



[TRANSLATION]

Citation: *RC v Canada Employment Insurance Commission*, 2023 SST 1946

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

Decision

Appellant: R. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (602810) dated August 4, 2023 (issued by Service Canada)

Tribunal member: Normand Morin

Type of hearing: Videoconference

Hearing date: November 21, 2023

Hearing participant: Appellant

Decision date: December 11, 2023

File number: GE-23-2182

Decision

[1] The appeal is allowed in part.

[2] I find that the Appellant hasn't shown that he had just cause for voluntarily leaving his job.¹ He had reasonable alternatives to leaving. This means that his disqualification from receiving Employment Insurance (EI) benefits from January 29, 2023, is justified.²

[3] I find that the Appellant has proven his availability for work from February 6, 2023.³

Overview

[4] From November 15, 2021, to January 30, 2023, inclusive, the Appellant worked as an [translation] "operator helper" for X (employer). He stopped working for that employer after voluntarily leaving his job.⁴

[5] On February 1, 2023, he made an initial claim for EI benefits (regular benefits).⁵ A benefit period was established effective February 5, 2023.⁶

[6] On April 26, 2023, the Canada Employment Insurance Commission (Commission) told the Appellant that he wasn't entitled to EI benefits from January 29, 2023, because he had voluntarily left his employment with the employer on January 30, 2023, without just cause as defined in the Act. The Commission also told him that it was unable to pay him benefits from February 6, 2023, because he hadn't answered its calls

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

² See sections 29 and 30 of the Act.

³ See section 18(1)(a) of the Act and sections 9.001 and 9.002(1) of the *Employment Insurance Regulations* (Regulations).

⁴ Although the Appellant's statements report him as saying that his last day worked was January 27, 2023, I find that his job ended on January 30, 2023, since the Record of Employment from his employer indicates that his last day paid was January 30, 2023—GD3A-18, GD3A-19, GD3A-25, and GD3A-26.

⁵ See GD3A-3 to GD3A-17 and GD3B-3 to GD3B-17.

⁶ See GD3A-1, GD3B-1, GD4A-1, GD4B-1, and GD9-1.

and hadn't been able to prove that he was available for work without restrictions. The Commission said that, as a result, he wasn't considered available for work.⁷

[7] On August 4, 2023, after a request for reconsideration, the Commission told the Appellant that it was upholding the April 26, 2023, decisions about his voluntary leaving and availability for work.⁸

[8] On August 9, 2023, the Appellant challenged the Commission's reconsideration decisions before the Social Security Tribunal of Canada (Tribunal).⁹

[9] The Appellant says that he had no choice but to stop working for the employer. He explains that mechanical problems with his car prevented him from going to work from January 30, 2023. His car had over 20 years of wear and tear on it. He says he had it fixed several times but could not get it fixed again, given the wear and tear and the costs involved, and he could not afford to buy another one. He notes that his mechanic told him it wasn't worth fixing. The Appellant explains that he had to travel about 30 kilometres to get to work, that his workplace wasn't accessible by public transit, and that he could not carpool. He says that his employer wasn't "flexible" enough to accommodate him and take his transportation problem into account.

[10] On the issue of availability, the Appellant argues that he was available for work and looked for a job. He says that he focused his job search on places accessible by public transit, as was the case for several jobs he has had in the past. He says that the Commission didn't ask him for proof of his job search. He argues that it didn't do an objective analysis of his availability for work. He says that he started a new job in early October 2023.

⁷ In its arguments, the Commission said there was a clerical error in the April 26, 2023, notice of decision. It says that the Commission was unable to pay the Appellant EI benefits from January 29, 2023, because he wasn't considered available for work. According to the Commission, it should say that benefits could not be paid from February 6, 2023—GD9-1 and GD9-2. See also GD3A-21, GD3A-22, GD3B-19, and GD3B-20.

