



Citation: *CM v Canada Employment Insurance Commission*, 2023 SST 753

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

## **Decision**

**Appellant:** C. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (565185) dated January 23, 2023  
(issued by Service Canada)

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**Tribunal member:** Leanne Bourassa

**Type of hearing:** **IN WRITING**

**Decision date:** May 11, 2023

**File number:** GE-23-576

## **Decision**

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant didn't have just cause because he had reasonable alternatives to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits.

## **Overview**

[3] The Claimant's quit his job on October 12, 2022. He applied for EI benefits the next day. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[4] I have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[5] The Commission says that, instead of leaving when he did, the Appellant could have accepted the probationary period extension and tried to resolve the personal conflicts he was facing or looked for another job before quitting.

[6] The Appellant disagrees and says that he could not have stayed in the toxic work environment where he was experiencing bullying and harassment. His mental health was being affected and the issues he had raised were not being addressed.

## **Matter I have to consider first**

### **The hearing proceeded In Writing**

[7] The Tribunal asks appellants to tell us their preferred method of hearing. In this case, the Appellant chose to have a hearing "In Writing". He explained that the strain of discussing this situation causes him anxiety, trembling, shaking, and waking up in the middle of the night after discussing this toxic work environment.

[8] I have considered whether holding the hearing “in writing”, meaning based only on the documents I have in the file, would be fair. Since this is what the Appellant asked for and since he has anxiety talking about his experience, I think having an oral hearing would not help his situation. He has already expressed himself clearly in writing. I don’t believe I need to test his credibility. There is a full record of what he and the employer have said about this situation. So, I believe I can decide fairly and quickly with the materials the parties have given me.

## **Issue**

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

[10] To answer this, I must first address the Appellant’s voluntary leaving. I then have to decide whether the Appellant had just cause for leaving.

## **Analysis**

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

[11] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit on October 12, 2022. I see no evidence to contradict this.

### **The parties don’t agree that the Appellant had just cause**

[12] The parties don’t agree that the Appellant had just cause for voluntarily leaving his job when he did.

[13] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn’t have just cause.<sup>1</sup> Having a good reason for leaving a job isn’t enough to prove just cause.

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<sup>1</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

[14] 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.<sup>2</sup>

[15] It is up to the Appellant to prove that he had just cause. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his only reasonable option was to quit.<sup>3</sup>

[16] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I have to look at.<sup>4</sup>

[17] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to leaving at that time.<sup>5</sup>

### **The Appellant was facing harassment at work**

[18] The Appellant says that one of the circumstances set out in the law applies. Specifically, he says he was facing harassment in his workplace.<sup>6</sup> I agree.

[19] I believe that the Appellant felt that his workplace was toxic. He felt the treatment he was facing and the lack of training he was receiving from other employees of the company were causing him stress and anxiety. He was also unhappy with the behavior of other employees in the office.

[20] The Appellant explained to the Commission that he worked closely with the owner of the company. He had been brought in to fill a void in the sales roles when the owner eventually retired. He believes that this led to some resentment from other employees who might have wanted that role, with the result that he was ignored and blocked out by them. They would not teach him the tasks that he needed to learn to do

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<sup>2</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>3</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

<sup>4</sup> See section 29(c) of the Act.

<sup>5</sup> See section 29(c) of the Act.

<sup>6</sup> See section 29(c) (i) of the Act.

his job. This caused him stress and anxiety and prevented him from learning all he needed to do his job.

[21] The Commission questioned both the Appellant and his employer with respect to the situation at the office. The employer acknowledged that the Appellant faced some challenges and rejection from his co-workers. However, the employer also insisted that the Appellant was not living up to expectations and that was a cause of the friction with other employees.

– **The Appellant's performance review**

[22] The Appellant explained that he was facing a toxic situation in his workplace. The event that brought him to quit was two weeks after his probation review meeting. He got what he calls a scathing email from the Vice President of Operations. The Appellant felt that his probation review meeting had ended on a positive note, but he found this message unprofessional and brought into question his integrity and behavior.

[23] It is true that the probation review form and the attached email message do express deep concerns about the Appellant's own conduct. The VP also explains that the review includes an action plan to give the Appellant time to achieve the desired outcomes.

[24] While I can understand it would have been disappointing and perhaps even surprising for the Appellant to receive such a written assessment, I do not see any language in the email message that is overtly offensive or inappropriate in a workplace setting.

[25] I also note that the assessment, while sent to the Appellant by the VP Operations mentions the participation of three other members of senior staff. The owner of the company, whom the Appellant says he got along with very well, is one of the participants in the review. The owner also included specific comments suggesting that there was room for the Appellant to improve.

– **Weight given to the employer’s version of events**

[26] The Appellant argues that Commission’s assessment of his workplace situation is wrong because it gives too much weight to the employer’s version of events.

[27] The Commission say that the employer’s version was given more weight because it remained consistent throughout its investigation, while the Appellant’s version varied.

