Citation: *CS v Canada Employment Insurance Commission*, 2023 SST 1982

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (624013) dated October 27, 2023 (issued by Service Canada)

Tribunal member:	Marc St-Jules
Type of hearing:	Teleconference
Hearing date:	December 7, 2023
Hearing participant:	Appellant
Decision date:	December 13, 2023
File number:	GE-23-3203

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) regular benefits.

Overview

[3] The Appellant left his job March 14, 2023, 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 have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[5] The Commission says that, instead of leaving when he did, the Appellant could have raised his safety concerns with an outside authority. The Appellant could also have searched for work prior to leaving.

[6] The Appellant disagrees and says that he had to leave because of safety concerns. The work was dangerous as a log could hit his work area. He says that a cage was required to avoid this from happening.

Matters I have to consider first

The Appellant was granted an expedited appeal

[7] The Appellant's appeal was received on November 16, 2023. He spoke to the Tribunal on November 27, 2023. The Appellant requested an expedited appeal as his financial situation is dire. This request was granted.[1]

The hearing type was changed

[8] The Appellant originally requested an in-person hearing.[2] When possible, the Appellant's wishes are honoured.

[9] As part of his expedited appeal request, the Appellant advised the Tribunal that a teleconference hearing was an agreeable to him. This is providing it allows for a quicker hearing. For this reason, I sent a Notice of Hearing for a teleconference. The Tribunal must make sure that the appeal process is as simple and quick as fairness allows.[3]

[10] At the start of the hearing, I confirmed the Appellant's acceptance that a teleconference hearing was agreeable to him.

[11] I find the Appellant was able to express himself well. All his arguments were conveyed in a way that I understood all what he was trying to communicate.

[12] For this reason, the hearing continued as a teleconference.

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 have to decide whether the Appellant had just cause for leaving.

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[1] See GD06.
[2] See GD02.
[3] See *Social Security Tribunal Rules of Procedure* 8(1) The Tribunal must make sure that the appeal process is as simple and quick as fairness allows.

Analysis

The parties agree that the Appellant voluntarily left

[15] I find that the Appellant voluntarily left his job. My analysis is in the following paragraphs.

[16] The Commission decided that the Appellant is disqualified from receiving EI benefits. It made this decision on the basis that he voluntarily left his job without just cause. The law says you are disqualified from receiving EI benefits if you left your job voluntarily without just cause or if you lost your job because of misconduct.[4] Case law says that because both of these concepts are dealt with together in the law, I can apply either one when I decide if the Appellant is disqualified from getting benefits.[5]

[17] The Appellant and the Commission agree that he quit on March 14, 2023. However, I do have some evidence which is contradictory to this. This needs to be considered.

[18] I accept that the employer first issued a record of employment (ROE) dated March 21, 2023, which first shows quit.[6] I accept that this was subsequently changed to dismissal on March 29, 2023.[7] The Appellant was also sent a termination letter dated March 29, 2023.[8] In this letter, the employer is stating that the Appellant was terminated for not complying with the absenteeism policy. The employer stated that the Appellant was absent without notice or leave for more than three days.

[19] I prefer what the Commission and Appellant say over what the employer wrote in this letter. There are a few reasons for this. They are as follows:

- It is what the Appellant argues, and the Commission agrees.

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[4] Section 30 of the *Employment Insurance Act* (EI Act).
[5] See *Canada (Attorney General) v Easson*, A-1598-92, and *Canada (Attorney General) v Desson*, 2004 FCA 303.
[6] See GD03 pages 23 and 24.
[7] See GD03 pages 25 and 26.
[8] See GD03 page 44.

- It is undisputed that the Appellant left on March 14, 2023.

- The employer's statement to the Commission on April 5, 2023.[9] It is written there that "The Employee left on March 14th stating they would not return until certain issues were dealt with."

- It is uncontested that the Appellant attended the workplace and was asked to sign a resignation letter. The Commission added a statement from the Employer. The Commission wrote that "He handed in all of his equipment, so it was obvious he was aware he was quitting."[10]

[20] Based on the evidence above, 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.[11] 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.[12]

[24] It is up to the Appellant 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.[13]

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[9] See GD03 pages 28 and 29.
[10] See GD03 pages 28 and 29.
[11] Section 30 of the *Employment Insurance Act* (Act) explains this.
[12] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[13] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

[25] 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 law sets out some of the circumstances I have to look at.[14]

[26] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to leaving at that time.[15]

The circumstance that existed when the Appellant quit

[27] The Appellant says that one of the circumstances set out in the law apply. Specifically, he says that the working conditions constituted a danger to health or safety.

