



[TRANSLATION]

Citation: *AP v Canada Employment Insurance Commission*, 2023 SST 1073

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: A. P.
Representative: Olivier Gentil

Respondent: Canada Employment Insurance Commission

Decisions under appeal: Canada Employment Insurance Commission reconsideration decisions (531515, 545507, and 545503) dated September 14 and 15, 2022 (issued by Service Canada)

Tribunal member: Normand Morin

Type of hearing: Videoconference
Hearing date: June 6, 2023
Hearing participants: Appellant
Appellant's representative

Decision date: July 28, 2023
File numbers: GE-22-4203, GE-22-4205, and GE-22-4210

Decision

[1] The appeal is allowed in part.

[2] I find that the Appellant's application for Employment Insurance (EI) benefits must be antedated to the week of December 12, 2021, and not to January 30, 2022, as the Canada Employment Insurance Commission (Commission) determined.¹ The Appellant has shown that she had good cause for the delay in applying for benefits. This means that her application can be treated as though it was made earlier, that is, in the week of December 12, 2021.

[3] I find that the Appellant has shown that she had just cause for voluntarily leaving the jobs she had with two different employers on January 27 and 28, 2022, and during the period from April 1, 2022, to May 8, 2022, inclusive.² This means that the disqualifications from receiving benefits that the Commission imposed on her from February 13, 2022,³ and from May 8, 2022,⁴ aren't justified.

Overview

[4] On December 13, 2021, the Appellant contacted the Commission to tell it that a claim for benefits had been made in her name but that she wasn't the one who made it.⁵

[5] On January 27 and 28, 2022, the Appellant worked as a technology analyst for X. She stopped working for that employer after voluntarily leaving her job.⁶

¹ See section 10(4) of the *Employment Insurance Act* (Act). Section 10(4) of the Act uses the term "initial claim" to refer to a claimant's application for benefits, which is used to determine whether the claimant qualifies to establish a benefit period.

² See sections 29 and 30 of the Act.

³ See GD3-18, GD3-19, GD6-15 to GD6-17, and GD6-21 to GD6-23 in file GE-22-4203; GD3-18, GD3-19, GD3-26, GD6-15 to GD6-17, and GD6-21 to GD6-23 in file GE-22-4205; and GD3-32, GD3-33, GD3-40, GD6-15 to GD6-17, and GD6-21 to GD6-23 in file GE-22-4210.

⁴ See GD4-6 in file GE-22-4210.

⁵ See GD3-4 in file GE-22-4203.

⁶ See GDJ6-3 and GDJ8-77 in file GE-22-4203; GD3-11, GD3-12, and GDJ6-3 in file GE-22-4205; and GDJ6-3 in file GE-22-4210.

[6] On February 18, 2022, she applied for EI benefits (regular benefits). On her application, she indicated that she worked for two employers during the periods from May 14, 2020, to August 13, 2021, and from October 12 to 26, 2021.⁷

[7] From April 1, 2022, to May 8, 2022, inclusive, she worked as a room attendant at X. She stopped working for that employer after voluntarily leaving her job.⁸

[8] On May 27, 2022, she asked the Commission to antedate her February 18, 2022, application. She wanted the claim to start on October 26, 2021 (week of October 24, 2021).⁹

[9] On June 29, 2022, the Commission told her that her claim for EI benefits could not start on October 24, 2021, because she hadn't proven that between October 24, 2021, and February 12, 2022, she had good cause to apply late for benefits. The Commission also told her that she wasn't entitled to benefits from February 13, 2022, because she had voluntarily left her employment with X on January 28, 2022, without just cause as defined in the *Employment Insurance Act* (Act). In addition, the Commission said that, to be entitled to EI benefits, the hours she had accumulated in her job at X would not be considered, since she had voluntarily left her employment there on May 8, 2022, without just cause as defined in the Act.¹⁰

[10] On September 14, 2022, after a reconsideration request, the Commission told her that a new decision had replaced the June 28, 2022, decision about her antedate request. The Commission explained that, according to the new decision, her benefit period started on January 30, 2022, but that it could not start on October 24, 2021, because she hadn't shown good cause for her delay in applying.¹¹

⁷ See GD3-7 to GD3-15 in file GE-22-4203, GD3-3 to GD3-10 in file GE-22-4205, and GD3-3 to GD3-10 in file GE-22-4210.

⁸ See GDJ8-83 in file GE-22-4203 as well as GD3-26 and GD3-27 in file GE-22-4210.

⁹ See GD3-16 in file GE-22-4203.

¹⁰ See GD3-18 and GD3-19 in file GE-22-4203, GD3-18 and GD3-19 in file GE-22-4205, and GD3-32 and GD3-33 in file GE-22-4210.

¹¹ See GD3-25, GD3-26, GD5-18, GD5-19, and GD6-18 to GD6-20 in file GE-22-4203; and GD6-18 to GD6-20 in files GE-22-4205 and GE-22-4210.

[11] On September 15, 2022, following the Appellant's reconsideration request, the Commission told her, in two similar decisions, that it was upholding the June 28, 2022, decisions about her voluntarily leaving her jobs at X and at X.¹²

[12] The Appellant says that she had good cause for applying late. She says that, in early December 2021, she saw in her EI file that a claim for benefits had been made in her name and that the claim had been approved, but she wasn't the one who made it. She says that, on December 13, 2021, she contacted the Commission about this, and it explained that her identity had been stolen in her file. She says the Commission also told her that she might be entitled to benefits, but it recommended that she not apply for benefits at that time to avoid interfering with its investigation into the identity theft. She says that she contacted the Commission several times after December 13, 2021, to find out when she would be able to apply for benefits. She argues that this situation shows that her application for benefits should be antedated to December 13, 2021, despite previously asking for it to be antedated to earlier dates (for example, October 26, 2021, December 6, 2021).

[13] The Appellant says that she had just cause for leaving the job she had at X on January 27 and 28, 2022, and the job she had at X from April 1, 2022, to May 8, 2022, inclusive. She explains that she has autism spectrum disorder (ASD) and that she is being followed by a psychiatrist and other health professionals. She argues that she tried to find a solution with the employers in question but that, because of her psychological state, she no longer felt able to continue working for them.

[14] On December 15, 2022, the Appellant challenged the Commission's reconsideration decisions before the Social Security Tribunal of Canada (Tribunal). Those decisions are now being appealed to the Tribunal.

¹² See GD3-26, GD6-15 to GD6-17, and GD6-21 to GD6-23 in file GE-22-4205; GD6-15 to GD6-17 and GD6-21 to GD6-23 in file GE-22-4205; and GD3-40, GD6-15 to GD6-17, and GD6-21 to GD6-23 in file GE-22-4210.

Preliminary matters

[15] I note that the appeals in files GE-22-4203, GE-22-4205, and GE-22-4210 were joined on March 30, 2023,¹³ because they “raise a common question” and “joining the appeals is not unfair to the parties.”¹⁴

[16] In this case, all three files concern the same Appellant.

[17] In one of the three files (GE-22-4203), the issue is whether the Appellant’s application for benefits must be antedated to January 30, 2022.¹⁵

[18] The other two files (GE-22-4205 and GE-22-4210) involve two different employers but deal with the same issue: whether the Appellant had just cause for voluntarily leaving her job.¹⁶

Issues

[19] I have to decide whether the Appellant’s application for benefits must be antedated.¹⁷ To decide this, I have to answer the following questions:

- Has the Appellant proven that she qualified for EI benefits on an earlier day than the day she applied?
- Did the Appellant have good cause for the delay in applying for benefits, therefore justifying her antedate request?

