



Citation: *DD v Canada Employment Insurance Commission*, 2022 SST 480

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

**Decision**

**Appellant:** D. D.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (438042) dated October 21, 2021  
(issued by Service Canada)

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**Tribunal member:** Linda Bell  
**Type of hearing:** Teleconference  
**Hearing date:** March 15, 2022  
**Hearing participant:** Appellant (Claimant)  
**Decision date:** April 5, 2022  
**File number:** GE-22-44 and GE-22-46

## Decision

[1] I am allowing both appeals, GE-22-44 and GE-22-46.

[2] The Claimant has shown just cause (in other words, a reason the law accepts) for leaving her jobs when she did. This means she isn't disqualified from receiving regular Employment Insurance (EI) benefits, for this reason.

[3] The overpayment of benefits that resulted from the retroactive disqualifications is removed. However, there remain two outstanding issues, which may result in an overpayment of benefits. Accordingly, this decision should be read along with the decision issued for appeal GE-22-45.

## Overview

[4] During the global COVID-19 pandemic, the Claimant established a claim for the EI emergency response benefit (EI-ERB) effective March 15, 2020. She returned to work at X on June 18, 2020. She quit this job on August 30, 2020.

[5] The Claimant continued to receive the EI-ERB until these benefits expired. The Commission automatically generated a subsequent application for regular EI benefits. The claim for regular EI benefits was set up effective September 27, 2020.

[6] While receiving regular EI benefits, the Claimant worked for X, from September 25, 2020, until she quit on November 4, 2020. She also worked for X starting on November 2, 2020, until she quit on November 28, 2020.

[7] The Commission looked at the Claimant's reasons for leaving her jobs. It determined that the Claimant was disqualified from receiving regular EI benefits as of September 27, 2020. This is because she voluntarily left (or chose to quit) her jobs at X and X, without just cause.

[8] The Commission imposed retroactive disqualifications. This results in a \$28,077.00 overpayment of EI benefits.

[9] The Claimant disagrees and appeals to the Social Security Tribunal. She says she quit both jobs for medical reasons relating to her alcoholism, mental health, and anxiety.

## **Matters I have to consider first**

### **Joining appeals**

[10] The Claimant submitted three appeals (GE-22-44, GE-22-45, and GE-22-46). All three appeals relate to her claim for regular EI benefits that was effective September 27, 2020.

[11] As the Member assigned to all three appeals, I decided to join GE-22-44 and GE-22-46 so that the Claimant could present the merits of these two appeals during the same hearing. This means that I will issue only one decision for appeals GE-22-44 and GE-22-46. I will issue a separate decision for appeal GE-22-45. Here is what I considered when deciding to join the two appeals.

[12] The law states that the Tribunal may deal with two or more appeals together (jointly) if a common question of law or fact arises in the appeals when it will not cause injustice.<sup>1</sup>

[13] In the matters at hand, I found that there is a common fact pattern relating to the reasons why the Claimant left her jobs at X (appeal GE-22-44) and X (appeal GE-22-46).

[14] Furthermore, I found that there would be no injustice with hearing these appeals together. Determining these appeals together will allow them to proceed more quickly, while upholding the principles of fairness and natural justice.<sup>2</sup>

### **Relevant evidence presented during both hearings**

[15] The Claimant attended two hearings before me on March 15, 2022. I scheduled the first hearing to hear the reasons she quit her jobs at X and X (appeals GE-22-44

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<sup>1</sup> Section 13 of the *Social Security Tribunal Regulations (SST Regulations)*.

<sup>2</sup> Paragraph 3(1)(a) of the *SST Regulations*

and GE-22-46). I scheduled the second hearing on March 15, 2022, to hear the evidence relating to the Claimant's availability for appeal GE-22-45.

[16] During the second hearing the Claimant presented evidence that she said was applicable to the previous hearing.<sup>3</sup> Specifically, she said that she quit X because she started working full-time for X. I agreed to consider that testimony as evidence for the joined appeals, GE-22-44 and GE-22-46.

