



Citation: *AM v Canada Employment Insurance Commission*, 2023 SST 1076

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

# **Decision**

**Appellant:** A. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (456076) dated February 17, 2022 (issued by Service Canada)

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**Tribunal member:** Suzanne Graves

**Type of hearing:** Videoconference

**Hearing date:** March 29, 2023

**Hearing participant:** Appellant

**Decision date:** May 3, 2023

**File number:** GE-22-3698

## Decision

[1] The appeal is allowed in part.

[2] The Appellant is disqualified from receiving benefits from October 6, 2021.

[3] The Canada Employment Insurance Commission (Commission) hasn't proved that the Appellant left his job voluntarily until October 6, 2021. This means that he isn't disqualified from receiving Employment Insurance (EI) benefits from January 17, 2021, to October 5, 2021.

## Overview

[4] The Appellant was laid off from his job on January 21, 2021, and applied for EI benefits. The Commission looked at why the Appellant left his job, and whether he had reasonable alternatives to 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.

[5] I must decide whether the Appellant voluntarily left his job, and if so, whether he has proved that he had no reasonable alternative to leaving his job.

[6] The Commission says that the Appellant voluntarily left his job because he refused an offer to return to his employment. The employer told the Commission that it tried to recall the Appellant to work, but he refused its offer to go back to his job.

[7] The Appellant disagrees and says his employer never contacted him about returning to work. He says that the employer's statements to the Commission about its discussions with him are completely false.

[8] The Tribunal's General Division made a decision on this appeal on July 25, 2022. The Appellant appealed that decision to the Appeal Division (AD). On November 14, 2022, the AD upheld the appeal and returned the matter to the General Division. I held a new hearing on the appeal on March 29, 2023.

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

### **The employer is not a party to the appeal**

[9] Sometimes the Tribunal sends the Appellant's former employer a letter asking if they want to be added as a party to the appeal. In this case, the Tribunal wrote to the Appellant's employer asking if it wished to be added as a party, but it did not reply to that letter.<sup>1</sup> To be an added party, the employer must have a direct interest in the appeal. I have decided not to add the employer as a party as there is no evidence to show that it has a direct interest in the outcome of this appeal.

### **Issue**

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

[11] To answer this, I must first address the Appellant's voluntary leaving. If I decide that he left voluntarily, I must consider whether the Appellant had just cause for leaving.

### **Analysis**

#### **Did the Appellant voluntarily leave his job?**

[12] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>2</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[13] Voluntary leaving includes a situation where a claimant refuses to resume their employment.<sup>3</sup>

[14] I first have to decide whether the Appellant voluntarily left his job. If so, I must consider whether he had just cause for leaving.

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<sup>1</sup> The Tribunal's letter to the Appellant's employer is at GD5.

<sup>2</sup> Section 30 of the *Employment Insurance Act* (EI Act) explains this.

<sup>3</sup> See section 29(b.1)(ii) of the EI Act, which states that voluntarily leaving an employment includes: (ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed.

[15] It is the Commission's responsibility to show, on the balance of probabilities, that a claimant left their employment voluntarily.<sup>4</sup>

[16] Courts have said that the test for whether an employee voluntarily left their employment is a simple one. The question to be asked is: did the employee have a choice to stay or to leave?<sup>5</sup>

[17] I must consider the evidence regarding whether the Appellant voluntarily left his job, including whether he refused an offer from his employer to resume his employment.

[18] The Commission argues that the Appellant voluntarily left his job, because he declined an offer from his employer to return to work. It filed notes of its conversations with the Appellant's employer. The employer told the Commission that they called the Appellant on two occasions and asked him to return to work.

[19] According to the employer's statements, the Appellant asked for some time before returning to his job, and they gave him time before resuming work. The employer said the Appellant then refused a second recall request, so they considered he had abandoned his job and issued a new record of employment (ROE), stating that he had quit.<sup>6</sup>

[20] The Commission decided that the Appellant was disqualified from receiving benefits because he voluntarily left his job without just cause, and calculated an overpayment of benefits from January 24, 2021, to December 11, 2021.<sup>7</sup>

[21] The Appellant says he didn't voluntarily leave his job. He testified that he knew that recall was a possibility and would have gone back to work if it was offered to him. He testified that his employer never made contact with him by phone or in writing after January 21, 2021, to ask him to return.

