



Citation: *SB v Canada Employment Insurance Commission*, 2024 SST 1521

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: S. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (658270) dated April 18, 2024
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: In writing

Decision date: December 5, 2024

File number: GE-24-3336

Decision

[1] The appeal is dismissed. The General Division 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 as a greeter at a retail store on July 7, 2023, and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

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

[5] The Commission says the Appellant could have stayed in his former city of residence until he found a job in his new city of residence instead of quitting and leaving himself in a situation where he is unemployed.

[6] The Appellant disagrees and states that he made a mistake in his application for benefits. He says the real reason he left his job is that he was harassed and threatened by co-workers.

Matters I have to consider first

The Appeal Division returned the appeal to the General Division

[7] The Appellant said in his notice of appeal that he wanted to have his hearing by phone, in person, or in writing. The Tribunal called the Appellant to ask which of the three options for form of hearing he preferred. The Appellant said he preferred to have his hearing in writing.

[8] The General Division wrote to the Appellant proposing to hold the hearing in person to better allow for a full and fair hearing. The General Division asked the Appellant for his thoughts. The Appellant said he would still prefer a hearing in writing.

[9] The General Division decided to hold an in-person hearing, but the Appellant didn't attend. The General Division proceeded with the hearing and dismissed the Appellant's appeal. The Appeal Division allowed the Appellant's appeal and returned the appeal to the General Division. It decided that the process wasn't fair to the Appellant.

The Appellant didn't respond to questions sent to him in writing

[10] The Tribunal again called the Appellant to find out which of the three forms of hearing he selected on his notice of appeal he preferred. The Appellant again said he felt that this matter could be resolved in writing.

[11] On November 6, 2024, the Tribunal sent questions to the Appellant to answer by email to the email address he gave. He had until November 18, 2024, to respond. But he didn't do so. The Tribunal left the Appellant a voicemail message on November 26, 2024, asking him to call since his responses to the questions were not received. The Appellant has not called to date.

[12] When the Tribunal sends a document to a party by email, it is considered to have been received on the next business day.¹ So, the Appellant got the questions sent to him by email on November 7, 2024. But he didn't answer the questions by the deadline given.

[13] I'm satisfied that the Appellant got the letter with the questions sent to him by email. So, I proceeded with the decision, but without his additional input.

¹ See section 22(4) of the *Social Security Tribunal Rules of Procedure*.

Issue

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

[15] 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

[16] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on July 14, 2023. I see no evidence to contradict this.

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

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

[18] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.² Having a good reason for leaving a job isn't enough to prove just cause.

[19] 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.³ These include sexual or other harassment, working conditions that constitute a danger to health and safety, and an obligation to care for a member of the immediate family.⁴

[20] It is up to the Appellant to prove that he had just cause.⁵ 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. When I decide whether the Appellant had

² Section 30 of the *Employment Insurance Act* (Act) explains this.

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

⁴ See sections 29(c)(i), 29(c)(iv), and 29(c)(v) of the Act.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

just cause, I have to look at all of the circumstances that existed when the Appellant quit.

[21] The Appellant says he left his job because he was harassed and threatened by co-workers. But he first said he quit so he could move to a new residence so he could be closer to his aging parents. The Appellant says he had no reasonable alternative to leaving at that time because of the threats he was facing at work.

[22] The Commission says the Appellant didn't have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says the Appellant could have stayed at his former residence while looking for a job in the city of his new residence. Concerning the threats and harassment, the Commission says there is no evidence that the Appellant tried to remedy the situation by discussing it with his employer.

[23] I find that the Appellant had reasonable alternatives to leaving when he did. I find that the Appellant made a personal decision to move to a different city. So, I find that he could have secured a job before quitting. He could also have worked with his employer to address his concerns about what he referred to as threats and harassment.

[24] In his application for benefits, the Appellant said he quit his job to accompany his parents to a new residence. He said his parents are in elderly and in poor health, so he was moving to be near them to help look after them.

[25] The Appellant later said that what he said in his application for benefits about accompanying his parents to a new residence was a mistake. He said he had personal safety issues at work and at his residence, and moving to the city near his parents was the solution. But according to notes in the Commission's reconsideration file, the Appellant only referred to safety concerns and work duty issues without giving details.

[26] The Appellant told the Commission that his parents are elderly and he lived too far from them. He said he was offered housing in a city closer to them. The Appellant said he jumped at the opportunity and asked his employer for a transfer to a location in the city where he was moving to.

[27] The Commission spoke to the Appellant's employer. The employer said the Appellant quit for personal reasons.

[28] The Appellant asked the Commission to reconsider its decision to deny his application for benefits. He said he had no choice to quit his job so he could accept rent geared to income housing in the city near his parents. He added that he had safety concerns and work duty issues, but he was willing to work for the employer at a new location.

