



Citation: *ED v Canada Employment Insurance Commission*, 2023 SST 6

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

## **Decision**

**Appellant:** E. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (500506) dated June 14, 2022 (issued by Service Canada)

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**Tribunal member:** Glenn Betteridge

**Type of hearing:** Teleconference

**Hearing date:** November 9, 2022

**Hearing participant:** Appellant

**Decision date:** January 9, 2023

**File number:** GE-22-2395

## Decision

[1] I am dismissing E. D.'s appeal.<sup>1</sup>

[2] He hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. He didn't have just cause because, in all of the circumstances, he had reasonable alternatives to leaving.

[3] So he is disqualified from receiving EI regular benefits.

[4] This means the Canada Employment Insurance Commission (Commission) made the correct decision in his Employment Insurance (EI) claim.

## Overview

[5] The Claimant left his job at COSTCO Wholesale Inc, a multi-national, big-box retailer, where he worked as a loss prevention officer. Then he applied for EI benefits.

[6] The Commission looked at the Claimant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause. This means the Commission didn't pay him EI benefits.

[7] The Claimant and the Commission agree he quit his job. But they disagree about whether he had just cause for quitting when he did.

[8] The Commission says that, instead of leaving when he did, the Claimant could have filed a complaint with human resources (HR), or continued to work until he got the shifts he wants or found another job.

[9] The Claimant disagrees. He says he quit when he did because the store director was abusive, aggressive, and yelled at him. It was a hostile and toxic work environment.

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<sup>1</sup> In my decision, I refer to E. D. as the "Claimant", rather than the "Appellant". I am doing this because the *Employment Insurance Act* (EI Act) uses the word "claimant", meaning a person who has made a claim for EI benefits. And he is appealing the Commission's decision to deny his claim.

He says complaining to HR wasn't a reasonable alternative because there was no HR in the store where he worked. The director dealt with everything.

[10] I have to decide whether the Claimant has proven that he had just cause for quitting when he did.

## **Issue**

[11] Is the Claimant disqualified from receiving benefits because he voluntarily left (quit) his job without just cause?

[12] To answer this, I must decide two things.

- I have to decide whether he voluntarily left his job.
- If I find he did, then I have to decide whether he had just cause for leaving.

## **Analysis**

### **The parties agree that the Claimant voluntarily left**

[13] I accept that the Claimant voluntarily left (quit) his job on February 16, 2022, after about two weeks of work.

[14] The Claimant says that he quit on February 16, 2022. This is what he said to the Commission, and what he testified to at his appeal hearing.<sup>2</sup> This is what his employer wrote on his original record of employment.<sup>3</sup> And it is supported by an email he wrote the day after he quit.<sup>4</sup> I accept this evidence because it is consistent and the sequence of events makes sense.

[15] The employer filed an amended record of employment.<sup>5</sup> It lists February 13, 2022 as the Claimant's last day of work. I don't accept this date. It doesn't fit with all of the

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<sup>2</sup> See the Commission's notes of its call with the Claimant at GD3-16.

<sup>3</sup> See GD3-12.

<sup>4</sup> See GD3-30.

<sup>5</sup> See GD3-14.

other evidence. And there is no explanation or evidence about why his employer changed the date.

## **The parties don't agree that the Claimant had just cause**

[16] The parties don't agree that the Claimant had just cause for voluntarily leaving (quitting) his job when he did.

[17] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>6</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[18] The law explains what "just cause" means in the EI Act. The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when he quit.<sup>7</sup> The law sets out some of the circumstances I have to look at.<sup>8</sup>

[19] It is up to the Claimant to prove that he had just cause. He has to show that it is more likely than not that his only reasonable option was to quit.<sup>9</sup>

[20] After I decide which circumstances apply to the Claimant, he then has to show that he had no reasonable alternative to quitting when he did.<sup>10</sup>

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

### ***Harassment***

[21] The law says just cause for voluntarily leaving exists if the claimant had no reasonable alternative having regard to all the circumstances, including harassment.<sup>11</sup>

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<sup>6</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>7</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

<sup>8</sup> See section 29(c) of the Act.

