Citation: *WG v Canada Employment Insurance Commission*, 2023 SST 252

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

# Decision

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| **Appellant:** | W. G. |
| **Respondent:** | Canada Employment Insurance Commission |

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| **Decision under appeal:** | Canada Employment Insurance Commission reconsideration decision (495827) dated June 22, 2022 (issued by Service Canada) |

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| **Tribunal member:** | Glenn Betteridge |
| **Type of hearing:** | Teleconference |
| **Hearing date:** | December 21, 2022 |
| **Hearing participant:** | Appellant<br>Appellant's Representative (R. M., MP) |
| **Decision date:** | February 15, 2023 |
| **File number:** | GE-22-2585 |

## Decision

[1] I am allowing W. G.'s appeal.

[2] He has shown just cause (in other words, a reason the law accepts) for leaving his job when he did.

[3] This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

[4] So the Commission should pay him EI regular benefits so long as he meets all other conditions of eligibility.

## Overview

[5] March 18, 2022 was the Appellant's last day of work as an HVAC technician for X (X or employer) in the Greater Toronto Area. Soon after, the Appellant and his spouse moved to Prince Edward Island (PEI). Then he applied for EI regular benefits.

[6] The Commission looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause. So it denied him EI regular benefits.

[7] The Commission says that quitting his job was a personal decision and he had reasonable alternatives to quitting when he did.

[8] The Appellant disagrees. He says he has knee problems that made his job dangerous for his health. So he needed to change careers. And he says its wasn't reasonable to expect him to get a job in PEI before he got there.

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

# Matter I have to consider first

## Documents sent in after the hearing

[10] The Appellant referred to medical evidence during the hearing. He hadn't submitted these documents to the Commission or the Tribunal. He described the evidence and I decided it was relevant to his appeal. So I said he could refer to it during the hearing and send it to the Tribunal after the hearing, which he did.[1]

[11] The Tribunal sent it to the Commission and gave the Commission an opportunity to respond. The Commission didn't respond by the deadline I set.

[12] I am accepting the documents the Appellant sent in after the hearing, for three reasons: First, the Tribunal gave him an opportunity to send in the documents. Second, the documents are relevant to the legal issue I have to decide (just cause for voluntarily leaving). Third, accepting the documents isn't unfair to either party since I gave the Commission an opportunity to respond.

[13] So I will consider the documents when I make my decision.

# Issue

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

[15] To answer this question I have to decide two things:

- whether the Appellant voluntarily left (quit) his job
- if he did, whether he had just cause for quitting when he did

[1] See GD8.

# Analysis

## The Appellant voluntarily left (quit) his job

[16] I find that the Appellant voluntarily left (in other words, he quit) his job.

[17] The Appellant and the Commission agree that he quit. And there is no evidence that says otherwise.

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

[18] The parties don't agree that the Appellant had just cause for voluntarily leaving (quitting) his job when he did.

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

[20] The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that I have to consider all the circumstances that existed when you quit.[3]

[21] The Appellant has to prove it is more likely than not his only reasonable option in the circumstances was to quit.[4]

## Circumstances that existed when the Appellant quit

[22] At the hearing the Appellant said two circumstances from section 29(c) of the *Employment Insurance Act* (EI Act) existed at the time he quit.

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[2] Section 30 of the *Employment Insurance Act* (EI Act) explains this.
[3] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[4] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

### *Obligation to accompany a spouse*

[23] The law says that a claimant who has an obligation to accompany a spouse to another residence has just cause for leaving if they had no reasonable alternative but to quit.[5]

[24] This section applies where the person has an obligation to accompany a spouse who is moving (or has moved) for work.

[25] The Appellant and his spouse moved to PEI soon after he quit his job. At the hearing the Appellant testified that his spouse didn't have a job waiting in PEI. And his spouse wasn't employed in Ontario before they moved to PEI. He testified that he and his spouse together made the decision to move because they wanted to be closer to their children (who lived on PEI), PEI was safer than Toronto, and the cost of living is better there.[6] The Appellant and his spouse sold their Ontario house in November 2021, bought a new house in PEI in January 2022, and moved to PEI in March 2022.