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<sup>4</sup> *Green v. Canada (Attorney General)*, 2012 FCA 313.

<sup>5</sup> *Canada (Attorney General) v. Peace*, 2004 FCA 56.

<sup>6</sup> The Commission's notes of its conversations with the employer are at GD3-29. The Appellant's initial record of employment (ROE) dated February 25, 2021, is at GD3-17 to 18. A second ROE was issued by the employer on October 6, 2021, at GD3-19 to 20.

<sup>7</sup> The Commission filed a pay history report at GD8-3 to 4.

[22] As noted above, it is the Commission's responsibility to prove that the Appellant voluntarily left his job. It must prove this on a balance of probabilities. So I have considered and weighed the evidence on this issue.

[23] The evidence shows that the Appellant was initially laid off on January 21, 2021, due to COVID-19. This is not in dispute. The employer told the Commission that the Appellant was a "no call, no show." A human resources officer stated that the employer later contacted the Appellant by phone to call him back to work but he refused to return, even after it gave him more time to decide.<sup>8</sup> The employer gave no information about the dates of any calls it said that it made to the Appellant.

[24] The Commission relied on the employer's statements to its officer on February 15, 2022. These statements were supported by a second ROE issued by the employer on October 6, 2021, which shows the reason for leaving as "Quit."<sup>9</sup>

[25] The Appellant testified that he never got a call from the employer about returning to work. He testified in a direct and forthright manner, and his statements were consistent with prior statements he made to the Commission. But he also testified that he had moved and that he took no steps to keep in touch with his employer, even though he knew that he could be recalled according to the terms of his layoff notice.<sup>10</sup>

[26] I find that it is more likely than not that the employer attempted to contact the Appellant on or before October 6, 2021, to discuss a recall date. When the Appellant did not respond to the employer's calls and had not contacted the employer in any way between January 21, 2021, and October 6, 2021, it reasonably concluded that he had abandoned his job.

[27] I find that the Commission has proved that the Appellant left his job voluntarily on October 6, 2021, by abandoning his employment. In making this finding, I have given weight to the employer's first statement to the Commission, in which it said that the

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<sup>8</sup> The Commission's notes of its conversations with the employer are at GD3-29.

<sup>9</sup> See GD3-19 to 20.

<sup>10</sup> The Appellant's layoff notice dated January 20, 2021, is at GD3-27.

Appellant was a “no call, no show.”<sup>11</sup> That statement is supported by the ROE it issued on October 6, 2021, and the Appellant’s own testimony that he didn’t attempt to contact the employer to enquire about possible recall.

[28] I find that the Commission has not provided enough evidence to prove, on the balance of probabilities, that the Appellant refused an offer of recall or otherwise left his job voluntarily before October 6, 2021. On that issue it relied on a discussion with the employer’s human resources department which took place almost a year after the Appellant left his job. It also provided no evidence of the dates of any earlier calls, or records of any texts, emails or mail the employer may have sent to the Appellant.

### **Did the Appellant have just cause for voluntarily leaving his job?**

[29] 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>12</sup>

[30] 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>13</sup>

[31] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant left his job. I have already found that the employer issued an ROE stating that the Appellant quit, after he had been out of touch for over nine months and it could not contact him.

[32] The Appellant testified that he moved to a new residence after January 21, 2021, and had needed to reset his phone. He said that he does not accept calls from unknown numbers. So, he wasn’t certain as to whether his employer may have tried to call him.<sup>14</sup> He testified that he made no attempts to try to contact the employer.

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<sup>11</sup> See GD3-29.

<sup>12</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the EI Act.

<sup>13</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

<sup>14</sup> The Appellant didn’t give any call record evidence between January 21, 2021, and October 6, 2021.

[33] A reasonable alternative for the Appellant would have been for him to stay in touch with his employer so that he would be informed about a call back date. This is particularly true since he understood that he was still employed, had recently moved, and was also experiencing problems with his phone.

[34] I find that the Appellant did not have just cause for leaving his job voluntarily as of October 6, 2021, so he is disqualified from receiving benefits from that date.

## **Conclusion**

[35] The appeal is allowed in part.

[36] The Appellant is not disqualified from receiving benefits from January 21, 2021, to October 5, 2021.

[37] The Appellant is disqualified from receiving benefits from October 6, 2021.

Suzanne Graves  
Member, General Division – Employment Insurance Section