Citation: *AM v Canada Employment Insurance Commission*, 2023 SST 1886

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. M.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (592428) dated July 18, 2023 (issued by Service Canada)

Tribunal member:	Teresa M. Day
Type of hearing:	Videoconference
Hearing date:	September 26, 2023
Hearing participant:	Appellant
Decision date:	October 6, 2023
File number:	GE-23-1997

Decision

[1] The appeal is dismissed.

[2] The Appellant is disqualified from receiving employment insurance (EI) benefits because he has not shown just cause for voluntarily leaving his job.

Overview

[3] The Appellant applied for regular EI benefits after leaving his position as Vice-President of Sales at X (the employer) on February 6, 2023. The Respondent (Commission) investigated the reason he stopped working and decided he quit his job without just cause. A disqualification was imposed on his claim for voluntarily leaving his employment without just cause. This meant he could not receive EI benefits.

[4] The Appellant asked the Commission to reconsider its decision. He said he had no alternative but to quit his job because the Chief Executive Officer of the employer (the CEO) wanted him to engage in racial profiling when hiring prospective employees and this went against his moral beliefs. He also said the task of interviewing and hiring was taken away from him because he disagreed with the CEO that race had anything to do with success in sales. He believed he might face further consequences for going against the CEO's directions. He looked for another job prior to quitting but ultimately decided he couldn't continue to work in an environment that was "riddled with discrimination"[1].

[5] The Commission maintained the disqualification, and the Appellant appealed to the Social Security Tribunal (Tribunal).

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

[7] The Appellant says he quit because he couldn't continue working in the "culture of racism" created by the CEO.

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[1] See the Appellant's written statement at GD3-40.

[8] The Commission says the Appellant had several reasonable alternatives to quitting when he did, including continuing to work until he secured employment elsewhere.

[9] I find that the Appellant had reasonable alternatives to quitting on February 6, 2023. This means he hasn't proven just cause for leaving his employment and cannot receive EI benefits.

[10] These are the reasons for my decision.

Issue

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

[12] To answer this, I must first address the Appellant's voluntary leaving. Then I have to decide whether he had just cause for leaving.

Analysis

Issue 1: Did the Appellant voluntarily leave his job?

[13] The parties agree the Appellant quit (in other words, voluntarily left his job).

[14] The Appellant told the Commission that he quit. He also testified at the hearing that he quit. I see no evidence to contradict his statements.

[15] The Appellant initiated the severance of the employment relationship on February 6, 2023, when he advised the CEO that he was leaving his job effective immediately – at a time when the employer still had work for him.

[16] I therefore find the Appellant voluntarily left his job after his last day of work on February 6, 2023.

Issue 2: Did the Appellant have just cause for voluntary leaving?

[17] The parties do not agree that the Appellant had just cause for voluntarily leaving his job when he did.

[18] The law says you are disqualified from receiving EI benefits if you left your job voluntarily and didn't have just cause for doing so[2].

[19] Having a good reason for leaving a job isn't enough to prove just cause.

[20] The law explains what is meant by "just cause". It says you have just cause to leave if you had ***no reasonable alternative to quitting*** your job when you did.

[21] It is up to the Appellant to prove he had just cause[3].

[22] He must prove this on a balance of probabilities. This means he has to show it's more likely than not that his ***only*** reasonable option was to leave his employment on February 6, 2023.

[23] When I decide whether he had just cause, I have to look at all of the circumstances that existed at the time he quit[4].

[24] The Appellant testified that he had just cause for quitting because he could not continue to work in the "culture of racism" created by the CEO. He also submitted that he experienced 5 of the circumstances which can be considered just cause according to section 29(c) of the *Employment Insurance Act* (EI Act)[5].

[25] I will set out the Appellant's testimony and then I will address each of his submissions in turn.

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[2] Section 30 of the *Employment Insurance Act* (EI Act).
[3] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[4] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the EI Act.
[5] Specifically, the Appellant says he experienced harassment (section 29(c)(i) of the EI Act), discrimination (section 29(c)(iii) of the EI Act), working conditions that were a danger to his health (section 29(c)(iv) of the EI Act), significant changes in work duties (section 29(c)(ix) of the EI Act) and practices of an employer that are contrary to law (section 29(c)(xi) of the EI Act).

The Appellant's Testimony

[26] The Appellant testified that:

- He is "a professional" who "enjoys working".
- He made the "unprecedented decision" to quit without first finding another job because of the "mental toll" it was taking on him to stay in his roll at X, knowing he would either have to "comply" with the "racist culture" set by the CEO or be treated as "insubordinate" for refusing to comply.
- He was looking for another job before he quit, but ultimately decided to seek work from a position of unemployment because he couldn't stay at X any longer.
- X was a technology company that developed and sold hardware and software for 3D imaging.
- He started working there on December 12, 2022, as Vice-President of Sales.
- His job was "planning the entire sales strategy" for the company.
- This involved "taking the products that were being developed and putting a sales plan and a sales pipeline" in place and "building the sales team to execute the sales plan."
- On January 22, 2023, the CEO sent an E-mail "directing me to use racial profiling" in the hiring of sales employees. This is the E-mail at **GD3-30**.
- In this E-mail, the CEO questioned his decision to give a second interview to a candidate from Poland and suggested that "mainstream guys" had more success in sales.
- This was the first time he became aware of the CEO's "racist" views on hiring salespeople.

