



Citation: *DM v Canada Employment Insurance Commission*, 2024 SST 159

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: D. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision 551328 dated November 25, 2022
(issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: January 24, 2024

Hearing participant: Appellant

Decision date: February 20, 2024

File number: GE-23-3355

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Tribunal finds that the Appellant didn't voluntarily leave his job. So, he isn't disqualified (or disentitled) from receiving regular Employment Insurance (EI) benefits.

Overview

[3] This appeal is about whether the Appellant voluntarily left his job without just cause.

[4] The Appellant worked as a farm labourer in Canada under the foreign workers' program. From 2019 until 2022, he did seasonal farm work, moving from one farm to another, from April until November. He returned to his home country during the months he wasn't working.

[5] The 2022 season started like other seasons. In April 2022, he was in Canada living in a bunkhouse on his employer's farm, but the work had yet to start. In talking to someone at Service Canada, he learned that he could apply for EI benefits. So, he applied, and established a claim as of April 24, 2022. He told his coworkers that they could also apply.

[6] The Appellant reapplied for benefits (filed a renewal claim) on July 4, 2022, after his employment ended on June 28, 2022.

[7] At first, the Commission decided that the Appellant could get EI benefits. It changed its mind after the employer asked the Commission to reconsider its decision. After reconsidering its decision, the Commission decided that it couldn't pay the Appellant EI benefits because he didn't have just cause to voluntarily leave his job.

[8] The General Division of the Tribunal agreed that the Appellant didn't have just cause to voluntarily leave his job. The Appellant appealed the General Division's

decision to the Appeal Division. The Appeal Division decided that the General Division made errors of law and returned the matter to be reconsidered.

[9] So, I must decide if the Appellant voluntarily left his job, and if he did, whether he had just cause to do so. To have just cause means that he had no reasonable alternative to leaving when he did.

Issues

[10] I must answer these questions:

- a) Did the Appellant voluntarily leave his job?
- b) If so, did he have just cause to do so? In other words, did he have no reasonable alternative to leaving?
- c) If he didn't have just cause, did he leave within three weeks from when his employment was scheduled to end?

Analysis

Did the Appellant voluntarily leave his job?

[11] No. I find that the Appellant stopped working when his job ended.

– What it means to voluntarily leave a job

[12] The law says that when I decide if the Appellant voluntarily left his job, I must consider whether he had the choice to stay or to leave.¹ If he had the choice to stay and did not, then he voluntarily left his job.

[13] The Commission must prove that it is more likely than not that the Appellant voluntarily left his job.

¹ The court said this in *Canada (Attorney General) v Peace*, 2004 FCA 56.

– **The Appellant didn't voluntarily leave his job**

[14] The Appellant didn't voluntarily leave his job because he didn't have the choice to stay. His employment ended on June 28, 2022, when the employer eliminated his shift. As I explain below, I considered the contract, the Appellant's job, and the statements and actions of the Appellant and the employer.

– **The contract**

[15] The Appellant's contract ended on July 11, 2022. But that doesn't mean that the employer had work for the Appellant until then, or that his job didn't end on June 28, 2022. This is because the employer only paid the Appellant for the hours he worked. For example, when the Appellant first arrived at the farm in April 2022, he was under contract, but there was little work until the second week of May, so he wasn't paid.²

– **What the Appellant did for the employer**

[16] The Appellant's job was to read the scale in the barn. It is a two-person job and there is only one scale. During peak season, there were two shifts, so four people did that specific job. After June 28, 2022, the employer ran only one shift – the shift the Appellant wasn't working.

[17] When the employer reduced his position to one shift a day, the Appellant said he knew his job was over, and he stopped going to the barn to work. He learned about the change from another employee.

– **What they say happened**

[18] The Appellant says that the employer told him that he wasn't entitled to EI benefits. The employer was upset with the Appellant because he applied for EI benefits and told others about their entitlement to benefits.

[19] The Appellant says the employer didn't like Service Canada contacting its office and asking questions. The Appellant explained that while the employer pays all the

² The employer told the Commission that there was little work until the second week of May 2022. See page GD3-26. The Appellant applied for EI benefits on April 29, 2022.

hours they work, it doesn't pay every hour in the right pay period. The employer holds back pay for the extra hours its employees work at peak season and pays it later towards the end of the season, when the work is slower.³ For this reason, the employer didn't want Service Canada looking into its operations.

