Appellant

**Decision date:**

September 19, 2023

**File number:**

GE-23-1557

## **Decision**

[1] The appeal is dismissed. I disagree 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 on March 9, 2023 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided 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 he had no reasonable alternative to leaving his job.

[5] The Commission says the Appellant had several reasonable alternatives that he didn't explore before quitting, including discussing his concerns about his working conditions with his employer and getting a doctor's note for his asthma.

[6] The Appellant disagrees and says he had to quit when he did. He says his working environment was unsafe and he tried to talk to his employer about it before he quit. He also says he couldn't get a doctor's note for his asthma.

## **Issue**

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

[8] 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

[9] I accept that the Appellant voluntarily left his job. The Appellant agrees he quit on March 9, 2023.<sup>1</sup> I see no evidence to contradict this.

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

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

[11] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>2</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[12] 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.<sup>3</sup>

[13] It is up to the Appellant to prove that he had just cause.<sup>4</sup> He has to prove this on a balance of probabilities. This means 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.

### The circumstances that existed when the Appellant quit

[14] The Appellant's employer told the Commission:

- The Appellant quit without notice. He didn't give a reason why.<sup>5</sup>
- They provided personal protective equipment (PPE) to all employees. More specifically, they provided safety glasses, N-95 masks, leather gloves, Kevlar

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<sup>1</sup> GD3-13.

<sup>2</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

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

<sup>4</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

<sup>5</sup> GD3-38.

sleeves, leather aprons, respirators, replacement filters for the respirators, Tyvek suits, and steel knee high spats.<sup>6</sup>

- The Appellant had been wearing PPE equipment at work. He knew this equipment was available to him.<sup>7</sup>
- The Appellant had worn this equipment on several occasions, so they don't know why he would say he didn't know it was available to him.<sup>8</sup>
- The Appellant knew where the equipment was and what was needed for him to work safely.<sup>9</sup>
- They weren't aware the Appellant suffers from asthma or any other health concerns. He didn't tell them about it.<sup>10</sup>
- The Appellant never asked if his old job was available again.<sup>11</sup>

[15] The Appellant says<sup>12</sup>:

- He worked for his employer for about a year before he quit. They owned a factory.
- He first worked as a grinder in the back of the factory. He wore PPE while doing that job.
- The owner later asked him if he wanted to move to the front of the factory and make more money (as a furnace operator). He thought that sounded good and had a rough idea of what the job would be like.
- But he didn't know what he was getting into. No one in the front of the factory wore masks and other PPE. He also wasn't trained properly as the person who trained him was semi-retired.

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<sup>6</sup> GD3-29.

<sup>7</sup> GD3-29, GD3-38.

<sup>8</sup> GD3-38.

<sup>9</sup> GD3-38.

<sup>10</sup> GD3-29, GD3-38.

<sup>11</sup> GD3-38.

<sup>12</sup> GD2-7, GD3-27, GD3-30, GD3-34, GD3-37, hearing recording.

- He didn't have any safety equipment to wear, except for an old drywall mask that he found once. He also had to wear his sunglasses because they didn't have safety glasses available.
- He quit about a month after changing jobs. He quit because he has asthma and couldn't breathe properly from the fumes since he wasn't wearing a mask or any other safety equipment.
- The owner yelled at him a few times while he worked there, usually about his work performance. This happened on the day he quit too.
- He tried to talk to the owner (who is semi-retired) before he quit. He told them he wasn't being trained properly, but the owner told him it wasn't rocket science and he should pick it up quicker.
- He also talked to the owner's son (the factory manager) before he quit. He told them that he wasn't being trained properly and he felt it was the most dangerous position he'd ever been in because of that. They didn't seem concerned and told him that's just the way the trainer operates and he had better pick it up at that point.
- He didn't ask his employer for PPE he could wear in his new position before he quit. He didn't ask because he didn't know PPE might have been available to him, so why would he ask if he didn't know.
- He didn't tell his employer about his asthma before he quit. He was afraid he would lose his job if he did.
- He would have taken his old job back if he could. But he didn't ask his employer for his old job back before he quit. He didn't do that because his employer had already hired someone to replace him, so his position was filled.
- He didn't file a complaint about his working conditions with a public health agency before he quit because he didn't know he could do that. He would have done that if he had known.
- He was looking for work and applying for other jobs before he quit.