- On January 23, 2023, he responded to this E-mail by saying he does not profile candidates by their “cultural backgrounds”. His responding E-mail is at **GD3-29**.

- He now recognizes there were some “subtle hints” of “profiling” by the CEO in the week before.

- The CEO had “hinted at the idea that he (the CEO) had experienced prejudice himself because of his (the CEO’s) ethnic background” – and that this would “play a role in how we formed the sales team”.

- But he (the Appellant) dismissed these “hints” at the time and didn’t think much of them.

- After he sent his responding E-mail, the CEO met with him and said he thought the Appellant was “trying to piss him off” by scheduling a second interview with the candidate from Poland. The CEO was taking it as a “personal attack”.

- He told the CEO that the CEO’s reaction was “disappointing”.

- He told the CEO he would never “personally attack a peer or a CEO”. He also told the CEO he would not profile potential sales team members by their race.

- From Sunday, January 29, 2023 to Friday, February 3, 2023, he traveled for work to attend a conference in Las Vegas.

- When he returned to the office on Monday, February 6, 2023, he found out the CEO had been interviewing candidates for the sales team “the whole week” he had been away at the conference in Las Vegas.

- The CEO had lined up “3 or 4 second interviews” for February 6, 2023 and invited him (the Appellant) to participate in them.

- He attended these second interviews but was “nothing more than an observer”.

- The CEO did all the talking.

- He (the Appellant) had little to say because he'd never spoken with any of the candidates before. He'd been given their applications to review, but it was his first day back in the office after a week away and he'd "only briefly had time to review their backgrounds".

- "For 90% of the meetings", he was just an observer and "trying to put together what was happening here." He only "jumped in" to speak about the kind of culture and team he wanted to build.

- There was a "little bit of blood boiling too", with the realization that the important task of hiring – a critical part of his job – had been taken away "simply because I wouldn't be racist".

- All the candidates that had second interviews were "white males".

- The CEO setting up these second interviews on February 6, 2023 was the "final incident" for him.

- He went home at the end of the day and, at 9pm that evening, sent an E-mail to the CEO saying he resigned "effective immediately".

- He did not give any reasons for resigning.

- He did not receive a response from the CEO.

[27] The Appellant acknowledged that he only worked for this employer for 2 months before quitting.

[28] I asked him to comment on the Commission's submissions that his departure was precipitous and that a reasonable alternative would have been to continue working while looking for another job.

[29] He responded that:

- He has “managed a range of characters” throughout his career. He recognized that the CEO was “a very unique individual” and that his character was “a bit strange”.

- But he didn’t recognize that the CEO “was racist” when he was interviewing for the position of Vice-President of Sales because he (the Appellant) was focused on the product and the people he would be working with.

- The team at X “was a collection of some of the finest, smartest minds” he’d ever been a part of. “It was a fantastic team”. He was excited about the opportunity to be a part of “something special”.

- He “uncovered” the CEO’s “racism” during the two months he was there.

- After he quit, he saw it was also consistently mentioned in the “Glassdoor reviews” he found online[6].

- If the CEO had been “a colleague or a counterpart”, “absolutely, we could figure out a working relationship”.

- But he was the CEO and had the ultimate decision-making power.

[30] In his closing submissions the Appellant said that:

- The CEO was a very demanding individual.

- E-mails from the CEO “poured in” overnight and on weekends, full of “random directions” on various topics.

- The CEO’s “habit” was “to think at random times and he would send E-mails out at random times” and “all hours of the night”.

[6] See GD6-2 to GD6-3.

- The CEO was “all over” him, and this took a toll on his mental health.
- He was “constantly on edge and angry”.
- The mental burden was such that he was waking up “not a happy person” and experiencing high levels of stress.
- He “does good work” but the CEO was treating him as “insubordinate” because he (the Appellant) “wasn’t racist” and refused to do “racial profiling”.
- He had a choice – either he was going to comply “with racism” or he was “going to be in trouble” and treated as “insubordinate”.
- “You can’t be VP of sales and not have input on hiring your team”.
- It was not acceptable to him to have the CEO tell him he was “wrong” for “not being racist”, and for the CEO to “pick the sales team” based on “racial profiling”.
- The CEO “attaches productivity to race” and wanted the sales team built on his (the CEO’s) beliefs.
- This is why he made the “unprecedented decision” to “leave an organization before securing another job”.
- It seems like the Commission is trying to find a reason to not pay him EI benefits. “If the goal is to not pay me, fine.”
- But what he learned from the Black Lives Matter movement was that “it’s not enough to *not* be racist”.
- “You have to call it out. We have to find it at its roots and we have to address it. And no one’s allowed to tolerate it.”
- “If we see it, we have to stop it.”

- So it's "disappointing" to have the Commission say that since the job of hiring had been taken away, he didn't have to participate in practices he objected to and could have stayed in his job while looking for other work.

- The CEO's practices "were racist". There should be "zero tolerance" for this. They should be "unacceptable to the Canadian government".

[31] In addition to the Appellant's testimony, I also considered the statements he made in the supplementary appeal materials he filed prior to the hearing[7].

[32] I will now consider each of the 5 circumstances the Appellant listed as just cause according to section 29(c) of the EI Act[8].