[28] My review of the Commission’s notes as well as the documents and statements submitted by the Appellant also show that the Commission did not speak to the employer before reaching its original decision on the Appellant’s claim. It did speak to a representative of the employer several times at the reconsideration level. Both the employer and the Appellant were challenged by the Commission when their statements were unclear statements, and they were invited to provide information to support what they said.

[29] The employer told the Commission that the Appellant was not meeting his targets. They also explained that part of the treatment the Appellant was facing was likely caused because other employees felt he was not meeting the expectations they had for him when he was hired.

[30] I do give some weight to the Commission’s view that the employer’s statements were sometimes more credible than the Appellant’s. For example, when the Commission asked the Appellant about being asked for his timesheets, the Appellant denied he was ever asked. However, the employer provided a copy of the email message where they ask him for the time sheets.

– **The treatment the Appellant was facing was harassment**

[31] There is no definition of harassment in the Employment Insurance Act. So, I am turning to recent decisions of the Appeal Division for guidance on what would be considered harassment for the purposes of the EI Act.<sup>7</sup>

[32] In these cases, it says that a harasser can act alone or with other and does not need to be in a supervisory role. Harassment can take many forms, including actions, conduct, comments, intimidation and threats. It can be from a single incident and there is a focus on the alleged harasser and whether they knew or should reasonably have known that their behavior would cause offence, embarrassment, humiliation or other psychological or physical injury to the other person.

[33] I also find the Commission's Digest of Benefit Entitlement Principles provides a possible definition of harassment in chapter 6.5.2. In that section, it says:

“Harassment is generally defined as any improper behaviour by a person that is directed at and offensive to another person and which the first person knew or ought reasonably to have known would be unwelcome. Harassment may take the form of reprehensible comments, actions or displays which humiliate degrade or embarrass another person. Harassment may come from an individual or a group of persons, managers or employees, creating a hostile and poisoned work environment that quickly becomes intolerable.”

[34] While I am not bound by the Appeal Division decisions or the Digest, I find it instructive to note that harassment is not limited to open and active hostility. So, in this case, I can find that the exclusion and rejection that the Appellant was facing, and that his employer recognized, can be considered harassment.

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<sup>7</sup> While I am not bound by Appeal Division decisions, I am taking guidance from the discussion of harassment found in *N.D. v. Canada Employment Insurance Commission*, 2019 SST 1262, *D.G. v. Canada Employment Insurance Commission*, 2022 SST 759 and *R.J. v. Canada Employment Insurance Commission*, 2022 SST 757.

[35] There are two additional points I need to consider before reaching a conclusion.

[36] First, the Appellant did say that until July or early August, he had been able to work with one of the people who he felt became hostile to him. At some point, she shut him out and would not acknowledge him or teach him the tasks he needed to learn from her.

[37] I believe the Appellant that this treatment caused him stress and anxiety.

[38] However, there is no evidence that until he received the email message from the VP Operations about his performance review that he was actually taking steps to leave his job because of this treatment. So, while the circumstances may have been disagreeable, he did continue to work despite this treatment, until after the email message from the VP Operations.

[39] To find that there was harassment, I do not have to find the situation was intolerable. That can be considered when I look at reasonable alternatives to leaving a job. So, I can conclude the Appellant was facing harassment even if the situation was something he was tolerating for a while.

[40] Secondly, the Appellant mentions a second employee who he feels mistreated him. In explaining the toxic workplace, he mentions several issues that he thinks other employees had experienced when dealing with this second person. He says that other employees had left because of the actions of this director of inside sales.

[41] While this information does suggest that other employees also had a difficult relationship with this person, I can't draw any conclusions about their reasons for leaving, like the Appellant has. I also don't see any evidence of how this person's actions impacted the Appellant's ability to do his own work. So, I do not give as much weight to statements about this person's effect on the Appellant as I do his comments about the first person he refers to who he says started blocking him out.

[42] While the overall situation in the workplace may have been unpleasant for the Appellant to witness, when concluding that he was facing harassment, I am only looking



at the treatment he personally experienced. In this case, both the Appellant and his employer admit that he was being rejected by other employees. I see the effect on him was serious and caused him stress and anxiety, perhaps even humiliation. So, I conclude that harassment was a circumstance that was present when he left his job.

– **The Appellant was not facing antagonism with a supervisor**

[43] I have also considered whether the Appellant was facing antagonism with a supervisor.<sup>8</sup> However, it seems that those whose actions were causing the Appellant the most grief were co-workers or colleagues and not supervisors. Other than the review and email mentioned, there is no evidence the VP Operations acted inappropriately or with hostility towards the Appellant himself. The Appellant also has positive things to say about working with the owner of the company, so I do not believe he was facing antagonism from a supervisor.

[44] I also see that when speaking to the Commission, the employer explained some of the things the Appellant had done that may have contributed to bad feelings from the other employees. While I would not conclude that the Appellant was primarily responsible for any antagonism, the actions the employer describes<sup>9</sup> could lead to some friction in the workplace.

[45] So, I don't believe that the Appellant was facing antagonism from a supervisor for which he was primarily responsible.

