



[TRANSLATION]

Citation: *CM v Canada Employment Insurance Commission*, 2023 SST 353

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

Decision

Appellant: C. M.

Respondent: Canada Employment Insurance Commission

Decisions under appeal: Canada Employment Insurance Commission reconsideration decisions (513505 and 535788) dated August 11, 2022 (issued by Service Canada)

Tribunal member: Normand Morin

Type of hearing: Teleconference

Hearing date: December 13, 2022

Hearing participant: Appellant

Decision date: January 27, 2023

File numbers: GE-22-2878 and GE-22-2879

Decision

[1] The appeal is dismissed.

[2] I find that the Canada Employment Insurance Commission (Commission) is justified in asking the Appellant to pay back the amount of money she was overpaid as an advance payment of the Employment Insurance (EI) Emergency Response Benefit (ERB) (overpayment).¹ The Appellant has to pay it back.

[3] I find that the Appellant hasn't shown that she had just cause for voluntarily leaving her job.² She had reasonable alternatives to leaving. This means that her disqualification from receiving EI regular benefits from February 13, 2022, is justified.

Overview

[4] From June 23, 2018, to March 19, 2020, the Appellant worked as an "associate" for the employer X (X or employer). She stopped working for it because of a shortage of work.³

[5] On April 8, 2020, she made an initial claim for EI benefits (regular benefits).⁴ A benefit period was established effective March 22, 2020, so that she could receive the EI ERB.⁵

[6] From May 29, 2020, to January 9, 2021, she worked for the employer again. She stopped working for it because of a shortage of work.⁶

¹ See sections 43, 44, 52, 153.6(1)(a), 153.1301, and 153.1303(1) of the *Employment Insurance Act* (Act).

² See sections 29 and 30 of the Act.

³ See GD3-3 to GD3-12 in file GE-22-2878 and GD3-34 and GD3-35 in file GE-22-2879.

⁴ See GD3-3 to GD3-12 in file GE-22-2878.

⁵ See GD3-1 and GD4-1 in file GE-22-2878.

⁶ See GD3-60 and GD3-61 in file GE-22-2878.

[7] From February 8, 2021, to February 12, 2022, she had another period of employment with that employer. She stopped working for it by voluntarily leaving her job.⁷

[8] On February 23, 2022, the Appellant made an initial claim for benefits (regular benefits).⁸

[9] On May 28, 2022, Employment and Social Development Canada sent the Appellant a notice of debt.⁹

[10] On her June 23, 2022, request for reconsideration, the Appellant said she was asking for a reconsideration in connection with the amount of money she owed in overpaid benefits, according to the notice of debt dated May 28, 2022.¹⁰ She said she received an email from Service Canada about this on June 8, 2022, and the notice of debt on June 13, 2022.¹¹

[11] On July 11, 2022, the Commission told her that she wasn't entitled to EI benefits from February 13, 2022, because she voluntarily left her job on February 22, 2022, without just cause as defined in the *Employment Insurance Act* (Act), and that it wasn't the only reasonable alternative in her case.¹²

[12] On August 3, 2022, the Appellant made another request for reconsideration, this time in connection with her voluntary leaving.¹³

[13] On August 11, 2022, the Commission made two separate decisions in response to the Appellant's requests for reconsideration.¹⁴

⁷ See GD3-21 and GD3-22 in file GE-22-2879.

⁸ See GD3-3 to GD3-20 in file GE-22-2879.

⁹ See the document entitled "Notice of Debt / *Avis de dette*" issued by Employment and Social Development Canada / *Emploi et Développement social Canada*—GD3-52 to GD3-55 in file GE-22-2878.

¹⁰ See GD3-56 in file GE-22-2878.

¹¹ See GD3-56 in file GE-22-2878.

¹² See GD3-25, GD3-26, GD5-2, and GD5-3 in file GE-22-2879.

¹³ See GD2-2, GD3-27, and GD3-28 in file GE-22-2879.

¹⁴ See GD2-9, GD2-10, GD2-15, GD3-62, and GD3-63 in file GE-22-2878; and GD2-9, GD2-10, GD2-15, and GD3-36 in file GE-22-2879.

