



[TRANSLATION]

Citation: *JC v Canada Employment Insurance Commission*, 2023 SST 1913

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

**Decision**

**Appellant:** J. C.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (569492) dated March 14, 2023 (issued by Service Canada)

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**Tribunal member:** Normand Morin  
**Type of hearing:** Teleconference  
**Hearing date:** October 12, 2023  
**Hearing participant:** Decision on the record  
**Decision date:** October 27, 2023  
**File number:** GE-23-1053

## 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 May 15, 2022, is justified.

## Overview

[2] From October 22, 2018, to May 17, 2022, inclusive, the Appellant worked as a maintenance worker ([translation] 'heavy-duty/light maintenance worker') for X (employer) and stopped working for that employer after voluntarily leaving.<sup>2</sup>

[3] After this period of employment, the Appellant worked for the X general partnership from June 6 to June 18, 2022, and for X from August 8, 2022, to November 2, 2022.<sup>3</sup>

[4] On November 6, 2022, the Appellant applied for EI (regular) benefits.<sup>4</sup> A benefit period was established effective November 6, 2022.<sup>5</sup>

[5] On January 12, 2023, the Canada Employment Insurance Commission (Commission) told him that it hadn't used the hours he worked for X in calculating his benefits because he had voluntarily left his job with that employer without good cause within the meaning of the Act.<sup>6</sup>

[6] In its arguments, the Commission says that it imposed a disqualification from benefits on the Appellant from May 15, 2022.<sup>7</sup>

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

<sup>2</sup> See GD3-20 and GD3-21.

<sup>3</sup> See GD7-2 to GD7-5.

<sup>4</sup> See GD3-3 to GD3-19.

<sup>5</sup> See GD4-1.

<sup>6</sup> See GD3-27.

<sup>7</sup> See GD9-1.

[7] On March 14, 2023, after a reconsideration request, the Commission told him that it was upholding the January 12, 2023, decision about his voluntary leaving.<sup>8</sup>

[8] On April 11, 2023, the Appellant challenged the Commission's reconsideration decision before the Social Security Tribunal of Canada (Tribunal).

[9] The Appellant says that he had just cause for leaving his job. He says that he left because of problems with his director (the employer) to exercise his rights to take vacation and parental leave. The Appellant says that, before quitting, he made efforts to get support from his union representative but wasn't successful in doing so. He says that his union suggested he quit instead, given his problems with his director. He says that another reason he left his job is because he was harassed at work and discriminated against. He also says that he quit to work somewhere else.

## **Preliminary matters**

[10] The Appellant was absent from the teleconference hearing on October 12, 2023. A hearing can take place without the Claimant if the Tribunal is of the opinion that the Claimant received the notice of hearing.<sup>9</sup>

[11] On July 12, 2023, a notice of hearing was sent to the Appellant by email informing him that the hearing was going to take place.<sup>10</sup> In his notice of appeal dated April 11, 2023, the Appellant provided his email address to the Tribunal.<sup>11</sup>

[12] On October 4, 2023, a Tribunal representative contacted the Appellant by phone to remind him about the October 12, 2023, hearing and how to participate. He then confirmed that he would be present at the hearing.

[13] At the start of the hearing on October 12, 2023, the Tribunal tried to contact the Appellant, but was unsuccessful.

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<sup>8</sup> See GD3-33.

<sup>9</sup> Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

<sup>10</sup> See GD1-1 to GD1-3.

<sup>11</sup> See GD2-3.

[14] Convinced that the Appellant had been notified of the October 12, 2023, hearing, I proceeded in his absence, as permitted in this situation by section 58 of the *Social Security Tribunal Rules of Procedure*.

[15] I waited more than 45 minutes after the October 12, 2023, hearing started to make sure the Appellant was present. Despite this wait, he didn't show up. Before the hearing, the Tribunal didn't receive any notice from the Appellant that he wasn't going to attend.

[16] The Commission was also absent from the hearing, even though it was duly summoned.

[17] In these circumstances, I am making a decision on the record.

## **Issues**

[18] In this case, I have to decide whether the Appellant had just cause for voluntarily leaving his job.<sup>12</sup> To do this, I must answer the following questions:

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

## **Analysis**

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

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<sup>12</sup> See sections 29 and 30 of the Act.

[20] 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>13</sup>

[21] It is up to the Claimant to prove that he had just cause.<sup>14</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.

[22] 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?**

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

[24] I find that the Appellant had the choice to continue working for the employer but decided to voluntarily leave his job on May 17, 2022.

