Citation: *BL v Canada Employment Insurance Commission*, 2024 SST 246

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	B. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (634125) dated December 12, 2023 (issued by Service Canada)

Tribunal member:	Rena Ramkay
Type of hearing:	Teleconference
Hearing date:	January 24, 2024
Hearing participant:	Appellant
Decision date:	January 31, 2024
File number:	GE-24-153

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, B. L., left his job as a roofer on June 23, 2023, and applied for EI benefits.[1] 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 that he had no reasonable alternative to leaving his job.

[5] The Appellant says he had to leave his job because the work wasn't safe. He says he was expected to climb and work on roofs without a harness. The Appellant says he also worked with hot tar and asphalt without proper protective equipment.[2] He describes his co-workers as being set in their ways of working and unwilling to use safety equipment. The Appellant felt it was just a matter of time before he would be injured on the job.

[6] The Commission says the Appellant voluntarily left his job without just cause because he failed to exhaust all reasonable alternatives before leaving. It says he could have spoken to his employer about using safety equipment or filed a complaint with the Ministry of Labour if the workplace was unsafe. If the Appellant left because he wasn't

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[1] A person who applies for employment insurance (EI) benefits is called a "Claimant." A person who appeals a decision of the Canada Employment Insurance Commission (Commission) is called an "Appellant."
[2] See GD3-24.

getting enough hours of work, the Commission says he could have remained working until he found new employment.

[7] The Appellant disagrees with the Commission's decision that he didn't have just cause for voluntarily leaving his employment. He says his employer was aware that its employees didn't use safety equipment and saw no problem with this. He says he didn't know he could go to the Ministry of Labour to file a complaint about his unsafe workplace. The Appellant said the issue of too little work was secondary to safety issues. And he was confident that he would find other work quickly after quitting his job.

[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 agree that the Appellant voluntarily left

[10] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on June 23, 2023. His Record of Employment (ROE) confirms that he quit on June 23, 2023.[3] I see no evidence to contradict this.

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

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

[12] The law says 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.

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[3] See GD3-14.
[4] Section 30 of the *Employment Insurance Act* (Act) explains this.

[13] The law explains what it means by "just cause." The law says 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]

[14] 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 he has to show that it is more likely than not that his only reasonable option was to quit.[6]

[15] 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.[7]

[16] 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.[8]

The circumstances that existed when the Appellant quit

[17] The Appellant testified that he started working for his employer as a roofer on June 5, 2023, and left his job on June 23, 2023. He says a family member who worked for the employer helped him to get the job when he wasn't able to find other work. It was his first job as a roofer.

[18] Although he took a one-day course on safe working at heights, the Appellant testified that none of the safety precautions for working at heights were followed at the worksite. Safety harnesses weren't used when nailing down the roof at its edges. Nor were they used when climbing 40-foot ladders.

[19] The Appellant says he was on a crew with other roofers who had been working at the company for many years. He described them as "macho" guys who had a lot of experience and did things their own way. He felt he wasn't able to show his fear or ask for their help to harness him onto anchor points.

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[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 4.
[7] See section 29(c) of the Act.
[8] See section 29(c) of the Act.

[20] The Appellant says there was a supervisor who drove around and visited the worksites. He testified that the supervisor could see the crew didn't use safety equipment and didn't address this.

[21] After a couple weeks of work, the Appellant testified that he called a manager who worked in the office to tell him he was quitting because the work wasn't reliable enough to give the Appellant regular hours. He says he didn't mention his health and safety concerns to the manager, nor did he speak about his concerns to the supervisor who visited worksites.

[22] The Appellant initially told the Commission he left his job because he wasn't getting enough hours of work.[9] While he was hired as a full-time roofer, the Appellant says the work was weather-dependent. Since it rained a lot during his first weeks of work, the Appellant says he didn't get many hours. He didn't mention that he thought the working conditions were unsafe during the initial call with the Commission.

[23] At the hearing, the Appellant testified that he didn't understand the process of applying for EI since it was his first time. He thought he had to tell the Commission what he told his employer. The Appellant says he felt like he was being interrogated and was intimidated during the initial call. In hindsight, the Appellant says he should have provided all the information about his safety concerns in the initial call.

[24] The Appellant has provided two different reasons for leaving his employment. In his initial statements to the Commission, he only mentioned insufficient hours as the reason he left. When the Commission called him a second time for his reconsideration request, he said the real reason he left his employment was that it wasn't safe.

[25] When there is a contradiction in evidence, I have to decide which contradictory evidence I prefer. In doing so, I must provide reasons why I prefer that evidence.[10]

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[9] See GD3-18
[10] See *Bellefleur v Canada (Attorney General)*, 2008 FCA 13.

