



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v Canada Employment Insurance Commission*, 2020 SST 206

Tribunal File Number: GE-20-29

BETWEEN:

R. B.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: January 30, 2020

DATE OF DECISION: February 6, 2020

Decision

[1] I am dismissing the appeal. The Claimant has not shown just cause because he had reasonable alternatives to leaving his job when he did. This means he is disqualified from receiving employment insurance (EI) benefits.

Overview

[2] The Claimant left his job because the employer gave him a written warning about his attendance, which he felt the warning was unfair and discriminatory. He applied for EI benefits. The Commission looked at the Claimant's reasons for leaving and decided that he voluntarily left his employment without just cause, so it was unable to pay him benefits.

[3] I must decide whether the Claimant has proven that he had no reasonable alternatives for leaving his job. The Commission says the Claimant could have asked the employer to accommodate his absences or looked for other work before leaving. The Claimant disagrees and says the employer discriminated against him because of his disability.

Potential added party

[4] The Tribunal identified the Claimant's former employer as a potential added party to the Claimant's appeal. The Tribunal sent the employer a letter asking if they had a direct interest in the appeal and wanted to be added as a party. The employer did not respond by the date of this decision. As there is nothing in the file that indicates the employer has a direct interest in the appeal, I have decided not to add them as a party to this appeal.

Charter argument

[5] At the hearing, the Claimant said he felt the Commission had discriminated against him when it denied him benefits. In case he was arguing that the employment insurance law violated his *Charter* rights,¹ I informed the Claimant that there was a separate process to raise a constitutional argument before the Tribunal, which would require an adjournment of the hearing.

¹ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, c. 11

The Claimant confirmed at the hearing that he did not wish to pursue the *Charter* argument, as he did not want any further delay in the proceedings. I told him his appeal would continue without the consideration of any *Charter* issues.

What I must decide

[6] I must decide whether the Claimant is disqualified from being paid EI benefits because he voluntarily left his employment without just cause. To do this, I must first address the Claimant's voluntary leaving. I then have to see if the Claimant had just cause to leave his job.

Reasons for my decision

[7] The purpose of the *Employment Insurance Act* is to compensate persons whose employment has terminated involuntarily and who are without work.²

[8] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.³ You have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.⁴

[9] The Claimant applied for benefits on September 24, 2019. He stated on his application that he quit because the employer had looked back over the past year and penalized him for having a family emergency and being 15-minutes late because of a flat tire on the way to work. He said that he had worked overtime at a different plant for the employer as a favour and believed that he should have received some recognition for that. He felt the employer treated him unfairly.

[10] The Claimant spoke to the Commission on October 29, 2019. He said the employer called him into the office and gave him a written warning about his attendance. He said that he had not received any previous warnings. He quit because he felt the employer treated him unfairly. He gave the example that he had done the company a favour by working at another plant over

² This is set out in *Canada Pacific Ltd. v. Canada (Attorney General)*, [1985] 1 S.C.R. 678. The law requires me to apply the principles set by courts. I refer to other cases that explain the *Employment Insurance Act* and the *Employment Insurance Regulations* in this decision.

³ This is stated at section 30 of the *Employment Insurance Act*.

⁴ This is stated in *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and section 29(c) of the *Employment Insurance Act*.

Christmas. He was late to that job once because he had a flat tire on the way to work, and the employer brought that up on the warning.

[11] The employer spoke to the Commission on October 29, 2019. They said that they called the Claimant into a meeting on August 9, 2019, and gave him a written warning about his attendance. The employer gave the Claimant a list that indicated he had an “unjustified absence” from work nine times in the past six months and that he was late for work four times in the past six months. They told him that any other incidents could lead to suspension and then dismissal. The Claimant left that day and did not return to work.

[12] The employer issued a record of employment (ROE) on August 21, 2019, stating the reason for issuing as “quit.”

[13] The Claimant spoke to the Commission again on October 31, 2019. He said that the employer treated him badly and that he had a right to not work for someone that treats him badly.