[14] In one decision, the Commission told her that it was maintaining its June 13, 2022, decision (May 28, 2022, notice of debt) about the benefit overpayment she had to pay back ([translation] “advance payment – recovery of lump sum payment”).¹⁵ In this decision, the Commission said that she would receive a notice of debt and that she would have to repay the amount of benefits she wasn’t entitled to.¹⁶

[15] In the other decision, the Commission told her that it was maintaining its initial decision dated July 5, 2022,¹⁷ about her voluntary leaving.¹⁸

[16] The Appellant says that she disputes having to pay back the EI ERB or Canada Emergency Response Benefit (CERB) overpayment. She argues that she should not have to pay back the money that the Commission says she owes in overpaid benefits, since the pension income she receives isn’t a lot of money. She also argues that the Commission would not be asking her to pay back an amount of money in overpaid benefits if she had waited longer before going back to work for the employer instead of going back in late May 2020 as she did. She points out that she showed her good faith when she applied for benefits.

[17] Concerning her voluntary leaving, the Appellant argues that she had just cause. She says that in late January 2022 or early February 2022, the store manager—her immediate supervisor—criticized her for telling her that she had to end her shift early because of a medical appointment. She says she left her job because of this incident. She says that she previously made several complaints to the employer about the manager’s behaviour toward her but that nothing came of them and that the problem was never resolved. She says that she didn’t talk about these circumstances on her February 23, 2022, application for benefits because she didn’t want to face the employer again about the manager’s behaviour. According to her, this is why she

¹⁵ See GD2-9, GD2-10, GD3-62, and GD3-63 in file GE-22-2878; and GD2-9 and GD2-10 in file GE-22-2879.

¹⁶ See GD2-9, GD2-10, GD3-62, and GD3-63 in file GE-22-2878; and GD2-9 and GD2-10 in file GE-22-2879.

¹⁷ Although the Commission says that it made its decision on July 5, 2022, the notice of decision about the Appellant’s voluntary leaving is dated July 11, 2022—GD3-25 and GD3-26 in file GE-22-2879.

¹⁸ See GD2-15 in file GE-22-2878 and GD2-15 and GD3-36 in file GE-22-2879.

indicated that she had stopped working due to retirement on this application for benefits. She also says that she didn't talk about the manager's behaviour in her conversations with Commission representatives because she didn't feel comfortable or confident about doing so.

[18] On August 29 and 31, 2022, the Appellant challenged the Commission's reconsideration decisions before the Tribunal. Those decisions are now being appealed to the Tribunal.

Preliminary matters

[19] I note that the appeals in files GE-22-2878 and GE-22-2879 were joined on October 12, 2022,¹⁹ because they raise a common question of law or fact.

[20] In this case, both files concern the same Appellant. In file GE-22-2878, the issue is the benefits the Appellant was overpaid (overpayment) and the fact that she is being asked to pay them back. In file GE-22-2879, the issue is the Appellant's voluntary leaving.

[21] I note that the Appellant referred to the type of benefit paid to her as the CERB²⁰ and that the notice of debt she received also referred to this type of benefit.²¹ But, she actually got the EI ERB, given the information the Commission has provided about this. The Commission talked about the EI ERB payments that the Appellant had received.²² So, I will refer to what she received during the period in question as the EI ERB.

[22] I note that even though the EI ERB and the CERB can be considered similar, they are two different types of benefits. When these two types of benefits were available, that is, from March 15, 2020, to October 3, 2020, inclusive, those normally entitled to EI benefits (regular or special benefits) got the EI ERB, and those not

¹⁹ See the provisions of section 13 of the *Social Security Tribunal Regulations*, which were in force when the decisions were appealed to the Tribunal.

²⁰ See GD2-2, GD2-5, and GD3-56 in file GE-22-2878.

²¹ See GD3-52 to GD3-55 in file GE-22-2878.

²² See GD3-13, GD3-57, GD3-58, and GD4-3 to GD4-5 in file GE-22-2878.

normally entitled to them got the CERB, if they qualified for it. The amount paid was the same in both cases: \$500 per week.

