



[TRANSLATION]

Citation: *MD v Canada Employment Insurance Commission*, 2021 SST 248

**Social Security Tribunal of Canada**  
**General Division – Employment Insurance Section**

## Decision

**Appellant:** M. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (416465) dated February 25, 2021 (issued by Service Canada)

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**Tribunal member:** Normand Morin

**Type of hearing:** Videoconference  
**Hearing date:** April 20, 2021  
**Hearing participant:** Appellant  
**Decision date:** May 7, 2021  
**File number:** GE-21-441

## Decision

[1] The appeal is dismissed. I find that the Appellant has not shown that he had just cause for voluntarily leaving his job.<sup>1</sup> This means that his disqualification from receiving Employment Insurance (EI) regular benefits from November 29, 2020, is justified.

## Overview

[2] The Appellant worked as a [translation] “multi-skilled day labourer” at X (employer) from November 9, 2020, to December 3, 2020, inclusive. He stopped working there after he voluntarily left.

[3] On February 3, 2021, the Canada Employment Insurance Commission (Commission) informed him that he was not entitled to EI regular benefits from November 29, 2020, because he had voluntarily stopped working for the employer on December 3, 2020, without good cause within the meaning of the *Employment Insurance Act (Act)*.<sup>2</sup>

[4] The Appellant argues that he had a good reason for leaving his job. He says that his supervisor contacted his spouse to comment on his drinking instead of speaking to him directly about it. The Appellant explains that he did not accept the supervisor’s meddling in his personal life in that way or telling him what to do outside of work, especially since his comments were unfounded. The Appellant says that he did not drink before or during his shifts. On March 8, 2021, the Appellant challenged the Commission’s reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

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<sup>1</sup> See sections 29 and 30 of the *Employment Insurance Act (Act)*.

<sup>2</sup> See GD3-18 and GD3-19. See also the Commission’s argument that the Appellant should have been disqualified from receiving EI benefits from November 22, 2020, given that it corrected the date of his resignation to November 25, 2020 (last day worked: November 24, 2020), based on the information it had received from him and the employer. The Commission explained that, in accordance with existing procedures, it would keep the disqualification date as November 29, 2020, to avoid creating an overpayment in the Appellant’s file—GD4-3 and GD4-4.

## Issues

[5] In this case, I must decide whether the Appellant had just cause for voluntarily leaving his job.

[6] To decide this, I must answer the following questions:

- Does the Appellant's termination of employment amount to voluntary leaving?
- If so, did the Appellant have no reasonable alternative to voluntarily leaving?

## Analysis

[7] The Act says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>3</sup> Having good cause (in other words, a good reason) for leaving a job is not enough to prove just cause.

[8] Federal Court of Appeal (Court) decisions indicate that the test for determining just cause is whether, considering all the circumstances, the claimant had no reasonable alternative to leaving their job.<sup>4</sup>

[9] 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. When I decide whether a claimant had just cause, I have to look at all of the circumstances that existed when they quit.

### **Issue 1: Does the Appellant's termination of employment amount to voluntary leaving?**

[10] I find that, in this case, the Appellant's termination of employment does amount to voluntary leaving within the meaning of the Act.

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<sup>3</sup> Section 30 of the Act explains this.

<sup>4</sup> The Court established or reiterated this principle in the following decisions: *White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Laughland*, 2003 FCA 129; *Astronomo*, A-141-97; and *Landry*, A-1210-92.

[11] I find that the Appellant had the choice to continue working with the employer but that he chose to voluntarily leave his job.

[12] The Court tells us that, in a case of voluntary leaving, it must first be determined whether the person had the choice to stay at their job.<sup>5</sup>

[13] The Appellant's explanations indicate that he voluntarily left his job.<sup>6</sup>

[14] The Appellant does not dispute that he voluntarily left his job.

[15] I find that the Appellant had the opportunity to continue his employment but that he took the initiative of ending the employment relationship by informing the employer that he would not stay on.

[16] I must now determine whether the Appellant had just cause for voluntarily leaving his job and whether he had no reasonable alternative to leaving.

