



Citation: *AD v Canada Employment Insurance Commission*, 2022 SST 1033

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

Decision

Appellant:	A. D.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (468940) dated May 5, 2022 (issued by Service Canada)
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Tribunal member:	Glenn Betteridge
Type of hearing:	Teleconference
Hearing date:	September 27, 2022
Hearing participants:	Appellant Appellant's witness
Decision date:	October 12, 2022
File number:	GE-22-1975

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant didn't voluntarily leave his job. This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] In September 2021, the Claimant went to a hiring meeting at a school bus company. (He had worked for the same school bus company in the past.) He was offered a route to drive for the new school year. He says he didn't accept it.

[4] At the time, he was getting EI regular benefits.

[5] The Canada Employment Insurance Commission (Commission) found out about the bus driver job months later. It decided he voluntarily left (or chose to quit) the job and didn't have just cause for leaving. So, the Commission disqualified him and asked him to pay back some benefits.

[6] The Claimant disagrees with the Commission's decision. He says he didn't accept the job and never drove the new route. So, he didn't voluntarily leave the job because he never had the job.

Issue

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

[8] To answer this, I must first decide whether the Claimant voluntarily left his job. If I find that he did, then I have to decide whether he has shown he had no reasonable alternative to leaving when he did.

Analysis

The parties don't agree that the Claimant voluntarily left

[9] I find the Claimant didn't voluntarily leave his job. The Commission hasn't shown that it's more likely than not he chose to leave his job.

The law about voluntary leaving

[10] The legal test to determine voluntary leaving is whether he had a choice to stay or leave his job.¹

[11] The Commission has to show it's more likely than not he chose to leave.

What the Commission and the Claimant say

[12] The Commission accepted what the employer wrote on the Claimant's record of employment (quit, Code E) and told the Commission.² So, it says he voluntarily left his job.

[13] The Claimant testified he was never hired by the bus company. At the beginning of the school year he went to the meeting where the bus company offered routes to potential drivers. His friend, who was a witness at the hearing, told him about the meeting.

[14] His friend, who is a school bus driver, testified that this is how the bus company hires drivers at the beginning of the school year.

[15] The Claimant says he didn't take the bus route because it didn't have enough hours. He could not make enough money to live on.

¹ See *Canada (Attorney General) v Peace*, 2004 FCA 56.

² See the record of employment at GD3-18 and GD3-19. And see the Commission's notes of its phone calls at GD3-21, GD3-23, and GD3-42 and GD3-43.

[16] He says he only went to the meeting. He didn't take the job and never drove the route. So, he didn't voluntarily leave his job.

The Claimant didn't voluntarily leave his job

[17] I find the Commission hasn't proven it is more likely than not the Claimant voluntarily left his job. I find, as a matter of fact, he didn't take the job with the bus company. So, there was no job for him to voluntarily leave.³

[18] I accept the Claimant's testimony for four reasons.

[19] First, he stuck to his story. I asked him many questions about what happened. Although the hearing stressed him out, he always came back to this point: he didn't quit the job because he never accepted it, so there was no job to quit.

[20] Second, the witness's testimony supported the Claimant's testimony about how bus drivers are hired. No evidence goes against what they said about this. And I have no other reason to doubt their testimony.

[21] Third, documents the Commission relied on support his testimony. His record of employment says he was paid for four hours. The Claimant said this was for the start-up meeting. And his employer never told the Commission he quit **after** driving the route.

[22] Fourth, I find it is more likely than not the hearing was the first time he understood the legal issue in his case (voluntary leaving without just cause). So, the hearing was the first time he raised the argument that he never took the job, so he didn't quit. He didn't say this to the Commission, in his reconsideration request, or in his appeal notice.

[23] Normally, when a Claimant changes their story at the hearing, this might be a reason to doubt what they say. But I don't, not in the circumstances of this case:

³ In this appeal I can only decide the whether he voluntarily left his job without just cause or was dismissed or suspended for misconduct (under section 30 of the EI Act). See *Canada (Attorney General) v Easson*, A-1598-92; and *Canada (Attorney General) v Desson*, 2004 FCA 303. I can't decide whether another section of the EI Act required him to accept the job to continue getting benefits.

- The Claimant is an older man, whose first language isn't English or French.
- Both times he spoke to the Commission he used his friend to translate.⁴
- In his appeal notice he doesn't respond to the voluntary leaving issue. He argues the Commission made a mistake and he is sick and can't afford to pay back the overpayment.⁵
- I paused the hearing for 35 minutes so the Claimant (and his friend) could review the Commission's case. Because the Tribunal's emails were in English, he didn't know to review the Commission's documents (which were also in English) before the hearing.
- At the hearing we used a professional interpreter. So, once he understood the legal issue, he was able to explain himself. And he was able to answer my questions about the voluntary leaving issue.

[24] In these circumstances, I find it makes sense the hearing was the first time he said that he didn't quit the job because he never accepted it.

[25] So, after considering and weighing all the documents and testimony, I find the Commission hasn't proven it is more likely than not the Claimant voluntarily left his job.

[26] Because he didn't voluntarily leave his job, I don't have to decide whether he has shown he had just cause for voluntarily leaving.

Conclusion

[27] I find the Claimant isn't disqualified from receiving benefits.

[28] This means that the appeal is allowed.

Glenn Betteridge
Member, General Division – Employment Insurance Section

⁴ See the Commission's notes of its call with the Claimant and his friend at GD3-20.

⁵ See GD2-5.