<sup>9</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

<sup>10</sup> See section 29(c) of the Act.

<sup>11</sup> See section 29(c)(i).

[22] The term “harassment” isn’t defined in the EI Act.

[23] The concept of workplace harassment is usually seen as acts or verbal comments that could mentally hurt, embarrass or isolate a person in the workplace. It often involves repeated incidents or a pattern of behaviour intended to intimidate, offend, degrade, or humiliate a person or group of people.<sup>12</sup>

[24] The Tribunal’s Appeal Division has set out “key principles” for considering whether there was workplace harassment:<sup>13</sup>

- a) harassers can act alone or with others, and do not have to be in supervisory or managerial positions
- b) harassment can take many forms, including actions, conduct, comments, intimidation, and threats
- c) sometimes a single incident will be enough to constitute harassment
- d) focus on whether the harasser knew or should reasonably have known their behaviour would cause the other person offence, embarrassment, humiliation, or other psychological or physical injury.

[25] Finally, it isn’t harassment where an employer or supervisor takes reasonable action to manage and direct workers or the workplace.<sup>14</sup>

[26] In his notice of appeal, the Claimant wrote the store director “treated me aggressively, yelled at me and it’s a hostile working environment”. And he called how he was treated “workplace abuse”.<sup>15</sup>

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<sup>12</sup> See *CUBs 55611, 56604, and 57338*. These factors are similar to the factors in the *Canada Labour Code* (Code), a federal workplace law. Section 122(1) of the Code defines “harassment and violence” as “any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment”.

<sup>13</sup> *ND v. CEIC*, 2019 SST 1262, at paragraph 34.

<sup>14</sup> Some provincial laws include this. See for example Ontario’s *Occupational Health and Safety Act*, at section 1(4).

<sup>15</sup> See GD2-5.

[27] The Claimant told the Commission about one incident involving him and the store director.<sup>16</sup> It was about the shifts he was assigned, which he didn't like because he didn't get two days in a row off work. The Claimant was speaking with his manager. The store director overheard and said he shouldn't complain because he was a new hire. The Claimant says he found these comments disrespectful. He became angry and upset and left because he didn't want to work in such a hostile environment.

[28] At the hearing the Claimant acknowledged there was only one incident. He said the store director pointed a finger at him and said that you are new and shouldn't be telling us what days you get off. The Claimant says the director's behaviour was very aggressive. He could see it in his eyes and his tone of voice. He had heard from other employees that the director was an a\*\*hole and yelled at other employees. And he heard the director got into a physical fight with an employee at another store.

[29] When I asked for more details, the Claimant said this was his first incident with the store director. The director was seated throughout, about two metres from him. The director yelled at him for "maybe a minute" but didn't swear at him or use any vulgar or insulting language. He said this made his blood boil and made him want to fight. He said, "Being a man, treating me like that I can't take it." He said maybe he could have stayed, but in his "opinion and speculation" if he stayed he was going to be abused by the store director. He has high blood pressure, and it took him a week to clam down.

[30] I find that the store director didn't harass the Claimant.

[31] I accept the Claimant's description of the incident with the store director. His evidence was consistent—he said more-or-less the same thing to the Commission and at the hearing. He testified in forthright manner and answered my questions without hesitation and gave detailed responses. And there is no evidence that goes against what he said.

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<sup>16</sup> See GD3-16 and GD3-19.

[32] However, I find the Claimant hasn't met the legal test for harassment that I set out above. This was not a case of repeated incidents or a pattern of behaviour intended to intimidate, offend, degrade, or humiliate the Claimant.

[33] And although a single incident can be harassment, the incident in this appeal is not serious enough to be harassment. The incident lasted about one minute. Even though the store director yelled at the Claimant, he didn't use foul or demeaning language.