Issues

[23] I have to decide whether the Commission is justified in asking the Appellant to pay back the amount of money she was overpaid as an advance payment of the EI ERB (overpayment) and whether she has to pay this money back.²³

[24] I also have to decide whether the Appellant has shown that she had just cause for voluntarily leaving her job.²⁴ To decide this, I have to answer the following questions:

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

Analysis

Payment of the EI ERB to the Appellant

[25] Because of COVID-19,²⁵ changes were made to the Act. For example, the EI ERB was introduced. People can become EI ERB claimants for different reasons. This type of benefit isn't just for those who have stopped working for reasons related to COVID-19.

[26] A claimant can get the EI ERB if, for example, their benefit period could have been established for EI regular benefits, among other things, during the period from March 15, 2020, to September 26, 2020, inclusive.²⁶ However, for that period, no benefit period is to be established for EI regular benefits or special benefits (for example, sickness benefits).²⁷

²³ See sections 43, 44, 52, 153.6(1)(a), 153.1301, and 153.1303(1) of the Act.

²⁴ See sections 29 and 30 of the Act.

²⁵ Coronavirus disease 2019.

²⁶ See section 153.5(2)(b) of Part VIII.4 of the Act.

²⁷ See sections 153.5(3)(a) and 153.8(5) of Part VIII.4 of the Act.

[27] To be eligible for the EI ERB, the claimant must meet the eligibility requirements set out in the Act.²⁸

[28] For example, the claimant, whether employed or self-employed, must have stopped working for at least seven consecutive days within the two-week period for which they claimed the EI ERB.²⁹

[29] The Act also provides an exception saying that if a claimant received employment income the total of which didn't exceed \$1,000 over a period of four weeks that succeeded each other but not necessarily consecutively and for which the EI ERB was paid, then the claimant is deemed to meet several of the requirements to receive the EI ERB.³⁰

[30] The amount of the EI ERB for a week is \$500.³¹

[31] The Act says that if a person has received EI benefits—including the EI ERB—they weren't entitled to or because [*sic*] they were disqualified from receiving those benefits, they have to repay those benefits or the resulting overpayment.³²

[32] The Commission has 36 months to reconsider a claim for benefits paid or payable to a claimant, including the EI ERB. The Commission has 72 months if, in its opinion, a false or misleading statement or representation has been made in connection with a claim.³³

[33] The Commission argues as follows:

a) On April 13, 2020, the Appellant received an advance payment of \$2,000.

This payment is the equivalent of four weeks of EI ERB.³⁴

²⁸ See section 153.9(1) of Part VIII.4 of the Act.

²⁹ See section 153.9(1)(iv) of Part VIII.4 of the Act.

³⁰ See section 153.9(4) of Part VIII.4 of the Act.

³¹ See section 153.10(1) of Part VIII.4 of the Act.

³² See sections 43, 44, and 153.6(1)(a) of the Act.

³³ See sections 52 and 153.6(1)(a) of the Act.

³⁴ See GD4-3 and GD4-4 in file GE-22-2878.

- b) The Appellant completed claimant reports for 16 weeks from March 22, 2020, to July 11, 2020. This means that she could receive \$8,000 in EI ERB (16 weeks × \$500 = \$8,000).³⁵
- c) The Appellant received the EI ERB for 14 weeks out of the 16 weeks for which she could have received it. She could not receive the EI ERB for 2 weeks from June 14, 2020, to June 27, 2020 (13th and 14th weeks of benefits), because an [translation] “administrative disentitlement” had been imposed to recover part of the \$2,000 EI ERB advance payment she had received.³⁶
- d) In a claim for the EI ERB, when the [translation] “paid counter” had reached 12 weeks, a “disentitlement code” was imposed for the following 2 weeks—the 13th and 14th weeks—so no payment could be made. After the 17th week of paid benefits, a second 2-week disentitlement was imposed, for weeks 18 and 19. In many cases, this made it possible to recover the \$2,000 advance payment.³⁷
- e) In this case, \$1,000 was recovered for the 2 weeks from June 14, 2020, to June 27, 2020—the 13th and 14th weeks.³⁸
- f) With the \$2,000 advance payment, the Appellant received a total of \$9,000 in benefits (\$2,000 (advance payment) + \$7,000 (benefits paid for 14 weeks out of the 16 weeks for which she claimed benefits) = \$9,000).³⁹
- g) The Appellant received a total of \$9,000 in benefits but was eligible for 16 weeks of benefits, or \$8,000 (16 × \$500 = \$8,000). She was overpaid \$1,000 in benefits (\$9,000 – \$8,000 = \$1,000).⁴⁰