Analysis of the 5 circumstances from section 29(c) of the EI Act referred to by the Appellant:

a) Did the Appellant experience harassment such that he had no reasonable alternative but to quit on February 6, 2023?

[33] No, he did not.

[34] The law says just cause for voluntarily leaving exists if the Appellant had no reasonable alternative having regard to all the circumstances, including harassment[9].

[35] The term "harassment" isn't defined in the EI Act. But caselaw tells us that workplace harassment is usually seen as acts or verbal comments that could mentally hurt, embarrass, or isolate a person in the workplace. If often involves repeated incidents or a pattern of behaviour intended to intimidate, offend, degrade, or humiliate a person or group of people[10].

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[7] At GD6-1.
[8] See footnote 5 above.
[9] Section 29(c)(i) of the EI Act.
[10] See *CUBs 55611, 56605*, and *57338*. These factors are similar to the factors in the *Canada Labour Code*, a federal workplace law. Section 122(1) of the *Canada Labour Code* defines "harassment and violence" as "any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee".

[36] This Tribunal's Appeal Division has set out "key principles" for considering whether an EI claimant has experienced workplace harassment[11]:

a) harassers can act alone or with others, and do not have to be in supervisor or managerial positions.

b) harassment can take many forms, including actions, conduct, comments, intimidation, and threats.

c) sometimes a single incident will be enough to constitute harassment.

d) focus on whether the harasser knew or should reasonably have known their behaviour would cause the other person offence, embarrassment, humiliation, or other psychological or physical injury.

[37] It will not be considered harassment where an employer or supervisor takes reasonable action to manage and direct workers or the workplace[12].

[38] The Appellant submits he experienced harassment when the CEO directed him to "racially profile" prospective new sales employees and when the hiring process was "taken away" from him.

[39] I find the Appellant has not met the legal test for harassment that I have set out above.

[40] This was not a case of repeated incidents, or a pattern of behaviour intended to intimidate, offend, degrade or humiliate the Appellant.

[41] And although a single incident can be harassment, the final incident described by the Appellant did not give rise to circumstances such that he had no reasonable alternative but to quit his job when he did.

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[11] See ND v. CEIC, 2019 SST 1262, at paragraph 34.
[12] Some provincial laws also include this. See for example Ontario's *Occupational Health and Safety Act*, at section 1(4).

[42] I accept that the Appellant took offense at what he believed the CEO was instructing him to do (namely, engage in racial profiling of sales candidates). But there is no evidence the CEO **intended** to intimidate, offend, degrade or humiliate **the Appellant** when the CEO sent the January 22, 2023 E-mail.

[43] When the Appellant responded to that E-mail on January 23, 2023, he made it clear to the CEO that he does not "profile candidates by their cultural background"[13]. Then the Appellant proceeded with the second interview for the candidate from Poland. The Appellant told the CEO he was **"disappointed"** by the CEO's reaction during the conversation they had later that day. I see no evidence the Appellant felt intimidated by the CEO or afraid to continue in his role after their exchanges that day.

[44] The Appellant carried on with previously scheduled business travel less than a week later. When he returned to the office, he learned the CEO had been interviewing sales candidates while he was away and had selected "3 or 4" for second interviews that would be held the first day the Appellant was back in the office.

[45] There is no evidence this was done with the intention of isolating the Appellant in the workplace. The Appellant was invited to these second interviews and provided with the background information on the candidates he would be meeting.

[46] I accept that the Appellant was angry (he testified about "a bit of blood boiling") that he didn't have input on the 3 or 4 candidates who had been given a second interview and didn't have enough time to prepare before meeting the candidates.

[47] But there is no evidence the CEO was isolating the Appellant – either by taking the hiring process away from him or otherwise.

[48] The CEO could have completed the hiring process and presented the Appellant with the new sales employee(s) when the Appellant returned from the week-long conference in Las Vegas. Instead, the CEO did some preliminary interviews and

[13] See GD3-29.

selected 3 or 4 candidates for the next step in the hiring process (the second interviews) and scheduled their interviews for when the Appellant was back in the office.

[49] Nor is there any evidence the CEO was not interested in the Appellant's thoughts and feedback on the candidates interviewed on February 6, 2023 or that the CEO was unwilling to conduct second interviews for additional candidates selected by the Appellant. The Appellant quit before obtaining the evidence required to establish either of these circumstances[14].

[50] For these reasons, I find the evidence does not support a finding that the CEO had taken the hiring process away from the Appellant.

[51] Nor does it support a finding that the Appellant experienced harassment according to the legal test set out above.

[52] A reasonable alternative would have been for the Appellant to continue in his employment and remain engaged in the hiring process, providing input on the candidates who had been interviewed and putting forward additional candidates of his own. A further reasonable alternative would have been for the Appellant to continue working for the employer, while searching for other employment.

[53] I therefore find the Appellant has not proven that he experienced harassment such that he had no reasonable alternative but to quit his job when he did.

b) Did the Appellant experience discrimination such that he had no reasonable alternative but to quit on February 6, 2023?

[54] No, he did not.

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[14] At GD2-19 of the Appellant's Notice of Appeal, he stated that he quit on February 6, 2023 and the CEO hired "two white males" on February 7th and 9th, 2023. I cannot conclude from this statement that the hiring process had been taken away from the Appellant or that the CEO had predetermined the outcome of the 3 or 4 interviews that took place on February 6, 2023 because the Appellant resigned at 9pm that evening, "effective immediately" (see paragraph 26 (at page 7) above), and there is no evidence he provided any feedback on the candidates interviewed that day or asked for time to put forward additional candidates - prior to sending his E-mail resignation.

