



[TRANSLATION]

Citation: *YB v Canada Employment Insurance Commission*, 2023 SST 291

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

Decision

Appellant: Y. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (474127) dated May 4, 2022 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing dates: November 1, 2022, January 12, 2023, and February 14, 2023
Hearing participant: Appellant
Decision date: March 24, 2023
File number: GE-22-1733

Decision

[1] The appeal is dismissed.

[2] I find that the Appellant didn't have just cause for voluntarily leaving his job.¹ He had reasonable alternatives to leaving. This means that his disqualification from receiving Employment Insurance (EI) regular benefits from August 21, 2016, is justified.

[3] I find that the Canada Employment Insurance Commission (Commission) is justified in asking the Appellant to pay back the amount he was overpaid in benefits (overpayment).²

Overview

[4] On August 11, 2016, the Appellant applied for EI benefits (regular benefits).³ A benefit period was established effective August 7, 2016.⁴

[5] From August 23 to 27, 2016, inclusive, the Appellant worked as a driver for the employer X (employer). He stopped working for it after voluntarily leaving his job.⁵

[6] On September 10, 2019, the Commission told him that it was unable to pay him EI regular benefits from August 21, 2016,⁶ because he had voluntarily left his employment with the employer on August 27, 2016, without just cause within the meaning of the *Employment Insurance Act* (Act). The Commission said that he would have to repay the amount of benefits he wasn't entitled to.⁷

¹ See sections 29 and 30 of the *Employment Insurance Act* (Act).

² See sections 43, 44, 47, and 52 of the Act.

³ See GD3-3 to GD3-10.

⁴ See GD3-1 and GD4-1.

⁵ See GD3-11 and GD3-12.

⁶ In its arguments, the Commission explains that the Appellant's disqualification from receiving benefits was imposed effective August 21, 2016, not August 22, 2016, as indicated in the letter dated September 10, 2019—GD4-2.

⁷ See GD3-32 and GD3-33.

[7] In its arguments, the Commission says that it sent the Appellant this decision again, on March 15, 2022, at his new address.⁸

[8] On May 4, 2022, after a request for reconsideration, the Commission told him that it was upholding the March 15, 2022, decision.⁹

[9] The Appellant says that he had just cause for leaving his job with X. He explains that he left it because it wasn't suitable for him and because he had concerns for his safety. He also argues that he had reasonable assurance of another job before leaving. Even though the Commission criticizes him for not declaring that he had voluntarily left his job, he says that he always completed his claimant reports correctly, declaring the amounts of money he had earned from his jobs. He explains that he made a mistake by not declaring that he had stopped working for X when he completed his claimant reports for the period from August 21, 2016, to September 3, 2016. He says that he didn't start receiving benefits on August 21, 2016. According to him, he started receiving them in late October or early November 2016. He says that several years passed before the Commission asked him to pay back an amount he was overpaid in benefits, and that it took several months for the Commission to give him an explanation. He argues that he should not have to pay back the amount it says he owes. On May 16, 2022, he challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issues

[10] In this case, I have to decide whether the Appellant had just cause for voluntarily leaving his job.¹⁰ To decide this, I have to answer the following questions:

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

⁸ See GD6-1 to GD6-3.

⁹ See GD3-39 and GD3-40.

¹⁰ See sections 29 and 30 of the Act.

[11] I also have to decide whether the Commission is justified in asking the Appellant to pay back the amount he was overpaid in benefits (overpayment) and whether he has to pay it back.¹¹

Analysis

Voluntary leaving

[12] 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.

[13] 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.¹²

[14] It is up to the claimant to prove that they had just cause.¹³ They have to prove this on a balance of probabilities. This means that they have to show that it is more likely than not that their only reasonable option was to quit. When I decide whether a claimant had just cause, I have to look at all of the circumstances that existed when they quit.

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

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

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

¹¹ See sections 43, 44, 47, and 52 of the Act.

¹² 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.

¹³ The Court established this principle in *White*, 2011 FCA 190 (para 3).