³⁵ See GD4-3 and GD4-4 in file GE-22-2878.

³⁶ See GD4-3 and GD4-4 in file GE-22-2878.

³⁷ See GD4-3 in file GE-22-2878.

³⁸ See GD4-3 and GD4-4 in file GE-22-2878.

³⁹ See GD4-3 and GD4-4 in file GE-22-2878.

⁴⁰ See GD4-3 and GD4-4 in file GE-22-2878.

- h) This \$1,000 (remaining portion of the advance payment) could not be recovered from the benefits paid to the Appellant during the period for which she received benefits. She didn't claim benefits for enough weeks to allow the remaining \$1,000 to be [translation] "automatically recovered." It would have been automatically recovered from her 18th and 19th weeks of benefits if she had been entitled to receive benefits for at least 19 weeks and if she had claimed benefits for that many weeks. She claimed benefits for 16 weeks.⁴¹
- i) The Appellant hasn't shown that she was entitled to receive benefits for more than 16 weeks (period from March 22, 2020, to July 11, 2020), since she didn't make a claim or complete claimant reports to receive benefits after July 11, 2020. In addition, she hasn't shown that she would have been eligible after that, since she was working and earning more than \$1,000 per four-week period.⁴²
- j) The Appellant has to pay back \$1,000—the portion of the advance payment of benefits that she received and that could not be automatically recovered.⁴³

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

- a) She completed claimant reports for 16 weeks and received EI ERB payments, including the \$2,000 advance payment.
- b) She doesn't dispute that she received the EI ERB instead of EI regular benefits.
- c) She disagrees with having to pay back the money that the Commission says she owes in overpaid benefits (overpayment). She should not have to pay this

⁴¹ See GD4-3 and GD4-4 in file GE-22-2878.

⁴² See GD3-58, GD3-60, and GD4-4 in file GE-22-2878.

⁴³ See GD4-4 in file GE-22-2878.

money back, since she doesn't have income besides the pension income she receives. It amounts to about \$1,500 per month, which isn't a lot of money.⁴⁴

d) She would not have been asked to pay back a portion of the benefits she received (for example, the advance payment) if she had waited longer before going back to work for the employer instead of going back in late May 2020, as soon as her employer resumed operations.⁴⁵

e) She showed her honesty and good faith when she applied for the EI ERB.⁴⁶

[35] Even though the Appellant disagrees with having to pay back \$1,000, which is part of the EI ERB advance payment she received, the fact is that she has to pay it back.

[36] The Appellant received a \$2,000 advance payment, on top of receiving benefits for 14 weeks. The \$2,000 advance payment she received is the equivalent of four weeks of benefits.

[37] This means that she received 18 weeks' worth of benefits, when he [sic] could have received benefits for 16 weeks, from March 22, 2020, to July 11, 2020.

[38] The Commission was able to recover only a portion of the \$2,000 advance payment for the period for which the EI ERB was paid to the Appellant.

[39] According to the Commission's explanations, the remaining portion of the advance payment could not be recovered because the Appellant stopped receiving the EI ERB before that point. This is because she didn't make a claim or complete claimant reports to receive the EI ERB after July 11, 2020.⁴⁷

⁴⁴ See GD2-5, GD3-56, and GD3-58 in file GE-22-2878; and GD2-5 in file GE-22-2879.

⁴⁵ See GDJ2-2 and GDJ2-3 in files GE-22-2878 and GE-22-2879.