[28] The Appellant argues that the workplace was not safe. He was obligated to work beside a big loader. The loader would use its grapple hook and dump big logs right by him. There was a glass in front of him, but this would not have been enough to stop a huge log. In addition, the ramp to get to the workstation was not protected.

[29] The employer advised the Commission that the workplace was safe. There were government inspections. There had been no issues raised by government officials regarding this.

[30] The Appellant says that he approached the employer on a regular basis, and nothing would be done. The Appellant wanted a cage to protect his working area. The Appellant says it got to the point where it was a joke at meetings. People would say don’t forget the Appellant’s cage.

[31] The Employer told the Commission that there were regular inspections by the government, and no major issues were flagged. However, the Appellant testified that prior to inspections from the government, there would be a clean up to hide all dangerous items. The operations would be changed somewhat to satisfy inspections only to return afterwards. This way, the company would avoid being in trouble.

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[14] See section 29(c) of the Act.
[15] See section 29(c) of the Act.

[32] The Employer did in fact acknowledged that the Appellant wanted a cage over his work area.[16] However, the way the Commission documented the answer was different than what the Appellant is alleging. It is documented that this was an issue raised “a few years back” but nothing formal.

[33] I agree that a logging operation can be dangerous. Logs as described by the Appellant are extremely heavy. The fact that the employer acknowledged that the Appellant wanted a cage does support what the Appellant is arguing. I believe he sincerely felt the work environment was dangerous.

[34] Without firsthand inspection or training on mill operation safety issues, I find it difficult to judge the level of danger to the Appellant or his co-workers. I therefore must use what the employer told the Commission and what the Appellant provided during the hearing and earlier to the Commission.

[35] In conclusion to this section, based on the evidence before me, I believe the Appellant. The working conditions constituted a danger to the health of the Appellant.

[36] I am satisfied that the dangerous conditions were a factor when the Appellant left his job. I must now look at the reasonable alternatives.

The Appellant had reasonable alternatives

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

[38] The Appellant says that he had no reasonable alternative because the job was not safe. He had to leave.

[39] The Commission disagrees and says that the Appellant could have searched for work elsewhere prior to leaving. He also could have raised it with proper safety authorities.

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[16] See GD03 pages 28 and 29.

[40] The Appellant disagrees. He says he could not search for work as it was a sudden resignation. He also did not know he could go to higher safety authorities. He testified that he would have been very much disliked by the people in his workplace for raising this to a government agency.

[41] The Appellant says that he also had mental health issues. The Appellant was asked when his mental health issues started. The Appellant says they started after he left there. He had anxiety over having left his job.

[42] The Appellant was asked about his work history with this company. He says that he had worked with them in the past for about 10 years and then left. He returned about 5 years ago. He recalls being laid off once for about 5 weeks but then recalled.

[43] I find that the Appellant did not exhaust all reasonable alternatives. Even though I believe the Appellant when he says that the workplace was dangerous, he still has to exhaust all reasonable alternatives.

[44] The Appellant says he had to leave at that time the work situation was dangerous, and he had to leave suddenly. I am not persuaded by this argument. For one, the Appellant worked there for years. The situation was acceptable to him for years. He even returned after being absent and after being laid off. For this reason, the Appellant did not convince me that he had to leave at that time. If the situation were so bad, I find that an active job search starting some time ago would have been a reasonable alternative. I find that an active job search prior to leaving was a reasonable alternative.

[45] In addition, I agree with the Commission that prior to leaving, he should have taken the steps to alert the appropriate government agency. The Appellant testified that there were occasional visits from government agencies. He testified that he would be disliked by his co-workers if he complained to outside agencies. I find that may be the case but prior to quitting, the Appellant must try to resolve issues before asking all individuals who contribute into the employment insurance fund to grant benefits. The

courts have also said that there is a high obligation on an appellant to seek solutions to intolerable conditions before quitting.[17]

[46] Considering the circumstance that existed when the Appellant quit, the Appellant had reasonable alternatives to leaving when he did, for the reasons set out above.

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

Conclusion

[48] I find that the Appellant voluntarily left his job.

[49] I find the Appellant did not exhaust all reasonable alternatives.

[50] For this reason, I find that the Appellant is disqualified from receiving benefits.

[51] This means that the appeal is dismissed.

Marc St-Jules
Member, General Division – Employment Insurance Section

[17] See *Green v Canada (Attorney General)*, 2020 FCA 102; and *RC v CEIC*, 2016 SSTADEI 160.