¹³ See GDJ2-1 to GDJ2-3 in files GE-22-4203, GE-22-4205, and GE-22-4210.

¹⁴ See section 35 of the *Social Security Tribunal Rules of Procedure*.

¹⁵ See section 10(4) of the Act.

¹⁶ See sections 29 and 30 of the Act.

¹⁷ See section 10(4) of the Act.

[20] I also have to decide whether the Appellant had just cause for voluntarily leaving the jobs she had with two different employers on January 27 and 28, 2022, and during the period from April 1, 2022, to May 8, 2022, inclusive.¹⁸ To decide this, I have to answer the following questions:

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

Analysis

Antedating the Appellant's application

[21] When a late claim for EI benefits gets antedated, it is considered as having been made on an earlier day than the day it was actually made.

[22] To get their application for benefits antedated, a claimant has to meet two conditions:

[23] The claimant has to prove that they qualified for EI benefits on an earlier day than the day they applied.

[24] The claimant has to prove that they had good cause for the delay during the entire period of the delay. That period is from the earlier day they want their application antedated to until the day they actually applied.¹⁹

[25] Good cause is an explanation that the Act accepts. When good cause is shown, a claim for benefits can be treated as though it was made earlier.

¹⁸ See sections 29 and 30 of the Act.

¹⁹ See section 10(4) of the Act.

[26] The Federal Court of Appeal (Court) has held that a claimant who doesn't make their claim on time has to show that they had good cause for the delay and that they acted as a reasonably prudent person would have acted in the same situation.²⁰

[27] According to the Court, having good cause means acting as a "reasonable person" would have acted to find out about their rights and obligations under the Act.²¹

[28] The claimant has to prove this on a balance of probabilities. This means that they have to show that it is more likely than not that they had good cause for the delay.

[29] The claimant also has to prove this for the entire period of the delay.²² That period is from the day they want their application antedated to until the day they actually applied.

[30] For the Appellant, the period of the delay is from October 24, 2021, to January 30, 2022, according to the Commission's September 14, 2022, decision.²³

[31] The Court also says that, barring exceptional circumstances, a reasonable person has to take reasonably prompt steps to determine their entitlement to benefits and understand their obligations under the Act.²⁴

– Issue 1: Has the Appellant proven that she qualified for EI benefits on an earlier day than the day she applied?

[32] I find that the evidence on file shows that the Appellant qualified for EI benefits on an earlier day than the day she applied, that is, February 18, 2022.

²⁰ The Federal Court of Appeal (Court) reiterated this principle in the following decisions: *Kokavec*, 2008 FCA 307; and *Paquette*, 2006 FCA 309.

²¹ The Court established or reiterated this principle in the following decisions: *Burke*, 2012 FCA 139; *Persiiantsev*, 2010 FCA 101; *Kokavec*, 2008 FCA 307; and *Paquette*, 2006 FCA 309.

²² The Court established or reiterated this principle in the following decisions: *Burke*, 2012 FCA 139; *Dickson*, 2012 FCA 8; *Kaler*, 2011 FCA 266; and *Chalk*, 2010 FCA 243.

²³ See GD3-25, GD3-26, GD5-18, and GD5-19 in file GE-22-4203; and GD5-18 and GD5-19 in files GE-22-4205 and GE-22-4210.

²⁴ See the following Court decisions: *Kaler*, 2011 FCA 266; *Innes*, 2010 FCA 341; *Somwaru*, 2010 FCA 336; *Trinh*, 2010 FCA 335; *Mehdinasab*, 2009 FCA 282; *Caron*, A-395-85; and *Pirrotte*, A-108-76.

[33] Several Records of Employment indicate that the Appellant had periods of employment during the period from November 25, 2019, to May 8, 2022.²⁵

[34] These Records of Employment indicate that she accumulated the following hours of insurable employment during her periods of employment:

- 112 insurable hours (November 25, 2019, to December 12, 2019)²⁶
- 7 insurable hours (December 19, 2019)²⁷
- 13 insurable hours (December 19 to 22, 2019)²⁸
- 1,181 insurable hours (May 14, 2020, to December 18, 2020)²⁹
- 280 insurable hours (February 8, 2021, to March 26, 2021)³⁰
- 653 insurable hours (April 6, 2021, to August 13, 2021)³¹
- 71 insurable hours (October 12 to 26, 2021)³²
- 18 insurable hours (January 27 and 28, 2022)³³
- 74 insurable hours (April 1, 2022, to May 8, 2022)³⁴

²⁵ See GDJ6-3 to GDJ6-13, GDJ8-77, and GDJ8-83 in file GE-22-4203; GD3-11, GD3-12, and GDJ6-3 to GDJ6-13 in file GE-22-4205; and GD3-26, GD3-27, and GDJ6-3 to GDJ6-13 in file GE-22-4210.

²⁶ See GDJ6-12 and GDJ6-13 in files GE-22-4203, GE-22-4205, and GE-22-4210.

²⁷ See GDJ6-11 in files GE-22-4203, GE-22-4205, and GE-22-4210.

²⁸ See GDJ6-10 in files GE-22-4203, GE-22-4205, and GE-22-4210.

²⁹ See GDJ6-9 in files GE-22-4203, GE-22-4205, and GE-22-4210.

³⁰ See GDJ6-8 in files GE-22-4203, GE-22-4205, and GE-22-4210.

³¹ See GDJ6-6 and GDJ6-7 in files GE-22-4203, GE-22-4205, and GE-22-4210.

³² See GDJ6-5 in files GE-22-4203, GE-22-4205, and GE-22-4210.

³³ See GDJ6-3 and GDJ8-77 in file GE-22-4203; GD3-11, GD3-12, and GDJ6-3 in file GE-22-4205; and GDJ6-3 in file GE-22-4210.

³⁴ See GDJ8-83 in file GE-22-4203 as well as GD3-26 and GD3-27 in file GE-22-4210.

[35] The Appellant explains that she was told she might be entitled to benefits when she contacted the Commission about the identity theft.³⁵ She says that the Commission asked her not to apply for benefits during its investigation into the identity theft.³⁶

[36] In its arguments, the Commission explains that the Appellant would have been entitled to receive benefits from October 24, 2021, with 1,023 hours of insurable employment, if she had applied within the time set out in the Act.³⁷

[37] The Commission also indicates that the Appellant would have been entitled to receive benefits from December 5, 2021, or from December 12, 2021, with 1,037 hours of insurable employment.³⁸

[38] Based on the Commission's analysis, the Appellant's periods of employment show that she qualifies for EI benefits with a benefit period established effective October 24, 2021, December 5, 2021, or December 12, 2021.

[39] I note that the Act says that a benefit period begins on the later of the Sunday of the week in which the interruption of earnings occurs, and the Sunday of the week in which the initial claim for benefits is made.³⁹ This explains the hypothetical effective dates for the benefit period (for example: October 24, 2021, December 5, 2021, or December 12, 2021).

[40] I must now determine whether the Appellant had good cause for the delay in applying for benefits, therefore justifying her antedate request.

³⁵ See GD3-17 and GD3-20 to GD3-22 in file GE-22-4203, GD3-20 to GD3-22 in file GE-22-4205, and GD3-34 to GD3-36 in file GE-22-4210.

³⁶ See GD3-20 to GD3-22 and GDJ8-20 in file GE-22-4203, GD3-20 to GD3-22 in file GE-22-4205, and GD3-34 to GD3-36 in file GE-22-4210.

