



[TRANSLATION]

Citation: *X v Canada Employment Insurance Commission and RR*, 2024 SST 266

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: X
Representative: Nick Asselin

Respondent: Canada Employment Insurance Commission

Added Party: R. R.

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (578748) dated April 28, 2023 (issued by Service Canada)

Tribunal member: Mylène Fortier

Type of hearing: In person
Hearing date: December 22, 2023
Hearing participants: Appellant
Appellant's representative
Added Party

Decision date: January 29, 2024
File number: GE-23-1537

Decision

[1] The employer's appeal is allowed.

[2] I find that the Claimant voluntarily left his job. This means he is disqualified from receiving Employment Insurance (EI) benefits.¹

Overview

[3] The Appellant in this case is the employer. The Claimant worked as a truck driver for the employer. He made an initial claim for EI benefits on December 12, 2022. He indicated that he was dismissed and that his employer didn't tell him why.

[4] The Commission looked at the reasons the Claimant lost his job. It decided that he was let go but that it wasn't because of misconduct. So, it decided that he was entitled to benefits.

[5] The employer disagrees. It initially said that the Claimant voluntarily left his job. Then, at the hearing, it said it was rather of the opinion that the Claimant lost his job because of misconduct.

[6] The Claimant says that his employer asked him to resign. He says he refused, and that is why he was let go.

Matter I have to consider first

– Post-hearing documents

[7] At the hearing, the Claimant agreed to provide certain documents to support his testimony.

[8] He had to provide a copy of the text message from his employer that proves he was let go. The Tribunal did receive the document. It is numbered GD17.

¹ Section 30 of the *Employment Insurance Act* (Act) says that claimants who lose their job because of misconduct are disqualified from receiving benefits.

[9] He also had to provide his work logs. He shared a few. I didn't accept these documents because I find that the information in them isn't relevant to the issues before me.

Issues

[10] The Tribunal has to decide the following issues:

- a) Was the Claimant let go, or did he voluntarily leave his job?
- b) If the Claimant lost his job, has the employer proven his misconduct?
- c) If the Claimant voluntarily left his job, did he have just cause under the law?

Analysis

Why did the Claimant lose his job?

[11] I find that the Claimant lost his job because he stopped showing up for work as of July 13, 2022. He voluntarily left his job. I will now explain how I reached this conclusion.

[12] The Claimant went to a Service Canada Centre in person on November 11, 2022. He asked to get a Record of Employment from his former employer because it had asked him to resign.²

[13] The Claimant explained that he made a mistake at work. He forgot to lower the box of his truck and hit a wire in the lot of a flour mill. After that accident, his employer criticized his way of working, his driving, and his professionalism. The Claimant told the Commission that he had a text message from his employer that proved he was let go.

[14] On November 7, 2022, the Commission issued a Record of Employment indicating "dismissal or suspension" as the reason the employment ended.³

² See GD3-16 in the appeal record.

³ See GD3-18 in the appeal record.

[15] The Claimant applied for benefits on December 12, 2022. On his application, he indicated that he didn't know why he was dismissed.⁴

[16] The Commission was unable to reach the employer to confirm the reason the employment ended. It decided that the Claimant was entitled to benefits because the reasons he lost his job don't amount to misconduct according to the *Employment Insurance Act* (Act).

[17] The employer asked the Commission to reconsider its decision. It submitted a letter explaining several problematic situations involving the Claimant, including accidents and fraudulent use of the company credit card. It said it tried to enter into an agreement with the Claimant to have expenses reimbursed, but the Claimant didn't want to talk. He stopped showing up for work after that.⁵

[18] The Commission was unable to reach the employer to discuss its request for reconsideration.

[19] It contacted the Claimant, who said his employer let him go for damaging equipment. The Commission upheld its decision that there was no misconduct on the Claimant's part.

[20] The employer appealed this decision to the Tribunal.

[21] At the hearing, the Claimant said he didn't know why he was let go. He said he got a call from his employer on July 13, 2022, asking him to turn in the keys to the truck. According to him, his employer also verbally asked him to resign, and he refused.