[55] The law says just cause for voluntarily leaving exists if the Appellant had no reasonable alternative having regard to all the circumstances, including discrimination on a prohibited ground under the *Canadian Human Rights Act*[15].

[56] The legal test for discrimination has 2 steps.

[57] First, the Appellant has to show **all 3** of the following factors[16]:

- he has a characteristic protected from discrimination under a human rights law;
- he experienced a negative impact or loss; and
- the protected characteristic was a factor in, or somehow connected to, the negative impact or loss he suffered.

[58] If the Appellant shows all 3, he has proven discrimination on the face of the case. Then – and only then – the employer gets the chance to show why it's not illegal discrimination[17].

[59] The Appellant alleges the CEO held racist views and wanted him to engage in racial profiling of prospective new employees.

[60] However, it's not sufficient to say that potential employees may be discriminated against or suffer a loss based on their race. The Appellant must explain how ***he*** **faced discrimination at work** on a prohibited ground and how ***he*** **experienced a negative impact or loss**.

[61] The Appellant does not say how he was discriminated against or on what grounds.

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[15] Section 29(c)(iii) of the EI Act.
[16] This is the legal test for discrimination laid out by the Supreme Court of Canada in *Moore v. British Columbia (Education)*, 2012 SSC 61. It was also the test used by the Federal Court in a case under the *Canadian Human Rights Act*: see *Ottawa (City) v. Todd*, 2022 FC 579.
[17] In other words, the employer gets a chance to legally defend or justify what it did (or failed to do). The employer has to show that because of a health risk, a safety risk, or an unbearable cost for the employer it had no reasonable alternative to discriminating against the Appellant: (see sections 15(1)(a) and 15(2) of the EI Act).

[62] Nor does he identify a loss he suffered due to alleged discrimination against him.

[63] He testified that he was concerned there ***could*** be consequences to him ***in the future*** for refusing to engage in racial profiling and challenging the CEO on this issue. But there is no evidence the Appellant had, **in fact**, experienced a negative impact or loss at the time he quit[18].

[64] I therefore find the Appellant has not proven that ***he*** experienced discrimination such that he had no reasonable alternative but to quit his job when he did.

c) Did the Appellant experience working conditions that were a danger to his health such that he had no reasonable alternative but to quit on February 6, 2023?

[65] No, he did not.

[66] The law says just cause for voluntarily leaving exists if the Appellant had no reasonable alternative having regard to all the circumstances, including working conditions that constitute a danger to his health or safety[19].

[67] Where an EI claimant says they had to quit their job because of dangerous or unsafe working conditions that caused health problems, they have to: (a) provide medical evidence[20], (b) attempt to resolve the issue with the employer[21]; and (c) attempt to find other work prior to leaving[22]. And before leaving for health reasons, an EI claimant should tell their employer or the Commission about the health problems responsible for their decision to leave[23].

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[18] For the reasons set out in my analysis under heading a) above, I find the Appellant has not proven the CEO had taken hiring away from him. This means it cannot be considered a negative impact or loss.
[19] Section 29(c)(iv) of the EI Act.
[20] See *SA v. CEIC*, 2017 SSTADEI 330; and *CUBs 11045, 16437, 24012, 21817, 27441*, and *39915*.
[21] See *CUBs 21817* and *58511*.
[22] See *CUBs 18965, 27787, 33709* and *39915.* See also *CUBs 15309, 19187, 23802* and *21638*, which say that even where a claimant is experiencing physical problems, they have an obligation to discuss these with their employer and attempt to seek alternative employment prior to leaving. If they do not, the Tribunal can find that a claimant left without just cause despite their physical problems.
[23] See *CUB 566636*.

[68] The type of medical evidence required to show just cause will depend on the facts and circumstances of each case. But generally, an EI claimant must show a specific health problem rather than a general stress-related condition[24].

[69] The Appellant says his working conditions were dangerous to his health because the mental burden of the CEO's demands on him (to racially profile prospective new hires and inundating him with E-mails in evenings and on weekends) was taking a toll on him and he was waking up "not a happy person" and experiencing high levels of stress.

[70] I find the Appellant has not met the legal test for working conditions that were a danger to his health.

[71] There is no evidence the Appellant consulted with a doctor about his stress levels prior to quitting. Nor is there any evidence that he was diagnosed with a stress-related illness prior to quitting or that he was advised by a medical practitioner to leave his job for health reasons.

[72] There is similarly no evidence the Appellant brought his health concerns to the employer's attention. Nor is there any evidence the Appellant had discussions with the CEO about his need to set some boundaries and expectations with respect to responding to work E-mails on personal time. And despite his passionate testimony about the need to "call out" racism[25], the Appellant chose not to engage with the CEO to resolve the "final incident" on February 6, 2023[26].

[73] Finally, there is no evidence of the Appellant's job search efforts prior to quitting[27]. There is only his testimony that he looked for work but decided he couldn't stay any longer after the final incident.