[25] 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.<sup>15</sup>

[26] In this case, the Appellant's statements show that he made the decision to leave his job.<sup>16</sup>

[27] Although in some of his statements, the Appellant says that he didn't have the choice to leave because the union that represented him suggested or asked him to do so,<sup>17</sup> I find that he wasn't required to agree to such a request and that he had the option of staying at his job. The union wasn't in a position to make such a request.

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<sup>13</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>14</sup> The Court established this principle in *White*, 2011 FCA 190 (para 3).

<sup>15</sup> The Court established this principle in *Peace*, 2004 FCA 56.

<sup>16</sup> See GD2-5, GD3-7, GD3-22, GD3-25, and GD3-28 to GD3-30.

<sup>17</sup> See GD2-5, GD3-29, and GD3-30.

[28] I find that the Appellant initiated the end of employment by telling the employer that he wasn't going to continue working for it.

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

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

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

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

[32] The statements the Commission got from the employer (department head) indicate the following:

- a) The Appellant voluntarily left his job.
- b) Because of his tardiness, absences, and [translation] 'lack of civil behaviour' (rudeness), the Appellant got several verbal and written warnings and suspensions.
- c) The Appellant was also monitored at work because of his behaviour to see whether he was improving.
- d) His behaviour had to improve or he would be at risk of being let go.
- e) The Appellant has a [translation] 'hot temper.' He easily [translation] 'blows up' when upset. But when he is in a good mood, he is pleasant. The Appellant says that he isn't the problem, but that others are. The employer says he had to do some [translation] 'soul-searching.'
- f) On several occasions, the employer offered help and support to the Appellant and referred him to the Employee Assistance Program (EAP).

g) The employer says it could not do more to help him.<sup>18</sup>

[33] The statements the Commission got from the Appellant indicate the following:

a) He worked for X for more than three years and was doing his job well.<sup>19</sup>

b) When he wanted to take vacation and parental leave, there was a problem with the director (director of the health and safety department). The director refused his request. The Appellant was unhappy with that refusal. He said that it was [translation] 'not legal.' He argues that he was entitled to the leaves he requested but lost them because of the director's decision.<sup>20</sup>

c) The Appellant asked his union for help, but it suggested he quit because of the problems he had with his director. The Appellant says that the director told the union that he had threatened him when that wasn't the case. The union asked him to write a resignation letter. He says that he had no [translation] 'other option' than to write it.<sup>21</sup>

d) He wanted to file a complaint with [translation] 'labour standards,' the Commission des normes, de l'équité, de la santé et de la sécurité du travail [Quebec's labour standards commission] (CNESST). The CNESST didn't act on his request because he was a unionized worker, and it was his union that had to defend him. He didn't tell the CNESST that he wasn't working for the employer anymore.<sup>22</sup>

e) He didn't ask his union to file a grievance against his manager. The union didn't suggest he do so. The Appellant says that the director's version of events would have been preferred over his; it would have been his word against his. The Appellant's colleagues would have spoken against him. The

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<sup>18</sup> See GD3-31 and GD3-32.

<sup>19</sup> See GD2-5, GD3-29, and GD3-30.

<sup>20</sup> See GD2-5, GD3-29, and GD3-30.

<sup>21</sup> See GD2-5 and GD3-28 to GD3-30.

<sup>22</sup> See GD3-29 and GD3-30.

- union didn't want to defend him. The only suggestion the union made was to write a letter of resignation.<sup>23</sup>
- f) He says that he had no choice but to leave his job because no one would have believed him.<sup>24</sup>
  - g) The Appellant was [translation] 'tired' of the problems with the director.<sup>25</sup>
  - h) He also wanted to change jobs. He says that he isn't very liked by the boss (department head) or other employees. He argues that no one wanted to defend him and that at work [translation] 'everyone was against him' (for example, the union, manager, department head, colleagues). He says that he left [translation] 'on a whim.'<sup>26</sup>
  - i) The Appellant says that, during his last year of employment, his department head also psychologically harassed him and that he filed grievances about that. He says that the employer had placed another employee with him to supervise him. The grievances he filed were closed because he no longer works for the employer. He says that he was discriminated against.<sup>27</sup>
  - j) He received verbal and written warnings and was suspended for being late and absent without notifying the employer. The Appellant says that the employer intended to let him go.<sup>28</sup>
  - k) He didn't look for another job before leaving the one he had, since he didn't think he would be quitting.<sup>29</sup>
  - l) In his November 6, 2022, claim for benefits, the Appellant says that he left his job to work at another one. He says that he had planned for the other job to

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<sup>23</sup> See GD3-29 and GD3-30.

<sup>24</sup> See GD3-29 and GD3-30.