⁸ See GD02-10, GD3A-29, GD3A-30, GD3B-27, and GD3B-28.

⁹ See GD02-1 to GD02-11.

[11] On August 29, 2023, the Commission said that it was conceding the appeal on the issue of the Appellant's availability for work.¹⁰

Issues

[12] In this case, I have to decide whether the Appellant had just cause for voluntarily leaving his job.¹¹ 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?

[13] I also have to decide whether the Appellant has proven his availability for work from February 6, 2023.¹²

Analysis

Voluntary leaving

[14] 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.

[15] 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.¹³

[16] It is up to the claimant to prove that they had just cause.¹⁴ 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.

¹⁰ See GD7-1.

¹¹ See sections 29 and 30 of the Act.

¹² See section 18(1)(a) of the Act and sections 9.001 and 9.002(1) of the Regulations.

¹³ 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.

¹⁴ The Court established this principle in *White*, 2011 FCA 190 (para 3).

[17] 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?**

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

[19] I find that the Appellant had the choice to continue working for the employer but decided to voluntarily leave his job on January 30, 2023.

[20] 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.¹⁵

[21] The evidence on file indicates that on January 30, 2023, the Appellant gave the employer a resignation letter saying he was going to stop working for it as an operator helper because of a problem getting to work and because he hadn’t landed an operator position.¹⁶

[22] On his February 1, 2023, application for benefits and in his July 31, 2023, statement to the Commission, he said he left his job because he wasn’t able to get to work anymore.¹⁷

[23] At the hearing, the Appellant said that his job didn’t end because of voluntary leaving. He argued that he had no choice but to stop working for the employer, since he had no way of getting to work anymore. He said he had no alternatives.

[24] Although the Appellant argues that he had to stop working because he didn’t find a solution to his problem getting to work, I find that he still initiated the end of his employment by telling the employer that he was going to stop working for it.

¹⁵ The Court established this principle in *Peace*, 2004 FCA 56.

¹⁶ See GD02-11 and GD3A-27.

¹⁷ See GD3A-7, GD3A-25, and GD3A-26.

[25] I now have to decide 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?**

[26] 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 reasons the Act accepts.

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

[28] The statements the Commission got from the employer indicate the following:

- a) On January 30, 2023, the Appellant handed in a resignation letter.¹⁸
- b) He also sent an email to the human resources manager saying that he was resigning because he no longer had a car.¹⁹
- c) He didn't ask to take a leave of absence until his car was fixed.²⁰
- d) He didn't ask for a transfer or a change in his duties or—according to the employer—to work from home.²¹

[29] The Appellant's testimony and statements indicate the following:

- a) He had to drive about 30 kilometres to get to work, for a total of 300 kilometres per week.²²
- b) He had mechanical problems with his car on January 27, 2023. He had no way of getting to work after that, so he stopped working.²³

¹⁸ See GD02-11, GD3A-27, and GD3A-28.

¹⁹ See GD3A-28.

²⁰ See GD3A-28.

²¹ See GD3A-28.

²² See GD02-5, GD3A-7, GD3A-25, GD3A-26, and GD3B-7.

²³ See GD02-5, GD3A-7, GD3A-25, GD3A-26, and GD3B-7.

- c) His car had over 20 years of wear and tear on it. He had it fixed several times before he stopped working. He could not afford to have it fixed again, given the wear and tear on it and the cost. His mechanic told him it wasn't worth it. His car was scrapped.²⁴
- d) He could not afford to buy a new one.
- e) The area where he worked wasn't accessible by public transit.²⁵
- f) He could not carpool to work. The only person he could have carpooled with was a former co-worker who lived near him but didn't work for the employer anymore. He could not carpool with his partner. They worked in two completely different areas or too far from each other, and they had different work schedules. The Appellant worked an evening shift from 2:30 p.m. to 11 p.m.²⁶
- g) He didn't look into renting a car, never rented one, and didn't think to rent one. To do so, he would have needed to get approved for credit, and he had no sources of income other than his employment income.
- h) With a daily commute of 60 km, he would have worked for nothing if he had taken a taxi to work.
- i) He didn't talk to the employer about accommodations for his transportation problem (for example, a transfer, a leave of absence). He said that the employer wasn't "flexible." He explained that a number of employees experienced shift changes in the wake of the company's restructuring. Co-workers tried to make arrangements with the employer in connection with this but were unsuccessful.²⁷

