[TRANSLATION]

Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 875

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. A.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (461568) dated March 15, 2022 (issued by Service Canada)

Tribunal member:	Normand Morin
Type of hearing:	Videoconference
Hearing date:	July 20, 2022
Hearing participant:	Appellant
Decision date:	August 19, 2022
	GE-22-1152

Decision

[1] The appeal is allowed. I find that the Appellant had just cause for voluntarily leaving his job.[1] He had no reasonable alternative to leaving. This means that his disqualification from receiving Employment Insurance (EI) regular benefits from September 19, 2021, isn't justified.

Overview

[2] On August 28, 2021, the Appellant applied for EI benefits (regular benefits). A benefit period was established effective August 22, 2021.

[3] On September 19, 2021, the Appellant worked one day at X (employer) and voluntarily left at the end of that day.

[4] On February 11, 2022, the Canada Employment Insurance Commission (Commission) told him that it had reconsidered his claim for benefits and that he still wasn't entitled to other EI regular benefits from September 19, 2021, because, on that day, he voluntarily stopped working for the employer without good cause within the meaning of the *Employment Insurance Act* (Act).[2] On March 15, 2022, after a request for reconsideration, the Commission told him that it was upholding the February 11, 2022, decision.[3]

[5] The Appellant argues that he had just cause for leaving his job. He says that he left it because the tasks he performed weren't the ones he had been hired for. He says that he applied for a job as a forklift operator but that he performed different tasks than those of the position. He says that a forklift operator position was discussed during his job interview, not a pick worker position as the employer says. He explains that he accepted a forklift operator position but was unable to work as one. He says that, his first day on the job, the team leader responsible for training him told him that it could be several weeks or months before he could work as a forklift operator. The Appellant

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[1] See sections 29 and 30 of the *Employment Insurance Act* (Act).
[2] See GD3-20 and GD3-21.
[3] See GD2-10, GD3-40, and GD3-41.

argues that the employer didn't honour its offer for a forklift operator job. He explains that he was unable to work as a forklift operator, the position he was hired for, so he left his job. He says that he is entitled to benefits. On March 26, 2022, he challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issues

[6] In this case, I have to decide whether the Appellant had just cause for voluntarily leaving his job.[4] To decide this, I have to answer the following questions:

- Did the Appellant's job end because he voluntarily left?
- If so, did the Appellant have no reasonable alternative to voluntarily leaving?

Analysis

[7] The Act says that a claimant is disqualified from receiving benefits if they left their job voluntarily and they didn't have just cause. Having good cause—in other words, a good reason for leaving a job—isn't 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.[5]

[9] It is up to the claimant to prove that they had just cause.[6] They have to prove this on a balance of probabilities. This means that they have to show that it is more likely than not that their 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.

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[4] See sections 29 and 30 of the Act.
[5] The Federal Court of Appeal (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.
[6] The Court established this principle in *White*, 2011 FCA 190 at para 3.

Issue 1: Did the Appellant's job end because he voluntarily left?

[10] I find that, in the Appellant's case, his job did end because of voluntary leaving under the Act.

[11] I find that the Appellant had the choice to continue working for the employer but decided 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 a choice to stay at their job.[7]

[13] In this case, the Appellant's testimony and statements show that he decided to leave his job.[8]

[14] The Appellant doesn't dispute that he quit. I see no evidence to contradict this.

[15] I find that the Appellant had the option of continuing in his job but that he took the initiative of ending it by telling the employer that he would not be staying 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] In this case, I find that the Appellant has shown just cause for leaving his job when he did. He had a reason the Act accepts.

[18] I find that the Appellant's work duties were significantly changed after he was hired and that this is a circumstance that justifies his voluntary leaving.[9]

[19] In my view, the Appellant had no reasonable alternative to voluntarily leaving.

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[7] The Court established this principle in *Peace*, 2004 FCA 56.
[8] See GD2-5, GD3-15 to GD3-18, GD3-22, GD3-26, and GD3-27.
[9] See section 29(c)(ix) of the Act.