⁴⁶ See GD2-5, GD3-56, GDJ2-2, and GDJ2-3 in file GE-22-2878; and GD2-5, GDJ2-2, and GDJ2-3 in file GE-22-2879.

⁴⁷ See GD3-57 to GD3-69 and GD4-4 in file GE-22-2878.

[40] The Commission also says that the Appellant hasn't shown that she would have been entitled to receive the EI ERB after that date, since she was working and earning more than \$1,000 per four-week period.⁴⁸ I note that the exception under the Act doesn't apply to her—the exception that would have allowed her to get benefits if she had received employment income the total of which didn't exceed \$1,000 over a period of four weeks.⁴⁹

[41] This means that the portion of the \$2,000 advance payment that the Commission was unable to recover when it paid her the EI ERB—an amount of \$1,000—is an overpayment that has to be repaid.

[42] The Federal Court of Appeal (Court) tells us that the amount of an overpayment specified in a notice of debt becomes repayable on the date of the notification of the amount of the overpayment and that a person who receives an overpayment of benefits is required to return the amount of the overpayment without delay.⁵⁰

[43] The Appellant's situation can't relieve her from her liability to repay the benefit overpayment that she owes.

[44] While I sympathize with the Appellant's case, the Court tells us that adjudicators, including the Tribunal, aren't permitted to rewrite the Act or to interpret it in a manner that is contrary to its plain meaning.⁵¹

[45] I find that the Commission is justified in asking the Appellant to pay back the overpayment. It is up to the Commission to consider how she should pay back the amount of money it says she owes.

[46] The appeal is without merit on this issue.

⁴⁸ See section 153.9(4) of Part VIII.4 of the Act. See also GD3-57 to GD3-59 and GD4-4 in file GE-22-2878.

⁴⁹ See section 153.9(4) of Part VIII.4 of the Act.

⁵⁰ The Federal Court of Appeal (Court) established this principle in *Braga*, 2009 FCA 167. See also sections 43, 44, 52, and 153.6(1)(a) of the Act.

⁵¹ The Court established this principle in *Knee*, 2011 FCA 301.

Voluntary leaving

[47] 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.

[48] 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.⁵²

[49] It is up to the claimant to prove that they had just cause.⁵³ 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.

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

[50] In this case, I find that the Appellant's job did end because she voluntarily left under the Act.

[51] I find that the Appellant had the choice to continue working for the employer but decided to voluntarily leave her job.

[52] The Court tells us that when it comes to voluntary leaving, it must first be determined whether the person had a choice to stay at their job.⁵⁴

[53] In this case, the Appellant's testimony and statements show that she decided to leave her job.⁵⁵

⁵² 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.

⁵³ The Court established this principle in *White*, 2011 FCA 190 at para 3.

⁵⁴ The Court established this principle in *Peace*, 2004 FCA 56.

⁵⁵ See GD2-1 to GD2-19, GD3-3 to GD3-20, GD3-23, GD3-24, GD3-27, GD3-34, GD3-35, and GDJ3-1 to GDJ3-13 in file GE-22-2879.

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

[55] I must now determine whether the Appellant had just cause for voluntarily leaving her job and whether she had no reasonable alternative to voluntarily leaving.

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

[56] In this case, I find that the Appellant hasn't shown just cause for leaving her job when she did. She didn't have a reason the Act accepts.

[57] In my view, the Appellant had reasonable alternatives to voluntarily leaving.

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

- a) The Appellant quit for personal reasons.⁵⁶
- b) She was a part-time [translation] "store associate" (working at checkout or "on the floor").⁵⁷
- c) She worked 20 to 24 hours per week but didn't have guaranteed hours.⁵⁸
- d) She was a [translation] "regular employee."⁵⁹

[59] The Appellant says that she had just cause for voluntarily leaving her job. Her testimony and statements indicate the following:

- a) She voluntarily left because of the comments that the store manager made to her when she showed up for work in late January 2022 or early February 2022.
- b) She didn't raise this reason in her statements to the Commission or in the arguments she initially made before the hearing, since she didn't want to face

⁵⁶ See GD3-31 and GD3-32 in file GE-22-2879.