<sup>25</sup> See GD3-29 and GD3-30.

<sup>26</sup> See GD3-29 and GD3-30.

<sup>27</sup> See GD3-29 and GD3-30.

<sup>28</sup> See GD3-29 and GD3-30.

<sup>29</sup> See GD3-29 and GD3-30.



be permanent or to last longer than the one he left and that the hours worked would be equal to or greater than those of his previous job.<sup>30</sup>

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

[35] Although the Appellant argues that his manager's refusal to grant him vacation or parental leave was the reason for his voluntary leaving, this situation doesn't show that there were 'practices of an employer that are contrary to law'<sup>31</sup> that could justify voluntarily leaving his job.

[36] The evidence on file indicates that the Appellant didn't ask his union to file a grievance against his director.<sup>32</sup> His statements also indicate that he assumed that the director's version of events would have been preferred over his.<sup>33</sup>

[37] Even though the Appellant also argues that he was [translation] 'tired' of the problems with his manager, he hasn't shown that his voluntary leaving could be justified by the 'antagonism with a supervisor if the claimant isn't primarily responsible for the antagonism.'<sup>34</sup>

[38] I note the employer's statement that it suggested several times to the Appellant to make use of the EAP to help him with his work performance.<sup>35</sup> Nothing in the Appellant's statements indicate that he agreed to take advantage of the assistance program.

[39] Although the Appellant also says that he was harassed and discriminated against, he hasn't shown that he experienced such situations to justify voluntarily leaving his job.

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<sup>30</sup> See GD3-7 to GD3-9.

<sup>31</sup> See section 29(c)(xi) of the Act.

<sup>32</sup> See GD3-29 and GD3-30.

<sup>33</sup> See GD3-29 and GD3-30.

<sup>34</sup> See section 29(c)(x) of the Act.

<sup>35</sup> See GD3-31 and GD3-32.

[40] The Appellant refers to situations that allegedly happened in his last year of work, but he doesn't describe them in terms that are measurable and observable (for example, words spoken, actions taken, when specific events happened, the context in which they happened).<sup>36</sup> He also doesn't give reasons as to why he was discriminated against as he claims.

[41] Although the Appellant explains that complaints were filed about the harassment he allegedly suffered, he doesn't present convincing evidence to show that his voluntary leaving could be justified by 'sexual or other harassment.'<sup>37</sup>

[42] I find that the Appellant is adding a motive related to harassment or discrimination in an attempt to justify his voluntary leaving, but without proving it.

[43] Even though he had another job about two weeks after he voluntarily left on May 17, 2022, he hasn't shown that he had reasonable assurance of another job in the immediate future.<sup>38</sup>

[44] I note that the Appellant says that he didn't look for another job before leaving the one he had, saying that he made the decision to voluntarily leave [translation] 'on a whim.'<sup>39</sup>

[45] The evidence on file also shows that, after he voluntarily left, he worked at his new job for only about two weeks, from June 6 to June 18, 2022.<sup>40</sup>

[46] I find that the Appellant hasn't shown that his conditions of employment had gotten to a point that they could justify leaving his job when he did.

[47] In summary, I find that, by voluntarily leaving his job, the Appellant created his own unemployment situation.

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<sup>36</sup> See GD3-29 and GD3-30.

<sup>37</sup> See section 29(c)(i) of the Act.

<sup>38</sup> See section 29(c)(vi) of the Act.

<sup>39</sup> See GD3-29 and GD3-30.

<sup>40</sup> See GD7-2 and GD7-3.

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

[49] A reasonable alternative under the Act would have been, for example, for him to agree to make use of the employer's EAP. In doing so, support measures could have been implemented to help him with his work performance and his continued employment.

[50] Another reasonable alternative would have been for the Appellant to continue working for the employer while waiting to find another job that better met his expectations and offered him conditions to be entitled to benefits (for example, enough insurable hours) or to avoid creating his unemployment situation.

[51] I note that, in his November 2022 claim for benefits, the Appellant indicated that, when he quit, he had planned to work at another job that was permanent or for longer than the one he left, and that the hours worked would be equal to or greater than those of his previous job.<sup>41</sup>

[52] Instead, I find that the Appellant chose to leave his job without first getting reasonable assurance that he would be able to work at the type of job he refers to in his claim.

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

## **Conclusion**

[54] 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.

[55] The Appellant's disqualification from receiving EI regular benefits from May 15, 2022, is therefore justified.

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<sup>41</sup> See GD3-7 to GD3-9.

[56] This means that the appeal is dismissed.

Normand Morin  
Member, General Division – Employment Insurance Section