[34] The Claimant testified he found the comments disrespectful and upsetting. I have no reason to doubt this is what he believed and how he felt. However, the Claimant's words, manner and tone at the hearing suggest to me that his reaction was out-of-proportion to the store director's actions. The Claimant's reaction seems to me to be based, at least in part, on what the Claimant had heard about the store director, his own view of what it is to be respected as a man, and the appropriate behaviour when challenged by a superior. In other words, he overreacted to the store director's legitimate action to manage and direct him.

### ***Antagonism with a supervisor***

[35] The law says just cause for voluntarily leaving exists if the claimant had no reasonable alternative having regard to all the circumstances, including antagonism with a supervisor if the claimant isn't primarily responsible for the antagonism.<sup>17</sup>

[36] Antagonism has been defined as a form of hostility or attitude, which in most cases cannot be detected or determined by what may have happened in one incident or in one dispute.<sup>18</sup> The antagonism has to happen independently from the will or participation of the claimant, and is beyond their control.<sup>19</sup>

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<sup>17</sup> See section 29(c)(i).

<sup>18</sup> See *CUB 36792*.

<sup>19</sup> See *Smith v Canada (Attorney General)*, A-875-96 (FCA), where the court sets out this general principle behind the circumstances listed in section 29(c) of the EI Act, and points to antagonism with a supervisor as the prime example.

[37] Just cause was found where a manager constantly criticized the claimant's job performance, and verbally abused the claimant for three years.<sup>20</sup> Just cause was not found where the employer treated the claimant rudely, but conditions were not so unbearable that he could not have continued to work even for a short period, while looking for other employment.<sup>21</sup>

[38] I find that there wasn't antagonism between the Claimant and the store director.

[39] Above I accepted the Claimant's evidence of the one incident. But there is no evidence the store director criticized the Claimant's job performance, or verbally abused him on an ongoing basis. Although the store director may have been rude and even yelled at the Claimant, the one incident does not amount to antagonism under the EI Act.

### ***Hostile and toxic work environment***

[40] Although it isn't listed in the EI Act, I have to consider the Claimant's argument that he had just cause for leaving due to the hostile and toxic work environment at his workplace.

[41] Unsatisfactory working conditions will only be just cause for leaving employment if they are so manifestly intolerable that the claimant had no reasonable alternative but to leave.<sup>22</sup> And there is a high obligation on a claimant to seek solutions to intolerable conditions before leaving.<sup>23</sup>

[42] At the hearing I asked the Claimant what he meant when he told the Commission that his employer has a very hostile toxic working environment. He said it was based on

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<sup>20</sup> See *CUB 27487*. See also *HC v CEIC*, 2019 SST 72, where a claimant alleged that the employer verbally abused the restaurant wait staff over a span of several years, even calling them "garbage" in front of customers. The Claimant confronted the employer at some point, after which he perceived that the employer seemed to single him out for poor treatment. The Claimant stated that his disagreements with the employer's treatment of the staff persisted throughout his three-year employment.

<sup>21</sup> See *CUB 74816*.

<sup>22</sup> See *CUBs 11890, 12767, 16473, 16704, 17143, 17108, 11738, 20434, and 20926*. And see recent Tribunal cases *ME v CEIC*, 2015 SSTGDEI 112, and *IO v CEIC*, 2019 SST 1483.

<sup>23</sup> See *RC v CEIC*, 2016 SSTADEI 160, and *Green v. Canada (A.G.)*, 2020 FCA 102.



the incident with the store director and the store director's history at other stores, which other employees told him about.

[43] The Claimant testified that his two-week training was great. He said his manager was nice, not aggressive, and mellow. He said before the incident with the store director he was treated fine and things were good. He testified that the manager of loss prevention, who had hired him but didn't work at the store, was a nice guy.

[44] The Claimant wrote that manager an email the day after he quit, apologizing for quitting and explaining what happened.<sup>24</sup> Here is the relevant part of that email:

Going back to [store director], I just can't tolerate his abusive management if I work with this kind of management my life will be miserable. I can see in a foreseeable future that it's a toxic working environment. I believe that our Employer's should take care of their employees and respect that we also have a life outside of work to enjoy our families and friends and activities for our two days off. This way us employees will be more productive in doing our job.