### **Late documents**

[17] In the interests of justice, I have accepted all documents and submissions received on file after the March 15, 2022, hearings. Here is what I considered when determining whether I would accept the late documents.

[18] The Tribunal has a Practice Direction outlining the procedure for when to send supporting documents.<sup>4</sup> This says that the Tribunal Member may grant a party permission to submit late documents after the hearing started.

[19] The Claimant appeared at the March 15, 2022, hearing. She spoke about three jobs she had quit and her dispute about the \$28,077 overpayment of benefits. The Claimant says that the Commission told her they were allowing her reasons for quitting the third job at X. The Claimant also requested permission to submit late documents in support of her appeals.

[20] On March 17, 2022, I requested that the Commission provide supplementary representations regarding its decision about the Claimant's separation from X. I also requested the Commission submit a spreadsheet detailing the benefits paid and how the overpayment amount was determined.<sup>5</sup>

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<sup>3</sup> See the audio recording from appeal GE-22-45 at 52:57.

<sup>4</sup> <https://www.sst-tss.gc.ca/en/your-appeal/ei-general-division-appeal>

<sup>5</sup> See GDJ04.

[21] On March 23, 2022, I received one submission of late documents from the Claimant. This includes a letter from the Claimant's Concurrent Disorders Counsellor. The Tribunal provided a copy to the Commission on March 24, 2022.<sup>6</sup>

[22] On March 24, 2022, the Commission made supplementary representations in response to my request for additional information.<sup>7</sup> The Tribunal sent a copy to the Claimant as an attachment to an email on April 4, 2022.

[23] In its March 24, 2022, supplementary representations, the Commission provides the requested information and spreadsheet regarding the overpayment. The Commission confirms that it determined that the Claimant had just cause for leaving her job at X. Accordingly, the reason for separation from X, is not at issue for this appeal.

[24] I find that there would be no prejudice to either party if all of the late documents were accepted. I also find that it would be in the interest of justice to accept the late documents. This is because all of the late documents are relevant to the issues under appeal.

## **Issues**

[25] Did the Claimant voluntarily leave her jobs at X and X?

[26] If so, did she have just cause for leaving each job?

[27] Does the Claimant have an overpayment of EI benefits?

## **Analysis**

### **Voluntary Leaving**

[28] I accept that the Claimant voluntarily left her jobs at X and X.

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<sup>6</sup> See GDJ05.

<sup>7</sup> See GDJ06.

[29] The Claimant agrees that she gave one or two weeks' notice to quit her with X. Her last day worked was on November 17, 2020. The Claimant also agrees that she ended her job at X when she quit. Her last day worked was on August 30, 2020.

[30] I see no evidence to contradict that the Claimant voluntarily left her jobs at X and I will now determine whether the Claimant had just cause to leave each job voluntarily, when she did.

### **Just cause**

[31] The parties don't agree that the Claimant had just cause to voluntarily leave her jobs when she did.

[32] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>8</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[33] 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 at the time that the claimant quit.<sup>9</sup>

[34] It is up to the Claimant to prove that she had just cause. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that her only reasonable option was to quit.<sup>10</sup>

[35] 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.<sup>11</sup>

[36] After I decide which circumstances apply to the Claimant, she then has to show that she had no reasonable alternative to leaving at that time.<sup>12</sup>

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<sup>8</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>9</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>10</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

<sup>11</sup> See section 29(c) of the Act.

<sup>12</sup> See section 29(c) of the Act.

– **The circumstances that existed when the Claimant quit**

[37] The Claimant says she quit her jobs at X and X for the same reasons. Specifically, she says she quit both jobs because the work environments negatively affected her mental health, anxiety, depression, and alcoholism recovery.<sup>13</sup>

[38] The Claimant explained in detail how she suffers from alcoholism, anxiety and mental health issues. She says that after being in hospital to detox, the hospital doctors referred her for ongoing treatment at the South Mental Health and Substance Use Services Department. She says that the hospital informed her family doctor of her treatment progress.