³⁷ See GDJ6-1 and GDJ8-33 in file GE-22-4203 as well as GDJ6-1 in files GE-22-4205 and GE-22-4210.

³⁸ See GDJ6-2 and GDJ8-34 in file GE-22-4203 as well as GDJ6-2 in files GE-22-4205 and GE-22-4210.

³⁹ See section 10(1) of the Act.

– **Issue 2: Did the Appellant have good cause for the delay in applying for benefits, therefore justifying her antedate request?**

[41] I find that the Appellant’s reasons for applying late amount to good cause for such a delay, under the Act.

[42] But I find that it wasn’t until December 13, 2021 (week of December 12, 2021), not October 24, 2021, that the Appellant showed good cause for the delay in applying for benefits.

[43] A June 3, 2022, report by the Commission indicates that a [translation] “third party” had made a claim for benefits in the Appellant’s name on December 3, 2021, that it was a “fraudulent” claim, and that the third party in question had completed the claimant reports for the weeks of November 14 to 27, 2021.⁴⁰

[44] Other reports submitted by the Commission on June 23, 2022, and September 13, 2022, mention the fraud that the Appellant experienced in her EI file.⁴¹

[45] The Appellant’s testimony and statements indicate the following:

- a) She says she wants her claim for benefits to be antedated to start on December 13, 2021 (week of December 12, 2021), instead of October 26, 2021 (week of October 24, 2021), as she initially requested.
- b) After she stopped working on October 26, 2021, she didn’t apply for benefits within the time set out in the Act, since she didn’t think she was entitled to benefits.⁴²
- c) In early December 2021, she saw in her EI file (“My Service Canada Account”) that a claim for benefits had been made in her name and that the

⁴⁰ See GDJ8-70 and GDJ8-76 in file GE-22-4203.

⁴¹ See GDJ8-58 and GDJ8-60 in file GE-22-4203.

⁴² See GD2-11, GD3-20 to GD3-22, GD6-65, GD6-66, and GDJ8-20 in file GE-22-4203; GD2-11, GD3-20 to GD3-22, GD6-65, and GD6-66 in file GE-22-4205; and GD2-11, GD3-34 to GD3-36, GD6-65, and GD6-66 in file GE-22-4210.

claim had been approved (reactivation of a claim for benefits), but she wasn't the one who made it. A message told her how to complete her reports.⁴³

- d) On December 13, 2021, she contacted the Commission to tell it that a fraudulent claim for benefits had been made in her name and that she wasn't the one who made it. The Commission explained that her identity had been stolen in connection with her EI file. It also told her that she might be entitled to benefits, but it asked her not to apply for benefits at that time to avoid interfering with its investigation into the identity theft. It told her that she had to wait for a call from Integrity Services before applying.⁴⁴
- e) Between December 13, 2021, and the end of January 2022, the Appellant contacted the Commission at least three times to find out whether its investigation into the identity theft had ended and when she would be able to apply for benefits. Each time she contacted the Commission, a representative told her to wait for a call from Integrity Services before applying.⁴⁵
- f) The Appellant's January 27, 2022, statement to the Commission reports her as saying that she wasn't in financial difficulty but that she hadn't received anything, since another person had made a claim for benefits in her name.⁴⁶
- g) On February 18, 2022, a Commission representative told her that she could apply, which is what she did.⁴⁷
- h) Around September 2022, the Commission told her that her antedate request had been denied. The Appellant reiterated that she hadn't applied for benefits because her identity had been stolen. The Commission told her that, based on the file notes, she hadn't mentioned wanting to apply for benefits until the

⁴³ See GD2-11, GD6-65, GD6-66, and GDJ8-20 in file GE-22-4203; GD2-11, GD6-65, and GD6-66 in file GE-22-4205; and GD2-11, GD6-65, and GD6-66 in file GE-22-4210.

⁴⁴ See GD3-17 and GD3-20 to GD3-23 in file GE-22-4203, GD3-20 to GD3-22 in file GE-22-4205, and GD3-34 to GD3-36 in file GE-22-4210.

⁴⁵ See GD3-23 in file GE-22-4203.

⁴⁶ See GD3-5, GD3-6, and GDJ8-59 in file GE-22-4203.

⁴⁷ See GD3-23 in file GE-22-4203.

end of January 2022. The Appellant believes that her conversation with the Commission in early December 2021 wasn't fully recorded in her file.⁴⁸

[46] The Appellant's representative argues as follows:

- a) The Appellant had good cause, therefore justifying her antedate request to have her benefit period start on December 13, 2021 (week of December 12, 2021). From then on, she acted diligently, as a reasonable person in her situation would have done.⁴⁹
- b) The Digest of Benefit Entitlement Principles (Digest) says that you can ask for an antedate for part of the period of the delay when you apply late for benefits.⁵⁰
- c) The Appellant wanted to apply for benefits when she contacted the Commission in December 2021 to tell it about the identity theft.
- d) It is more likely that the Appellant was told she had to wait before applying for benefits given the identity theft, although it isn't mentioned in the summaries of her conversations with Commission representatives. Commission representatives don't always summarize their conversations with claimants if no decisions have been made. There was also a very large number of cases of identity theft in EI files around the time the Appellant had her identity stolen.⁵¹
- e) The Appellant didn't apply for benefits until February 18, 2022, because she followed the Commission's instructions.⁵²

⁴⁸ See GD2-11 and GDJ8-20 in file GE-22-4203 as well as GD2-11 in files GE-22-4205 and GE-22-4210.

⁴⁹ See GDJ8-6 and GDJ8-7 in file GE-22-4203.

⁵⁰ See GDJ8-4 in file GE-22-4203. See also section 3.2.2 of the Digest of Benefit Entitlement Principles (Digest). See also CUB 46459—GDJ8-73 to GDJ8-75 in file GE-22-4203.

⁵¹ See GDJ8-5 and GDJ8-6 in file GE-22-4203.

⁵² See GDJ8-4 in file GE-22-4203.

- f) Getting false information from the Commission is good cause for applying late.⁵³
- g) The Digest says: “The decision as to good cause is based on the credibility and reasonableness of the explanations, and the action taken as a consequence of the information received or allegedly received.”⁵⁴
- h) Between December 2021 and the end of January 2022, the Appellant was very active in getting information about her file, following up, and trying to resolve the identity theft issue by contacting the Commission several times.⁵⁵
- i) The Commission hasn’t explained why, following the Appellant’s reconsideration request, it decided that her benefit period could start on January 30, 2022,⁵⁶ rather than after February 12, 2022 (week of February 13, 2022), as it had initially determined.⁵⁷
- j) The Appellant applied for benefits after the Commission told her that she could, after the investigation by Integrity Services into the identity theft. This proves that the Appellant wanted to apply.

[47] The Commission, meanwhile, argues as follows:

- a) The Appellant didn’t act as a “reasonable person” in her situation would have acted to find out about their rights and obligations under the Act.⁵⁸
- b) She stopped working on October 26, 2021, but waited until February 18, 2022, to apply for benefits because she didn’t think she was entitled to

⁵³ See GDJ8-4 in file GE-22-4203. See also CUBs 62792 and 37589—GDJ8-66 to GDJ8-69 in file GE-22-4203.

⁵⁴ See GDJ8-4 in file GE-22-4203. See also section 3.3.7 of the Digest—GDJ8-64 and GDJ8-65 in file GE-22-4203.