[14] The Commission issued a decision letter on November 5, 2019, denying the Claimant benefits. The Claimant requested reconsideration of this decision on November 6, 2019. In his reconsideration request, he stated that the employer did not offer any accommodation of his disability, that he had left work due to a family emergency, and the employer discriminated against him so he left the job to work somewhere else.

[15] The Claimant spoke to the Commission on December 2, 2019. He said that he has a physical disability and mental health issues and the employer did not try to accommodate these. He sometimes missed work because of mental health problems. He had been trying to get medical insurance through the employer to address his issues. He was stressed when the employer called him into the office and gave him the warning. He said that he told the employer that he had to deal with a family emergency and left that day.

[16] The employer spoke to the Commission on December 5, 2019. The employer reiterated that they called the Claimant into the office on August 9, 2019, to discuss attendance issues. He was not happy about the meeting, he left the plant and did not return to work. She said the Claimant had not discussed his physical or mental health concerns with them before he left. She said the employer offers resources through an Employee Assistance Program (EAP) and there is

a joint health and safety committee on site. She suggested the Claimant could have used either of those resources to get help he felt he needed. She said that all employees undergo an orientation session that explains these resources.

[17] The Claimant stated on his Notice of Appeal to the Tribunal that he felt depressed enough to leave work because of discrimination and because nothing was done to resolve it.

[18] At the hearing, the Claimant said that he did not quit his job, he only left that day because he had a family emergency at home. He did not return to work because the employer never called him. He said that he tried to contact the employer on November 3 and 4, 2019, but they did not return his calls.

The Claimant voluntarily left his employment

[19] When determining whether the Claimant voluntarily left his employment, I must determine whether he had a choice to stay in the job at the time.⁵

[20] The Claimant made conflicting statements regarding whether he quit his employment. On his application for benefits and in his initial conversations with the Commission, he stated that he quit because he felt the employer did not treat him fairly when they gave him the written warning on August 9, 2019. He told the Tribunal that he did not quit his employment; he just left work to attend to a family emergency and did not return to work because the employer did not contact him. He said he attempted to contact the employer in November 2019, but the employer did not return his calls.

[21] In the face of this conflicting evidence, I prefer to rely on the Claimant's initial statements to the Commission and on his application for benefits that he quit his employment. The Claimant clearly stated that he left his work when the employer gave him a written warning about his attendance because he felt it was unfair for the employer to penalize him for some of the incidents listed on the warning. The employer's statements to the Commission that the Claimant was not happy that he was given a warning, left the workplace and did not return support this version of events.

⁵ This is set out in *Canada (Attorney General) v. Peace*, 2004 FCA 56

[22] I find the Claimant's argument that he did not quit his job, but rather he did not return to work after August 9, 2019, and did not contact the employer until early November 2019, because he was attending to a family emergency is not credible.

[23] At the hearing, the Claimant said that he and his partner have mental health issues and were upset that they had received bad news from their doctor. He said that it was a family emergency for them and he felt that it was important. However, the Claimant's explanation that this family emergency extended for a period of three months and required him to be away from his work is simply not reasonable. Further, this explanation is inconsistent with the Claimant's action of applying for EI benefits in September 2019. He stated that he left his job on this application for benefits. He repeated that he left his job to the Commission in multiple conversations before he attempted to contact the employer around November 3 or 4, 2019. These actions do not support that the Claimant believed his absence from work was due to a family emergency.

[24] Based on the Claimant's statements in September and October 2019, and the employer's statements to the Commission, I find it is more likely the Claimant initiated his separation from employment when he left work on August 9, 2019, and did not return. The Claimant had a choice to return to work after August 9, 2019, or to contact the employer soon after to explain his absence. The Claimant did neither of those things. For these reasons, I find he had a choice to stay in his employment and chose to leave. Therefore, he voluntarily left his employment.

The Claimant did not have just cause to voluntarily leave his employment

[25] The law says that you are disqualified from receiving regular EI benefits if you left your job voluntarily and you did not have just cause.⁶ Having a good reason for leaving a job is not enough to prove just cause. You have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.⁷ It is up to the Claimant to prove this.⁸

⁶ This is stated at section 30 of the *Employment Insurance Act*.