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[24] See *AS v CEIC*, 2017 SST ADEI 378; and *CUBs 18965* and *57484.*
[25] See paragraph 30 above.
[26] See the Appellant's testimony at paragraph 26 above. See also paragraph 49 and footnote 14 above.
[27] Such as a verifiable list of the jobs he applied to or interviews he had.

[74] I accept that the Appellant may have started looking for another job at some point during his 2-months working for X, especially given his testimony about the CEO being a “unique” and “strange” individual and a demanding boss.

[75] But I find it harder to believe that between the CEO’s E-mail on January 22, 2023 (which the Appellant testified was the first time he became aware of the CEO’s problematic views on hiring salespeople) and finding out about the second interviews the CEO had arranged on February 6, 2023 (the final incident), the Appellant decided to quit for health reasons and escalated his job search efforts towards immediately finding employment elsewhere. Especially since he traveled to Las Vegas on behalf of the employer from January 29 to February 3 and his first day back in the office was February 6, 2023. The Appellant would only have had 4 days in the office between sending his E-mail response on January 23, 2023 (advising he does not engage in racial profiling of prospective hires) and returning to work on February 6, 2023. He did not describe any further incidents during this time.

[76] For these reasons, I find the evidence does not support a finding that the Appellant experienced working conditions that were a danger to his health according to the legal test set out above.

[77] A reasonable alternative would have been for the Appellant to consult a doctor about his work-related stress to see if he needed to take a medical leave of absence or quit his job because of it. Another reasonable alternative would have been for the Appellant to talk to the CEO about the stress he was experiencing because of the CEO’s communication habits and alleged racial profiling of new sales candidates – and see if the CEO took steps to alleviate the Appellant’s stress on either issue. And a further reasonable alternative would have been for the Appellant to search for and secure other employment prior to quitting. He did none of these things.

[78] I therefore find the Appellant has not proven that he experienced working conditions that were dangerous to his health or safety such that he had no reasonable alternative but to quit his job when he did.

d) Did the Appellant experience significant changes in his work duties such that he had no reasonable alternative but to quit on February 6, 2023?

[79] No, he did not.

[80] The law says just cause for voluntarily leaving exists if the Appellant had no reasonable alternative having regard to all the circumstances, including significant changes to his work duties[28].

[81] When the Appellant asked me to consider this section of the law, he referred to the CEO taking away the hiring of the team – but then he went on to suggest he didn't actually think this was "significant"[29].

[82] I will still address this ground.

[83] The court has said that if the terms and conditions of the employment are ***significantly*** altered, a claimant may have just cause for leaving their position[30]. The court has found just cause where the employer acted unilaterally in a manner which ***fundamentally alters*** the terms of the employment as they existed prior to separation[31].

[84] I must consider the following questions[32]: does the Appellant's version of the facts support a finding that there were significant changes in his duties within the meaning of the law, and, if so, was there no reasonable alternative but to quit on February 6, 2023?

[85] In my view, the facts do not support a finding that there were significant changes to the Appellant's duties.

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[28] Section 29(c)(vii) of the EI Act.
[29] At the end of the hearing, the Appellant was listing the grounds in section 29(c) of the EI Act that he thought applied to his case. At the 50min:45sec point in the recording of the hearing, he gets to the "significant changes in work duties" ground in section 29(c)(vii) and refers to the CEO taking away the hiring of the team but then quickly added "Well maybe that's not significant" and moved on to continue listing the other section 29 grounds he thinks apply to his case.
[30] See *Lapointe v. C.E.I.C.*, A-133-95 (FCA).
[31] See *Lapointe, supra*, and *Horslen v. C.E.I.C.*, A-517-94 (FCA)
[32] This was set out by the court in *Chaoui* 2005 FCA 66.

[86] The Appellant testified that the first time he became aware of the CEO's alleged racism was the CEO's January 22, 2023 E-mail, which he took as direction from the CEO to racially profile prospective sales candidates. He sent a responding E-mail the next day saying he "does not "profile candidates by their cultural background"[33]. There was an unpleasant exchange with the CEO after the Appellant sent this response and made it clear he intended to proceed with a second interview for the candidate the CEO allegedly objected to.

[87] A week later, the Appellant traveled to Las Vegas on behalf of the employer from January 29 to February 3. After the Appellant returned to the office on February 6, 2023, he learned the CEO had lined up 3 or 4 second interviews for that day. The Appellant met the candidates and observed that they all fit the CEO's alleged desired racial profile.

[88] He took this to mean the task of hiring had been taken away from him.

[89] I accept that hiring sales associates was a significant part of the Appellant's duties as Vice-President of Sales. But I cannot agree with the Appellant's conclusion on February 6, 2023 that the CEO had taken these duties away from him.

[90] The employer was currently hiring[34]. The Appellant had been out of the office on business travel the entire week before. The CEO had arranged for 3 or 4 second interviews in the Appellant's absence, but they were scheduled so they would take place when the Appellant returned to work and was able to participate. When the Appellant came to work on Feb. 6th, he was invited to attend the second interviews and given the candidate materials to review.

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[33] See GD3-29.

[34] The hiring process was said to be at the "final round" stage in the January 23, 2023 E-mail inviting the Appellant's candidate from Poland to an interview with the CEO (at GD3-30).

[91] There is no evidence the CEO intended to continue or complete the hiring process without the Appellant, or without considering the Appellant's input, or without allowing the Appellant to bring in other candidates for second interviews[35].