⁵⁵ See GDJ8-3 in file GE-23-4203.

⁵⁶ See GD3-25, GD3-26, GD5-18, and GD5-19 in file GE-22-4203.

⁵⁷ See GD3-18, GD3-19, GDJ8-3, GDJ8-56, and GDJ8-57 in file GE-22-4203; GD3-18 and GD3-19 in file GE-22-4205; and GD3-32 and GD3-33 in file GE-22-4210.

⁵⁸ See GD4-4 and GD4-5 in file GE-22-4203.

benefits. She didn't intend to apply for benefits after her job ended on October 26, 2021.⁵⁹

- c) She didn't get information about her rights until February 18, 2022.⁶⁰
- d) Even though the Appellant argues that she didn't apply earlier because she was told she had to wait, the file contains no such indication. On the contrary, she said she didn't need benefits.⁶¹
- e) It wasn't until February 18, 2022, that she told the Commission she wanted to apply for benefits.⁶²
- f) The fact that the Appellant didn't contact the Commission until she learned that someone else had made a claim for benefits in her name shows that her intention at first wasn't to apply for benefits but to report a potentially fraudulent claim in her file.⁶³
- g) The facts of the case show that the Appellant never mentioned delaying applying for benefits because she was told she had to wait.⁶⁴
- h) The information discussed in each conversation with the Commission was properly recorded in the Appellant's file.⁶⁵

[48] Taking into account all the circumstances of her case, I find that the Appellant has shown that she had good cause for the delay in applying for benefits for part of the delay, that is, from December 13, 2021, to January 30, 2022.

⁵⁹ See GD4-4 and GD4-5 in file GE-22-4203.

⁶⁰ See GD4-5 in file GE-22-4203.

⁶¹ See GD4-4 in file GE-22-4203.

⁶² See GD4-4 in file GE-22-4203.

⁶³ See GD4-5 in file GE-22-4203.

⁶⁴ See GD4-5 in file GE-22-4203.

⁶⁵ See GD4-5 in file GE-22-4203.

[49] I find that, from December 13, 2021, the Appellant acted as a “reasonable person” would have acted in similar circumstances.

[50] I find that, from that point forward, exceptional circumstances related to the fraud in the Appellant’s EI file caused her to delay applying for benefits.

[51] I find that it is more likely than not that, when the Appellant contacted the Commission on December 13, 2021, to tell it that she had had her identity stolen or that someone other than her had made a fraudulent claim for benefits, her entitlement to benefits was also discussed at that time.

[52] Even though the Commission says that the file contains no indication of the Appellant being told to wait before applying for benefits and that, on December 13, 2021, she actually told it that she didn’t need benefits,⁶⁶ I am of the view that, at that time, she didn’t just make that kind of statement, without discussing the issue of her entitlement to benefits.

[53] I also find the Commission’s summary of its December 13, 2021, conversation with the Appellant to be brief, saying, in a single sentence, that the Appellant contacted it to tell it that a claim for benefits had been made in her name and [translation] “that she [didn’t] need [benefits].”⁶⁷

[54] On this point, I don’t find persuasive the Commission’s argument that the information discussed in each of its conversations with the Appellant was properly recorded in her file.⁶⁸

[55] I find more specific and complete the Appellant’s summary of the December 13, 2021, discussion she had with a Commission representative to report that a claim for benefits had been made using her name, but she wasn’t the one who made it.

⁶⁶ See GD4-4 in file GE-22-4203.

⁶⁷ See GD3-4 in file GE-22-4203.

⁶⁸ See GD4-5 in file GE-22-4203.

[56] I also have no reason to second-guess the Appellant's testimony and statements, since she was consistent.

[57] In the circumstances, I am of the view that it is likely the Commission recommended that the Appellant wait before applying for benefits. I find that such a recommendation was made to her, given her information that she had had her identity stolen in her EI file. And I find that she was told at that time that she might be entitled to benefits.

[58] I also accept from the Appellant's testimony that she contacted the Commission several times between December 13, 2021, and the end of January 2022, to get information about her EI file and find out about her rights and obligations, even though there are no summaries of those communications on file.

[59] In one of its decisions, the Tribunal's Appeal Division (Appeal Division), relying on the claimant's statements and testimony because no other evidence was available, found that the Commission hadn't told the claimant of the importance of applying for benefits in a timely manner or immediately.⁶⁹

[60] In that decision, the Appeal Division found that the claimant had properly enquired about his obligations by acting on the Commission's recommendations.⁷⁰

[61] While I am not bound by Appeal Division decisions, I find that decision to be similar to the Appellant's case in terms of the steps she says she took with the Commission on December 13, 2021, and later, concerning her application and the information the Commission gave her based on her situation. So, I take the same approach in assessing her case.

[62] I find that the Appellant's January 27, 2022, statement to the Commission, where she indicated that she [translation] "[hadn't received] anything" because another person

⁶⁹ See the decision of the Tribunal's Appeal Division in *DC v Canada Employment Insurance Commission*, 2018 SST 977.

⁷⁰ See the decision of the Tribunal's Appeal Division in *DC v Canada Employment Insurance Commission*, 2018 SST 977.

had made a claim for benefits in her name,⁷¹ also supports the idea that she took steps to get benefits before then.

[63] So, I don't accept the Commission's argument that [translation] "it was not until February 18, 2022," that the Appellant told it she wanted to apply for benefits and that she didn't get information about her rights until then.⁷²

[64] I find that the Appellant's explanation that, after she stopped working on October 26, 2021, she didn't apply for benefits within the time set out in the Act, since she didn't think she was entitled to benefits, doesn't amount to good cause for allowing an antedate to October 24, 2021.

[65] In my view, there is no evidence that the Appellant was prevented from applying for benefits on time after she stopped working on October 26, 2021, and until December 13, 2021.

[66] But I find that the Appellant has shown that, from December 13, 2021 (week of December 12, 2021), she acted as a reasonable and prudent person would have acted in similar circumstances to satisfy themselves as to their rights and obligations.

[67] I note that the Digest says that good cause for applying late for benefits may exist for part of the period of the delay in cases where that part immediately precedes the day on which the application was made.⁷³

[68] In this case, the Appellant applied for benefits on February 18, 2022. I find that she has shown that there was good cause for the delay for the period from December 13, 2021, until the day she applied for benefits.

[69] I find that the Appellant has shown that, from the week of December 12, 2021, she had good cause for the delay in applying for benefits.

⁷¹ See GD3-5, GD3-6, and GDJ8-59 in file GE-22-4203.

⁷² See GD4-4 and GD4-5 in file GE-22-4203.

⁷³ See section 3.2.2 of the Digest.

[70] Her application must be antedated to December 12, 2021.

[71] The appeal has some merit on this issue.

Voluntary leaving

[72] 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.

[73] 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.⁷⁴

[74] It is up to the claimant to prove that they had just cause.⁷⁵ This means that they have to show that it is more likely than not that their only reasonable option was to quit.

[75] 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 jobs end because she voluntarily left?

[76] I find that, for the two periods of employment in question, the Appellant's jobs did end because she voluntarily left under the Act.

[77] I find that the Appellant had the choice to continue working for the employers X and X but decided to voluntarily leave her job in each case.

[78] 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.⁷⁶

⁷⁴ 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.

⁷⁵ The Court established this principle in *White*, 2011 FCA 190 (para 3).

⁷⁶ The Court established this principle in *Peace*, 2004 FCA 56.

