Citation: *CM v Canada Employment Insurance Commission*, 2024 SST 860

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (624488) dated November 3, 2023 (issued by Service Canada)

Tribunal member:	Marc St-Jules
Type of hearing:	In person
Hearing date:	January 30, 2024
Hearing participant:	Appellant Appellant's spouse
Decision date:	February 13, 2024
File number:	GE-23-3513

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.

[3] This means the Appellant is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[4] The Appellant left his job on August 9, 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.

[5] The Commission says that, instead of leaving when he did, the Appellant could have approached the owner to discuss this situation. The Commission also says the Appellant could have lodged a complaint regarding the unsafe workplace issues. Another option the Commission says the Appellant could have remained employed while searching for work elsewhere.

[6] The Appellant disagrees and says that he should not be subject to the yelling and profanity used against him. It is not his responsibility to deal with the co-worker who yelled at him.

[7] In addition, the Appellant argues the place is unsafe to work at. The employer does not observe the laws regarding vehicle maintenance. He says that the mechanic is not licensed for the work he does. In addition, the employees are overworked and sometimes have to work 24 hours straight. This makes the work environment unsafe.

[8] I have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

Issue

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

[10] 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

[11] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on August 9, 2023. I see no evidence to contradict this. I see no evidence of a dismissal or a shortage of work.

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

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

[13] 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.

[14] 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]

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[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.

[15] 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]

[16] 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]

[17] 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

[18] The Appellant says that three circumstances set out in the law apply. Specifically, he says the following:

- He was harassed at work.
- The employer engaged in practices that are contrary to law.
- The work conditions constituted a danger to health or safety.

[19] I will address the circumstances separately. I will first start with the harassment circumstance.

[20] The other two circumstances are closely related to each other. It is the employer's alleged practices that lead to the working conditions that constitute a danger to the health and safety of the workers.

– Harassment

[21] My analysis in the paragraphs below will show that I agree this circumstance does fall under harassment. In other words, I agree with the Appellant.

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[3] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[4] See section 29(c) of the EI Act.
[5] See section 29(c) of the EI Act.

[22] Harassment is one of the circumstances set out in section 29(c) of the EI Act.[6] The Appellant says he was yelled at and used profanity against him. I accept that he was yelled at. The employer did not dispute this. The employer agreed the supervisor yelled at the Appellant.

[23] To enable me to make a decision on harassment, I will first start with defining what I find to be harassment.

[24] Harassment is not defined in the EI Act, nor has it been interpreted by the courts. As a result, I will consult the definition that has been added to the Canada Labour Code.[7] The definition there is:

> ***harassment and violence*** means 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, including any prescribed action, conduct or comment.

[25] The Social Security Tribunal Appeal Division expanded on that definition and included the following key principles in their definition of harassment:[8]

- harassers can act alone or with others and do not have to be in supervisory or managerial positions; and
- harassment can take many forms, including actions, conduct, comments, intimidation, and threats; and
- in some cases, a single incident will be enough to constitute harassment; and
- there is a focus on the alleged harasser, and whether that person knew or should reasonably have known that their behaviour would cause offence,

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[6] See section 29(c)(i) of the EI Act. It says that one of the circumstances is sexual or other harassment. In this case, the Appellant is alleging other harassment.
[7] See Section 122(1) of the Canada Labour Code for definitions.
[8] See *N. D. v. Canada Employment Insurance Commission*, 2019 SST 1262.

embarrassment, humiliation, or other psychological or physical injury to the other person.

[26] Although I am not bound to follow these definitions, I find the Canada Labour Code definition and the Appeal Division's additional key principles to be persuasive. The Appeal Division agreed that in some cases, a single incident will be enough to constitute harassment. I agree that a single incident is sufficient.

[27] Applying this definition and key principles to the Appellant's statements and evidence, I find that the Appellant was harassed within the meaning of section 29(c)(i) of the EI Act.

[28] In conclusion to this section, I will consider the harassment when I decide whether the Appellant had just cause for quitting his job when he did.

– **The employer engaged in practices that are contrary to law.**

[29] The Appellant's main argument regarding this was the individual doing maintenance work was not a licensed mechanic. This led to safety issues at work with the trucks.

[30] The Appellant testified the following:

- There was an unreported truck accident in June 2023. The driver had to seek medical attention.
- The "mechanic" was not licensed.
- There was an incident with wheels flying off a trailer.
- The lights on the trailer did not work properly.
- Welded patches to the frames of trailers are common for this employer.
- The steering tires were bald and replaced with drive tires which is not safe.

[31] The Commission questioned the employer regarding these allegations. The employer did confirm the accident and the wheels falling off.[9] The employer denied that the accident was not handled properly. All proper procedures were followed.

[32] In support of these allegations, the Appellant provided a “Field Visit Report” from the Ministry of Labour, Immigration, Training and Skills Development (MOL).

[33] There are issues that were raised by the Field Visit Report which support what the Appellant alleges. I find the report itself to not be as serious as what the Appellant alleges. However, that does not mean I do not believe the Appellant. The Field Visit Report only mentions one truck being inspected. With this one truck, there was “a minor defect under schedule 1 maintenance.”

[34] It also mentions that the employer is to provide a photo of the mechanic's certificate, and a copy of workplace violence and harassment policy among other things. If there was an unlicensed mechanic doing work there, it is not mentioned.

[35] I have two conflicting statements before me.

[36] I agree with the Appellant again. I am giving more weight to his statements. I found no reason to doubt the Appellant. He provided his statements without hesitation under solemn affirmation. In addition, I find that the Field Visit Report supports his statement.

[37] I find that the employer was lacking in some aspects of the job. This is based on the field visit report. For this reason, I find that this is a circumstance which I need to consider.