[92] The Appellant was clearly upset (he testified about "a bit of blood boiling") by the CEO conducting first interviews in his absence and by what he saw as racial profiling of the candidates. But I cannot ignore the fact that the Appellant resigned effective immediately and didn't bother to tell the CEO why or give reasons for his sudden departure. This tells me he was not interested in preserving this employment.

[93] For these reasons (and the reasons set out under headings a)[36] and c)[37]above), the evidence does not support a finding that the Appellant experienced significant changes to his duties according to the legal test set out above.

[94] A reasonable alternative would have been for the Appellant to ask the CEO to clarify the hiring process for sales candidates and confirm the Appellant's authority and role in that process. It was incumbent on the Appellant to have a conversation with the CEO rather than simply **assume** the CEO's actions signaled a change in his duties – especially when the duty involved (hiring of sales candidates) was a significant part of his role as Vice-President of Sales. He failed to do so.

[95] I therefore find the Appellant has not proven that he experienced a material change in his duties such that he had no reasonable alternative but to quit his job when he did.

e) Did the Appellant experience practices of the employer that were contrary to law such that he had no reasonable alternative but to quit on February 6, 2023?

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[35] See paragraphs 48 to 50 and footnote 14 above.
[36] Heading a) Did the Appellant experience harassment such that he had no reasonable alternative but to quit on February 6, 2023?
[37] Heading c) Did the Appellant experience working conditions that were a danger to his health such that he had no reasonable alternative but to quit on February 6, 2023?

[96] No, he did not.

[97] The law says just cause for voluntarily leaving exists if the Appellant had no reasonable alternative having regard to all the circumstances, including practices of the employer that are contrary to law[38].

[98] If an employer requires a claimant to perform acts which are illegal or contrary to business ethics, the claimant may have just cause for leaving their position[39]. The term "illegal" has a broader meaning than merely "contrary to the criminal law" and can include contraventions of employment standards and legislation[40], collective agreements[41] and licensing board certifications[42].

[99] The Appellant says the CEO asked him to racially profile prospective sales candidates, which is contrary to human rights legislation, employment standards legislation and his ethical obligations as Professional Engineer.

[100] A practice that involves racially profiling prospective employees may be illegal and unethical[43].

[101] The Appellant must show that he was required to engage in such a practice **as a condition of his employment** to prove just cause for voluntarily leaving according to section 29(c)(xi) of the EI Act.

[102] He has not done so.

[103] In the January 22, 2023 E-mail (at GD3-30), the CEO compares his own experience working in sales to that of "mainstream guys". He asks the Appellant if "onboarding" a candidate directly from Poland would result in the "desired results" given that the "cultures are very much different between the two countries".

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[38] Section 29(c)(xi) of the EI Act.
[39] See *CUBs 16340, 12125* and *8452*; see also *CUBs 16209, 12125, 10650, 28211* and *52809*; see also
[40] See *CUB 16209*.
[41] See *CUB 51219*
[42] See *CUB 24394* and *E.D v. C.,E.I.C.*, 2018 SST 1148.
[43] This is not the issue before me, and I make no findings as to whether the CEO or the employer engaged in racial profiling of prospective employees.

[104] The Appellant responded by E-mail the next day (at GD3-29), stating he does not profile candidates by their "cultural background"[44], and only looks for their "experience, skill set, work ethics, coachability, desired salary, education and their fit in our team".

[105] The CEO responded minutes later (with the E-mail at GD3-28) and said those were "the variables" he looked at, too. The CEO also said that X had "more than average diversified group of members, so you see our direction".

[106] The CEO went on to say that he believed there are cultural and language considerations "when it comes to sales"; and ended by telling the Appellant to "feel free to suggest your thoughts".

[107] As the Appellant testified, he did just that during his conversation with the CEO later that day – and then he proceeded with the second interview of the Polish candidate.

[108] The CEO's E-mails do not explicitly direct the Appellant to engage in racial profiling of prospective new employees ***or*** threaten consequences for his employment if he refuses to do so.

[109] But the Appellant argues these messages were **implied** in the CEO's E-mails on January 22 and 23, 2022.

[110] I find the evidence does not support this.

[111] There is no evidence the Appellant took the CEO's E-mails as a warning not to proceed with the second interview of the Polish candidate or to only put forward "mainstream" candidates in future. Nor is there any evidence the Appellant took the CEO's E-mails as threatening him with dismissal, demotion, or any other negative consequences if he proceeded with the second interview scheduled for the Polish candidate. The Appellant testified that he made his position against racial profiling clear in the conversation he had with the CEO on January 23, 2023 after their E-mail

[44] See GD3-29.

exchange earlier in the day[45]. The Appellant then carried on with his work as usual, conducted the second interview of the Polish candidate, and left for the conference in Las Vegas a week later, without further incident.

[112] The Appellant also argues that the CEO's actions in selecting the 3 or 4 candidates for second interviews while he was away at the conference **implied** that the Appellant was required to engage in racial profiling or he'd face consequences for refusing to do so.

[113] But I find the evidence does not support this, either.

[114] When the Appellant returned to the office on February 6, 2023, he learned the CEO had lined up 3 or 4 second interviews for that day. The Appellant met the candidates and observed that they all fit the racial profile the CEO allegedly desired.