[22] He also said that his employer dismissed him via text message on July 13, 2022, and that he still has this evidence. He said he didn't get a Record of Employment when his employment ended.

⁴ See GD3-25 in the appeal record.

⁵ See GD3-41 in the appeal record.

[23] The employer explained at the hearing that the Claimant worked for it for about 10 months. It said he was involved in several accidents during that time and caused significant damage to the truck.

[24] The employer explained that on August 31, 2021, it agreed to lend the Claimant its tag-along trailer for his personal use outside work hours. The employer said that because of the Claimant, the trailer fell into a ditch and needed towing, which it had to pay for. It said that the Claimant had to reimburse it, but he never did. It submitted photos of the accident and a towing invoice as evidence.⁶

[25] The employer also said that it agreed to prepay the Claimant's dues to Quebec's construction commission (CCQ) in October 2021. It said the Claimant assured it that he would pay it back, but he didn't.

[26] Additionally, the employer explained that the Claimant caused significant damage on a customer's premises on March 8, 2022. It said he drove his truck with the box up—despite the raised box detector on the truck—and took out a wire and a post. It submitted evidence of the accident⁷ as well as photos of the work that had to be done on the customer's premises.⁸

[27] Moreover, the employer said that in January 2022, it noticed that the Claimant had used the company credit card for personal use several times between May and December 2021. It submitted copies of credit card statements.⁹ It noted that in December 2021, the Claimant wasn't working because he was laid off for the winter. It took the card away on February 22, 2022.

[28] The employer said that a verbal agreement was entered into so that the Claimant would reimburse it for the personal expenses, towing, and dues. It said that he agreed but that he hasn't paid anything back so far.

⁶ See GD6-3 to GD6-10 in the appeal record.

⁷ See GD6-12 to GD6-14 and GD10-3 in the appeal record.

⁸ See GD8-18 to GD8-23 in the appeal record.

⁹ See GD10-5 to GD10-11 in the appeal record.

[29] The employer explained that on July 13, 2022, it asked the Claimant to put the agreement in writing concerning the amounts he had to pay back, since he didn't seem to want to fulfill his verbal promise. He was against putting it in writing.

[30] According to the employer, the Claimant stopped showing up for work after that, so it still has his personal belongings.

[31] I find that the Claimant voluntarily left his job and that he wasn't let go.

[32] Although the employer explained the many problematic situations that might have justified dismissing the Claimant, I find that his employment ended when he stopped showing up for work.

[33] I place more weight on the employer's version of events than on the Claimant's version because the employer's description of the problematic situations is supported by the extensive evidence on file.

[34] In addition, the employer's version of events at the hearing matches the one it gave in its request for reconsideration. The Claimant refused to enter into a repayment agreement with it and stopped showing up for work.¹⁰ This means the employer didn't let him go.

[35] The Claimant's version of events is fluid and inconsistent. At the hearing, he denied using the credit card for personal use after November 2021. He admitted using it before that but said he paid the employer back. He said this was done by deducting overtime he had worked. So, he considered that he no longer owed the employer any money.

[36] The Claimant could not say exactly when he paid his employer back or how the overtime and repayments were accounted for. He said this was done verbally with the employer. He said he had no evidence of these reimbursements.

¹⁰ See GD3-42 in the appeal record.

[37] According to the employer, these reimbursements never happened, and such a practice is illegal.

[38] At the hearing, the Claimant denied causing any damage to the truck. He also denied some of the incidents described by the employer or downplayed the consequences. However, he admitted putting the tag-along trailer in a ditch.

[39] I asked the Claimant for a copy of the text message from the employer that proves he was let go, as he told the Commission.

[40] He submitted this evidence after the hearing. However, I note that the text message doesn't prove that the employer let him go. The employer rather asked him to turn in the keys to the truck and collect his personal belongings that were in the truck.¹¹ The date of the text message isn't visible.

[41] It seems the Claimant replied to the employer's message on July 27, 2022, but his reply isn't visible.