[45] At the hearing he said virtually the same about how management should take into account employees' lives when assigning shifts, so they get two days in a row off.

[46] I accept the Claimant's evidence of his assessment of his training and his work colleagues, based on his experience. I have no reason to doubt what he said and there is no evidence that goes against that. I also accept his evidence about how he believes management should assign shifts. I have no reason to doubt that is what he believes, and he said this right after he quit in the email and months later at the hearing.

[47] I don't accept his evidence about what might happen in the future—that his work environment will become toxic. His evidence is too speculative. It is based on two weeks of training, one incident involving the store director, and what other employees told him about the store director's reputation (on other words, workplace gossip). The Claimant got the information second-hand, and had no personal knowledge of what

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<sup>24</sup> See GD3-30.

went on in other stores under the store director's management. So I am assigning no weight to his evidence about this.

[48] I find that the Claimant's work environment wasn't manifestly intolerable, for four reasons.

- First, I have to look at the circumstances that existed at the time the Claimant quit. But the Claimant's evidence about toxic workplace was about what he thought would happen in the future—not at the time he quit. And I gave that evidence no weight.
- Second, the single incident that led the Claimant to quit was not typical of his experience with the employer. The workplace environment is larger than one incident. The Claimant's evidence about other managers, whom he had many more interactions with during his two weeks of work, was positive. So was his experience during training.
- Third, he made no efforts to try to resolve the situation (in other words, to seek solutions) before quitting.
- Fourth, disagreeing with management about shift assignments (and how to promote employees' work-life balance and productivity) doesn't make the work environment toxic, abusive, or intolerable.

### **The Claimant had reasonable alternatives**

[49] I will now look at whether the Claimant had no reasonable alternative to leaving his job when he did, taking into account the circumstances that existed at that time.

[50] For the reasons that follow, I find the Claimant had reasonable alternatives to quitting when he did, taking into account all of the circumstances. I have made this finding based on each circumstances the Claimant raised above, as well as all of the circumstances taken together.

[51] The Commission says that the Claimant had three reasonable alternatives:

- contact the off-site human resources department
- continue working and building seniority to get his choice of days off
- continue working until he found another job

[52] The Claimant says that he had no reasonable alternative because:

- there was no one to complain to about the store director because everything went to the store director
- he couldn't have continued working until he found another job because his blood was boiling so hard he couldn't take it and had to quit when he did

[53] I find that complaining to off-site HR, rather than quitting on the spot, was a reasonable alternative. The Claimant's employer is a multi-national, big-box retailer. It stands to reason it has a large, off-site HR department. For example, he was interviewed and hired by a centralized loss prevention department. So, contrary to what he argues, not everything in the store was dealt with by the store director. The law says he has an obligation to try to resolve problems before making the decision to quit. In this case, he made no effort to explore this reasonable alternative before he quit.

[54] I also find that continuing to work to build seniority to put himself in a position to get his preferred days off was a reasonable alternative. I found above that he wasn't harassed, there was no antagonism with the store manager, and his workplace environment wasn't so intolerable that he had no other option but quitting. I also found that he overreacted to the single incident involving the store manager. So, it was reasonable for him to accept that management gets to assign shifts to newly hired workers, and work towards getting his ideal shifts.

[55] Finally, I find that securing another job before quitting was a reasonable alternative. Above I found that his workplace was no intolerable. He testified, and I have no doubt because there is no evidence that goes against this, he made no efforts to find

another job before he quit. For the reasons I gave the paragraph before this one, it was reasonable for him to stay at his job and look for another job.

### **My conclusion about just cause**

[56] Based on my review of all the documents and testimony, and the findings I made above, I find the Claimant didn't have just cause for leaving his job when he did.

[57] In other words, quitting was not his only reasonable option—he had reasonable alternatives.

### **Conclusion**

[58] I find that the Claimant voluntarily left his job, and he didn't have just cause for leaving when he did.

[59] This means the Commission made the correct decision when it disqualified him from receiving EI regular benefits.

[60] So I am dismissing his appeal.

Glenn Betteridge  
Member, General Division – Employment Insurance Section