[20] I find the Appellant's testimony credible and place the most weight on it. The Appellant painted a detailed picture of the circumstances that led him to accept the forklift operator job he had applied for and to voluntarily leave his job on September 20, 2021, because his tasks weren't consistent with the position. He didn't contradict himself. His testimony is supported by compelling documentary evidence that he applied to be a forklift operator and that this is the position he accepted.[10]

[21] The statements the Commission got from the employer indicate the following:

a) The Appellant was hired as a pick worker. The employer says that, when it hired him, it was very clear with him in explaining the tasks he would have to perform.[11]

b) A new employee needs training to operate a forklift.[12]

c) The employer says that, in its September 10, 2021, email to the Appellant, it mentioned that he had to select [translation] "Pick Worker" under "Position."[13]

d) The Appellant worked 11 hours and decided to leave his job.[14]

e) He chose to leave without talking to his supervisor or the manager.[15]

f) The Appellant didn't talk to the employer to indicate that he preferred a [translation] "lift driver" (forklift operator) position, since he worked just one

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[10] See the Appellant's September 10, 2021, email to the employer with the subject line [translation] "night forklift operator"—GD2-13, GD2-14, GD2-17, GD2-18, GD3-36, and GD3-37. See also the employer's September 10, 2021, email to the Appellant with the subject line [translation] "RE: night forklift operator," telling him that his job was confirmed—GD2-13, GD2-17, and GD3-36.
[11] See GD3-38.
[12] See GD3-28 and GD3-29.
[13] See GD3-28 and GD3-29. See also the copies of the following emails: the email the employer sent to the Appellant at 1:01 p.m. on September 10, 2020 [*sic*], indicating steps to be completed online ([translation] "1. Web link: […] – 2. Under 'Location': DC32 – 3. Under 'Position': Pick Worker")—GD3-30; the email the Appellant sent to the employer at 2:17 p.m. on September 12, 2021, indicating [translation] "completed"—GD3-32; and the email the employer sent to the Appellant at 10:42 a.m. on September 13, 2021, confirming his start date of September 19, 2021—GD3-31.
[14] See GD3-28 and GD3-29.
[15] See GD3-38.

day. He left his job because he was unhappy with the work. He was a good employee, but he didn't enjoy working for the employer.[16]

g) The Appellant didn't submit a letter of resignation.[17]

h) He left his supervisor a voice message telling him that he would not be coming back to work.[18]

i) On September 20, 2021, the Appellant sent the employer an email telling it that the evening of September 19, 2021, had been rough, that he would not continue working, and that he was sorry.[19]

j) In his email or in the voice message he left his supervisor, the Appellant never said that he was leaving his job because he wasn't in the right position (forklift operator) or the job wasn't suitable for him.[20]

k) In its February 11, 2022, statement to the Commission, the employer indicated that the Appellant needed to complete a probation period of at least three months before he could work as a forklift operator. A transfer to another position can't happen during this probation period.[21]

l) On March 14, 2022, when the Commission asked it whether it was true that it would have been months before the Appellant could operate a forklift, the employer answered that, if all went well, an employee could work with a forklift after a week. However, the employer indicated that the Appellant had never talked to it about that.[22]

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[16] See GD3-19.
[17] See GD3-19.
[18] See GD3-28 and GD3-29.
[19] See GD3-28 and GD3-29. See the email the Appellant sent to the employer at 5:39 p.m. on September 20, 2021—GD3-31.
[20] See GD3-28, GD3-29, and GD3-38.
[21] See GD3-19.
[22] See GD3-28 and GD3-29.

m) In its March 14, 2022, statement, the employer indicated that it had pick worker positions and that no one had said anything about a forklift operator position.[23]

[22] The Appellant, on the other hand, explains that he voluntarily left his job because the tasks he performed weren't those of a forklift operator, the position he had been hired for.[24]