⁵⁷ See GD3-31 and GD3-32 in file GE-22-2879.

⁵⁸ See GD3-31 and GD3-32 in file GE-22-2879.

⁵⁹ See GD3-31 and GD3-32 in file GE-22-2879.

- the employer—a multinational company—about the manager’s behaviour toward her. During her period of employment, she made several complaints to the employer about the manager’s behaviour toward her, but the situation didn’t improve.
- c) She didn’t talk about the manager’s behaviour or about the circumstances of her voluntary leaving in her conversations with Commission representatives because she didn’t feel comfortable or confident about doing so.⁶⁰
 - d) This situation explains why she initially indicated that she left her job to retire and to focus, among other things, on writing a piece on Indigenous psychology.⁶¹
 - e) When she showed up for work in late January 2022 or early February 2022, she told the manager that she had to end her shift early because she had a telephone appointment with a doctor that afternoon. The manager replied [translation] “Why didn’t you call us yesterday so we could plan ahead?” The Appellant told her that she was going through tough times and that things weren’t going well. She asked her whether she wanted a meeting with her [translation] “boss,” that is, the manager’s boss or the senior manager (D. L.). The Appellant explains that she had to [translation] “threaten” the manager in this way to get her “off [her] back.” The manager told her that she understood and that she would manage. The Appellant didn’t want to tell her everything that was going on in explaining that she had to end her shift early, since she would have told others. According to the Appellant, the manager is indiscreet. She wasn’t able to respect the Appellant’s privacy.
 - f) The Appellant quit after her discussion with the manager during her workday in late January 2022 or early February 2022. She could not continue working under those circumstances. She could not see herself having to continue

⁶⁰ See GD6-5 to GD6-7 in file GE-22-2879.

⁶¹ See GD6-2 to GD6-4, GD6-7, and GD6-8 in file GE-22-2879.

- [translation] “threatening” the manager by asking for a meeting with her and the senior manager.
- g) According to the Appellant, the manager often reacts impulsively and is [translation] “unfit” for her position.
- h) The Appellant points out that her discussion with the manager on the day in question (late January 2022 or early February 2022) was [translation] “the last straw” given her many complaints against her because of her “inappropriate behaviour.”⁶²
- i) The complaints were about the following, among other things: breaching the confidentiality of employees’ personal information, like medical information; giving employees medical advice to keep them from missing work; not closing the store early enough to let employees go home without being on the road at a time when they could get stopped by police during the government-imposed COVID-19 curfew; discrediting the authority of an assistant store manager; letting management of the fitting room deteriorate; using sexual or lewd language; and [translation] “controlling” the Appellant’s interactions with another employee by trying to separate them to keep them from talking to each other. The Appellant says that she doesn’t have dates for the events described in her complaints to the employer.⁶³
- j) In July 2021, after several complaints, the Appellant discussed the situation with the head of human resources (HR). The Appellant first sent her an email on July 5, 2021, telling her [translation] “things really weren’t going well” with the manager.⁶⁴ During her conversation with the head of HR, the latter asked for permission to discuss the situation with the senior manager (D. L.). The Appellant said she was okay with it, but the problem wasn’t resolved.

⁶² See GDJ3-1 in file GE-22-2879.

⁶³ See GDJ3-10 to GDJ3-13 in file GE-22-2879.

⁶⁴ See GDJ3-10 to GDJ3-13 in file GE-22-2879.