[42] This evidence doesn't persuade me that the Claimant was let go. Also, the reason why he says he was let go is vague. He can't clearly explain why he was let go in July 2022 over an incident from March 2022.

[43] For all these reasons, I find that the Claimant's credibility is greatly affected.

[44] I find that it is more likely than not that the Claimant was the one who ended his employment because he stopped showing up for work after July 13, 2022. He never collected his personal belongings.

[45] Since I found that the Claimant wasn't let go but rather voluntarily left his job, I don't have to consider whether the cause of his dismissal is related to misconduct.

[46] I must now decide whether the Claimant had just cause for leaving his job.

¹¹ See GD17 in the appeal record.

Did the Claimant have just cause for leaving his job?

[47] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹² Having a good reason for leaving a job isn't enough to prove just cause.

[48] 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.¹³

[49] It is up to the Claimant to prove that he had just cause. 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.¹⁴

[50] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit. The law sets out some of the circumstances I have to look at.¹⁵

[51] After I decide which circumstances apply to the Claimant, he then has to show that he had no reasonable alternative to leaving at that time.¹⁶

The circumstances that existed when the Claimant quit

[52] The Claimant's statements and testimony suggest that he believes some of the circumstances set out in the law may apply. I will look at these specific circumstances in the following sections.

¹² Section 30 of the Act explains this.

¹³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

¹⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

¹⁵ See section 29(c) of the Act.

¹⁶ See section 29(c) of the Act.

– **Undue pressure to leave**

[53] The law says that undue pressure by an employer on a person to leave their employment is a circumstance to be considered.¹⁷

[54] In my view, the Claimant hasn't shown that his employer pressured him to resign.

[55] His testimony to this effect isn't very credible and isn't supported by the evidence on file. First, he said he was forced to resign over an incident from March 2022, several months before his employment ended. Then, he said he didn't know why his employer asked him to resign.

[56] When asked how his employer asked him to resign, he gave vague explanations and said he didn't remember.

[57] I place more weight on the employer's testimony. Its version of events is credible and matches the one it gave the Commission.

[58] The employer didn't want the Claimant to resign, since it was hoping to be reimbursed by keeping him on.

[59] I find that this circumstance didn't exist when the Claimant's employment ended, and I won't consider it in my analysis.

[60] The Claimant didn't mention any other circumstances to be considered.

The Claimant had reasonable alternatives

[61] I must now look at whether the Claimant had no reasonable alternative to leaving his job when he did.

[62] The Claimant says that he was forced to resign, but as described above, he hasn't shown that this circumstance existed.

¹⁷ See section 29(c)(xiii) of the Act.

[63] The Claimant hasn't explained why he had no reasonable alternative to leaving his job.

[64] The Commission didn't discuss this in its arguments.

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

[66] A reasonable alternative would have been for the Claimant to discuss and enter into an agreement with his employer before deciding to leave his job. He refused to do so, and his employer never heard from him after that.

[67] The Claimant could have contacted Quebec's labour standards commission (CNESST) to find out about his rights.

[68] At the end of the hearing, the Claimant said that he thought he had and that he thought the hearing was precisely about labour standards.

[69] I give little weight to this statement given that the Claimant contacted the Commission several times as well as the Tribunal.

[70] I find it unlikely that the Claimant confused the CNESST with the Employment Insurance Commission and the Tribunal.

[71] Lastly, the Claimant could have secured another job before quitting, to avoid placing himself in an unemployment situation.

[72] The purpose of the Act is to compensate persons whose employment has terminated involuntarily and who are without work.¹⁸ This isn't the case here. The Claimant's employment didn't terminate involuntarily. He hasn't shown that he did everything he could to keep his job or that he had just cause for leaving it.

¹⁸ See *Gagnon v Canada Employment and Immigration Commission*, [1988] 2 SCR 29.

[73] I find that the Claimant had reasonable alternatives to leaving his job, for the reasons set out above.

[74] This means [the Claimant] didn't have just cause for leaving his job.

Conclusion

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

[76] This means that the employer's appeal is allowed.

Mylène Fortier

Member, General Division – Employment Insurance Section