



[TRANSLATION]

Citation: *VB v Canada Employment Insurance Commission*, 2023 SST 522

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

## Decision

**Appellant:** V. B.  
**Representative:** M. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (476508) dated May 16, 2022 (issued by Service Canada)

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**Tribunal member:** Normand Morin

**Type of hearing:** Teleconference  
**Hearing date:** March 3, 2023  
**Hearing participant:** Appellant's representative  
**Decision date:** April 14, 2023  
**File number:** GE-22-2010

## Decision

[1] The appeal is dismissed. I find that the Appellant didn't have just cause for voluntarily leaving his job.<sup>1</sup> He had reasonable alternatives to leaving. This means that his disqualification from receiving Employment Insurance (EI) regular benefits from December 5, 2021, is justified.

[2] I am not making a decision on the Appellant's disqualification from receiving benefits from September 5, 2021, which the Canada Employment Insurance Commission (Commission) refers to in its arguments,<sup>2</sup> because it hasn't made a reconsideration decision on this issue.<sup>3</sup> For this reason, I am also not making a decision about the amount of money the Commission is asking the Appellant to repay for benefits he was allegedly overpaid as a result of that disqualification.<sup>4</sup>

## Overview

[3] On December 4, 2020, the Appellant made an initial claim for EI benefits (regular benefits).<sup>5</sup> A benefit period was established effective November 29, 2020.<sup>6</sup>

[4] From September 6 to 17, 2021, the Appellant worked as a warehouse clerk for the employer X (employer) and stopped working for that employer after voluntarily leaving.<sup>7</sup>

[5] From October 4, 2021, to December 3, 2021, he worked as a tire fitter for the employer X and stopped working for that employer because of a shortage of work.<sup>8</sup>

[6] On March 31, 2022, the Commission told him that he wasn't entitled to EI benefits from December 5, 2021, because he had voluntarily left his job for the

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<sup>1</sup> See sections 29 and 30 of the *Employment Insurance Act* (Act).

<sup>2</sup> See GD8-1.

<sup>3</sup> See section 113 of the Act.

<sup>4</sup> See section 113 of the Act.

<sup>5</sup> See GD3-3 to 12.

<sup>6</sup> See GD3-1.

<sup>7</sup> See GD16-2 and GD16-3.

<sup>8</sup> See GD16-4 and GD16-5.

employer X on September 7, 2021, without good cause within the meaning of the Act. It told him that, since his benefit period began on December 5, 2021, he wasn't entitled to benefits from that date.<sup>9</sup>

[7] On May 16, 2022, after a reconsideration request, the Commission told him that it was upholding the March 31, 2022, decision. It told him that he would receive a notice of debt and that it could deduct the amount he owed from his future benefits.<sup>10</sup>

[8] The Appellant says that he had just cause for leaving his job. He argues that he had assurance of another job before leaving the one he had with X. The Appellant also argues that, when he completed his claimant reports, he indicated his periods of work, the hours he had worked, and the amounts of money he had earned. He argues that he should not have to pay back the Commission's benefit overpayment. On June 13, 2022, the Appellant challenged the Commission's reconsideration decision before the Tribunal. This decision is being appealed to the Tribunal.

## Issues

[9] In this case, I have to decide whether the Appellant had just cause for voluntarily leaving his job.<sup>11</sup> To decide this, I must answer the following questions:

- Does the Appellant's termination of employment amount to voluntary leaving?
- If so, did the Appellant have no reasonable alternative to voluntarily leaving?

## Analysis

[10] The *Employment Insurance Act* (Act) says that you are disqualified from receiving benefits if you left your job voluntarily and you 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.

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<sup>9</sup> See GD3-40 and 41.

<sup>10</sup> See GD2-9, GD3-46, and GD3-47.

<sup>11</sup> See sections 29 and 30 of the Act.

[11] Federal Court of Appeal (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.<sup>12</sup>

[12] It is up to the Claimant to prove that he had just cause.<sup>13</sup> 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. When I decide whether a claimant had just cause, I have to look at all of the circumstances that existed when they quit.

### **Question 1: Does the Appellant's termination of employment amount to voluntary leaving?**

[13] I find that, in this case, the Appellant's termination of employment does amount to voluntary leaving within the meaning of the Act.

[14] I find that the Appellant had the choice to continue working for the employer X but that he chose to leave his job voluntarily.