[20] The Appellant says that although he got along with the employer in earlier years, after the employer learned that the Appellant had applied for benefits and had told others how to apply, the employer started referring to him as the "smart one." The employer would talk to others within the Appellant's hearing and say things like "the Appellant wouldn't be working there again" and that "he couldn't wait for the Appellant to stop working."⁴ The Appellant says when the employer entered the barn where he worked, he would greet the employer, but despite hearing him, the employer ignored him. He says the employer told him he was free to stop working whenever he wanted, and that he wouldn't help the Appellant find another farm job.

[21] The Appellant stated that around June 24, 2022, the employer sent another employee to watch the Appellant work so he could learn the Appellant's job for the following season. The other employee told the Appellant that the employer said it had signed the Appellant off (in other words, it had released him from his contract).

[22] As far as the Appellant knows, none of his coworkers who applied for EI benefits were rehired in 2023.

[23] To the Commission, the employer denied telling the Appellant that he wouldn't be rehired the next year.

[24] The employer told the Commission that the Appellant's evening shift was cancelled on June 28, 2022, because the season was ending, but the Appellant was expected to show up for the 6 a.m. shift.⁵ The employer told the Commission that the

³ The Appellant told me that he tried to explain this to the Commission, but its officer didn't understand what he was saying.

⁴ For example, see what the Appellant told the Commission on page GD3-38 and GD3-42, and what the Appellant told me at the hearing.

⁵ See page GD3-26.

Appellant stopped working because he didn't want to do the job anymore.⁶ The employer says that no one realized the Appellant wasn't working until a few days had passed.⁷

[25] I find that the employer's statements are unreliable and not credible.

[26] First, the record of employment prepared by the employer for the Appellant doesn't reflect what the employer told the Commission. The employer told the Commission that the Appellant didn't have much work until May 9, 2022, yet his record of employment shows that he worked more hours during those first two pay periods starting on April 22, 2022, than he did in weeks three, four, five, six, eight, nine and ten.⁸ The time sheets provided by the employer suggest that the Appellant only started work on May 9, 2022.⁹ If this is true, based on the number of pay periods on the record of employment, the Appellant would have worked beyond June 28, 2022, which we know isn't true. So, the employer's statements and its record of employment can't both be true. This is the main reason I find the employer's statements are unreliable.

[27] Secondly, I don't believe that the Appellant could have missed days of work without the employer noticing, as the employer claims happened. This is why:

- It is unreasonable to think that half of a two-person team not showing up for work would go unnoticed for an hour, let alone the days the employer claims. The Appellant worked in the barn, not in the field, and if he had been scheduled to work and didn't show up, the product wouldn't have been weighed and stored. As I say, this wouldn't have gone unnoticed for days.
- If the employer had scheduled the Appellant to work, his supervisor would have walked the few minutes from the barn to the Appellant's bunkhouse and asked him why he wasn't at work. The Appellant's supervisor lived in a bunkhouse next

⁶ See pages GD3-26 to GD3-27.

⁷ See GD3-26. See also the employer's email of July 5, 2022, on page GD3-36.

⁸ See page GD3-26 and GD3-18.

⁹ See time sheets starting on page GD3-28. The first date is May 9, 2022.

to the Appellant and they were close to the barn. So, it isn't credible that the employer didn't know the Appellant wasn't at work.

- Even if the employer intended the Appellant to work in the field after June 28, 2022, it is still unlikely that his absence went unnoticed for days. If nothing else, his supervisor would have noticed that he was still at the bunkhouse, and not working.

[28] I find that the employer waited a few days then reported the Appellant's absence in hopes that the Appellant wouldn't be entitled to EI benefits. Such an action is in line with the animosity he showed the Appellant since he learned the Appellant had applied for EI benefits. The employer's request for reconsideration of the Commission's decision to pay the Appellant EI benefits also shows that he was against the Appellant receiving benefits.

[29] When the Appellant filed his renewal application, he reported that he stopped working because of a shortage of work. I find that this shows that until the Commission started probing into why he left, the Appellant believed that his job had come to its natural ending.