[79] In this case, the Appellant's testimony and statements show that she decided to leave her jobs with the employers in question.⁷⁷

[80] The Appellant doesn't dispute that she voluntarily left her jobs with both employers. I see no evidence to contradict this.

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

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

[82] For the two jobs in question, I find that the Appellant has shown that she had just cause for leaving when she did. She had a reason the Act accepts.

[83] The Appellant has shown, on a balance of probabilities, that she had just cause for leaving each job because of "working conditions that constitute a danger to health or safety."⁷⁸

[84] In my view, the Appellant had no reasonable alternative to voluntarily leaving in each case.

[85] I find the Appellant's testimony credible and place the most weight on it. The Appellant painted a detailed picture of the circumstances that led her to voluntarily leave her jobs, given her psychological state. She didn't contradict herself. She provided compelling documentary evidence about the fact that she has ASD and the consequences it can have in a work setting.

⁷⁷ See GD2-11, GD2-12, GD3-20 to GD3-22, GDJ8-20, and GDJ8-84 in file GE-22-4203; GD2-11, GD2-12, GD3-13 to GD3-GD3-16 [*sic*], and GD3-20 to GD3-23 in file GE-22-4205; and GD2-11, GD2-12, GD3-11 to GD3-25, GD3-28, GD3-29, and GD3-34 to GD3-37 in file GE-22-4210.

⁷⁸ See section 29(c)(iv) of the Act.

- [86] The statements the Commission got from the employer X indicate the following:
- a) The Appellant worked two days: January 27 and 28, 2022. She told the employer that she was leaving her job after her two days of work.⁷⁹
 - b) The Appellant explained to the employer that there was a personality clash between her and her trainer.⁸⁰
 - c) The Appellant was under pressure and didn't feel comfortable in this situation.⁸¹
 - d) The Appellant is shy, while the trainer is more a person of action.⁸²
 - e) The employer tried to find a solution, but the Appellant stuck with her decision to leave her job.⁸³
 - f) The employer didn't have time to talk to the trainer or to see what the options were to assign the Appellant to another team or trainer if necessary. The Appellant didn't give it a chance to consider all options before she left.⁸⁴
- [87] The statements the Commission got from the employer X indicate the following:
- a) The Appellant was hired as a room attendant for the summer. She worked from April 1, 2022, to May 8, 2022.⁸⁵
 - b) When she started her job, the Appellant told the employer that she didn't like her tasks. After a few days of work, she told it she would continue in her job.⁸⁶

⁷⁹ See GDJ8-82 in file GE-22-4203 as well as GD3-17 and GD3-24 in file GE-22-4205.

⁸⁰ See GDJ8-82 in file GE-22-4203 as well as GD3-24 in file GE-22-4205.

⁸¹ See GD3-17 in file GE-22-4205.

⁸² See GDJ8-82 in file GE-22-4203 as well as GD3-24 in file GE-22-4205.

⁸³ See GDJ8-82 in file GE-22-4203 as well as GD3-24 in file GE-22-4205.

⁸⁴ See GD3-17 and GD3-24 in file GE-22-4205.

⁸⁵ See GD3-31 and GD3-38 in file GE-22-4210.

⁸⁶ See GD3-38 in file GE-22-4210.

- c) She resigned in early May 2022. She told the employer that she could not take it anymore.⁸⁷
- d) The Appellant also told the employer that she was leaving her job to take another.⁸⁸
- e) The Appellant didn't talk to the employer about a different position. It could have found something else for her, given the labour shortage.⁸⁹

[88] The Appellant's testimony and statements about her voluntary leaving indicate the following:

- a) Her voluntary leaving is related to the fact that she has ASD.⁹⁰
- b) In her jobs at X and X, the anxiety she felt was so great or so unbearable that she had to quit for the sake of her mental health.⁹¹
- c) In March 2020, a psychologist (neuropsychologist) diagnosed her condition.⁹²

⁸⁷ See GD3-31 in file GE-22-4210.

⁸⁸ See GD3-38 in file GE-22-4210.

⁸⁹ See GD3-31 and GD3-38 in file GE-22-4210.

⁹⁰ See GD2-12 and GDJ8-84 in file GE-22-4203, GD2-12 and GD3-13 to GD3-15 in file GE-22-4205, and GD2-12 in file GE-22-4210.

⁹¹ See GD2-12 in files GE-22-4203, GE-22-4205, and GE-22-4210.

⁹² See the document entitled [translation] "Psychological Assessment Report," by Dr. Marie-Hélène Prud'homme, PsyD, Psychologist, from the Clinique de consultation, intervention et formation en autisme [autism consultation, intervention, and training clinic] (CCIFA), dated March 19, 2020. The document indicates the following: [translation] "Diagnosed with schizotypal personality disorder by Dr. Daudelin. [...] ASD screening questionnaires (AQ, EQ, FQ, and SQ-R) [...] The questionnaire results are indicative of observations that point to autism spectrum disorder in [the Appellant]. [...] The ADOS (Autism Diagnostic Observation Schedule) [...] The ADOS algorithm results are indicative of observations that point to autism spectrum disorder in [the Appellant]. [...] In light of the various notes and results for the diagnostic assessment tools and of the comments received from [the Appellant] [...] Discussions with people involved in the network [...] Discussion with [...], employment counsellor with the SEMO-CA [...] [The employment counsellor] is supporting [the Appellant] in adjusting to her new position as a management assistant at a construction company. She had to intervene with [the Appellant] in her third week of work [...] Discussion with [...], social worker at the PISE in Québec [...] She met [the Appellant] [...] and followed up for a year, from September 2018 to July 2019. It is a mental health employment support service. She supported [the Appellant] in returning to her position with the ministry of finance after a medical leave of absence. [...] Discussion with Dr. Daudelin, psychiatrist [...] Dr. Daudelin acknowledges [the Appellant]'s social characteristics and finds that they can be explained by the diagnosis of schizotypal personality disorder. [...] [The Appellant] has characteristics that meet the diagnostic criteria for level 1 (support level) autism spectrum disorder, as defined by the DSM-V (*Diagnostic and Statistical Manual of*

- d) In November 2022, the psychologist behind the March 2020 report wrote another report about the Appellant's condition.⁹³
- e) The Appellant's condition makes it difficult for her to keep her jobs.⁹⁴
- f) Given her diagnosis, when things aren't going well at work, she can't help but panic, have an [translation] "autistic meltdown," and resign.⁹⁵
- g) She is being followed by a psychiatrist and by other health professionals from the Centre de réadaptation en déficience intellectuelle pour les troubles du spectre de l'autisme [intellectual disability rehabilitation centre for autism spectrum disorder] (CRDI-TSA).
- h) When she was diagnosed in 2020, she was somewhat left to her own devices, until she changed psychiatrists about six months ago.
- i) The psychiatrist who followed her until around the fall of 2022—that is, during the time she worked for different employers—wasn't very up to date on what

Mental Disorders, Fifth Edition, APA - American Psychiatric Association). Her psychiatrist made a diagnosis of schizotypal personality disorder in connection with her episodes of psychosis. The two conditions can co-exist."—GD6-29 to GD6-38 and GDJ8-36 to GDJ8-45 in file GE-22-4203 as well as GD6-29 to GD6-38 in files GE-22-4205 and GE-22-4210.