## **Issue 2: Did the Appellant have no reasonable alternative to voluntarily leaving?**

[17] I find that the Appellant had reasonable alternatives to voluntarily leaving.

[18] I find that his reason for voluntarily leaving his job—the fact that his supervisor contacted his spouse to comment on his drinking—does not show that he had just cause for doing so within the meaning of the Act.

[19] The statements the Commission got from the employer (head of Human Resources) indicate the following:

- a) The Appellant worked nights and travelled with his supervisor (night supervisor).<sup>7</sup>

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<sup>5</sup> The Court established this principle in *Peace*, 2004 FCA 56.

<sup>6</sup> See GD2-8, GD3-13 to GD3-16, GD3-20 to GD3-24, GD3-28, and GD3-29.

<sup>7</sup> See GD3-17.

- b) The employer says that the Appellant would show up for work smelling of alcohol. The day supervisor noticed this. The Appellant was given several verbal warnings, but the problem was not addressed. Given that the situation had not been rectified, the night supervisor, who knew the Appellant's spouse, decided to contact her to ask her to tell the Appellant to stop drinking before going to work. The Appellant did not appreciate or accept what the supervisor did, and decided to suddenly leave his job.<sup>8</sup>
- c) The employer explains that the Appellant could have come to him to find someone else to travel with for work, given the conflict with his supervisor. The Appellant did not do anything to stay at his job. When the Appellant called him to discuss the incident of November 25, 2020, he insisted that he had resigned.<sup>9</sup>
- d) According to the employer, it would be surprising if the supervisor contacted the Appellant's spouse about the Appellant's tasks. The employer explains that the supervisor did not know ahead of time what tasks needed to be done.<sup>10</sup>

[20] The Appellant says that he had just cause for voluntarily leaving his job. His testimony and statements to the Commission indicate the following:

- a) On November 25, 2020, the Appellant found out about a text message his supervisor had sent to his spouse that same day, before starting his shift (night shift). In the message, the supervisor said that the Appellant should not drink beer [translation] "in the afternoon" and that people had told him this was the case the previous Tuesday (November 24, 2020), since he smelled of alcohol.<sup>11</sup>

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<sup>8</sup> See GD3-17, GD3-30, and GD3-31.

<sup>9</sup> See GD3-30 and GD3-31.

<sup>10</sup> See GD3-17.

<sup>11</sup> See screenshot of the text message the supervisor sent to the Appellant's spouse on November 25, 2020—GD3-26 and GD3-27.

- b) The Appellant says that this was the first time the supervisor had contacted his spouse to give him a message about his work. He explains that this message is what caused him to tell his supervisor that he was quitting. According to the Appellant, this was a good reason to leave his job.<sup>12</sup>
- c) The Appellant explains that he did not accept his supervisor's contacting his spouse about his behaviour and meddling in his personal life in that way or giving him orders outside of work. No one should have the right to tell him what to do at home. The Appellant says that he never drank at work, whether in the afternoon or before starting his shift. According to the Appellant, his supervisor made false accusations against him because of the message he sent his spouse, and he did not have to put up with that.<sup>13</sup>
- d) In his December 7, 2020, and February 3, 2021, statements to the Commission, the Appellant explained that his supervisor would write to his spouse about the work to be done during the day instead of contacting him directly. The supervisor would also tell the Appellant what to do or not to do when he was not working.<sup>14</sup>
- e) On November 25, 2020, after finding out about the supervisor's message, the Appellant contacted him. He told him that he should not contact his spouse to make comments to him about him or his work. He told him that he should not accuse him of something he had not done. The Appellant, who had been travelling with the supervisor for his work since starting his job, told him not to come get him, because he was resigning. The Appellant also made the following comment to his supervisor: [translation] "Take the job and shove

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<sup>12</sup> See GD2-8 and GD3-20 to GD3-24.

<sup>13</sup> See GD2-8, GD3-20 to GD3-24, GD3-28, and GD3-29.