[115] He says this proves that racial profiling was a condition of his employment because it shows the CEO had given him a choice: either comply with the direction to racially profile sales candidates or be treated as insubordinate by having the task of hiring taken away from him.

[116] For the reasons set out in my analysis under headings a)[46], c)[47], and d)[48] above, I have found the Appellant has not proven the CEO took the task of hiring prospective sales candidates away from him on February 6, 2023.

[117] Without proving that hiring had been taken away from him, there's nothing to show the Appellant had faced (or would face) consequences to his employment for refusing to racially profile prospective sales candidates (such as removing the key hiring role from his position as Vice-President of Sales).

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[45] See paragraph 26 above.
[46] Heading a) Did the Appellant experience harassment such that he had no reasonable alternative but to quit on February 6, 2023?
[47] Heading c) Did the Appellant experience working conditions that were a danger to his health such that he had no reasonable alternative but to quit on February 6, 2023?
[48] Heading d) Did the Appellant experience significant changes in his work duties such that he had no reasonable alternative but to quit on February 6, 2023?

[118] And without proving that he had or would face consequences for refusing to racially profile prospective employees, the Appellant cannot show he was required to engage in racial profiling **as a condition of his employment** when he quit his job on February 6, 2023.

[119] The Appellant quit before obtaining the evidence that might have established this circumstance.

[120] I agree with the Commission that a reasonable alternative to quitting would have been for the Appellant to raise his concerns about potential racial profiling in the workplace with an outside organization such as the provincial Ministry of Labour or the provincial Human Rights Commission. Such organizations exist not only to investigate complaints but to provide guidance and resources for resolving workplace issues and disputes.

[121] A further reasonable alternative would have been for the Appellant to ask the CEO to confirm the Appellant's role and authority in the hiring process. It was incumbent on the Appellant to have a conversation with the CEO rather than **assume t**he CEO's actions (in selecting 3 or 4 candidates for second interviews, all of whom fit the racial profile the CEO allegedly preferred) **implied** that the Appellant had to make a choice between doing something he felt was illegal and unethical or facing consequences to his employment for refusing to do so.

[122] The Appellant failed to pursue either of these reasonable alternatives.

[123] I therefore find the Appellant has not proven that he experienced practices of the employer that were contrary to the law such that he had no reasonable alternative but to quit his job when he did.

This concludes my analysis of the 5 circumstances the Appellant listed from section 29(c) of the EI Act.

[124] I will now address the last circumstance the Appellant asked me to consider.

[125] The Appellant said he quit because he couldn't continue to work in the "culture of racism" created by the CEO.

[126] Although it is not a ground listed in the EI Act, I will now consider the Appellant's submissions that he had just cause for leaving due to a hostile and toxic workplace.

f) Was the workplace environment so hostile or toxic that the Appellant had no reasonable alternative but to quit on February 6, 2023?

[127] No, it was not.

[128] Unsatisfactory working conditions will only be just cause for leaving an employment if they are so "manifestly intolerable" that the claimant had no reasonable alternative but to leave[49].

[129] I find that such circumstances did not exist for the Appellant.

[130] The Appellant has not proven the CEO created a "culture of racism"[50] at X or that the workplace environment was "riddled with discrimination"[51].

[131] In his appeal materials, the Appellant included 2 *undated* online postings by the CEO (at GD2-13 and GD2-20) and an *undated* internal E-mail from the CEO (at GD3-14) which he says show the CEO displayed racism in the workplace[52]. He also submitted 3 "glassdoor reviews"[53] that were posted by other employees in July 2023, after the Appellant quit. These reviews refer to the CEO as "racist" (GD6-2), "incompetent" (GD6-2) and "a fraud" (GD6-3), and the Appellant says they show the CEO was never going to change.

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[49] See *CUBs 11890, 12767,16473, 16704, 17143, 17108, 11738, 20434*, and *20926*. And see recent Tribunal cases *ME v CEIC*, 2015 SSTGDEI 112, and *IO v CEIC*, 2019 SST 1483.
[50] As he stated during his testimony.
[51] See the Appellant's written statement at GD3-40.
[52] This is not the issue before me, and I make no findings on whether the CEO was racist in the workplace or otherwise.
[53] Starting at GD6-1.

[132] While some of these materials are admittedly troubling, they fall short of the evidence required to establish a culture of racism or pervasive discrimination in the workplace as of February 6, 2023, when the Appellant quit.

[133] Nor is there sufficient evidence to prove that **the Appellant** experienced working conditions that were so hostile or toxic that they would be considered manifestly intolerable as of February 6, 2023. I place greatest weight on the Appellant's own testimony about the events between January 22, 2023 (when the CEO sent the E-mail about hiring "mainstream guys") and the final incident on February 6, 2023. Those events, as described in detail by the Appellant at the hearing, do not reach the level of manifestly intolerable working conditions[54].

[134] There are also many cases from the courts imposing an obligation on EI claimants to try to resolve workplace issues with their employer or seek other employment before making a unilateral decision to quit[55].

[135] I cannot ignore this obligation.

[136] I acknowledge the Appellant was unhappy with his situation at X.