[15] The Court tells us that, in a case of voluntary leaving, it must first be determined whether the person had the choice to stay at their job.<sup>14</sup>

[16] In this case, the Appellant's statements indicate that he chose to leave his job at X.<sup>15</sup>

[17] The Appellant's representative says that the Appellant chose to change jobs.

[18] The Appellant doesn't dispute that he voluntarily left his job. I have no evidence to contradict this.

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<sup>12</sup> The Court established or reiterated this principle in *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.

<sup>13</sup> The Court established this principle in *White*, 2011 FCA 190, at para 3.

<sup>14</sup> The Court established this principle in *Peace*, 2004 FCA 56.

<sup>15</sup> See GD2-5, GD3-37 to 39, GD3-42, and GD3-45.

[19] I now have to decide whether the Appellant had just cause for voluntarily leaving his job and whether he had no reasonable alternative to leaving when he did.

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

[20] In this case, I find that the Appellant hasn't shown that he had just cause for leaving his job when he did. He didn't have a reason the Act accepts.

[21] I am of the view that he had reasonable alternatives to voluntarily leaving his job when he did.

[22] The Appellant's claimant reports indicate that he worked during the period from September 5 to 25, 2021, and that he didn't stop working for an employer during that time.<sup>16</sup>

[23] The Appellant argues that he didn't voluntarily leave his job without good cause.<sup>17</sup> His statements indicate the following:

- a) His October 12, 2021, statement to the Commission says that he stopped working at X on September 7, 2021.<sup>18</sup>
- b) He was assured of a job with X. He changed jobs within a two-week period.<sup>19</sup>
- c) He started working for this employer on October 4, 2021.<sup>20</sup>
- d) He also left his job at X for medical reasons. His work there involved lifting and carrying boxes (for example, boxes of screws, nuts, and bolts). This work caused him back pain. He was no longer physically able to continue the work he was doing. He was worried about getting injured again. He received massage therapy. Although he doesn't have a medical document indicating

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<sup>16</sup> See GD3-20 to 34.

<sup>17</sup> See GD3-42 and 45.

<sup>18</sup> See GD3-38.

<sup>19</sup> See GD2-5 and GD3-43.

<sup>20</sup> See GD3-37 to 39.

that he was unable to work for health reasons, a physiotherapist advised him to leave his job.<sup>21</sup>

- e) As part of his job at X, there were no opportunities to be transferred to a more suitable job. He discussed the possibility of changing jobs with the employer, but it denied his request. He could not ask the employer for a leave of absence. He chose another job, which was better suited to his health.<sup>22</sup>

[24] The Appellant's representative makes the following arguments:

- a) The Appellant had just cause for voluntarily leaving his job at X. He left it to work at X.
- b) He worked at X from September 6, 2021, until the week ending September 25, 2021, as indicated in his claimant reports. In each of his reports, he specified his hours of work and the amounts of money he earned for each of the weeks in question (24 hours in the week of September 5 to 11, 2021: \$334.00; 32 hours in the week of September 12 to 18, 2021: \$512.00; and 12 hours in the week of September 19 to 25, 2021: \$192.00).<sup>23</sup>
- c) The Appellant's bank statement says that the employer paid him September 16, 2021 (\$357.80), and September 23, 2021 (\$509.83).<sup>24</sup>
- d) The T4 statement issued by this employer indicates that the Appellant received earnings of \$1,016.32 for his employment period there.<sup>25</sup>
- e) The representative points out that the Appellant would not have declared hours worked if he hadn't done them.

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<sup>21</sup> See GD3-37 to 39, GD3-42, and GD3-45.

<sup>22</sup> See GD3-37 to 39 and GD3-42.

<sup>23</sup> See GD3-20 to 34.

<sup>24</sup> See GD14-2 and GD14-5.

<sup>25</sup> See GD14-1.

- f) When he worked at X, he had back pain from carrying boxes. He didn't discuss this issue with the employer and didn't see a doctor before leaving his job. He knew that he would be able to work in another job.
- g) Around September 18, 2021, about a week before his job at X ended, he knew that he would start a new job at X. He knew the people who worked there. He started working for this employer on October 4, 2021. He had to wait until the demand for tire changes was large enough to start. This was a full-time job. He could have continued working for this employer after December 2021. He went back to school after that.