[23] The Appellant's testimony and statements indicate the following:

a) The employer didn't honour its job offer.[25]

b) Around late August 2021 or early September 2021, he applied for a forklift operator job with the employer that was being advertised on the Jobillico job site. It was a night job (four evenings a week). The ad intrigued the Appellant because it was about a forklift operator position and the pay being offered was attractive, considering the night shift premium. To apply, the Appellant completed documentation on Jobillico. He wasn't able to find the ad again on the website, including the title and description of the position in question, because it was deleted from the site six months after it was posted.[26] He points out that all the attachments are unavailable for the employer's forklift operator position (for example, position title and description of tasks) given the amount of time that passed between when he applied for it and when the Commission made its decision.

c) On September 9, 2021, he had a job interview. It was about a forklift operator position, specifically operating a forklift to load the trailers. The wage conditions related to the position (for example, premium for night work) were also discussed. The Appellant attended the job interview specifically for that

[23] See GD3-28 and GD3-29.
[24] See GD2-5, GD3-15 to GD3-17, GD3-22, GD3-26, and GD3-27.
[25] See GD3-26 and GD3-27.
[26] See GD2-5, GD2-11, GD2-12, GD2-15, and GD2-16.

position. If that hadn't been the case, he would have abandoned his efforts to work there and would not have attended the job interview. It wasn't about a pick worker position. During the interview, there was no talk of performing tasks that involved preparing orders or doing some "picking" in the warehouse (for example, grabbing items from shelves).[27] And there was no talk of a three-month probation period before being able to work as a forklift operator, as the employer indicated in one of its statements.[28]

d) The Appellant explains that the email he sent to the employer on September 10, 2021, was about a [translation] "night forklift operator" position.[29]

e) He says that the employer's email responding to his September 10, 2021, email, which it sent him that same day, was also about a forklift operator position.[30]

f) At the time of hiring, and to complete documentation for the employer through a web link it provided, all the positions were grouped under the [translation] "Pick Worker" position, including that of forklift operator.[31]

g) On September 19, 2021, his first day on the job, the tasks he performed weren't the ones he had been told about during his job interview.[32] That day, he learned from a team leader responsible for training him that he wasn't there to work as a forklift operator and that it could be a long while—several

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[27] See GD2-5.
[28] See GD3-19.
[29] See the email the Appellant sent to the employer at 11:08 a.m. on September 10, 2021. The subject line is [translation] "night forklift operator." In this email, the Appellant says that he accepts the position of night forklift operator with the employer and that he will be able to start at 10 p.m. on September 19, 2021—GD2-13, GD2-14, GD2-17, GD2-18, GD3-36, and GD3-37.
[30] See the email the employer sent to the Appellant at 12:57 p.m. on September 10, 2021. The subject line is [translation] "RE: night forklift operator." In this email, the employer confirms the Appellant's job and tells him that he will start at 10 p.m. on September 19, 2021. It also tells him that he will receive other emails to finalize his hiring—GD2-13, GD2-17, and GD3-36.
[31] See GD3-30.
[32] See GD3-22.

weeks or months—before he could work in such a position.[33] He was informed on his very first shift that he would actually be working as a [translation] “shelf picker” or “shelver” or “shelving clerk.”[34] The Appellant’s work involved shipping out goods. He prepared pallets to be brought to a loading dock. Once on the dock, the pallets were loaded onto truck trailers by forklift operators.[35]

h) The tasks he performed his first day on the job were physically demanding. Even though he doesn’t have any medical impairments, he found this work difficult and decided that he could not do these types of tasks. The work wasn’t suitable for him.[36] The work of a forklift operator is less physically demanding because it is done with a forklift. He didn’t discuss the situation with the employer before leaving his job. The employer could not accommodate him for the forklift operator position.[37]

i) On the morning of September 20, 2021, he told his supervisor that he had found his work difficult. That same day, he sent an email to the manager telling him that he would not be continuing in that position and that he would not go on.[38] On the evening of September 20, 2021, he handed his work materials over to the supervisor who was on duty at the time. He didn’t meet with the employer again after informing it that he would not continue working for it and after handing his materials over to it. He didn’t submit a letter of resignation.[39]

j) The Appellant argues that his only option was to be able to work as a forklift operator, the position he was hired for. He saw that he didn’t have that option.

