



Citation: *X v Canada Employment Insurance Commission and CW*, 2023 SST 2120

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: X

Respondent: Canada Employment Insurance Commission

Added Party: C. W.

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (569861) dated March 10, 2023
(issued by Service Canada)

Tribunal member: Katherine Parker

Type of hearing: Teleconference

Hearing date: June 23, 2023

Hearing participants: Appellant
Appellant's witness
Added Party (Claimant)
Added Party's witness

Decision date: July 5, 2023

File number: GE-23-887

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant (the employer).

[2] The Claimant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant 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 Claimant left his job at company X on July 26, 2022. He started a new job with company Y a few days later and worked there until November 23, 2022, when he was laid off. He made a claim for EI benefits, but he only had 581 hours at company Y, and he needed 700 hours to qualify for EI benefits.

[4] To qualify for benefits, the Claimant can use the hours accumulated from a previous job as long as he qualifies. The Claimant has to prove that the reason for separation from company X doesn't disqualify him so he can add those hours to his claim to qualify for benefits.¹

[5] The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving company X. It decided that he voluntarily left (or chose to quit) his job with just cause, so it qualified him to receive EI benefits. It said he had no other alternative to leaving.

[6] The Appellant (the employer) disagrees with the Commission. He said that, instead of leaving when he did, the Claimant could have continued working or found another job. He said that the Claimant decided to leave for a new job because he wasn't

¹ Paragraph 30(1)(a) of the Employment Insurance Act (the Act) says that a claimant is disqualified from receiving any employment insurance benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause. Unless, since losing or leaving the employment, the claimant has been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive employment insurance benefits.

happy with the wages. He said the Claimant is making up his claim of just cause because he wants to qualify for benefits.

[7] The Claimant disagrees with the Appellant and says that he was harassed and suffered abuse by the employer. He said he didn't say anything at the time because he didn't want to burn bridges. He said he only told his employer he was leaving for better wages as an excuse for the real reason which he kept to himself.

[8] The Claimant says the real reason he quit falls within the definition of just cause. He says he should be able to use the hours worked at company X and that he should qualify to receive EI benefits.

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

Matter I have to consider first

The Claimant was an added party

[10] The Tribunal added the Claimant as a party to the appeal in accordance with section 33(1)(b) of the Social Security Tribunal Rules of Procedure (Rules).

[11] The Appellant is the employer who was represented by the owner. He appealed the Commission's decision to qualify the Claimant for EI benefits. He said he was offended by the Claimant's allegations of harassment, and he wanted to defend his business and its reputation.

Issue

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

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

Analysis

The parties agree that the Claimant voluntarily left

[14] I accept that the Claimant voluntarily left his job. The Claimant agrees that he quit on July 26, 2022, by email. I see no evidence to contradict this.

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

[15] The parties don't agree that the Claimant had just cause for voluntarily leaving his job when he did. The Commission agrees with the Claimant that he had just cause. But the Appellant (the employer) doesn't agree, he said the Claimant quit without just cause.

[16] 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.

[17] 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

[18] It is up to the Claimant 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.⁴

[19] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit. The law sets out some of the circumstances I have to look at.⁵

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

⁵ See section 29(c) of the Act.

[20] After I decide which circumstances apply to the Claimant, he then has to show that he had no reasonable alternative to leaving at that time.⁶

The circumstances that existed when the Claimant quit

[21] The Claimant says that one of the circumstances set out in the law applies. Specifically, he says that he was harassment by his manager and that his workplace was toxic. If this is founded, then it would be considered just cause under section 29(c)(i) of the Act.

[22] The Claimant provided text messages with his manager that demonstrated inappropriate and degrading comments about the Claimant's partner. He also provided messages sent by his manager that were vile, and misogynistic. He said he never mentioned this to anyone because he wanted to be the better person and not hold a grudge.

[23] The Appellant also provided extensive documentation showing the Claimant's conduct, manner, and intent at work was equally vile and disturbing. The messages sent by the Claimant to his manager included comments that are racist, misogynistic, and anti-Semitic. But the Claimant said he was a changed person and that those messages were old and don't represent who he was when he quit. The Appellant said the real reason the Claimant left was for better job security and a better paying job.

[24] The Commission originally denied the Claimant benefits because it decided he had left without just cause. But then it changed its mind after hearing more from the Claimant during the reconsideration phase. But the Commission didn't have all of the evidence that was provided by the employer when it reconsidered its original decision.