[26] I accept the Appellant's evidence about why he and his spouse moved to PEI. I have no reason to doubt it. And there is no evidence that goes against what he said.

[27] Based on that evidence, I find that the Appellant didn't have an obligation to accompany his spouse to PEI. So this circumstance doesn't help him prove he had just cause for quitting his job when he did.

### *Working conditions that constitute a danger to health*

[28] The law says that a claimant who experiences working conditions that constitute a danger to health or safety has just cause for leaving if they had no reasonable alternative but to quit.[7]

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[5] See section 29(c)(ii) of the EI Act.
[6] This is also what he wrote on his EI application and said to the Commission. See GD3-9, GD3-19, and GD3-26.
[7] See section 29(c)(iv) of the EI Act.

[29] Where a claimant says they quit their job because their working conditions were dangerous for their health or safety, they need to: (a) give medical evidence[8]; (b) attempt to resolve the problem with the employer;[9]and (c) attempt to find other work before leaving.[10] And before leaving for health reasons, a claimant should tell their employer or the Commission about the health problems responsible for their decision to leave.[11]

[30] The Appellant has the onus of establishing that his work caused negative health effects. Generally, a claimant has to show a specific health problem rather than a general stress-related condition.[12] The medical evidence required will depend on the facts and circumstances of the case. Where the health problem is particularly obvious, I can find just cause even if there is no medical report or certificate.[13]

[31] The Commission says the Appellant "…didn't leave his employment due to health reasons; he left his employment to move from Ontario to PEI, for personal reasons."[14]

[32] It also says the Appellant didn't provide medical information to the Commission to show that he was forced to give up his work for health reasons.[15] On his EI application he didn't say he quit for medical reasons—he says he quit for personal reasons. And when the Commission asked him, he said that he had no physical limitations at present, but they would eventually prevent him from working.[16] So the Commission questions the credibility of the letter from his family doctor he submitted after he filed his appeal.[17]

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[8] See *SA v CEIC*, 2017 SSTADEI 330; and *CUBs 11045, 16437, 24012, 21817, 27441*, and *39915*.
[9] See *CUBs 21817* and *58511*.
[10] See *CUBs 18965, 27787, 39915*, and *33709*. See also *CUBs 15309, 19187, 23802, 21638*, which say that the failure to discuss physical difficulties with an employer, and the failure to attempt to seek alternative employment prior to leaving, will lead to a finding that a claimant left without just cause despite the physical problems of the claimant.
[11] See *CUB 56636*.
[12] See *AS v CEIC*, 2017 SSTADEI 378; and *CUBs 18965* and *57484*. But see *SM v CEIC*, 2019 SST 499.
[13] See *Brisebois v CEIC* A-510-96 (FCA), in which the court found it was an error to find the claimant should have produced a medical certificate. The claimant was not relying on an illness when she asserted that standing all day was too physically demanding. See also *RV v. CEIC*, 2017 SSTADEI 31; and *DS v CEIC*, SST GE-21-2561.
[14] See GD6-2.
[15] See GD6-1.
[16] See GD4-3.
[17] See the doctor's letter at GD5.

[33] The letter from the Appellant's family doctor (dated September 16, 2022) is brief. It says:

> W. G. has been a patient for 15 years. Because of severe knee conditions (OA/ chondromalacia bilateral knees with past arthroscopy and debridement both knees) he was forced to give up his work which he loved but which involved kneeling and repetitive bending/ flexing / extending his knew. In light of his medical condition, I have strongly advised W. G. to change careers.

[34] The Appellant also submitted the following medical evidence, which I summarize here:

Ontario WSIB letter closing his case (dated July 28, 2020)[18]

- Date of injury October 3, 2018, injury to left knee (MCL strain).
- Lower extremity specialty program follow-up assessment reported dated November 19, 2019 notes reached full recovery.
- Medical consultant (orthopaedic surgeon) reviewed file on June 16, 2020 and gave opinion no ongoing impairment related to compensable left knee MCL strain injury and temporary exacerbation of pre-existing left knee condition.

  As of November 19, 2019, he reached his maximum medical recovery with no permanent impairment as a result of the workplace injury.