⁹³ See the document entitled [translation] "Functional Capacity Evaluation Report" by Dr. Marie-Hélène Prud'homme, PsyD, Psychologist, from the CCIFA, dated November 24, 2022. The document indicates the following: [translation] "[The Appellant] has schizotypal personality disorder (controlled with medication) and autism spectrum disorder, as well as high-average intelligence. She has sensory sensitivities (auditory, tactile, olfactory) and difficulties with social understanding and social skills. [...] In terms of her different jobs, she says that, once she was on the job, the tasks expected of her didn't match what she had thought or understood about them. The information hadn't been clear enough to her. For some jobs, the tasks were unstimulating and unstructured. When she shared her thoughts, some places suggested possibly changing her tasks, but the uncertainty of what would be proposed without a clear explanation made her more anxious, which affected her sleep, leading to a cycle of fatigue and exhaustion that she wasn't able to overcome on her own. [...] [She] has difficulties with adaptive behaviours, [and] her overall functioning is poor compared to her age group. Her autism spectrum disorder and schizotypal personality disorder are also to be considered as affecting her job skills. Despite her high-average intelligence, accommodations must be suggested and implemented in future workplaces. [...] Employers will need to know what ASD and schizotypal personality disorder are, and employees will need to be educated."—GD6-25 to GD6-28 and GDJ8-46 to GDJ8-49 in file GE-22-4203 as well as GD6-25 to GD6-28 in files GE-22-4205 and GE-22-4210.

⁹⁴ See GD6-7 and GDJ8-84 in file GE-22-4203, GD6-7 and GD3-23 in file GE-22-4205, and GD6-7 in file GE-22-4210.

⁹⁵ See GD3-20 to GD3-22 in file GE-22-4205 as well as GD3-34 to GD3-36 in file GE-22-4210.

ASD is. She didn't offer the Appellant any help or support with her medical condition. If she had referred the Appellant to the CRDI-TSA then, the latter could have gotten help sooner.

- j) Her new psychiatrist didn't know her when she left her jobs at X and X. He didn't feel comfortable recommending "retroactive" medical leaves of absence (for example, periods of employment in 2022). The same was true of the doctors she saw (for example, without an appointment). They also weren't comfortable doing it, since they didn't follow up with her.
- k) The Appellant says that medical certificates show that she was unable to work for medical reasons (for example, adjustment disorder, difficulties with emotional management) from September 28, 2022, to October 30, 2022, inclusive; that she could return to work gradually from October 31, 2022, to November 20, 2022, and then full-time from November 21, 2022;⁹⁶ and that she was again unable to work for health reasons (for example, adjustment disorder, ASD, affective anxiety symptoms) from January 10, 2023, to March 27, 2023, inclusive.⁹⁷
- l) The CRDI-TSA has been helping her with her personal development since the fall of 2022.
- m) An agency in La Pocatière called Univers Emploi is also helping to make it easier for her to find a job, a bit like the Service externe de main-d'œuvre de Chaudière-Appalaches [Chaudière-Appalaches external employment service] (SEMO-CA).
- n) The aspects related to her psychological state or medical condition weren't discussed with the employers X and X before she started working for them, whether during her periods of employment or when she left those jobs. She

⁹⁶ See GD6-1 to GD6-6 in files GE-22-4203, GE-22-4205, and GE-22-4210.

⁹⁷ See GD8-2, GD9-5, and GD9-6 in files GE-22-4203, GE-22-4205, and GE-22-4210.

says that she would not have known what accommodation to ask the employers for, given her situation.

[89] Concerning her job at X specifically, the Appellant says the following:

- a) She left her job because of a personality clash with her trainer. The latter put a lot of pressure on her, wasn't patient with her, and made her feel incompetent. This situation was very stressful for her.⁹⁸
- b) On her first day of work, the Appellant and her manager discussed the problems with her training. Her manager told her to talk about it with her trainer, which is what she did. During that discussion, her trainer told her that she didn't have time to show her things twice and that she had had to put projects on hold to be able to train her, so the Appellant had to pay attention and listen.⁹⁹
- c) After her first day of work, the Appellant realized that she could not work in such an environment but decided she would try one last day.¹⁰⁰
- d) On her second day of work, her trainer made comments to her that were similar to the ones made on her first day. Her trainer judged her and made her feel bad about not knowing or understanding things. The Appellant found that they weren't getting along at all.¹⁰¹
- e) The Appellant says the following happened on that second day: Her trainer, who was teleworking with her, asked her whether there were tickets to process in the request centre, that is, requests from users (clients) to resolve technical issues. Her trainer pointed out that there was an urgent request to

⁹⁸ See GD2-11 and GDJ8-20 in file GE-22-4203; GD2-11, GD3-13 to GD3-16, and GD3-20 to GD3-22 in file GE-22-4205; and GD2-11 and GD3-23 in file GE-22-4210.

⁹⁹ See GD2-11 and GDJ8-20 in file GE-22-4203, GD2-11 and GD3-16 in file GE-22-4205, and GD2-11 in file GE-22-4210.

¹⁰⁰ See GD2-11 and GDJ8-20 in file GE-22-4203 as well as GD2-11 in files GE-22-4205 and GE-22-4210.

¹⁰¹ See GD2-11 and GDJ8-20 in file GE-22-4203, GD2-11 and GD3-16 in file GE-22-4205, and GD2-11 in file GE-22-4210.

process. The Appellant asked her whether she wanted to screen share to show her what it was. Her trainer replied, [translation] “Show you what? [...] And you didn’t take care of the ticket, so I did.”¹⁰²

- f) The Appellant spoke with her employer (manager) about the fact that her personality clashed with her trainer’s and that she didn’t feel comfortable in this situation. The employer said that it would first discuss this with her trainer but that she was the only one who could train her, and there were no other options. The Appellant says that it wasn’t possible for her to hold a different position.¹⁰³
- g) The Appellant decided to leave her job, without waiting for the employer to talk to her trainer, because the pressure was far too stressful for her. She panicked at the thought of having to finish her day. She didn’t feel she could continue working there.¹⁰⁴

[90] Concerning her job at X, the Appellant says the following:

- a) She didn’t like her tasks.¹⁰⁵
- b) She could not see herself working there all summer like she had promised, since she would likely have gotten sick before the end of the summer. She felt anxious about continuing to work there, which she could not handle. She had reached the point where, every time she finished a task and started another, she felt extremely unhappy and unmotivated.¹⁰⁶

¹⁰² See GD2-11, GD6-11, GD6-12, and GDJ8-20 in file GE-22-4203; GD2-11, GD3-23, GD6-11, and GD6-12 in file GE-22-4205; and GD2-11, GD6-11, and GD6-12 in file GE-22-4210.

¹⁰³ See GD2-11 and GDJ8-20 in file GE-22-4203; GD2-11, GD3-13 to GD3-16, and GD3-23 in file GE-22-4205; and GD2-11 in file GE-22-4210.

¹⁰⁴ See GD2-11 and GDJ8-20 in file GE-22-4203; GD2-11, GD3-16, and GD3-23 in file GE-22-4205; and GD2-11 in file GE-22-4210.

¹⁰⁵ See GD2-12, GDJ8-21, and GDJ8-84 in file GE-22-4203; and GD2-12, GD3-11 to GD3-25, GD3-30, and GD3-37 in file GE-22-4210.

¹⁰⁶ See GD2-12, GDJ8-21, and GDJ8-84 in file GE-22-4203; and GD2-12, GD3-11 to GD3-25, GD3-28 to GD3-30, and GD3-37 in file GE-22-4210.