[26] The Commission argues that I must give more weight to initial and spontaneous statements than those following an unfavourable decision.[11] I disagree because I have no reason to disbelieve the Appellant's testimony. I accept that he wasn't familiar with EI processes and the initial call was stressful for him. I find it reasonable that he didn't provide full information about leaving his employment under these circumstances.

[27] I found the Appellant's testimony at the hearing to be credible. His testimony was detailed, free of contradictions and provided a complete picture of his working conditions. I am satisfied that proper safety procedures weren't being followed at his worksite. I accept that, while also a circumstance that led to him quitting, the lack of hours was a secondary reason.

[28] The Appellant, in saying that his working conditions were a danger to his health and safety, cites one of the circumstances set out in the law that applies as just cause for leaving his employment when he did if there were no reasonable alternatives.[12]

[29] Accordingly, I find the circumstances that existed when the Appellant quit were that his working conditions were a danger to his health and safety, and he wasn't getting enough hours of work.

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

The Appellant had reasonable alternatives

[31] The Commission says the Appellant had reasonable alternatives to leaving when he did. It says:

- He could have stayed in his job until he found new work if he left because of a lack of hours.

[11] See GD4-2.
[12] See section 29(c)(iv) says that working conditions that constitute a danger to health or safety is considered just cause for voluntarily leaving employment if the claimant had no reasonable alternative to leaving.

- He could have filed a complaint with the Ministry of Labour if the workplace was unsafe.
- He could have spoken to his employer about using safety equipment if it wasn't being used at work.

[32] The Appellant says it wasn't a reasonable alternative to stay in the job until he found other work because it wasn't safe. He believed his health and safety were at risk because, on any day, he could have tripped and fallen off the ladder or the roof.

[33] The Appellant testified he wasn't aware that he could have filed a complaint with the Ministry of Labour. Even if he had been aware and filed a complaint, he doubts he would have had any influence because he would have been the only one complaining. And he is sure he would have been fired, had he complained outside the company.

[34] The Appellant says he didn't think it was an option to speak to the employer about not using safety equipment at the work site. He testified that it was up to the crew's discretion to work as they wanted. He says the supervisor was aware that the crew didn't use safety equipment and didn't ask them to use it. He didn't believe that he, as one person in the crew, would have been able to change the working conditions.

[35] I accept that it wasn't a reasonable alternative for the Appellant to remain on the job until he found new employment. If the only reason for his departure was that he wasn't getting enough hours, this would be a reasonable alternative. But I am satisfied the Appellant's testimony about the working conditions being a risk to his health is truthful. His leaving does meet one of the allowable reasons given in the EI Act.[13] I find that, at the time the Appellant quit, he believed the circumstances at the work site to be unsafe and intolerable to the point that he had to leave.

[36] I am also satisfied that it wasn't a reasonable option for the Appellant to file a complaint with the Ministry of Labour. He testified that he wasn't aware he could do this. He also says he wasn't confident it would have any effect since he would have been the only one making a complaint. In my view, it is logical for the Appellant to assume he

[13] See section 29(c)(iv) in the EI Act.

would be the only complainant because the rest of his crew had chosen to work without using safety equipment. An investigation would have taken time and the Appellant would have had to continue working while he feared for his safety. For these reasons, I find this wasn't a reasonable alternative to leaving when the Appellant did.

[37] The Appellant didn't think speaking to his employer would have changed anything. But, if he believed there were safety issues, the onus (or burden) is on the Appellant to try to resolve the situation with his employer before leaving his job.[14]

[38] I acknowledge that the Appellant thought speaking to his employer would not change his working conditions. But, in my view, he didn't give his employer the chance to address his concerns before leaving. The law is clear that claimants (appellants) should discuss working conditions with their employer to see if the employer can change the conditions in response to the claimant's (appellant's) concerns.[15]

[39] I find that speaking to his employer to resolve issues was a reasonable alternative to leaving when the Appellant did. I find that he should have informed his employer he felt unsafe at the work site to see if safety issues could be resolved.

[40] Considering the circumstances that existed when the Appellant quit, the Appellant did have a reasonable alternative to leaving when he did, for the reasons set out above. This means the Appellant didn't have just cause for leaving his job.

Conclusion

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

[42] This means that the appeal is dismissed.

Rena Ramkay

Member, General Division – Employment Insurance Section

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[14] See *Canada (Attorney General) v Hernandez*, 2007 FCA 320.
[15] See *Canada (Attorney General) v White*, 2011 FCA 190; and *Canada (Attorney General) v Hernandez*, 2007 FCA 320.