[30] The Commission says the Appellant admitted to the Jamaican Liaison officer that he knew he had to work but stopped going because he was expecting to start another job.¹⁰ The Appellant denies having said this. He says he agreed that he breached the contract because he just wanted to get it over with.

[31] I prefer the Appellant's original statement to the Commission that he stopped working because of a shortage of work to what the Commission says the Jamaican Liaison officer said.

[32] The Appellant's original statement to the Commission is in line with his testimony.

¹⁰ See page GD3-42.

[33] In the circumstances, I find it unlikely that the Appellant would have deliberately stopped showing up for scheduled work. He was reliant upon the employer to drive him to his next employer, for transportation for groceries, and for his accommodations, which was at the workplace.

[34] Considering all the evidence, the Appellant's explanation of what happened is more likely than the employer's version of events.

[35] So I find that the Appellant's job ended on June 28, 2022. Since the Appellant didn't have the choice to stay employed, he didn't voluntarily leave his job. This means that he isn't disqualified from receiving EI benefits.

[36] That said, I am also going to consider whether the Appellant would have had just cause to leave his job.

Did the Appellant have just cause to leave his job?

– What it means to have just cause

[37] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹¹ Having a good reason for leaving a job isn't enough to prove just cause.

[38] The law explains what it means by "just cause." 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 you must consider all the circumstances.¹²

[39] It is up to the Appellant to prove that he had just cause. He must prove this on a balance of probabilities. This means that he must show that it is more likely than not that his only reasonable option was to quit.¹³

¹¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

¹² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

¹³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

[40] When I decide whether the Appellant had just cause, I must look at all the circumstances that existed when the Appellant quit. The law sets out some circumstances I must look at.¹⁴

[41] After I decide which circumstances apply to the Appellant, he then must show that he had no reasonable alternative to leaving at that time.¹⁵

– **What else happened**

[42] As mentioned above, the Appellant says that after the employer learned that the Appellant had applied for EI benefits, and had told others how to apply, the employer's conduct towards the Appellant changed. Specifically, the employer:

- Ignored the Appellant when the Appellant greeted him
- Made comments in front of others that the Appellant was the smart one, that he wouldn't be rehired, and that the employer would be happy when the Appellant was done

[43] The employer called the Jamaican Liaison Office and reported that the Appellant had breached his contract.

[44] The employer also asked the Commission to reconsider its decision to pay the Appellant EI benefits. In its request for reconsideration, the employer alleged that the Appellant remained in Ontario illegally.¹⁶

[45] The Appellant says that when he talked to the Jamaican Liaison Office he agreed that he had breached the contract because the office always takes the employer's side.¹⁷ He says the fact that the officer didn't return his calls but promptly replied to the

¹⁴ See section 29(c) of the Act.

¹⁵ See section 29(c) of the Act.

¹⁶ See page GD3-24.

¹⁷ See what the officer told the Commission on page GD3-37. See also page GD3-39 that shows that the Appellant told the Commission that he knew the liaison officer was there to do the employer's bidding and he just wanted to get it over with. See also page GD3-42.

employer is proof of this.¹⁸ He says the only thing the liaison officer wanted to know from him was when he wanted to leave Canada.

[46] The Appellant believes that the employer interfered with the next farm job he was going to do.

[47] The employer told the Commission that he was annoyed that the Appellant asked its office staff for letters for his benefits and that he avoided the Appellant. It denied saying that the Appellant wouldn't be rehired and holding his application for benefits against him.¹⁹

Specific circumstances that I must consider

[48] Based on the evidence in the file, I have to consider some of the circumstances set out in the *Employment Insurance Act*, including whether there was antagonism and harassment.²⁰

[49] First, I find that there was antagonism with a supervisor for which the Appellant was not primarily responsible.²¹

[50] I accept what the Appellant told me about how the employer treated him. As explained above, the employer's statements are not credible. I believe the employer's negative treatment towards the Appellant was meant to deter other workers from applying for benefits the employer feels they aren't entitled to. There is no compelling evidence that the Appellant was responsible for the way the employer treated him.