- k) Before quitting, the Appellant didn't talk to the senior manager (D. L.) about the late January 2022 or early February 2022 incident involving the manager. She figured she had made enough complaints about her manager. She didn't discuss the complaints with the senior manager either. When she had discussed them with the head of HR, the latter asked whether she could talk to the senior manager about them. The Appellant was then told that her complaints would be looked into. But, she never heard back about what came of that.
- l) In late February 2022, the Appellant told the head of HR that she was quitting and retiring. So, the head of HR didn't ask her any questions to find out why she was leaving her job. The Appellant didn't talk to her about the late January 2022 or early February 2022 incident with the manager. The Appellant says that she doesn't remember whether she tendered her resignation in a letter (for example, an email) or orally (for example, over the phone). In her statement to the Commission on August 10, 2022, she said she had told the employer she was quitting in an email.⁶⁵
- m) The Appellant says that she could have continued working and worked fewer hours when students would have been hired beginning in May 2022. By working fewer hours, she could have continued writing her piece on Indigenous psychology.
- n) But, given the incident with the manager in late January 2022 or early February 2022, the Appellant could not continue working.
- o) On her February 23, 2022, application for benefits, and in her statements to the Commission on July 5, 2022, and August 10, 2022, the Appellant indicated that she left her job to retire.⁶⁶

⁶⁵ See GD3-34 and GD3-35 in file GE-22-2879.

⁶⁶ See GD2-16 to GD2-19, GD3-3 to GD3-20, GD3-23, GD3-24, GD3-34, and GD3-35 in file GE-22-2879.

- p) On her application for benefits, she indicated that she was retiring because of her age and said that she had found the previous two years difficult because of the pandemic.⁶⁷
- q) In her statements on July 5, 2022, and August 10, 2022, she said that she had enjoyed working for the employer and that nothing had happened to make her leave her job.⁶⁸
- r) In her August 3, 2022, request for reconsideration, the Appellant said that at her age, she was entitled to retire.⁶⁹
- s) On August 10, 2022, the Appellant told the Commission that the manager was [translation] “somewhat unfit” but that it wasn’t a big deal and wasn’t what made her leave her job. She pointed out that there was no [translation] “trigger” behind her leaving. She reiterated that leaving her job to retire was a personal decision.⁷⁰
- t) In her August 29, 2022, notice of appeal, the Appellant again explained that she voluntarily left her job to retire and to continue writing her piece on Indigenous psychology.⁷¹

[60] I find that the Appellant’s statements that she voluntarily left her job because of what her manager allegedly said to her in late January 2022 or early February 2022 don’t show that she had just cause for doing so within the meaning of the Act.

[61] In my view, despite the reasons she has given, she chose to voluntarily leave her job to retire. But this perfectly legitimate decision doesn’t show that she had just cause for voluntarily leaving.

⁶⁷ See GD2-16 to GD2-19 and GD3-3 to GD3-20 in file GE-22-2879.

⁶⁸ See GD3-23, GD3-24, GD3-34, and GD3-35 in file GE-22-2879.

⁶⁹ See GD2-2 and GD3-27 in file GE-22-2879.

⁷⁰ See GD3-34 and GD3-35 in file GE-22-2879.

⁷¹ See GD2-8 and GD2-14 in file GE-22-2879.

[62] I find contradictory the Appellant's statements explaining her decision to voluntarily leave her job.

[63] On her application for benefits, in her statements to the Commission (including her request for reconsideration), and in her notice of appeal, the Appellant indicated that she left her job to retire. Her statements are clear on this point. For example, she mentioned wanting to focus on her piece on Indigenous psychology.

[64] Then, at the hearing, she said that she voluntarily left her job because of a late January 2022 or early February 2022 incident involving her manager.

[65] I find that at the hearing, that is, after the Commission had told her that she didn't have just cause for voluntarily leaving within the meaning of the Act, the Appellant raised a different reason than the one she had repeatedly given, namely that she left her job to retire.

[66] The Court tells us that initial and spontaneous statements should be given much more credibility than later statements after an unfavourable decision by the Commission.⁷²

[67] So, I place more weight on the Appellant's many statements that she left her job to retire than on her explanations that she voluntarily left because of what her manager allegedly said to her in late January 2022 or early February 2022.

[68] I don't accept the Appellant's explanations for why she didn't argue that she voluntarily left because of her manager's comments to her at that time. She said she didn't want to face the employer about it or didn't feel comfortable or confident enough to explain it to the Commission representatives she had spoken with.