[29] The Commission's notes show that in its last conversation with the Appellant, he said the reason he quit his job was to move to a new residence in a different city. He said he had no choice to quit his job so he could accept the offer of a new apartment. He added that he kept the apartment where he used to live and travelled back and forth to work from June 16, 2023, until his last day of work on July 14, 2023.

[30] The Commission maintained its initial decision. In his appeal of that decision, the Appellant said he was harassed and threatened at work. He said the reason he didn't bring this up before is that "experiencing them was bad enough".

[31] The Appellant gave details of an incident. He said another employee assaulted him. The Appellant stated that the incident was settled with an apology. But he said he kept his distance from the co-worker who he says assaulted him.

[32] The gave details of another incident. This one involved an employee who it appears had a medical condition. The Appellant said he tried to get help for the employee, but the employee grabbed him by the shirt and would not let him go. The Appellant didn't say what happened after this. But he said the employer's disregard for health and safety is unacceptable.

[33] The Commission pointed out that the Appellant didn't raise safety concerns with Service Canada. The Appellant didn't respond to my questions sent to him. So, he didn't give additional details of what he called threats and harassment.

[34] I'm not satisfied that the two incidents the Appellant referred to show that he was threatened and harassed. And I don't find that his statement that he has reported and documented over 40 incidents that led to security being hired is enough to show this.

[35] The Appellant said some incidents related to loss-prevention and others related to workplace safety, the code of conduct, and workplace ethics. But it appears from his evidence that the employer acted at least in part by hiring security. And if the Appellant felt that security wasn't doing its job properly, I find that he could have spoken again with the employer. And the Appellant said a manager intervened when another employee assaulted him, and this was settled with an apology.

[36] The Appellant didn't give examples other than the two involving other employees. Based on what he says the employer's response was, I don't find that he has proven that he had no reasonable alternative to leave his job when he did because of his safety concerns.

[37] A claimant should discuss working conditions with an employer to see if the employer can change the conditions in response to their concerns.⁶ I find that the Appellant did this and the employer took action to address his concerns. So, I find that he could reasonably have continued to do so if he wasn't satisfied with the employer's response.

[38] In an updated submission, the Appellant said customers and employees had informed the employer about the safety issues at work, but the employer took no action.⁷ But this is different from what he said in the narrative in his notice of appeal about the employer hiring security because of the 40 incidents he had documented and reported. And it's different from what the Appellant said about the manager intervening and having the dispute settled with an apology.⁸

⁶ *Canada (AG) v. White*, 2011 FCA 190; *Canada (AG) v. Hernandez*, 2007 FCA 320; *Canada (AG) v. Murugaiah*, 2008 FCA 10.

⁷ See pages GD5-3 and GD5-6.

⁸ See page GD2-10.

[39] I give more weight the Appellant's initial statement in his notice of appeal about the employer's response. This is because in general, the Appellant seemed to be tailoring or adjusting his evidence with each submission so his application for benefits could be approved as detailed below.

[40] The Appellant said first that he quit because he got housing closer to his elderly parents. Then he said he had safety concerns and work duty issues, without giving any details. Then he said he quit because he was threatened and harassed, but his employer had taken some action. Then he said the employer had taken no action.

[41] I don't doubt that the Appellant had some conflict with co-workers. And he may have had some safety concerns. But I have already found that the Appellant had reasonable alternatives to quitting given those circumstances since the employer had acted in the past.

[42] The employer said the Appellant quit his job for personal reasons. I find from this that the Appellant likely didn't tell the employer that he was leaving because of what he had experienced at work.

[43] The Appellant said in his notice of appeal that he didn't want to bring up some of the personal issues he had at work because he was applying for a full-time position at the employer's location in the city where he was moving. So, I find it likely that the real reason he quit was to accept the rent geared to income housing so he could be closer to his parents.

[44] The Appellant suggested that his employer should have let the Commission know about what he had experienced while working there. But I agree with the Commission that it is up to the Appellant, not the employer, to prove that he had just cause for leaving his job.

[45] I note that the Appellant said he was his parents' caregiver and that he is their only family member. But I'm not satisfied that this meant he had to quit his job when he did. He told the Commission that his parents live in different cities, and he doesn't live

with either one. He said the reason he applied for the rent geared to income housing is that he wanted to be closer to his parents.

[46] In updated submissions, the Appellant said he has to look after his parents, and they may have to move in with him. He said he's looking into becoming their caregiver.

[47] Sadly, the Appellant sent another update to say that his mother has passed away. I sympathize with him in the circumstances. But I don't find his evidence is detailed enough to prove that he moved because of an obligation to care for an immediate family member within the meaning of the law. And I note that he said that it was his father's advice that he say he was moving to assist his parents.

[48] I find that the Appellant had reasonable alternatives to leaving his job. It makes sense that he wanted to be closer to his parents. But I find that he could have waited to find another job in the city of his new residence before quitting. He could have asked to take time off for this reason as well. So, I don't find that he had just cause to quit his job when he did.

Conclusion

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

[50] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section