[25] The Claimant was consistent about why he said he left his job at company X until he was denied benefits. Then his story changed.

⁶ See section 29(c) of the Act.

- The Claimant originally said in his departure email to his manager that his primary reason for quitting was job security. He said he was quitting with a “heavy heart”.⁷ He said although he expressed upset with his manager’s threat to take his work away from him for the rest of the week or year, he said he didn’t hold a grudge or ill will. He said he couldn’t stay and be constantly threatened about losing his job. So he decided to get another job which was a reasonable alternative.
- The Claimant said in his initial application for benefits, four months later, that the reason he left company X was for more money than he was making and for a different job.⁸ I accept this as the truthful reason why he quit company X.
- The Claimant signed an attestation on his initial application for benefits that he understood the information provided is subject to verification and that making a false statement on the application is subject to an administrative penalty or criminal proceedings for knowingly making a false or misleading statement.⁹
- The Claimant said in his conversation with the Commission on January 18, 2023, that he left company X to get a higher paying job. He said he applied for the job at company Y on July 22, 2022, and that his first interview with them was July 27, 2022. When asked why he didn’t wait to quit his job until he had a job offer, he said that company X didn’t allow him time off for personal appointments. He didn’t mention harassment in this interview.
- The Claimant was notified by the Commission verbally on January 19, 2023, that he wouldn’t qualify for benefits because the Commission decided he had left company X without just cause.¹⁰

⁷ See GD21-10.

⁸ See GD3-10.

⁹ See GD3-16.

¹⁰ See GD3-30.

- After the call with the Commission on January 19, 2023, informing him of a negative decision, the Claimant said, for the first time, that he left for a different reason. He said he left because of a toxic environment.

[26] The Claimant regularly asked for a raise. He sent a resignation letter that included fondness for his workplace. He had worked there for nine years. He said he was leaving with no grudge and didn't keep his text messages when he left. He left with a clean slate and hadn't been planning to make a claim of harassment. He had another job lined up which paid him more.

[27] The circumstances that existed when the Claimant quit were not only tolerated by the Claimant, but he also contributed to it. His conduct as proven by the Appellant could only be described as misogynistic, racist, and anti-Semitic. This conduct was not only condoned by the manager and owner, but they also participated in it.

[28] I weigh the evidence initially provided by the Claimant to the employer, and to the Commission and in his initial application for benefits, to be the most truthful. He said he left for a new job with better wages, and he got that job. For the next several months, he didn't mention that he left because of a toxic workplace even though he had the opportunity to say so. I believe he decided to use the claim of harassment to try and qualify for benefits.

The Claimant had reasonable alternatives

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

[30] The Claimant says that he had no reasonable alternative because he couldn't tolerate the harassment by his manager, and he had no one to complain to. He thought the manager was the highest authority and he said he didn't know he could have complained to the owner.

[31] The Commission agrees with the Claimant and says that he should not have been expected to stay in an environment that was toxic.

[32] The Appellant disagrees and says that the Claimant was part of the problem and that he had been planning to quit as soon as he could find a better paying job which he did.

[33] I find that I find that the Claimant quit because he wanted a better paying job and job security.

- The Claimant consistently said he left for a better paying job.
- He attested to this in his original application for benefits approximately four months after he quit company X. He still said the reason he left was for a better job.
- The first time he complained of harassment by company X was after he was first denied benefits by the Commission, approximately six months after quitting.
- He had a reasonable alternative to staying in this work environment, and he took it. He secured a full-time job a few days after he quit company X and he didn't experience an interruption of earnings.
- The Claimant contributed to the toxic workplace at company X. He shared private and personal details of his romantic relationship knowing it was possible for others to use it as fuel for the toxic communication. He made vile and offensive comments on a regular basis.

[34] Considering the circumstances that existed when the Claimant quit, the Claimant had reasonable alternatives to leaving when he did, and he got another job. Although the workplace was toxic, he was part of the problem. When his manager threatened his job security, he found another job and avoided unemployment. He said he left for more money and didn't change his story until after he was denied benefits.

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

Conclusion

[36] I find that the Claimant is disqualified from receiving benefits.

[37] This means that the appeal by the employer (the Appellant) is allowed.

Katherine Parker
Member, General Division—Employment Insurance Section