Attending physician statement (September 11, 2020)[19]

- severe pain under kneecap; constant throbbing; worse with stairs; pain affecting sleep and quality of life; Celebrex 200 mg po qd prn; always compliant with physiotherapy and exercises but no longer provides any symptom relief or improvement
- orthopaedic surgery consult pending
- limitations include no bending, crouching, squatting, or kneeling; limit stair climbing and standing for any prolonged period of time; company accommodating modified duties; prognosis is guarded; return to modified work September 14, 2020

[18] See GD8-8 and GD8-9.
[19] See GD8-2 to GD8-4.

Physical capacities assessment (April / May 2021)[20]

- Patient can return to work April 12, 2021 with restrictions:
    - week 1 three days at 4hours per day; week 2 three days at 6 hours per day; week 3 three days at 8 hours per day; weeks 4 to 6 five days at 8 hours per day as able
    - alternatives to heavy lifting for 3 months; otherwise, please consider risk of re-injury

[35] At the hearing the Appellant testified that he was 59 years old. He had worked for 35-plus years, including as a service technician with his current employer for 22 years. He serviced furnaces and water heaters. For each service call he walked up and down staircases six or more times and would be kneeling for an hour at a time. He would do six to seven service calls each workday.

[36] He testified he has had 10–15 years of knee problems, especially in his left knee. He hurt his knees at work. The problems got worse and worse as time went on. He has had surgery on both knees. He was on workers' compensation in 2020, but his claim was closed. He couldn't go back to work because of his knee problems, so he went on short-term disability (STD) benefits for about six months. He got an injection in his knee and then tried to return to work in spring 2021, under a return-to-work plan with restrictions and accommodations.

[37] But in July or August 2021, his knees got to the point where they didn't want to cooperate anymore. That's when he decided he needed to leave his job and look for another type of work. So he and his wife made the "life-changing decision" to sell their house and move to PEI. They sold their house in November 2021. He worked up until the week they left for PEI in March 2022.

[38] I asked the Appellant why he didn't mention his knee problems until he was denied EI benefits. He said he had never applied for EI before and didn't know this was

[20] See GD8-5 to GD8-7.

important. No one ever asked about it. Once he was denied EI benefits, he elaborated more. He tried to explain 30 to 40 years of working but never properly explained it to the Commission. He said he guessed he was at fault for not explaining 100%.

[39] I have some doubts about some of the information in his family doctor's letter. She wrote the letter after he had started his Tribunal appeal, over a year after he left his job. The physical limitations she lists and the reason he left his job seems to be information the Appellant told her. She didn't attach any chart notes or test results. And there is no evidence that she saw the Appellant close to the time he quit.

[40] However, I accept what his family doctor says about her advice to him— she strongly advised him to change careers based on his severe knee conditions. I accept this for two reasons. First, it was her professional medical opinion. It would be unprofessional for her to give an opinion that wasn't supported by medical evidence. Second, she was also his long-time family doctor, so she knew his medical history, and she included medical diagnoses of his knee problems in her letter.

[41] I accept the information in the attending physician statement and physical capacities assessment form. Medical professionals prepared these documents at the time they assessed and treated him. I have no reason to doubt the information in them. I give these reports more weight than the WSIB letter and the Commission's notes that he said he didn't have any limitations. The WSIB letter is focused on legal criteria for compensation under that scheme. The WSIB decision assesses the effect of a workplace injury to his left knee, not the overall state of the Appellant's chronic knee problems.

[42] The Appellant testified that he went on STD for six months after WSIB ended his claim. And he had significant return to work restrictions when he came off STD. I have no reason to doubt his testimony about this, or the information in the physical capabilities assessment prepared before he returned to work. And the dates on the attending physician statement and physical capacities assessment form support his testimony.

[43] I accept the Appellant's explanation about why he didn't tell the Commission about his knee problems until he was refused benefits. It makes sense in the circumstances. He had never applied for EI before. He thought he would get benefits because he didn't know the Commission would make him justify why he quit his job. He started to send the Tribunal medical information after he understood that was important to his appeal.