⁷ This is set out in section 29(c) of the *Employment Insurance Act* and stated at paragraph 3 by the Federal Court of Appeal in *Canada (Attorney General) v White*, 2011 FCA 190.

⁸ *Canada (Attorney General) v White*, 2011 FCA 190, at para 4.

[26] When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant left his job.⁹ The Claimant then has to show that there was no reasonable alternative but to leave his job when he did.¹⁰

The circumstances that existed when the Claimant quit

[27] The Claimant says that he left his employment for several reasons. He felt the employer did not treat him fairly when it gave him a written warning about his attendance on August 9, 2019. This is because the employer included incidents the Claimant felt were not his fault and should not be held against him. Namely, when he was absent for health reasons or family emergencies, and when he was late for work because he had a flat tire. The Claimant felt the employer owed him some good will because he had worked temporarily in another plant as a favour to the employer.

[28] The Claimant also says that he left his employment because the employer discriminated against him because of his disability. Discrimination on a prohibited grounds of discrimination within the meaning of the *Canadian Human Rights Act* is one of the circumstances set out in law to be considered when determining whether a claimant has just cause to leave their employment.¹¹

[29] The *Canadian Human Rights Act* prohibits discrimination on the grounds of physical and mental disability. Discrimination in the workplace involves being treated unfairly or prejudicially by an employer, supervisor or co-worker on the basis of one or more personal characteristics.¹²

[30] The Claimant argues that the employer discriminated against him because of his disability. He gave specific examples at the hearing, saying that his supervisor claimed to have seen him driving around town during work hours, when he was actually present on the worksite.

⁹ Some circumstances are set by law. These can be found at paragraph 29(c) of the *Employment Insurance Act* and section 51.1 of the *Employment Insurance Regulations*.

¹⁰ Paragraph 29(c) of the *Employment Insurance Act*.

¹¹ This circumstance is found at 29(c)(iii) of the *Employment Insurance Act*.

¹² Those personal characteristics are: race, national or ethnic origin, colour, religion, age, sex (including pregnancy), sexual orientation, marital status, physical or mental disability (including dependence on alcohol or drugs), and pardoned conviction.

He also said the supervisor would make inappropriate remarks about men and women. Even though they were not directed at him, he felt those statements were discriminatory.

[31] Additionally, the Claimant said the employer refused to accommodate him by not allowing him to upgrade his medical insurance plan. He said the employer gave the employees basic medical coverage. He asked the employer several times to upgrade his insurance policy so that it “covered something” and they would not do it.

[32] The Claimant provided excerpts of the New Brunswick Human Rights Commission’s guideline on accommodating physical and mental disabilities at work. I do not find this information relevant in establishing a claim of discrimination under the *Canadian Human Rights Act* in the context of a claim for benefits under the *Employment Insurance Act*.

[33] I find that the Claimant has not demonstrated that he was facing discrimination due to his disability at the time he left his employment. In my view, the examples the Claimant gave about the supervisor’s behaviour do not show that the Claimant was subject to discrimination because of his disability. Rather, the examples do not seem related to the Claimant’s disability in any way.

[34] I am also not persuaded by the Claimant’s argument that the employer’s refusal to upgrade his medical insurance is discrimination. There is no evidence that the employer refused to give him an upgrade to his medical insurance due to his disability. Based on the Claimant’s statements, it appears that he received the same medical insurance as other employees. While the Claimant may have felt the employer’s refusal to upgrade his medical insurance was unfair, he has not presented evidence to prove that it was discriminatory.

[35] The Claimant did not provide any other specific evidence in support of his claim that his employer had discriminated against him because of a disability. Therefore, I find that the Claimant has not demonstrated that he was facing discrimination within the meaning of the *Canadian Human Rights Act* at the time he left his employment.

[36] In overview, the circumstances that existed when the Claimant quit work were that he felt the employer treated him unfairly when he was given a written warning for his attendance at work.