[39] The Claimant says that in August 2020, she suffered from an increase in anxiety, distress, anger, and interruption in her sleep patterns. She enrolled in a STAR treatment program. Her counsellor confirms that the circumstances of working around alcohol and having to wear a mask during the COVID-19 pandemic increased her anxiety and risk of relapse.<sup>14</sup>

[40] The Claimant says that she discussed her situation with both her counsellors. Both counsellors agreed that she needed to quit her job at X and continue her treatment in the STAR program.

[41] The Claimant says that she continued to look for a suitable job while in treatment because she needed money to pay her bills. She began working at X on September 25, 2020. She also took on a second job at X when she started working there on November 2, 2020.

[42] The Claimant says that she quit working at X on November 4, 2020, after a customer sexually harassed her. As stated above, the Commission determined she left her job at X with just cause.

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<sup>13</sup> Section 29(c)(iv) of the Act states that in cases where the working conditions constitute a danger to health or safety, a Claimant will have just cause to leave if they have no reasonable alternative but to leave.

<sup>14</sup> See page GD2-11.

[43] The Claimant consistently says that she quit her job at X on November 17, 2020, for the same reasons she quit her job at X. Specifically, she quit because working around alcohol and having to wear a mask during the COVID-19 pandemic increased her anxiety and put her at risk of a relapse.

[44] During the second hearing on March 15, 2022, the Claimant says that she quit X after giving one or two weeks' notice. Upon further clarification, the Claimant says that she quit X and started working full-time for X in November 2020.<sup>15</sup>

[45] The Claimant provided affirmed testimony that she received her first pay cheque from X on December 4, 2020. She says that since November 2020, she has worked as a procurement coordinator for X. She is paid \$55,000.00 per year. She continues to work full-time for X.<sup>16</sup>

[46] The Claimant submitted two notes from her doctor. The first note dated September 25, 2021, confirms that the Claimant suffered from alcoholism, anxiety, and depression from September to November 2020.<sup>17</sup> The second note dated March 9, 2022, states that the doctor believes that if the work environment caused relapse for her, the counsellor's view for leaving her job was acceptable.<sup>18</sup>

[47] The Claimant submitted two letters from the South Mental Health & Substance Use Services. The first letter supports her statements that she was working with concurrent disorders counsellor and a vocational counsellor at South Mental Health and Substance Use Services from November 2019 to April 2021.<sup>19</sup>

[48] The concurrent disorders counsellor wrote a second letter. In this letter, the concurrent disorders counsellor states that she is classified as a "paramedical professional under the Health Sciences Association."<sup>20</sup>

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<sup>15</sup> Section 29(c)(vi) of the Act states that in cases where a claimant has reasonable assurance of another job in the immediate future, they will have just cause to leave if they have no reasonable alternative but to leave.

<sup>16</sup> At 54:38 of the audio recoding from GE-22-45.

<sup>17</sup> See page GD2-13.

<sup>18</sup> See page GDJ03-2.

<sup>19</sup> See GD2-11 and GD2-12.

<sup>20</sup> See page GDJ05-2.



[49] I find that the Claimant has shown that she quit both jobs (X and X) because the working conditions constituted a danger to her health. Specifically, that both jobs negatively affected her mental and physical health and put her at risk of relapse.<sup>21</sup>

[50] In addition, I find that the Claimant has shown that she quit her job at X because she had reasonable assurance of another job with X. She stopped working at X on November 17, 2020, after giving them one or two weeks notice. She started working full-time at X in November 2020.

[51] I must now look at whether the Claimant had no reasonable alternative to leaving both her jobs when she did.

– **Reasonable alternatives**

[52] I find that the Claimant had no reasonable alternative to leaving her jobs at X and X. This is what I considered.

[53] Claimants don't need to establish that their working conditions were so intolerable that they had no choice but to quit immediately.<sup>22</sup> Instead, the question is whether, having regard to all the circumstances, they had no reasonable alternative to leaving their job when they did.