<sup>14</sup> See GD3-13 to GD3-16.

it!”<sup>15</sup> The Appellant did not return to work for the employer. His last day worked was November 24, 2020.<sup>16</sup>

- f) The Appellant says that the employer, including his supervisor, had never made comments to him or warned him about his drinking or the smell of alcohol he may have given off.
- g) On December 7, 2020, about two weeks after he told his supervisor that he was quitting, the Appellant contacted the head of Human Resources to give him explanations about this. The Appellant says that he did not go to work on November 25, 2020, to complain to the employer about his supervisor’s actions because he did not think of it [translation] “at the time.” According to the Appellant, he was [translation] “frustrated” that his supervisor had contacted his spouse on November 25, 2020.<sup>17</sup>
- h) The Appellant did not take any steps or make any effort to find a new job before leaving the one he had.<sup>18</sup>

[21] The Commission says that the Appellant did not have just cause for leaving his job, because he has not shown that he exhausted all reasonable alternatives before doing so.<sup>19</sup>

[22] The Commission argues that a reasonable alternative would have been for the Appellant to talk to his employer and try to find a solution to his supervisor’s alleged behaviour. According to the Commission, the evidence shows that the Appellant chose to resign when there was no urgency to do so. It notes that the Appellant did not consider the possibility of talking to his employer to find a solution to his travel problem or the possibility of finding an equivalent job before resigning.<sup>20</sup>

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<sup>15</sup> See GD3-28.

<sup>16</sup> See GD3-28 and GD3-29.

<sup>17</sup> See GD3-28 and GD3-29.

<sup>18</sup> See GD3-14.

<sup>19</sup> See GD4-4 and GD4-5.

<sup>20</sup> See GD4-4.

[23] In this case, I find that the Appellant has not shown that he had just cause for leaving his job. He did not have a reason the Act accepts.

[24] The Appellant's testimony and statements show that he left his job because of the comment his supervisor texted to his spouse, not to him, so that he would know that people had noticed he smelled of alcohol when he showed up for work.

[25] I find that what happened was a one-time, isolated act that does not show that the Appellant had just cause for voluntarily leaving his job when he did.

[26] In his statements to the Commission, the Appellant also indicated that his supervisor would write to his spouse about the work to be done during the day instead of contacting him directly.<sup>21</sup>

[27] On this point, I note that the Appellant testified that the message his spouse received from the supervisor on March [sic] 25, 2020, was the first message that the supervisor had sent him about him or his work.

[28] Even though the Appellant argues that he did not accept the supervisor's going to his spouse to comment on his work or personal life, this does not show that his working conditions had reached the point that they could justify his voluntary leaving.

[29] By voluntarily leaving his job, the Appellant created his own unemployment situation.

[30] I find that the Appellant had alternatives to leaving his job.

[31] For example, I find that a reasonable alternative within the meaning of the Act would have been for the Appellant to talk to the employer before he voluntarily left to tell the employer about the problem created by his supervisor's giving him a message through a text to his spouse. This would have enabled the Appellant to have the

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<sup>21</sup> See GD3-13 to GD3-16.



employer intervene with the supervisor to prevent this sort of thing from happening again.

[32] The Appellant's testimony indicates that he contacted the employer more than two weeks after he voluntarily left to give the employer his version, not to try to find a solution.

[33] I find that, as a result, the Appellant presented the employer with a done deal without indicating that he was ready to return to work.

[34] I note that the employer's statements indicate that the Appellant could have come to him to find someone to get to work with other than the supervisor he had a conflict with. The employer says that the Appellant did not do so.

[35] Another reasonable alternative would have been for the Appellant to make sure he had another job before he voluntarily left.

[36] I find that the Appellant has not shown that he had no reasonable alternative to leaving his job.

## **Conclusion**

[37] Considering all the circumstances, I find that the Appellant did not have just cause for voluntarily leaving his job.

[38] The Appellant's disqualification from receiving EI regular benefits from November 29, 2020, is justified.

[39] The appeal is dismissed.

Normand Morin  
Member, General Division – Employment Insurance Section