- c) In early May 2022, she gave the employer two weeks' notice that she was leaving. She hoped to be able to honour it. After she gave it, the employer reduced her hours.¹⁰⁷
- d) Despite the notice, she left her job on May 8, 2022.¹⁰⁸
- e) Before leaving, she didn't ask for a transfer to a different position (for example, to work in the kitchen or as a server).¹⁰⁹
- f) It upset her that she had broken her promise, since she had told the employer that she wanted a job for the summer. She felt unreliable.¹¹⁰
- g) This was her fourth job in less than a year. She points out that working is important to her but that she worked for only about two months in one year.¹¹¹
- h) After her last day of work, she took steps to apply for social assistance.¹¹²

[91] The representative argues as follows:

- a) The Appellant had just cause for leaving her jobs at X and X.¹¹³ She had no reasonable alternative to leaving them.
- b) The Commission should have considered the Appellant's psychological state and her [translation] "medical reality,"¹¹⁴ including the fact that she has ASD, in assessing whether she had just cause for voluntarily leaving, and it should have considered that it was a [translation] "mitigating circumstance."¹¹⁵

¹⁰⁷ See GD2-12, GDJ8-21, and GDJ8-84 in file GE-22-4203; GD2-12 in file GE-22-4205; and GD2-12, GD3-20, GD3-29, and GD3-37 in file GE-22-4210.

¹⁰⁸ See GD2-12 and GDJ8-21 in file GE-22-4203 as well as GD2-12 in files GE-22-4205 and GE-22-4210.

¹⁰⁹ See GDJ8-84 in file GE-22-4203 as well as GD3-30 and GD3-37 in file GE-22-4210.

¹¹⁰ See GD2-12, GDJ8-21, and GDJ8-22 in file GE-22-4203; and GD2-12 in files GE-22-4205 and GE-22-4210.

¹¹¹ See GD2-12 and GDJ8-22 in file GE-22-4203 as well as GD2-12 in files GE-22-4205 and GE-22-4210.

¹¹² See GD2-13 and GDJ8-22 in file GE-22-4203 as well as GD2-13 in files GE-22-4205 and GE-22-4210.

¹¹³ See sections 29 and 30 of the Act.

¹¹⁴ See GDJ8-10 in file GE-22-4203.

¹¹⁵ See GDJ8-10 and GDJ8-11 in file GE-22-4203.

- c) The representative says he finds it incomprehensible that the Commission excluded anything to do with the Appellant's psychological condition from its arguments.
- d) The Commission should also consider how difficult it can be for a person with ASD to enter the job market in determining whether they had just cause for voluntarily leaving their job.¹¹⁶
- e) The Appellant's ASD diagnosis was made in 2020.
- f) The Appellant voluntarily left the two employers in question in the midst of [translation] "autistic meltdowns" or "emotional overdoses." This means that she had [translation] "intense emotional meltdowns" that affected her mental health and well-being. If it hadn't been for the "meltdowns" she had in those jobs, she would not have voluntarily left.¹¹⁷
- g) The representative disagrees with the Commission's argument that there is no information on file to support a finding that the Appellant's situation at her job with X [translation] "was so unbearable or serious that she had to leave suddenly without waiting to see how things would turn out with the manager."¹¹⁸
- h) In the circumstances, it was reasonable for the Appellant to leave that job to protect her health, given what had happened with her trainer.
- i) It seems clear that the trainer was "rude" to the Appellant. According to the representative, the situation was unbearable for the Appellant and could have harmed her or made things worse for her if she had continued working for that employer.

¹¹⁶ See GDJ8-9 in file GE-22-4203.

¹¹⁷ See GDJ8-7 and GDJ8-10 in file GE-22-4203.

¹¹⁸ See GD4-5 in file GE-22-4205.

- j) The Appellant tried to find a solution by talking to her immediate supervisor (for example, changing positions or trainers).¹¹⁹
- k) The Act says that a claimant is entitled to leave their job because of “antagonism with a supervisor if the claimant is not primarily responsible for the antagonism.”¹²⁰
- l) The Commission unilaterally accepted the employer’s version of events.¹²¹
- m) As for the job at X, the Appellant also had just cause for leaving given her mental state and her [translation] “medical reality.”¹²²
- n) The nature of the work that the Appellant was doing and the work environment she was in when she announced her resignation contributed to her worsening emotional state.¹²³
- o) The Appellant has shown that she made efforts to resolve the situation with the employer. She decided to leave her job to protect her mental health.
- p) It wasn’t a suitable job for the Appellant.¹²⁴ It wasn’t suitable for her medical condition. Her health and physical capabilities didn’t allow her to perform the work.¹²⁵
- q) The Appellant has a bachelor’s degree in business administration and has previously worked in that field.

¹¹⁹ See GDJ8-8 in file GE-22-4203.

¹²⁰ See section 29(c)(x) of the Act. See also GDJ8-7 in file GE-22-4203.

¹²¹ See GDJ8-8 and GDJ8-9 in file GE-22-4203.

¹²² See GDJ8-10 in file GE-22-4203.

¹²³ See GDJ8-10 in file GE-22-4203.

¹²⁴ See section 9.3.1.1 of the Digest.

¹²⁵ See section 9.3.1.1 of the Digest. See also GDJ8-10, GDJ8-11, and GDJ8-85 to GDJ8-94 in file GE-22-4203.

- r) The Appellant had difficulty going back to work. In the past, she acted in good faith in going back to work after a period of illness that had caused her to leave a job. She accepted the job that was available to her.
- s) The Appellant made a very honest attempt to go back to work, but it failed. She could not have known this until she was on the job. One of the reports from a neuropsychologist describing her condition says that she has difficulty understanding the nature of the job she takes and that she doesn't understand it until she works at that job.¹²⁶
- t) The EI program should be modified to better protect people with ASD who make significant efforts to enter the job market when things don't go well in the jobs they have and they voluntarily leave.¹²⁷

[92] I find that the Appellant's reasons for leaving her jobs at X and X show that she had just cause for leaving under the Act.

[93] Given the Appellant's psychological state, related to the fact that she has ASD, I find that continuing to work for the employers in question could have been harmful or damaging to her health or safety.

[94] The Appellant explains that she is being followed by a psychiatrist and by other health professionals from the CRDI-TSA.

[95] I accept her explanations that the symptoms she experienced when working for the employers in question (for example, stress, anxiety, "meltdowns") were so intense that she had to leave her jobs for the sake of her mental health.¹²⁸

¹²⁶ See GD6-25 to GD6-28 and GDJ8-46 to GDJ8-49 in file GE-22-4203 as well as GD6-25 to GD6-28 in files GE-22-4205 and GE-22-4210.

¹²⁷ See GDJ8-9 in file GE-22-4203.

¹²⁸ See GD2-12 in files GE-22-4203, GE-22-4205, and GE-22-4210.

[96] Her explanations are also supported by compelling documentary evidence.¹²⁹

[97] A report by a psychologist from March 2020 gives a comprehensive description of the Appellant's psychological condition.¹³⁰

[98] This document says that the Appellant has characteristics that meet the diagnostic criteria for ASD.¹³¹

[99] This document also refers to the Appellant's specific medical diagnosis from a psychiatrist.¹³²

[100] In addition, this document says that, for jobs that the Appellant had from 2018 onward, a support service helped her find and keep work, either through a specific mental health support program (for example, the Programme intégré de soutien à l'emploi [integrated employment support program] or PISE, a job market integration program for people with mental health problems) or through the SEMO (for example, the SEMO-CA), an agency that works with people with disabilities.¹³³

[101] I also note from the Appellant's testimony that she didn't receive this type of support when she worked at X and X. She says that, after the March 2020 report, she was left to her own devices until she changed psychiatrists in the fall of 2022.