[17] 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.¹⁴

[18] In this case, the Appellant's testimony and statements show that he decided to leave his job.¹⁵

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

[20] I must now determine whether the Appellant had just cause for voluntarily leaving his job and whether he had no reasonable alternative to voluntarily leaving.

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

[21] 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.

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

[23] The statements the Commission got from X indicate the following:

- a) The employer doesn't know the reason for the Appellant's voluntary leaving.¹⁶
- b) The Appellant had a full-time job.¹⁷
- c) He delivered milk to a number of places. He had to start his deliveries at 3 a.m. and worked 11 hours a day.¹⁸

¹⁴ The Court established this principle in *Peace*, 2004 FCA 56.

¹⁵ See GD2-1, GD3-27, and GD3-38.

¹⁶ See GD3-28.

¹⁷ See GD3-28.

¹⁸ See GD3-28.

[24] The Appellant, on the other hand, says that he voluntarily left his job with that employer because it wasn't suitable for him, because he had concerns for his safety, and because he had reasonable assurance of another job before leaving.¹⁹

[25] His testimony and statements indicate the following:

- a) His job with X was to deliver dairy products, but he is a heavy vehicle (van) driver, not a milkman.²⁰
- b) He didn't like the job. He left it on August 27, 2016.²¹
- c) When he applied for a job with that employer, it was looking for a heavy vehicle (van) driver. It is a [translation] "good company," and this would have been a steady job. It was a full-time job that paid \$19 an hour.²²
- d) The employer told him that he would receive training and be assigned a route. The training took place from August 23 to 27, 2016.²³
- e) The employer didn't tell him about the conditions related to the distance he would have to travel in his job. He accepted the job.
- f) In his May 3, 2022, statement to the Commission, he indicated that when he was hired, he knew that he would be transporting dairy products and that he would not be doing much driving in a single day. He also said that he had never done this type of work as a driver.²⁴
- g) With that employer, he worked 10 hours a day and travelled about 80 kilometres with a number of stops. He also had to complete an

¹⁹ See GD2-1, GD3-27, and GD3-38.

²⁰ See GD3-38.

²¹ See GD2-1 and GD3-27.

²² See GD3-38.

²³ See GD2-1 and GD3-38.

²⁴ See GD3-38.

- [translation] “electronic logbook,” that is, a daily log (electronic logging device) to record his hours of work and rest.²⁵
- h) When he works as a heavy vehicle driver, he can travel 400 to 450 kilometres in about 10 hours.
 - i) He feared for his safety because the other driver he worked with would text and drive.²⁶
 - j) He gave the employer a letter of resignation to explain why he was leaving and that the job wasn’t suitable for him (for example, not much driving, texting and driving by the other driver he worked with).²⁷
 - k) He had reasonable assurance of another job when he voluntarily left.²⁸
 - l) On August 24, 2016, the employer X contacted him to offer him a job as a driver (long-haul driver) that was more suitable for him. He started working for that employer on September 5, 2016. He says that he knew that it wasn’t a full-time job and that he would work on call. This employer offered him conditions of employment equivalent to those he had with X (for example, hourly wage).²⁹
 - m) He changed jobs to do work that he liked instead of delivering milk. He could make deliveries over long distances and travel between 400 and 500 kilometres a day.³⁰
 - n) He didn’t anticipate that he would be short of work from October 14, 2016, after he started working for the employer X.³¹

²⁵ See GD3-27 and GD3-38.

²⁶ See GD3-38.

²⁷ See GD3-38.

²⁸ See GD3-38.

²⁹ See GD3-27 and GD3-38.

³⁰ See GD2-27.

³¹ See GD3-38.

- o) Also, between September 18, 2016, and November 5, 2016, he worked another contract job for the company X.³²

[26] The evidence on file indicates that the Appellant worked as a driver for the employer X from August 29, 2016, to October 14, 2016, inclusive, and that he stopped working for that employer because of a shortage of work.³³ The Record of Employment issued by this employer indicates that the Appellant worked 89 hours from September 5, 2016, to October 14, 2016, before he was laid off.³⁴

[27] According to the employer X, the Appellant worked as an independent driver (contractor) for about 7 to 10 days in 2016, and he stopped showing up for work without notifying the employer.³⁵

[28] I find that the Appellant's explanation for voluntarily leaving his job with X doesn't show that he had just cause for doing so under the Act.