[25] The employer X's statements indicate the following:

- a) It doesn't remember when the Appellant had a promise of a job. However, given the shortage of staff, a person who wants to work for its business is hired immediately if their application is suitable.<sup>26</sup>
- b) If the Appellant started working on October 4, 2021, it received his application no more than a week earlier.<sup>27</sup>
- c) It isn't possible that it told the Appellant that it was promising him a job on or before September 7, 2021, as he would have started working well before October 4, 2021.<sup>28</sup>

[26] I find that the Appellant's explanations for voluntarily leaving his job at X don't show that he had just cause within the meaning of the Act.

[27] I find that, before leaving his job with that employer, he hadn't gotten reasonable assurance of another job in the immediate future.<sup>29</sup>

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<sup>26</sup> See GD3-44.

<sup>27</sup> See GD3-44.

<sup>28</sup> See GD3-44.

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

[28] I find that the Appellant's employment period with X was from September 6 to September 17, 2021, as stated in the amended or replaced Record of Employment, issued by that employer on November 15, 2021.<sup>30</sup>

[29] I find the Appellant's and his representative's statements on this point to be contradictory.

[30] In one of his statements to the Commission, the Appellant indicated that his last day of work was September 7, 2021.<sup>31</sup>

[31] In his claimant reports for the period from September 5 to 25, 2021, the Appellant says that he worked during that period.<sup>32</sup> For the three weeks in question, he answered "no" to the question of whether he had stopped working for an employer.<sup>33</sup>

[32] The representative, on the other hand, argues that the Appellant's employment period with X ended the week ending September 25, 2021.

[33] I don't accept the representative's argument on this point.

[34] I find that her indication that the Appellant's job with X would have ended in the week ending September 25, 2021, isn't consistent with the Appellant's statements about his employment period with that employer.

[35] In addition, the Appellant's bank statement indicates that he received two payments from this employer: one on September 16, 2021, and the other on September 23, 2021.<sup>34</sup> This supports that the Appellant worked two weeks for this employer, from September 6 to 17, 2021, and not until the week ending September 25, 2021.

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<sup>30</sup> See GD16-2 and GD16-3.

<sup>31</sup> See GD3-38.

<sup>32</sup> See GD3-20 to 34.

<sup>33</sup> See GD3-23 and GD3-32.

<sup>34</sup> See GD14-2 and GD14-5.



[36] I note that it wasn't only on September 6 and 7, 2021, that the Appellant worked for X, as that employer initially indicated on the Record of Employment it issued on October 4, 2021,<sup>35</sup> but from September 6 to 17, 2021, as stated in the amended or replaced Record of Employment it issued on November 15, 2022.<sup>36</sup>

[37] This amended or replaced Record of Employment also indicates that the Appellant's total insurable earnings for his employment period was \$1,016.32.<sup>37</sup> The amount of these earnings is the employment income that the employer reported paying the Appellant for 2021, as shown on the T4 statement it issued.<sup>38</sup>

[38] Although the representative argues that it was around September 18, 2021, that the Appellant knew he would start a new job with X, I find that the employer's explanations are more specific on this point.

[39] In its statements to the Commission, the employer X explains that it is understaffed and that it immediately hires a person if their application is suitable.<sup>39</sup> It says that, although it doesn't remember when the Appellant was promised a job, the [translation] "latest" he applied was the week before his job started, October 4, 2021.<sup>40</sup>

[40] I find that it is more likely than not that the earliest time the Appellant applied to work for that employer was during the week of September 26, 2021, to October 3, 2021, that is, after he voluntarily left his job at X.

[41] I find that, in this context, the Appellant hasn't shown that he had reasonable assurance of another job in the immediate future before leaving the one he had with X.<sup>41</sup>

[42] I find that the Appellant also hasn't shown that he had just cause for leaving his job for medical reasons.

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<sup>35</sup> See GD3-35 and 36.

<sup>36</sup> See GD16-2 and GD16-3.

<sup>37</sup> See GD16-2 and GD16-3.

<sup>38</sup> See T4 Statement of Remuneration Paid, issued by the employer X—GD14-1.

<sup>39</sup> See GD3-44.

<sup>40</sup> See GD3-44.

<sup>41</sup> See section 29(c)(vi) of the Act.

[43] I find the Appellant's and his representative's explanations on this point contradictory.

[44] The Appellant says that he had back pain and that he spoke with the employer X about changing jobs, but it denied his request.<sup>42</sup>

[45] The representative says that the Appellant didn't talk to the employer in question about his back problems before leaving his job.