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[33] See GD2-5, GD3-26, and GD3-27.
[34] See GD3-15 to GD3-18, GD3-26, and GD3-27.
[35] See GD2-5.
[36] See GD3-18.
[37] See GD3-18, GD3-22, GD3-26, and GD3-27.
[38] See the email the Appellant sent to the employer at 5:39 p.m. on September 20, 2020 [*sic*]—GD3-31.
[39] See GD3-18.

He realized that operating a forklift would not be possible in the short term even though that is what he was supposed to do.[40]

k) The employer's statement that [translation] "if all goes well, the employee can be on a forklift after a week"[41] isn't true.

l) The Appellant argues that the employer is looking for employees, and to attract them, it offers a forklift operator position, but that isn't the actual position that gets filled.[42] He says that, out of a dozen people whose work involves shipping out goods for the employer, two or three are forklift operators. He points out that the others are [translation] "up-and-coming forklift operators."

m) The Appellant points out that his version of the facts has remained consistent from the beginning: He applied for a forklift operator position.

n) After leaving his job, he looked for another one. He started a new job on October 18, 2021.[43]

[24] I find that the Appellant's reasons for voluntarily leaving his job show that he had just cause for doing so within the meaning of the Act.

[25] The Appellant's evidence shows that he applied to be a forklift operator and that he was hired for that position, but that he wasn't able to perform the tasks that come with it, specifically operating a forklift.

[26] To begin with, I find contradictory the employer's statements concerning the nature of the position the Appellant was hired for and his likelihood of working as a forklift operator if he hadn't left his job.

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[40] See GD2-5 and GD3-22.
[41] See GD3-28.
[42] See GD3-34.
[43] See GD3-18.

[27] In its March 14, 2022, statement to the Commission, the employer indicated, concerning the Appellant's position, that [translation] "no one said anything about a forklift operator position,"[44] when there is evidence to refute this.

[28] On this point, I want to point out that the subject line of the email the Appellant sent to the employer on September 10, 2021, refers specifically to a [translation] "night forklift operator" position. In this email, the Appellant tells the employer that he accepts the position of night forklift operator and that he will be able to start on September 19, 2021.[45]

[29] The subject line of the employer's email responding to the Appellant's September 10, 2021, email, which it sent him that same day, also refers to a [translation] "night forklift operator" position.[46]

[30] I find that this evidence supports the Appellant's testimony and statements that he applied to be a forklift operator and that he was hired for that position.

[31] I don't accept the Commission's argument that the additional documents the Appellant attached to his notice of appeal[47] provide no additional evidence for determining whether he was hired as a forklift operator or as a pick worker.[48]

[32] I find that the Commission didn't consider the Appellant's evidence, including the emails exchanged between him and the employer on September 10, 2021, referring specifically to a forklift operator position.[49]

[33] I want to point out that, although the employer sent the Commission copies of several emails exchanged with the Appellant, it seems to have neglected to send those

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[44] See GD3-28.
[45] See the email the Appellant sent to the employer at 11:08 a.m. on September 10, 2021—GD2-13, GD2-14, GD2-17, GD2-18, GD3-36, and GD3-37.
[46] See the email the employer sent to the Appellant at 12:57 p.m. on September 10, 2021—GD2-13, GD2-17, and GD3-36.
[47] See GD2-11 to GD2-18.
[48] See GD4-5.
[49] See GD2-13, GD2-14, GD2-17, GD2-18, GD3-36, and GD3-37.

of September 10, 2021, about a forklift operator position. The Appellant is the one who sent those documents to the Commission and to the Tribunal.[50]

[34] In addition, there is no indication that the Commission asked the employer about the emails it had exchanged with the Appellant about the forklift operator position he had applied for on September 10, 2021. The Commission didn't try to get the employer's version of the facts on this specific point.

[35] I also accept the Appellant's uncontradicted explanation that another email from the employer—also from September 10, 2021—telling him to complete an online questionnaire and select [translation] "Pick Worker" when asked about the position,[51] applied to all the positions available, including that of forklift operator.