[44] Finally, I accept the Appellant's testimony about:

- his work history and the physical demands of his HVAC technician job with X (for the past 22 years)
- his chronic knee problems that developed because of his work and got worse over time
- returning to work after being on STD, and discovering his knees were at the point where they would no longer cooperate
- making the decision to quit his job (and to change careers) for health reasons at that point
- deciding with his wife to move to PEI—after he decided to leave his job (change careers)

[45] I have no reason to doubt his testimony on these points. He testified and answered my questions in an upfront way. And what he said is supported by his long-time family doctor's opinion that he needed to change careers because of his severe knee problems. It is also supported by the significant restrictions and accommodations other health care professionals recommended for his return to work.

[46] So based the evidence I have accepted, I find that Appellant quit his job as an HVAC technician because it was a danger to his health.

[47] The fact he worked until he left for PEI doesn't change my assessment of the facts or my legal finding. Under the EI Act the Appellant had to prove that his work was

a **danger to his health or safety.**[21] (He also has to prove that he had no reasonable alternative to quitting when he did—which I will look at below.) The test for just cause under the EI Act doesn't require a person to work to the point of being totally disabled from doing their job.

[48] Below I will look at whether he had a reasonable alternative to quitting when he did because his job was a danger to his health.

***Another circumstance the Appellant identified: being close to family***

[49] The Appellant told the Commission and testified at the hearing that one of the reasons he and his spouse moved to PEI was to be closer to their children, who live there. He also told the Commission he had lost two close family members (his brother and his daughter) during COVID. Because of COVID restrictions he wasn't able to see them when they were dying.

[50] I have no reason to doubt the Appellant's testimony about his. His evidence was consistent—he told the same thing to the Commission and the Tribunal. And there is no evidence that says it wasn't one of the reasons why he moved to PEI.

[51] However, in the circumstances, wanting to be closer to his children and family doesn't help him to prove just cause for quitting his job when he did. I find that he didn't have an obligation to take care of an immediate family member.[22] There was no evidence of a pressing need or urgent reason for him to be close to his family. He didn't say anyone was sick or needed care at the time he quit his job and moved to PEI.

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[21] Section 29(c)(iv) of the EI Act reads: "just cause for voluntary leaving employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following: working conditions that constitute a danger to health or safety".
[22] This is one of the EI Act section 29(c) circumstances, at paragraph (v).

## The Appellant had no reasonable alternatives

[52] I have to look at whether the Appellant had a reasonable alternative to quitting his job when he did. If he had a reasonable alternative, the law says he didn't have just cause for quitting. And he would be disqualified from getting EI benefits.

[53] The Commission says he had a reasonable alternative. He could have secured employment in PEI before quitting his job.

[54] The Appellant says that it wasn't reasonable for him to look for a job in PEI before he quit his job, for two reasons.[23]

- First, he didn't know what type work he should be looking for. He could no longer do the job he trained for and worked at for three decades. He said at the hearing he enrolled in a job search program after moving to PEI. He needs this support to help him identify and get a job that he can do given his physical limitations.

- Second, he moved to PEI during the COVID pandemic. He wasn't sure whether the Atlantic province borders would be open, let alone what the job market would be on PEI. So it wasn't reasonable to expect him to look for work from Ontario.

[55] I accept the Appellant's testimony about this issue. I have no reason to doubt it. He testified in forthright way and answered my questions directly, to the best of him memory, and referred to the medical documents when he thought it was helpful.

[56] Based on his testimony, I find securing a job on PEI before quitting his job at X was not a reasonable alternative in the circumstances that existed when he quit his job.

[57] The Commission didn't identify other reasonable alternatives. And in the circumstances, I can't think of any either.

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[23] He made these points in his appeal notice (GD2) and in his testimony.

[58] So I find the Appellant had no reasonable alternative in the circumstances to quitting his job when he did. In other words, he has proven that quitting his job was his only reasonable alternative in the circumstances.

## Conclusion

[59] I have considered and weighed the evidence and applied the law. I have found that the Appellant has proven he quit his job because it was a danger to his health. I have also found that he had no reasonable alternative to quitting his job when he did.

[60] This means he had just cause under the EI Act for leaving his job. And he isn't disqualified from receiving EI regular benefits.

[61] So I am allowing his appeal.

Glenn Betteridge
Member, General Division – Employment Insurance Section