[46] The Court tells us that a claimant who claims to have left their job for health reasons must provide objective medical evidence, which not only attests to the medical condition, but also shows that the claimant was forced to leave their job for that reason.<sup>43</sup> The Court says they must show that they tried to reach an agreement with the employer to meet their health needs and prove that they looked for another job before leaving the one they had.<sup>44</sup>

[47] On this point, I find that the Appellant didn't make such a request to the employer X.

[48] I am of the view that the Appellant hasn't shown that, by continuing to work for the employer at X, his health could be compromised or that his voluntary leaving was justified by the existence of [translation] "working conditions that are a danger to his health or safety."<sup>45</sup>

[49] I find that the Appellant had other choices than to leave his job.

[50] A reasonable alternative, within the meaning of the Act, would have been, for example, for the Appellant to continue working at X while waiting for assurance of another job better suited to his expectations, before voluntarily leaving. He doesn't show this.

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<sup>42</sup> See GD3-37 to 39.

<sup>43</sup> The Court established this principle in *Dietrich*, A-640-93.

<sup>44</sup> The Court established this principle in *Dietrich*, A-640-93.

<sup>45</sup> See section 29(c)(iv) of the Act.

[51] Since the Appellant also argues that he left his job because his health could be compromised by continuing to work for that employer, another reasonable alternative would have been for him to see a doctor for medical evidence indicating that he was unable to work for health reasons. This would have allowed the Appellant to justify a period of leave for medical reasons to that employer.

[52] I find that the Appellant hasn't shown that he had no reasonable alternative to leaving his job when he did.

### **Repayment of benefit overpayment**

[53] The representative argues that, since the Appellant worked from September 6, 2021, to the week ending September 25, 2021, he should not have to pay back an amount of money for benefits he was overpaid if the Record of Employment issued by the employer X, on October 4, 2021, was corrected to show this.<sup>46</sup> She says that the Appellant reported the hours worked and the amounts of money earned for each of the weeks in question during his employment period with that employer.

[54] Following a request from the Tribunal, the Commission sent it a copy of the amended or replaced Record of Employment issued by X, on November 15, 2022.<sup>47</sup>

[55] The Commission explains that the amount of money the Appellant owes for benefits he was overpaid results from the disqualification from benefits imposed on him from September 5, 2021, for his benefit period established from November 29, 2020.<sup>48</sup> It says that this overpayment concerns the three weeks for which he received benefits— from September 5 to 25, 2021.<sup>49</sup>

[56] Although in the reconsideration decision dated May 16, 2022, the Commission told the Appellant that he would receive a notice of debt and that it could deduct the amount owed from his future benefits,<sup>50</sup> the amount of money it was asking him to repay

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<sup>46</sup> See GD3-35 and 36.

<sup>47</sup> See GD16-2 and GD16-3.

<sup>48</sup> See GD8-1.

<sup>49</sup> See GD8-1.

<sup>50</sup> See GD2-9, GD3-46, and GD3-47.

for the benefit overpayment results from a disqualification from before the one it imposed on him in that decision.

[57] The May 16, 2022, reconsideration decision refers only to the Appellant's disqualification from receiving benefits from December 5, 2021, because his benefit period began on December 5, 2021, as the Commission says in its initial March 31, 2022, decision.<sup>51</sup>

[58] The May 16, 2022, decision doesn't refer to the disqualification the Commission imposed on the Appellant from September 5, 2021.

[59] The May 16, 2022, reconsideration decision was appealed to the Tribunal. So, I have to make a decision on this issue. The issue of the Appellant's disqualification from benefits before the one the Commission imposed on him on or after December 5, 2021, isn't addressed in this decision.

[60] I also point out that, as a Tribunal member, I can't decide an issue that wasn't before me. The Tribunal can only hear appeals of reconsideration decisions made by the Commission.<sup>52</sup>

[61] I am of the view that it is up to the Commission to make a decision on this issue first, based on the information it gathered and its calculations of the amount of money it is asking the Appellant to repay for benefits it allegedly overpaid, for the three weeks from September 5 to 25, 2021.

[62] This claim isn't related to the Appellant's disqualification from receiving benefits from December 5, 2021, resulting from the Commission's May 16, 2022, reconsideration decision.

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<sup>51</sup> See GD2-9, GD3-40, GD3-41, GD3-46, and GD3-47.

<sup>52</sup> See section 113 of the Act.

## **Conclusion**

[63] Considering all the circumstances, I find that the Appellant didn't have just cause for voluntarily leaving his job. He had reasonable alternatives to leaving.

[64] The Appellant's disqualification from receiving EI regular benefits from December 5, 2021, is therefore justified.

[65] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section