[36] In my view, this email doesn't change the fact that the Appellant applied to be a forklift operator, that this is the position he accepted, and that he was hired for that position. I am also of the view that this email was an administrative step following the Appellant's hiring as a forklift operator.

[37] So, I place no weight on the employer's statement that the Appellant was hired as a pick worker.

[38] I also find contradictory the employer's statements concerning the Appellant's likelihood of working as a forklift operator if he hadn't left his job.

[39] In its February 11, 2022, statement to the Commission, the employer indicated that the Appellant needed to complete a probation period of at least three months before he could work as a forklift operator.[52]

[40] Then, on March 14, 2022, the employer said that, if all went well, an employee could operate a forklift after a week on the job.[53]

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[50] See GD2-13, GD2-14, GD2-17, GD2-18, GD3-36, and GD3-37.
[51] See GD3-30.
[52] See GD3-19.
[53] See GD3-28.

[41] I find that such contradictions hurt the credibility of the employer's statements.

[42] So, I don't accept the Commission's argument that the employer [translation] "maintained the same version of the facts during the decision-making process," namely that the Appellant was clearly told of the tasks related to the position offered and that he was hired as a pick worker.[54]

[43] In my view, there could have been no misunderstanding about the nature of the position that the Appellant accepted—a forklift operator position.

[44] I find that, despite being hired as a forklift operator, the Appellant was unable to perform the related tasks. The employer assigned him to other tasks than those of a forklift operator. In so doing, the employer significantly changed the Appellant's work duties.

[45] The tasks the Appellant had to perform on September 19, 2021, weren't part of the job he had accepted.

[46] I find that, objectively, the Appellant wasn't required from the outset to work in a job whose tasks weren't the ones he had been hired for.

[47] In my view, the information that the Appellant was given his first day on the job by a supervisor or someone in authority—the team leader—that he would not be able to work as a forklift operator for several weeks or even months, was enough to lead him to conclude that he would not be able to work in that position as expected.

[48] I find that, in the circumstances, the Appellant also wasn't required to have any further discussion with the employer about his tasks, his work duties, or his conditions of employment to clarify the situation. The situation was clear. The Appellant could not be forced to continue doing work he hadn't been hired for.

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[54] See GD4-4.

[49] I want to point out that the circumstances that can justify voluntary leaving include “significant changes in work duties.”[55]

[50] The Court tells us that voluntary leaving can be justified if the nature of the duties assigned to a person was no longer as that person and their employer had originally agreed, and that we must consider that person’s version of the facts to find that there were significant changes in work duties.[56]

[51] I don’t accept the Commission’s argument that there is [translation] “no evidence that the employer unilaterally changed the conditions of employment” for the position the Appellant was hired for.[57]

[52] I find that the evidence shows that the Appellant was hired for a forklift operator position but that he performed different tasks than those of a forklift operator.

[53] Although the Commission argues that the [translation] “only conclusive finding,” in its view, is that the Appellant thought that he could operate forklifts as soon as he was hired, but that this wasn’t the case,[58] the fact is that he was entitled to expect to work in a forklift operator position. I am of the view that he had no reason to think that he would not be able to work as a forklift operator as soon as he was hired.

[54] In summary, I find that significant changes were made to the Appellant’s work duties. Because of those changes, the tasks he performed on September 19, 2021, weren’t the ones he had been hired for.

[55] I find that the Appellant had just cause for voluntarily leaving his job because his work duties had been significantly changed.[59]

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[55] See section 29(c)(ix) of the Act.
[56] The Court established this principle in *Chaoui*, 2005 FCA 66.
[57] See GD4-5.
[58] See GD4-5.
[59] See section 29(c)(ix) of the Act.

[56] I find that the Appellant has shown that he had no reasonable alternative to leaving his job when he did.

Conclusion

[57] Considering all the circumstances, I find that the Appellant had just cause for voluntarily leaving his job. He had no reasonable alternative to leaving.

[58] The Appellant's disqualification from receiving EI regular benefits from September 19, 2021, isn't justified.

[59] This means that the appeal is allowed.

Normand Morin

Member, General Division – Employment Insurance Section