



Citation: *RV v Canada Employment Insurance Commission*, 2024 SST 602

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: R. V.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (578037) dated April 20, 2023 (issued by Service Canada)

Tribunal member: Harkamal Singh

Type of hearing: In person

Hearing date: December 6, 2023

Hearing participants: Appellant

Decision date: February 14, 2024

File number: GE-23-1564

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 left his job on August 26, 2022 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 addressed his health concerns with his employer, sought medical documentation, continued working in a different role, or discussed harassment issues within the organization as other options instead of quitting.

[6] The Appellant argues he didn't leave his job at X by choice on August 26, 2022, but because he felt he had to. He talks about the problems with his night shift in sanitation, like not being able to sleep well and getting hurt from using a very hot water hose, even though he was only supposed to be in that job for a month, but it turned into two. Then, after only two weeks in a different job in the warehouse, they told him he wasn't a good fit without telling him why. He was then told he had to either go back to the sanitation job he had problems with or leave the job with a little bit of severance pay. The Appellant believes that all these problems, along with being treated badly at work

and not having the job duration promises kept, really didn't give him any other option but to leave.

Issue

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

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

Analysis

The parties agree that the Appellant voluntarily left

[9] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on August 26, 2022. I see no evidence to contradict this.

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

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

[11] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ Having a good reason for leaving a job isn't enough to prove just cause.

[12] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.²

¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

[13] 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.³

[14] 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.⁴

[15] 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.⁵

The circumstances that existed when the Appellant quit

[16] The Appellant says that three of the circumstances set out in the law applies. Specifically, he says that he was subjected to working conditions that constitute a danger to his safety, there was significant changes in his work duties and finally that he faced harassment.

[17] The Appellant provided consistent and specific details regarding the conditions of his employment, the changes in his duties, and the harassment he faced. The employer's responses to the Commission's inquiries lacked specificity and did not directly refute the Appellant's claims regarding safety concerns and harassment.⁶

Health and Safety Concerns

[18] The Appellant described the sanitation role's working conditions as physically demanding and potentially hazardous, indicating the need to wear protective gear due to the nature of the tasks. The description of handling hot water, which led to discomfort and potential burns, substantiates the claim that these conditions posed a danger to his safety. The Appellant also testified regarding personal health issues he was having. The detailed and consistent recounting of these conditions, contrasted with the employer's

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

⁴ See section 29(c) of the Act.

⁵ See section 29(c) of the Act.

⁶ GD-3-30

generic reference to health-related issues without directly addressing the safety concerns raised, lends credibility to the Appellant's claims.⁷

Being Asked to Return to the Sanitation

[19] The Appellant and the employer both agree that he started working in the sanitation department and then moved to a warehouse job. The Appellant thought this new job in the warehouse would last longer and be better for him. He testified the employer later told him he must either go back to his old sanitation job or leave the company. However, the employer says they never told him he had to go back to sanitation. After looking at all the information, I believe that the Appellant was indeed told to return to the sanitation role.

[20] The Appellant's testimony regarding his employment journey—from being hired for sanitation, moving to the warehouse, and then facing an ultimatum—has been consistent. His expectation of the warehouse job as a more stable and suitable position was based on communications with his employer, which he detailed clearly

[21] While the employer disputes the claim that the Appellant was explicitly told to return to sanitation, they have not provided specific evidence to refute the Appellant's account. The absence of detailed counter-evidence or documentation from the employer leaves the Appellant's narrative as the more likely account.

[22] The above analysis leads me to conclude that the Appellant was told to return to the sanitation department.

Harassment from Team Leader

[23] The Appellant clearly and repeatedly described how he was unfairly criticized by his team leader, L., for taking necessary washroom breaks and for performing regular tasks like changing garbage bags, duties that were part of his job. He even mentioned distressing incidents where he wet his pants due to restrictions on using the washroom. The straightforward and consistent way he shared these experiences, without any

⁷ GD-3-27

specific denial or explanation from the employer, makes it credible that he faced harassment. This lack of a detailed response from the employer adds weight to the Appellant's claims, indicating that his reports of harassment are credible and had a significant negative impact on his work life.