[102] I find that, on top of having ASD, the Appellant didn't get adequate support from health workers to help her find and keep work. In my view, this situation supports the

¹²⁹ See the document entitled [translation] "Psychological Assessment Report" dated March 19, 2020—GD6-29 to GD6-38 and GDJ8-36 to GDJ8-45 in file GE-22-4203 as well as GD6-29 to GD6-38 in files GE-22-4205 and GE-22-4210.

¹³⁰ See the document entitled [translation] "Psychological Assessment Report" dated March 19, 2020—GD6-29 to GD6-38 and GDJ8-36 to GDJ8-45 in file GE-22-4203 as well as GD6-29 to GD6-38 in files GE-22-4205 and GE-22-4210.

¹³¹ See the document entitled [translation] "Psychological Assessment Report" dated March 19, 2020—GD6-29 to GD6-38 and GDJ8-36 to GDJ8-45 in file GE-22-4203 as well as GD6-29 to GD6-38 in files GE-22-4205 and GE-22-4210.

¹³² See the document entitled [translation] "Psychological Assessment Report" dated March 19, 2020—GD6-29 to GD6-38 and GDJ8-36 to GDJ8-45 in file GE-22-4203 as well as GD6-29 to GD6-38 in files GE-22-4205 and GE-22-4210.

¹³³ See the document entitled [translation] "Psychological Assessment Report" dated March 19, 2020—GD6-29 to GD6-38 and GDJ8-36 to GDJ8-45 in file GE-22-4203 as well as GD6-29 to GD6-38 in files GE-22-4205 and GE-22-4210.

idea that her health or safety could have been at risk if she had continued working for the employers in question.

[103] A November 2022 report by the same psychologist behind the March 2020 report gives details about the Appellant's psychological state, including the fact that she has ASD and difficulties with social understanding and social skills.¹³⁴

[104] The report also says that the Appellant's psychological state is to be considered as affecting her job skills.¹³⁵

[105] Although the report came after the Appellant voluntarily left her jobs, I find that the conditions described related to her need for support to help her find and keep work already existed when she worked for the employers in question in 2021.

[106] The Commission argues that the Appellant should not have spontaneously left her jobs before exhausting all reasonable alternatives, even though she [translation] "might have experienced some difficulties related to a diagnosis."¹³⁶

[107] The Commission says that this was the case when the Appellant worked at X, even though she felt that her personality clashed with her trainer's.¹³⁷ In the Commission's view, the same was true when the Appellant worked at X, even though in that case, she indicated that she would likely have gotten sick before the end of the summer and that she had had a "meltdown."¹³⁸

¹³⁴ See the document entitled [translation] "Functional Capacity Evaluation Report" dated November 24, 2022—GD6-25 to GD6-28 and GDJ8-46 to GDJ8-49 in file GE-22-4203 as well as GD6-25 to GD6-28 in files GE-22-4205 and GE-22-4210.

¹³⁵ See the document entitled [translation] "Functional Capacity Evaluation Report" dated November 24, 2022—GD6-25 to GD6-28 and GDJ8-46 to GDJ8-49 in file GE-22-4203 as well as GD6-25 to GD6-28 in files GE-22-4205 and GE-22-4210.

¹³⁶ See GD4-5 in files GE-22-4205 and GE-22-4210.

¹³⁷ See GD4-5 in file GE-22-4205.

¹³⁸ See GD4-5 in file GE-22-4210.

[108] For both instances of voluntary leaving, the Commission also argues that there is [translation] “no medical certificate saying that she had to leave her job permanently because of her health.”¹³⁹

[109] I don’t accept the Commission’s arguments on these points.

[110] I find that the Commission’s analysis fails to consider the contents of a very detailed report by a psychologist from March 2020 specifically about the Appellant’s psychological state, in connection with the fact that she has ASD.¹⁴⁰

[111] I note that this same document also refers to a health diagnosis from a psychiatrist.¹⁴¹

[112] I find that the Commission also didn’t consider the fact that the Appellant is being followed by a psychiatrist and other health care providers (for example, the CRDI-TSA).

[113] Even though the Appellant hasn’t provided specific medical evidence showing that she was unable to continue working for the two employers in question for health reasons, I find that she has provided detailed and convincing explanations of the symptoms she experienced in each job. She has described the potential health risks of continuing in those jobs without adequate support.

[114] Her explanations are supported by the equally compelling pieces of evidence that are the psychologist’s reports.¹⁴²

¹³⁹ See GD4-5 in files GE-22-4205 and GE-22-4210.

¹⁴⁰ See the document entitled [translation] “Psychological Assessment Report” dated March 19, 2020—GD6-29 to GD6-38 and GDJ8-36 to GDJ8-45 in file GE-22-4203 as well as GD6-29 to GD6-38 in files GE-22-4205 and GE-22-4210.

¹⁴¹ See the document entitled [translation] “Psychological Assessment Report” dated March 19, 2020—GD6-29 to GD6-38 and GDJ8-36 to GDJ8-45 in file GE-22-4203 as well as GD6-29 to GD6-38 in files GE-22-4205 and GE-22-4210.

¹⁴² See the document entitled [translation] “Psychological Assessment Report” dated March 19, 2020, and the document entitled [translation] “Functional Capacity Evaluation Report” dated November 24, 2022—GD6-25 to GD6-38 and GDJ8-36 to GDJ8-49 in file GE-22-4203 as well as GD6-25 to GD6-38 in files GE-22-4205 and GE-22-4210.

[115] In addition, the evidence on file indicates that the Appellant was unable to work for medical reasons—including reasons related to her having ASD—several times, before and after her periods of employment with X and X.¹⁴³

[116] In my view, this evidence also supports that, for both jobs, the Appellant experienced symptoms similar to those described in medical certificates to determine that she was unable to work for medical reasons during periods that came after those two jobs.

[117] I find that, objectively, the Appellant wasn't required to continue in jobs that could have put her health or safety at risk.

[118] I find that the Appellant had just cause for voluntarily leaving her jobs because of "working conditions that constitute a danger to health or safety."¹⁴⁴

[119] I find that the Appellant has shown that she had no reasonable alternative to leaving her jobs when she did.

[120] The appeal has merit on the issue of the Appellant's voluntary leaving.

Conclusion

[121] I find that the Appellant has shown that, from the week of December 12, 2021, she had good cause for the delay in applying for EI benefits.

[122] Considering all the circumstances, I find that the Appellant had just cause for leaving the jobs she had on January 27 and 28, 2022, and during the period from April 1, 2022, to May 8, 2022. For each job, she had no reasonable alternative to leaving.

¹⁴³ See the document entitled [translation] "Psychological Assessment Report" dated March 19, 2020—GD6-29 to GD6-38 and GDJ8-36 to GDJ8-45 in file GE-22-4203 as well as GD6-29 to GD6-38 in files GE-22-4205 and GE-22-4210. See also GD6-1 to GD6-6, GD8-2, GD9-5, and GD9-6 in files GE-22-4203, GE-22-4205, and GE-22-4210.

¹⁴⁴ See section 29(c)(iv) of the Act.

[123] The Appellant's disqualifications from receiving benefits from February 13, 2022, and from May 8, 2022, aren't justified.

[124] This means that the appeal is allowed in part.

Normand Morin
Member, General Division – Employment Insurance Section