[29] I find contradictory his statements that he didn't know the conditions of employment when he agreed to work for this employer.

[30] In his May 3, 2022, statement to the Commission, he indicated that when he was hired, he knew that he would be transporting dairy products and that he would not be doing much driving in a single day.³⁶

[31] Then, at the hearing, he said that the employer hadn't told him about the conditions related to the distance he would have to travel in his job.

[32] In my view, in choosing to work for X, the Appellant accepted the conditions of that job, and he was told about them when he was hired.

³² See GD3-27.

³³ See the Record of Employment issued by the employer X on March 3, 2017—GD3-29 and GD3-30.

³⁴ See GD3-29, GD3-30, and GD4-4.

³⁵ See GD3-31.

³⁶ See GD3-38.

[33] I find that the Appellant's statements about texting and driving by the other driver he worked with also don't show that he had just cause for voluntarily leaving for that reason.

[34] There is no indication that the Appellant discussed this issue with the employer before he voluntarily left his job. His testimony and statements indicate that he reported the problem to the employer when he gave it his letter of resignation.

[35] I find that the Appellant hasn't shown that he had just cause for voluntarily leaving because of "working conditions that constitute a danger to health or safety."³⁷

[36] The Court tells us that a claimant who left their job because they feared their working conditions were dangerous, without even discussing with their employer measures that could be taken to address their concerns, hasn't shown that they may have had just cause for voluntarily leaving.³⁸

[37] I find that overall, the Appellant's working conditions hadn't become such that he may have had just cause for voluntarily leaving his job when he did.

[38] Even though he started working for another employer the week after he voluntarily left, this doesn't show that he had just cause for leaving under the Act.

[39] The job with X was full-time.

[40] When he started working for the employer X, the Appellant knew that it wasn't a full-time job and that he would work on call instead. He knew that he had no assurance about the number of hours he would work for that employer.

[41] In the circumstances, I find that the Appellant hasn't shown that he had reasonable assurance of another job in the immediate future.³⁹

³⁷ See section 29(c)(iv) of the Act.

³⁸ See the Court's decision in *Hernandez*, 2007 FCA 320.

³⁹ See section 29(c)(vi) of the Act.

[42] In summary, I find that by voluntarily leaving his job, the Appellant caused his own unemployment.

[43] In my view, the Appellant had alternatives to leaving his job.

[44] For example, a reasonable alternative within the meaning of the Act would have been for him to continue working for X. I am of the view that he could have waited until he found another job that better met his expectations and with conditions that would allow him to do so long enough to be able to establish another benefit period and, in doing so, avoid causing his unemployment.

[45] Since the Appellant also argues that he left his job because his safety might have been at risk if he stayed on with X, given that the other driver he worked with would text and drive, another reasonable alternative would have been for him to discuss this issue with the employer before telling it that he was leaving his job. If he had, the employer could have found a solution.

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

Paying back the overpayment of benefits

[47] I find that the Commission is justified in asking the Appellant to pay back the amount he was overpaid in benefits.⁴⁰

[48] If a person has received EI benefits they weren't entitled to or because [*sic*] they were disqualified from receiving those benefits, they have to repay those benefits or the resulting overpayment.⁴¹

⁴⁰ See sections 43, 44, 47, and 52 of the Act.

⁴¹ See sections 43 and 44 of the Act.

[49] The Commission has 36 months to reconsider a claim for benefits paid or payable to a claimant. The Commission has 72 months if, in its opinion, a false or misleading statement or representation has been made in connection with a claim.⁴²

[50] The Commission argues as follows:

- a) The Appellant's claim for benefits was reconsidered after it was discovered that he had made a false statement about the reason for his separation from employment with X.⁴³
- b) The Appellant didn't report his voluntary leaving when he completed his claimant reports for the period from August 21, 2016, to September 3, 2016,⁴⁴ and contrary to what he said in his notice of appeal,⁴⁵ he received benefits after he voluntarily left, between August 21, 2016, and January 28, 2017.⁴⁶

[51] The Appellant argues as follows:

- a) He says that he didn't get benefits in the weeks after he voluntarily left X.⁴⁷ According to him, he started receiving benefits in late October or early November 2016.
- b) In his May 3, 2022, statement to the Commission, he said that he didn't quite remember whether he had received benefits between August 21, 2016, and January 28, 2017.⁴⁸
- c) The Commission is asking him to pay back \$5,055.⁴⁹

⁴² See section 52 of the Act.