- He didn't get a doctor's note about his asthma before quitting because he doesn't have a family doctor. He had to go to his local hospital to get checked out when he spoke to the Commission about it later. And he still doesn't have a family doctor today.

### **Antagonism with a supervisor**

[16] The law says that an employee has just cause for leaving their job if they experienced antagonism with a supervisor if the employee is not primarily responsible for the antagonism.<sup>13</sup>

[17] The Appellant testified that the owner of his employer yelled at him while he worked there, including on the day he quit. He testified that this final incident was embarrassing, and he felt he couldn't return to his job after that, which is part of why he quit.

[18] I asked the Appellant how often the owner yelled at him. He testified that it happened a few times. He said it happened 2 or 3 times due to the owner thinking he wasn't doing his job right, one time because he was in the bathroom dealing with a wisdom tooth, and one time because he walked into a saw and the owner thought that was funny.

[19] I sympathize with the Appellant about these incidents. It's clear that they upset him. But unfortunately, I still find that they don't show a regular pattern of antagonism with a supervisor. The Appellant says it happened a few times while he worked there (about a year), which, in my view, shows that it was more likely than not an isolated issue. And the Appellant says 2 or 3 of those times was due to the owner not liking his work, which I find means he might have been at least partly responsible for those incidents if they were related to his work performance.

[20] So, without more persuasive evidence, I find this circumstance doesn't apply here.

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<sup>13</sup> Section 29(c)(i) of the *Employment Insurance Act* says this.

[21] Even if the Appellant had met this condition, this doesn't mean he gets EI benefits. I still have to look at whether he had reasonable alternatives to leaving his job when he did.

### **Working conditions that constitute a danger to health or safety**

[22] The law says that an employee has just cause for leaving their job if they experienced working conditions that constituted a danger to their health or safety and they had no reasonable alternative to leaving.<sup>14</sup>

[23] I find the Appellant has shown that his working conditions were a danger to his health and safety.

[24] The Appellant testified that his employer didn't provide him with any PPE once he switched positions to the front of the factory. This activated his asthma as he couldn't breathe due to the fumes in his workspace.

[25] I accept the Appellant's testimony here. I have no reason to doubt what he says here. The Appellant's employer also didn't provide any information to the Commission about the nature of the Appellant's position that would lead me to doubt what the Appellant says.

[26] So, I find the Appellant likely worked in a position that required him to wear PPE to do his job safely.

[27] As noted above, the Appellant's employer told the Commission that they did provide PPE to employees, and that the Appellant knew this and had worn safety equipment several times.

[28] I asked the Appellant about what his employer told the Commission. He testified that his employer did provide PPE to employees who worked in the back of the factory (where he used to work), but not in the front. He says he wore PPE in his old position.

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<sup>14</sup> Section 29(c)(iv) of the *Employment Insurance Act* says this.

[29] I accept the Appellant's explanation. I find that what he said is plausible because different parts of a factory could have different work rules depending on the nature of work being done. I also note the Appellant's employer only told the Commission that they provided PPE to employees and didn't specify whether this meant **all** employees.<sup>15</sup> This leads me to give their information less weight here since they weren't more specific.

[30] So, based on the limited information available, I conclude that the Appellant's employer likely didn't provide PPE to employees who worked in the front of the factory. I also conclude the Appellant likely wasn't wearing PPE while working in the front of the factory since his employer didn't provide that to him.

[31] Since the Appellant's new job required him to wear PPE to do his job safely but his employer didn't provide that to him, I find his working conditions were a danger to his health and safety.

[32] The Appellant also testified that he wasn't trained to do his new job properly because he was trained by someone who was semi-retired and had trouble hearing him sometimes.

[33] I acknowledge the Appellant feels he wasn't trained to do his new job properly. But I find he hasn't provided enough evidence to show how this meant his working conditions were a danger to his health and safety. He didn't elaborate on why he felt someone who was semi-retired wasn't capable of training him properly or provide any examples of how they trained him wrong. He also didn't elaborate on why he felt that not being able to hear the trainer sometimes meant that they were training him wrong.

[34] Even so, I still find the Appellant experienced working conditions that were a danger to his health and safety. This is because his new job required him to wear PPE, but his employer didn't provide that to him.

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<sup>15</sup> GD3-29.