– **Working conditions constituted a danger to health or safety**

[38] I find that yes, this was a dangerous workplace.

[39] To come to this conclusion, I am relying on the following facts:

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[9] See GD03 page 35.

- Previous rollover of one vehicle.
- Wheels falling off a trailer.
- Employees working long hours

[40] Every job has different environments and working conditions. Sometimes, these conditions are just inherently risky or dangerous, such as working as a firefighter. However, these inherent risks in a job do not mean a person can quit, citing those risks, and have just cause for leaving. I am not suggesting that this is the case here. The Appellant did not raise an inherent risk to the job as a reason for leaving.

[41] The dangerous working conditions the Appellant testified to are over and above the inherent risk. The mechanic not being licensed is not an inherent risk.

[42] I have a few uncontested incidents which confirm the work environment can be dangerous. The employer also agreed that the employees do work very long hours on occasion.

[43] I find that, with the evidence before me, that this was a dangerous place to work. I am putting a lot of weight on the uncontested incidents which support the Appellant's testimony.

[44] In conclusion to this section, I agree that the circumstances that existed when the Appellant quit were the following:

- Harassment
- The employer engaged in practices that are contrary to law.
- The work conditions constituted a danger to health or safety

[45] Considering these circumstances, I must decide if the Appellant had just cause. That will be in the next section.

The Appellant had reasonable alternatives

[46] I must now look at whether the Appellant had no reasonable alternative to leaving his job when he did. In the previous section, I looked at the circumstances that existed. I will consider these in this section.

– **What the Appellant says:**

[47] The Appellant says that he had no reasonable alternative because he should not be subject to yelling and profanity. There was a danger of a physical confrontation had the Appellant remained employed. The Appellant says that no one should be a victim of this yelling.

[48] The Appellant further argued that it was not his responsibility to find a solution to the co-worker's behaviour. The Appellant testified that he did not approach the employer to ask what the employer was going to do about the yelling. The reason the Appellant says he did not approach the employer is because he knows the employer would not do anything about it. The supervisor is the employer's right-hand man.

[49] In addition, the working conditions were a danger to his health and safety. He had no reasonable alternative to leave.

– **What the Commission says:**

[50] The Commission disagrees and says that the Appellant left because of a single altercation with his foreman. The Commission says that the Appellant admitted this in his application and to the Commission that he never had an issue with this employee before.

[51] The Commission also says the Appellant could have:

- Discussed with the employer prior to quitting.
- Involved the MOL regarding the safety issues at work. He could have remained employed and file a complaint with the MOL but stay on to see that was followed up to his satisfaction.

- Remained employed while searching for employment elsewhere.

- Take a leave of absence to contemplate resigning and its consequences. While on leave, he could then seek other employment.

– **My findings are based on the arguments**

[52] I find that the Appellant had reasonable alternatives.

[53] I agree with the Appellant that he has a right not to be yelled at or be subject to profanity. I also agree that he needs to be working in a safe environment.

[54] However, I do not agree that the first course of action is quitting and asking all who contribute to the EI Fund to bear the burden of his choices. This is what the courts have decided over the years. The Federal Court of Appeal (FCA) says you need to discuss your situation with your employer before you quit and you must try to stay employed.[10]

[55] While he may have had good personal reasons, that is not the same as just cause under the law,[11] and the law generally requires claimants to try to resolve workplace issues or to find alternative employment before quitting.[12]

[56] Even where the harassment has been proven, there may be an obligation to make all reasonable efforts to rectify the situation before quitting.[13].

[57] I find that the Appellant did have an obligation to approach the owner. I find that giving the employer an opportunity to address the situation was a reasonable alternative. I agree with the Appellant that it was not his responsibility to resolve or to

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[10] See *Canada (Attorney General v Murugaiah,* 2008 FCA 10.
[11] See *Canada (Attorney General) v White*, 2011 FCA 190; and *Tanguay v Canada (Unemployment Insurance Commission)*, A-1458-84.
[12] See *Canada (Attorney General) v Hernandez*, 2007 FCA 320; *Canada (Attorney General) v Campeau*, 2006 FCA 376; and *Canada (Attorney General) v Murugaiah*, 2008 FCA 10.
[13] See CUB 57619. CUBs are Canadian Umpire Benefit decisions. While I am not bound by CUB decisions, I can find them to be persuasive.

deal with the yelling. However, I find that to meet the requirements of the EI Act, he did have the responsibility to approach the employer to see what can be done.

[58] The Appellant told the Commission and the Tribunal he did not search for work prior to leaving because he was not expecting to quit. This is also what the Appellant mentioned on his application for benefits. When asked for an explanation why he had not searched for work before leaving, the Appellant wrote, “Did not expect this to have happened. I fully expected to finish the season.”

[59] This is consistent with what he testified to during the hearing. He says he did not search for work prior to leaving because he did not expect to quit.

[60] I agree with the Commission that this seems to suggest the Appellant left his job because of the one yelling incident. I find that the safety issues were not the main reason the Appellant left. There are a few reasons for this.

- The first is that the Appellant says he would have remained had this incident not occurred.

- The second is that this is the Appellant’s second season with his employer. Had the issues been so bad the Appellant would not have returned.

[61] The last reasonable alternative that I believe the Appellant had was to request a leave of absence. This would allow the Appellant to search for work elsewhere and not be in contact with his supervisor. This would also be an option for the dangerous work conditions. A leave of absence to search for work would remove the Appellant from the dangerous working conditions as well.

[62] Employment Insurance regular benefits is financial support between two jobs. It is meant to help individuals who are unemployed who have been laid off. It also helps people who had to quit after exhausting all reasonable alternatives.

[63] 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.

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

Conclusion

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

[66] This means that the appeal is dismissed.

Marc St-Jules

Member, General Division – Employment Insurance Section