[137] He'd only been working there for 2 months and the CEO was turning out to be very demanding and inundating him with E-mails on his personal time. When the CEO questioned his decision to give a second interview to a sales candidate from Poland because the candidate wasn't "mainstream", he felt the CEO was being racist and was directing him to be racist too. He made it clear to the CEO (both in an E-mail and during a conversation with the CEO) that he did not profile candidates by their cultural background and proceeded with the second interview. But when the CEO lined up 3 or

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[54] The Appellant testified that January 22, 2023 was the first time he became aware of the CEO's problematic views on hiring salespeople. He traveled to Las Vegas on behalf of the employer from January 29, to February 3, 2023. He quit on February 6, 2023, his first day back in the office. The Appellant would only have had 4 days in the office between sending his E-mail response on January 23, 2023 (advising he does not engage in racial profiling of prospective hires) and returning to work on February 6, 2023. He did not describe experiencing any negative interactions or aggressiveness during these 4 days. I see no evidence the Appellant endured a hostile or toxic workplace during this period.
[55] See *Canada (Attorney General) v White*, 2011 FCA 190. See also *CUBs 57005, 57605, 57628, 69200, 69227, 71573*, and *71645*.

4 more second interviews while the Appellant was away at a conference – for candidates who fit the racial profile the CEO allegedly preferred, the Appellant assumed the CEO had taken the hiring process away from him because he refused to racially profile sales candidates. He wasn't prepared to abide that. He sat through the interviews of the CEO's candidates on February 6, 2023, and quit that evening.

[138] But the Appellant hasn't provided evidence that he took steps to address his unsatisfactory working conditions prior to quitting.

- If getting E-mails at home on off hours was unacceptable to the Appellant, it was incumbent on him to advise the CEO of that and clarify what the expectations and boundaries were.

- If he believed the CEO was racist in his hiring practices and was directing him to be racist, too – it was incumbent on the Appellant to have a full and frank discussion with the CEO about appropriate conduct in the workplace – and what he (the Appellant) was prepared to do. This is especially the case given the Appellant's testimony that if the CEO had been a colleague or counterpart and held these racist views, **"absolutely, we could figure out a working relationship"**[56]. The Appellant displayed strong communications skills in his testimony and submissions. I have no doubt he could have engaged the CEO in a productive dialogue on this issue if he had chosen to do so.

[139] Instead, the Appellant voluntarily put himself into a position of unemployment without taking steps to first preserve that employment.

[140] A reasonable alternative would have been to give the CEO a chance to address the workplace issues – whether by taking the steps I have set out in paragraph 136 above **or** under the section 29(c) EI Act headings a) through e) above. The fact the Appellant resigned by E-mail the evening of his first day back in the office (February 6,

[56] See paragraph 29 (at page 8) above.

2023), effective immediately – and without giving the CEO any reasons for his immediate departure – is indicative of the Appellant's lack of interest in preserving this employment.

[141] Another reasonable alternative would have been to continue working at X until he had secured other employment. I am not saying the Appellant should have engaged in the racial profiling he believed the CEO was asking of him. Rather, I am saying it would have been reasonable for the Appellant to continue in his employment and remain involved in the hiring process, providing input on the candidates who had been interviewed and putting forward additional candidates of his own – and carrying on with his other duties as Vice-President of Sales – until he found another job. This is especially the case given the fact he had already made it clear to the CEO (both in an E-mail and in conversation on January 23, 2023) that he would not profile prospective employees.

[142] A decision to leave a job for **personal reasons**, such as a difficult and demanding boss, feeling like your authority is being undermined, and feeling like you are being treated as insubordinate for no legitimate reason (as described by the Appellant), may well be ***good cause*** for leaving an employment.

[143] But the courts have said that ***good cause*** for quitting a job is not the same as the statutory requirement for **"just cause"**[57]; and that it is possible for a claimant to have good cause for leaving their employment, but not "just cause" within the meaning of the law[58].

[144] I find the evidence points very strongly to the Appellant having quit his job at X for **personal reasons**.

[145] I acknowledge that on February 6, 2023, the Appellant had an urgent desire to remove himself from an upsetting and stressful situation with the CEO. But he cannot expect those who contribute to the employment insurance fund to bear the costs of his

[57] See *Laughland* 203 FCA 129
[58] See *Vairumuthu* 2009 FCA 277

unilateral decision to leave his employment to do so. The courts have held that leaving one's employment to improve one's situation – be it the nature of the work or workplace, the pay, or other work-life factors – does not constitute just cause within the meaning of the law[59].

[146] The Appellant had the reasonable alternatives I have set out above. He failed to pursue these reasonable alternatives.

[147] I therefore find the Appellant has not met the onus on him to prove that he was experiencing working conditions that were so manifestly intolerable he had no reasonable alternative but to quit his job on February 6, 2023.

[148] This means he has not proven he had just cause for leaving his job because his workplace had become intolerable.

Conclusion

[149] The Appellant had reasonable alternatives to quitting his job when he did. He did not pursue these reasonable alternatives and, therefore, has not proven he had just cause for voluntarily leaving his employment at X on February 6, 2023.

[150] This means he is disqualified from receipt of EI benefits.

[151] The appeal is dismissed.

Teresa M. Day

Member, General Division – Employment Insurance Section

[59] See *Langevin* 2001 FCA 163, *Astronomo* A-141-97, *Tremblay* A-50-94, *Martel* A-169-92, *Graham* 2001 FCA 311, *Lapointe* 2009 FCA 147, and *Langlois* 2008 FCA 18.