[51] Secondly, I find that the employer's actions also amount to harassment. His verbal behaviour was meant to humiliate the Appellant and persisted from when the employer learned that the Appellant applied for EI benefits until after the Appellant stopped working.

¹⁸ See page GD3-39.

¹⁹ See page GD3-41.

²⁰ See section 29(c) of the Act.

²¹ This is one of the circumstances I must consider under section 29(c)(x) of the Act.

[52] Thirdly, I also thought about whether the employer's practices may have been contrary to the law.²² The employer didn't pay the Appellant for his work in the correct pay periods, and the Appellant normally worked seven days a week.²³ But the Appellant hasn't provided enough evidence to show that this practice is contrary to the law, and hasn't specified what law the employer's practices breach.

[53] Lastly, the Commission says that the Appellant didn't have a reasonable assurance of another job in the immediate future.²⁴ The Appellant didn't dispute this. And I see no evidence to the contrary.

The Appellant had no reasonable alternative

[54] I must now look at whether the Appellant would have had no reasonable alternative to leaving his job when he did.

[55] I find that the Appellant would have had no reasonable alternative but to leave because of the employer's treatment towards him. He couldn't have continued to work for the employer given the ongoing comments and treatment. The negative treatment affected his mental health and was exacerbated by the fact that the Appellant lived where he worked. He didn't have a break because he lived with those who heard the employer's words and witnessed his antagonistic and harassing treatment of the Appellant. In other words, staying until he had another job wasn't a reasonable alternative.

[56] The Commission says that the Appellant could have reported the situation to the Jamaican Liaison Office.²⁵

[57] Talking to the Jamaican Liaison Office wouldn't have helped the Appellant. I accept the Appellant's testimony that despite the fees he paid to the office, the office regularly takes the employer's side because if it didn't, the employer would use a different agency to help it find workers. The officer didn't return his calls, and when she

²² This is another circumstance that I must look at under section 29(c)(xi) of the Act.

²³ See page GD3-15. See also time sheets on page GD3-29, GD3-31, and GD3-34.

²⁴ See section 29(c) of the Act.

²⁵ See page RGD2-1.

talked to him at the employer's request, she didn't ask his side of the story. She didn't allow him to explain that the photo of him she claimed had been taken at Niagara Falls while he was supposed to be working was taken the year before. So, it's likely the officer would not have been interested in anything the Appellant had to say before his job ended.

[58] The Commission says that since the Jamaican Liaison officer wasn't returning his calls, the Appellant could have visited the Jamaican Liaison Office in person. This isn't a reasonable alternative because the Appellant had no realistic means to get to the office. The Appellant lived and worked in the country, about a two-hour car drive from the office. As far as the Appellant knows, there was no public transportation there. He relied on his employer for all his transportation needs, from getting groceries, to getting to his next employer. Further, most weeks he was working seven days a week. The idea that he could have attended the office is unrealistic, so it wasn't a reasonable alternative.

[59] Since the Appellant had no reasonable alternatives, he would have had just cause for leaving his job.

Leaving a job within three weeks of its end

[60] The Appeal division wanted me to consider whether the Appellant would have been disentitled to EI benefits only until his contract would have ended.

[61] Despite its reconsideration decision, the Commission now believes that the Appellant shouldn't be "disqualified" from receiving EI benefits, but should be "disentitled" only from June 28, 2022, to July 11, 2022.

[62] This is because the Act says that claimants who voluntarily leave their job without just cause within three weeks before their term of employment is to end are disentitled from receiving EI benefits **only** until their employment was scheduled to end.²⁶

²⁶ See section 33(1) of the Act.

[63] As explained above, the Appellant would have had just cause for leaving his job had it not already ended.

[64] But if he hadn't had just cause, I agree with the Commission that his job would have otherwise ended on July 11, 2022, which was within three weeks from when he stopped working. The Appellant agrees that this is when his contract was meant to end.²⁷ So, if he hadn't had just cause, he would have been disentitled from receiving EI benefits from June 28, 2022, to July 11, 2022.

Conclusion

[65] The Appellant isn't disqualified from receiving benefits because he didn't voluntarily leave his job.

[66] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section

²⁷ The Appellant confirmed this at the hearing.