[54] The Commission says that a reasonable alternative to leaving would have been for the Claimant to see her doctor before quitting or secure another job. It says that there was no urgency for her to quit X because she admits that she gave two weeks notice because she wanted to continue working, but then says she quit because it was too difficult.

[55] The Commission submits that a registered social worker (RSW) is not a medical professional accepted by the Commission to attest to medical incapacity of a patient.<sup>23</sup> It

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<sup>21</sup> See section 29(c) of the Act.

<sup>22</sup> *Chaoui v Canada (Attorney General)*, 2005 FCA 66 at para 7; *SW v Canada Employment Insurance Commission*, 2017 SSTADEI 437, 2017 CanLII 97203 at paras 47–57.

<sup>23</sup> See section 40 of the *Employment Insurance Regulations*.

says that only specified medical professionals are considered to be able to establish proof for voluntary leaving employment.

[56] Even though the Claimant's counsellors are not specified medical professionals, I have given full weight to both letters written by them. I have also given full weight to both notes written by and signed by the Claimant's physician for the following reasons.

[57] I accept that, on a balance of probabilities, the Claimant was no longer capable of working at X due to her medical conditions. Medical conditions related to mental health, anxiety, and alcoholism don't always present themselves in a manner that provides a claimant the capacity to seek medical guidance from a family doctor before quitting.

[58] I find it is plausible that the Claimant would work more closely with the counsellors who provided her specialized care through the South Mental Health and Substance Use Services Department of Vancouver Coastal Health, instead of her family physician. The hospital doctor referred her to these counsellors for continued treatment of her alcoholism, anxiety, and mental health issues. In addition, her family doctor stated that he supports the view of the counsellors. Namely, that it was acceptable for her to leave her jobs.<sup>24</sup>

[59] The evidence as set out above, supports that the Claimant did seek medical assistance for her ongoing medical issues. She was working with a team of professionals including her family physician, the hospital doctors, and the counsellors at the Vancouver Coastal Health mental health and substance use facility.

[60] The Claimant continued to work with her counsellors after quitting X but still needed money to pay her bills. I believe her when she says she thought she could handle the job at X because she was hired as the restaurant manager. She says she continued to look for a more suitable job and quit X once she secured an office job at X.

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<sup>24</sup> See page GDJ03.

[61] After considering the totality of the circumstances, I find the Claimant had no reasonable alternative but to quit her jobs at X and X., when she did. This means the Claimant had just cause for leaving both jobs.

### **Overpayment of benefits**

[62] As stated above, the Claimant has shown just cause for quitting her jobs. This means she is no longer subject to retroactive disqualifications for this reason. So, the overpayment resulting from the retroactive disqualifications is removed. However, there remain two outstanding issues, which may result in an overpayment of EI benefits.

[63] The first outstanding issue relates to whether the Claimant has shown she meets the availability requirements for regular EI benefits. I have determined this issue in a separate decision for appeal GE-22-45.

[64] The second outstanding issue relates to undeclared earnings. During the March 15, 2022, hearings, the Claimant confirmed that she did not declare her work and earnings on her biweekly reports from September 27, 2020, to September 4, 2021. She says that while on claim, she worked at X, X, and X. The Claimant says she recalls speaking with the Commission about her earnings but she didn't request a reconsideration on that issue.<sup>25</sup>

[65] I don't have jurisdiction to determine the issues relating to the Claimant's undeclared earnings. My jurisdiction comes from the reconsideration decision that the Commission made under section 112 of the Act. I recognize that the Commission spoke with the Claimant about the issue of undeclared earnings. However, there is no evidence that the Commission made a decision or reconsidered it for this issue. So, I make no determinations on the issue of undeclared earnings.

### **Conclusion**

[66] The appeal is allowed.

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<sup>25</sup> See the second last paragraph on page GD3-34.

[67] The Claimant has shown that she voluntarily left her jobs at X and X, with just cause.

Linda Bell

Member, General Division – Employment Insurance Section