[24] Therefore, based on the above analysis, I find that the following circumstances existed when the Appellant quit:

- a) *Working conditions that constitute a danger to health or safety*: The Appellant pointed out that his work in the sanitation department involved handling a hot water hose, which caused physical harm, and working night shifts which was required in sanitation, was challenging for him. These work conditions, combined with his own health problems like trouble sleeping, stomach issues, asthma, COPD, and joint pain, were the main reasons he left his job. He felt these conditions at work were harmful to his health and safety.
- b) *Significant changes in work duties*: Initially hired for a sanitation role with a promised term that was extended without his consent and then moved to a warehouse position only to be deemed unsuitable, the appellant experienced significant changes in work duties.
- c) *Harassment*: The appellant mentioned harassment by his team leader L.. L. would publicly reprimand him for taking necessary breaks, such as going to the washroom, and for carrying out tasks like changing the garbage bag, which were part of his regular job duties. This behavior contributed to a hostile work environment and significantly impacted the appellant's decision to leave his employment.

The Appellant had reasonable alternatives

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

[26] The Appellant says that he had no reasonable alternative because he was presented with only two options: to either transfer back to the sanitation department or to accept severance. This predicament, according to the Appellant, was further exacerbated by ongoing workplace harassment and the employer's failure to honor commitments regarding the tenure of his role. The Appellant argues that these adverse conditions, combined with the lack of meaningful alternatives, constituted just cause for his departure, underpinning his decision to leave as a forced and necessary action rather than a voluntary choice.

[27] The Commission disagrees and says that the Appellant could have engaged in dialogue with the employer to address his health concerns, sought medical documentation to support his claims, continued his employment in a different capacity, or utilized internal mechanisms to report and discuss the harassment issues he faced. The Commission posits that these options would have provided the Appellant with avenues to resolve his grievances without resorting to resignation, challenging the assertion that leaving his employment was the only reasonable course of action.

[28] I find that the Appellant had reasonable alternatives to leaving his employment.

[29] When the Appellant was asked to go back to working in sanitation, he didn't try to talk about his worries or look into other job options at the company. He quit because he felt he had no other choice, but he didn't take the simple step of talking to his boss about why he didn't want to go back to sanitation. If he had asked about other jobs that fit what he could do or asked for changes to make the job work for him, it could have helped find a solution that worked for both him and the company.

[30] The Appellant testified that he chose not to report the harassment from his team leader, L., because he thought he would be moving to the warehouse job permanently, which would mean he wouldn't have to work under L. anymore. However, hoping for this change doesn't mean he couldn't or shouldn't have asked for help from the Human Resources (HR) department or someone higher up in the company. By not taking this step, the Appellant missed a chance to possibly solve the harassment problem without having to quit.

[31] The Appellant's medical concerns, including stomach issues, asthma, COPD, and joint problems, are significant factors influencing his ability to perform certain roles, notably those with environmental conditions present in the sanitation department. Despite these valid health concerns, the Appellant did not substantively pursue medical leave or present medical documentation to his employer as evidence of his conditions, which could have initiated a discussion about reasonable accommodations or alternative duties. This lack of action omits a crucial step in exploring all reasonable alternatives to resignation, particularly when health issues are a primary concern.

[32] Looking at all of the Appellant's reasons for quitting together, it's clear he didn't explore all the options he had to fix his problems at work. Hoping to move to the warehouse job for good shouldn't have stopped him from trying to sort out his current problems through the usual ways at work. Also, not talking about his health issues or not asking for medical leave means he missed steps that could've given him other choices besides quitting.

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

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

Conclusion

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

[36] This means that the appeal is dismissed.

Harkamal Singh
Member, General Division – Employment Insurance Section