[46] I do find that when the Appellant decided to leave his job, he found himself in a workplace that he felt was causing him significant anxiety and stress. He felt that the treatment he was receiving from his co-workers was harassment. I find that harassment was a circumstance that existed at the time the Appellant chose to leave his job.

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<sup>8</sup> This is a circumstance that the law says I have to consider. See section 29 (c) (x) of the Act.

<sup>9</sup> The employer mentions multiple absences, lack of contact with clients and failing to advance projects he was supposed to be responsible for as examples of the Appellant's conduct that created friction in the workplace.

[47] I now have to look at whether the Appellant had no reasonable alternative to leaving his job when he did.

### **The Appellant had reasonable alternatives**

[48] Even though I find that the Appellant was subject to harassment, in order to find that he had just cause for leaving this employment, I have to see that on the balance of probabilities, leaving his job and becoming unemployed was the only reasonable alternative available to him.

[49] Caselaw sets out that the obligation is on a claimant to attempt to resolve workplace conflicts with and employer, or to show they had made efforts to seek other employment before taking a unilateral decision to quit a job.<sup>10</sup>

[50] The Appellant says that he had no reasonable alternative because he could not continue working in that toxic environment. Numerous meetings and talks with the president and vice president of the company did not deter any of the behaviour causing him harm.

[51] The Commission disagrees and says that the Appellant could have accepted the extended probationary period, tried to resolve the issues with his co-workers, secured other employment before quitting, or sought a doctor's advice and taken a leave of absence before quitting his job.

[52] I find that several alternatives were available to the Appellant, other than leaving his job.

[53] First, the Appellant had the choice to continue working to improve his performance to see if the issues could be resolved or worked around. Although he may not have wanted it, the Appellant had the option of remaining employed with a three-month extension of his probation period. The employer was not looking to end his employment, and in fact offered him feedback about how to address some of the issues

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<sup>10</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 5.

that might have been causing conflict with his co-workers. The Appellant chose not to take the opportunity that was offered to him.

[54] The Appellant argues that the workplace was toxic and he couldn't keep working in those conditions. He says that he had tried to work with those who were blocking him out. However, he also says that he didn't know why he was being rejected by his co-workers.

[55] I believe that the Appellant tried to keep working and that he didn't know why he was being treated the way he was. But I also don't see any evidence that he took steps himself to understand that he may have contributed to the problems.

[56] He may have raised complaints with the owner of the company, but he has not said that he himself talked to the co-workers about why they were blocking him out. It would have been difficult, but may have lead to some solutions. The Appellant seems to have expected the senior management to resolve the problem.

[57] The Appellant says that a meeting was held in September to address the treatment he was receiving. The employer told the Commission that the meeting was a general call to improve workplace relations and that the Appellant's behavior also contributed to the need for the meeting. In the answers he gave to the Commission, the Appellant demonstrated the behavior that the employer described – he did not seem to show an interest in reflecting on his own behavior, only on mentioning the actions of others as the source of the situation in the workplace.

[58] Second, if his workplace situation was causing such him stress and anxiety that continuing to go to work was impossible, the Appellant could have consulted with his doctor to find out if a medical leave was appropriate in his case. A medical leave could have allowed him to stay employed and consider his options before taking the decision to quit.

[59] Next, even if the Appellant felt that he did not want to keep working with the company in light of the results of his performance review, he could have kept working and looked for another job before quitting.

[60] I see that the Appellant did submit examples of jobs he had applied for before he quit. However, I also note that 7 of these applications were made in the space of about one hour on the evening after he received the email with the results of his probation review. There was one more job application the next night. A weekend followed and then there were two more potential workdays before he quit.

[61] I find that the evidence in the file does not show a serious and legitimate job search that started before the Appellant decided to leave his job. A reasonable alternative would have been to continue working or go on leave and stay employed until he found another job.

[62] The Appellant did say that he was not able to look for another job because he was committed to the job he was doing. I also note he had a long commute to work and children he wanted to spend time with. But his job applications from the night he received the email message with his review scores show that it was possible to apply for jobs with his schedule. He could also have continued working until he knew if any of the job applications he submitted led to a new job.

[63] The Commission asked the Appellant whether he could have avoided working with the people whose treatment was causing him stress. The Appellant denied that this was possible. From the employer's statements in the performance assessment and their conversations with the Commission, I see there was a suggestion from the owner of the company that the Appellant "learn by doing" and that perhaps more work in the field could be useful. That was an alternative he could have explored before choosing to quit.

[64] Considering the circumstances that existed when the Appellant quit, I find the Appellant had reasonable alternatives to leaving when he did, for the reasons set out above. He could have continued working until he found another job, consulted a doctor about a stress or medical leave, or explored opportunities to change where and how he worked with the company.

[65] This means the Appellant didn't have just cause for leaving his job.

## **Conclusion**

[66] I find that the Appellant is disqualified from receiving benefits.

[67] This means that the appeal is dismissed.

Leanne Bourassa

Member, General Division – Employment Insurance Section