⁴³ See section 52 of the Act. See also GD4-4.

⁴⁴ See GD3-18 to GD3-26.

⁴⁵ See GD2-1.

⁴⁶ See GD4-4.

⁴⁷ See GD2-1.

⁴⁸ See GD3-38.

⁴⁹ See GD2-1, GD3-34, and GD3-35.

- d) Even though the Commission criticizes him for not declaring that he had voluntarily left his job with X on his claimant reports, he was very honest when completing them.⁵⁰
- e) When he works, he declares the amounts of money he earned on his claimant reports.
- f) Even though he made a mistake by not declaring that he had stopped working for X to work elsewhere, this doesn't give the Commission the right to ask him to pay back more than \$5,000, since he continued working after that. He didn't commit EI fraud. The Commission would have the right to ask him to pay that amount back if he hadn't declared his earnings.
- g) He previously worked for three employment agencies at the same time. In his opinion, when he changed agencies to work elsewhere, he didn't need to declare that he had left one job to accept another or to indicate that he had changed agencies. So, on his claimant reports, he didn't need to answer the question, "Have you stopped working for any employer during the period of this report?"⁵¹ He considers it [translation] "playing with words" or "playing with French grammar," since he declared everything he had earned.
- h) Several years passed before the Commission asked him to pay back an amount he was overpaid in benefits. It took 10 months for the Commission to give him an explanation concerning the amount it says he owes.⁵²
- i) The Commission recovered \$1,500 from the benefits he received in 2021.

[52] Despite the Appellant's disagreement that he has to pay back the amount he owes for benefits he was overpaid, the fact is that he has to pay it back. It is an overpayment that must be paid back.

⁵⁰ See GD3-35.

⁵¹ See GD3-24.

⁵² See GD2-1 and GD3-35.

[53] The Court tells us that the amount of an overpayment specified in a notice of debt becomes repayable on the date of the notification of the amount of the overpayment and that a person who receives an overpayment of benefits is required to return the amount of the overpayment without delay.⁵³

[54] The Appellant acknowledges that he received benefits after he stopped working for X on August 27, 2016. But, he argues that he started receiving benefits in late October or early November 2016, not the week of August 21, 2016, as the Commission says.⁵⁴

[55] When he completed his claimant reports for the reporting period from August 21, 2016, to September 2, 2016, he answered “No” to the question, “Have you stopped working for any employer during the period of this report?”⁵⁵

[56] In my view, it is more likely than not that he started receiving benefits the week of August 21, 2016. His benefit period was established effective August 7, 2016, and his claimant reports for the period from August 21, 2016, to September 3, 2016, were successfully completed.⁵⁶ The Commission says that it paid him benefits for the period from August 21, 2016, to January 28, 2017.⁵⁷

[57] I find that after the Appellant’s job with X ended, the Commission wasn’t able to determine whether he might be entitled to benefits before it paid him benefits and reconsidered his claim for benefits.

[58] I find that the Appellant’s situation can’t relieve him from his liability to repay the benefit overpayment that he owes.

⁵³ The Court established this principle in *Braga*, 2009 FCA 167. See also sections 43, 44, 47, and 52 of the Act.

⁵⁴ See GD4-4.

⁵⁵ See GD3-24.

⁵⁶ See GD3-1, GD3-18 to GD3-26, and GD4-1.

⁵⁷ See GD4-4.

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

Conclusion

[60] 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.

[61] This means that his disqualification from receiving EI regular benefits from August 21, 2016, is justified.

[62] I find that the Appellant has to pay back the amount that he was overpaid in benefits, and that the Commission says he owes, in the manner determined by the Commission.

[63] This means that the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section