⁷² The Court established or reiterated this principle in the following decisions: *Clinique Dentaire O. Bellefleur*, 2008 FCA 13; *El Maki*, A-737-97; *Lévesque*, A-557-96; *Rancourt*, A-355-96; *Boucher*, A-272-96; and *Lépine*, A-78-89.

[69] Despite what she has said on this point, the fact is that she talked about the manager's work as a manager in one of her statements.⁷³ I note that in that statement, she said that even though she found her manager [translation] "somewhat unfit" for her position, it wasn't a big deal and wasn't the reason she left her job.⁷⁴ In that same statement, she reiterated that she left her job to retire and pointed out that there was no [translation] "trigger" behind her leaving.⁷⁵

[70] In my view, this statement supports the Appellant's initial statements that she left her job primarily to retire, and that the manager's behaviour has nothing to do with that decision.

[71] In the circumstances, I find that the Appellant didn't voluntarily leave because of the incident that allegedly happened between her and the manager in late January 2022 or early February 2022.

[72] In addition to that incident, the Appellant described several acts that had allegedly taken place before then and that she attributed to her manager.

[73] I find that the acts the Appellant described on this point also don't show that they justify her voluntary leaving.

[74] The Appellant talked about several of these acts in a July 2021 email to the head of HR (for example, breaching the confidentiality of employees' personal information, giving medical advice, discrediting the authority of an assistant store manager, and letting management of the fitting room deteriorate).⁷⁶ At the hearing, she attributed several other acts to her manager (for example, not closing the store early enough during the government-imposed pandemic curfew, using sexual or lewd language, and [translation] "controlling" the Appellant's interactions with another employee).

⁷³ See GD3-34 and GD3-35 in file GE-22-2879.

⁷⁴ See GD3-34 and GD3-35 in file GE-22-2879.

⁷⁵ See GD3-34 and GD3-35 in file GE-22-2879.

⁷⁶ See GDJ3-10 to GDJ3-13 in file GE-22-2879.

[75] However, I find that neither the incident that allegedly happened in late January 2022 or early February 2022—before she left her job on February 21, 2022—nor the other acts attributed to the manager justify the Appellant’s voluntary leaving.

[76] In addition, despite stating the nature of the acts she says the manager committed before the incident that allegedly happened in late January 2022 or early February 2022, the Appellant hasn’t described them in measurable or observable terms by saying, for example, when they happened.

[77] Even though she talked about several other acts by the manager in addition to those mentioned in her July 5, 2021, email, she hasn’t shown that they happened after she sent this email.

[78] I find that the incident that allegedly happened between the manager and the Appellant in late January 2022 or early February 2022 doesn’t show that the Appellant’s working conditions had become such that they justified her voluntarily leaving her job when she did.

[79] In summary, I find that the Appellant’s voluntary leaving was, first and foremost, a personal choice, since she decided to retire. This means that she caused her own unemployment.

[80] I find that the Appellant had other options besides leaving her job if she didn’t want to do so.

[81] Since the Appellant says that she voluntarily left because of the incident that allegedly happened with her manager in late January 2021 [*sic*] or early February 2021 [*sic*], she could have met and discussed it with the employer—either the head of HR or the senior manager. If she had, the relationship issues that might have existed between her and her manager could have been addressed.

[82] I note that the Appellant herself talked about the option of meeting with the senior manager when describing the situation she says she experienced with the store manager.

[83] Another reasonable alternative would have been for the Appellant to continue working for the employer until she found a job that better met her expectations.

[84] I find that the Appellant hasn't shown that she had no reasonable alternative to leaving her job.

[85] The appeal is without merit on this issue.

Conclusion

[86] I find that the Appellant has to pay back the amount of money that she was overpaid in benefits for the period from March 22, 2020, to July 11, 2020, and that the Commission says she owes, in the manner determined by the Commission.

[87] Considering all the circumstances, I find that the Appellant hasn't shown that she had just cause for voluntarily leaving her job. She had reasonable alternatives to leaving.

[88] The Appellant's disqualification from receiving EI regular benefits from February 13, 2022, is justified.

[89] This means that the appeal is dismissed on both issues before the Tribunal.

Normand Morin
Member, General Division – Employment Insurance Section