Reasonable alternatives

[37] The Claimant said he had no reasonable alternative but to leave because he felt the employer had treated him unfairly and had failed to accommodate his physical and mental health concerns as they related to his attendance at work.

[38] The Commission says the Claimant had reasonable alternatives to leaving his job when he did. Specifically, it says the Claimant could have discussed his health concerns with the employer and requested accommodation as needed, or he could have accessed the employer's resources to support his mental health issues, or he could have looked for other employment before quitting rather than making a hasty decision to leave after he received the warning about his attendance.

[39] At the hearing, the Claimant said that he had discussed his disability with the employer at the time he was hired. He said he told the Human Resources (HR) representative that he was disabled and she shared a story about her son, who also has a disability. When asked if he had requested accommodation from the employer, he only spoke about his request for upgraded medical insurance.

[40] The Claimant said that he did not speak to the health and safety committee at work because the employer did not invite him to the meetings. He did not pursue support through the EAP because he was not aware of the program. He agreed that the HR representative told him about the EAP during his initial interview, but says he did not see any written information about the program afterward.

[41] The Claimant said that he did not look for work before leaving his job because he hoped that the employer would resolve the issues. He wanted to try to work the issues out, which is why he contacted the employer in November 2019.

[42] I find the Claimant has not proven that he had just cause to voluntarily leave his employment. This is because he had reasonable alternatives to leaving his employment when he did.

[43] I understand the Claimant feels the employer treated him unfairly by giving him a warning about his attendance. The Claimant said he had a valid reason for some of the absences that the employer did not take into consideration. The written warning had a list of nine absences from work and four times that he was late for work in the last six months of his employment. This list includes an incident when the claimant was 15 minutes late due to a flat tire on the way to work. There is another incident listed which states he called to say there was an emergency and he could not come in for his shift. I also note that there are also several absences which only state that he called the employer and said he would not be at work that day, or that he did not show up for work without any notice given to the employer.

[44] The Claimant said the employer should have taken his physical and mental health conditions into consideration with regards to his absences. He acknowledged that he had not provided the employer with a medical note to support the reasons for his absences because the employer never requested it. It would have been reasonable for the Claimant to explain to his employer that his absences were related to his health issues. An employer cannot accommodate an employee if the employee does not make it aware of the need for accommodation. I recognize the Claimant's statements that he had told the employer that he had a disability at his initial interview. However, it would have been reasonable for the Claimant to discuss his health concerns as they related to his attendance record, especially after he received the written warning about his attendance.

[45] Just cause is not the same as a good reason. The question is not whether it was reasonable for the Claimant to leave his employment, but rather whether leaving his employment was the only reasonable course of action open to him, having regard to all the circumstances.¹³ In most cases, a claimant has an obligation to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job.¹⁴

[46] The Claimant said that he thought the written warning was a sign the employer was trying to push him out. He said he felt it would lead to progressive discipline up to termination. The Claimant may have been unhappy with the employer giving him the warning, but it would

¹³ *Canada (Attorney General) v. Laughland*, 2003 FCA 12

¹⁴ *Canada (Attorney General) v. White*, 2011 FCA 190

have been reasonable for him to continue working while he looked for other employment. He said that he was not happy in his job but that it was good money, so I am not convinced there was an urgent need for him to leave his job at the time the employer gave him the warning. Instead, it would have been reasonable for him to stay to resolve the issue with the employer or to remain working while he looked for another job.

[47] Employment insurance benefits are for people who have no reasonable alternatives but to quit their jobs. People can have good personal reasons for leaving a job, but good reasons are not the same as just cause.¹⁵ Considering the circumstances that existed at the time the Claimant voluntarily left his employment, I find he had reasonable alternatives to leaving his job when he did. Therefore, he has not proven that he had just cause for leaving.

Conclusion

[48] The appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	January 30, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. B., Appellant

¹⁵ This is stated in *Tanguay v. Unemployment Insurance Commission*, A-1458-84