[35] However, that doesn't meet the Appellant gets EI benefits. I still have to look at whether he had reasonable alternatives to quitting when he did. I will do that now.

### **The Appellant had reasonable alternatives**

[36] I sympathize with the Appellant, but I find he had reasonable alternatives to leaving that he didn't explore.

[37] First, I find the Appellant could have asked his employer to provide him with PPE before he quit.

[38] As noted above, the Appellant testified that he didn't ask his employer to provide him with PPE because he didn't know PPE might have been available to him.

[39] I don't accept the Appellant's explanation. He had worn PPE to do his old job in the back of the factory, so he should have been aware that PPE was somewhere onsite (in the factory).

[40] I acknowledge the Appellant says the owner yelled at him during the time he worked there (about one year). But as discussed above, I find there's not enough evidence to show that he experienced antagonism with the owner based on the number and nature of the incidents he described. Because of this, I find the Appellant could have still approached the owner and asked for PPE.

[41] Even if the Appellant wasn't comfortable asking the owner for PPE, I find he could have asked the owner's son instead. As noted above, the Appellant testified that the owner's son was the factory manager, which I find means they likely held a position with some seniority and would have been able to give the Appellant PPE if had asked.

[42] I also note the Appellant didn't say during his testimony that he had any incidents with the owner's son. In my view, it's reasonable to believe he would have mentioned these incidents if they had happened. Since he didn't, I conclude the Appellant had a typical working relationship with the owner's son and could have asked them for PPE.

[43] Second, I find the Appellant could have told his employer about his asthma and brought them a doctor's note before he quit.

[44] As noted above, the Appellant testified that he didn't tell his employer about his asthma before he quit because he was afraid of losing his job.

[45] Unfortunately, I don't accept the Appellant's explanation. He didn't tell the Commission or testify that his employer (whether the owner or someone else) had threatened to fire him for any reason while he worked there. In my view, it's reasonable to believe he would have mentioned that if it had happened.

[46] I acknowledge the Appellant's owner yelled at him a few times for different reasons. But, as discussed above, I find these incidents don't rise to the level where it would show that the Appellant experienced antagonism from his supervisor. As a result, I can't conclude that the Appellant could have been afraid of losing his job because of these incidents.

[47] And, as discussed above, I find the Appellant also never indicated that he had any problems with the owner's son, who he said was at work more than the owner. Because of this, there's no evidence to show the Appellant could have been afraid of losing his job because of any incidents with the owner's son either.

[48] As noted above, the Appellant also testified that he couldn't get a doctor's note because he didn't (and still doesn't) have a family doctor.

[49] Unfortunately, I don't accept the Appellant's explanation. I understand that it's more challenging for a person to get medical help when they need to if they don't have a family doctor. But I note the Appellant was still able to get a doctor's note from his local hospital after speaking to the Commission.<sup>16</sup> Since he was able to do it then, I find it's reasonable to believe he could have done the same thing before quitting.

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<sup>16</sup> GD2-13, GD3-33.

[50] Third, I find the Appellant could have asked his employer for his old job back before he quit.

[51] As noted above, the Appellant testified that he didn't ask his employer for his old job back because they had already hired someone to replace him, so his position was filled.

[52] I acknowledge why the Appellant didn't ask his employer for his old job back, but I find he could have still done this anyway. I find the fact that the Appellant's employer hired someone else to fill the Appellant's old job doesn't necessarily mean they wouldn't have been able to also give him his old job back if he asked. The Appellant simply assumed that. But I find it's also possible the Appellant's employer's needs could have changed since he switched jobs and they could have now had enough work in the Appellant's old job to bring him back too.

[53] In other words, I find it's reasonable to believe the Appellant could have at least asked his employer if he could have his old job back. He could have done that just to make sure this option was no longer available to him as they had already hired someone else.

[54] So, I find the Appellant had reasonable alternatives to leaving when he did, for the reasons set out above.

## **Conclusion**

[55] I find the Appellant experienced working conditions that constituted a danger to his health and safety. But I also find he still had reasonable alternatives to leaving his job when he did.

[56] This means he didn't have just cause for leaving his job.

[57] I therefore find the Appellant is disqualified from receiving benefits.

[58] This means the appeal is dismissed.

Bret Edwards

Member, General Division – Employment Insurance Section