²⁴ See GD02-5, GD3A-7, GD3A-8, GD3A-25, GD3A-26, GD3B-7, and GD3B-8.

²⁵ See GD02-5, GD3A-7, GD3A-8, GD3A-25, GD3A-26, GD3B-7, and GD3B-8.

²⁶ See GD02-5, GD3A-7, GD3A-8, GD3A-25, GD3A-26, GD3B-7, and GD3B-8.

²⁷ See GD3A-8, GD3A-9, GD3A-25, GD3A-26, GD3B-8, and GD3B-9.

- j) The Appellant thought it wasn't worth asking for an accommodation, since the employer hadn't accommodated other employees. He said he didn't know whether, in his case, his reason for getting an accommodation would have been more acceptable than those given by other employees.²⁸
- k) Although his resignation letter said that his decision to stop working was related to an operator position that he would have liked, this wasn't the case.²⁹ He noted that, if that had been the case, he would have left his job long before that. He said he mentioned it to get the employer thinking.
- l) The Act should cover his situation, even if it doesn't mention the specific circumstances related to the end of his employment.³⁰
- m) He said that the Commission should not try to influence the Tribunal's decision.³¹

[30] I find that the Appellant's reasons for voluntarily leaving his job don't show that he had just cause under the Act for doing so.

[31] When the Appellant started working for the employer in November 2021, he knew that he needed a vehicle to get to his workplace, which was about 30 kilometres from his home. He knew his conditions of employment and accepted them.

[32] I find that after the mechanical problems with his car in late January 2023, it was up to him to make the necessary arrangements to continue working for the employer or to tell it how and when he would be able to do so.

[33] The Appellant's testimony indicates that before voluntarily leaving his job, he didn't talk to the employer to try to find a solution.

²⁸ See GD3A-25 and GD3A-26.

²⁹ See GD02-11 and GD3A-27.

³⁰ See GD6-2 and GD11-1.

³¹ See GD11-1.

[34] Despite his statement that he thought it wasn't worth asking the employer for an accommodation for his problem (for example, a transfer, a leave of absence), since the employer would not have been flexible enough to grant it, I am of the view that the Appellant anticipated a situation that didn't end up happening.

[35] I find that the Appellant was only assuming that it would not have been possible to get an accommodation from the employer for his transportation problem, since the employer had supposedly denied accommodations suggested by other employees concerning their work schedules.

[36] Even though the Appellant argues that the Commission should not try to influence the Tribunal's decision by making additional arguments,³² the Commission is a party to this case and is entitled to present its case. I should mention that the Commission's additional arguments were submitted in response to a request from the Tribunal.³³

[37] I note that after those arguments were submitted, the Appellant had an opportunity to make his own submissions and did so. Because of this, I find that he was able to present his case again.

[38] In summary, even though he has shown that he had a good reason for leaving his job, the Appellant didn't have just cause within the meaning of the Act.

[39] In the circumstances, I find that the Appellant caused his own unemployment.

[40] In my view, the Appellant had other options besides leaving his job.

[41] A reasonable alternative within the meaning of the Act would have been, for example, for him to discuss his transportation problem with the employer before voluntarily leaving. If he had, the employer could have found a solution to this issue.

³² See GD9-1, GD9-2, and GD11-1.

³³ See GD8-1 to GD8-3.

[42] But the Appellant chose not to take steps to that end. Instead, he told the employer that he was going to stop working for it. As a result, he presented it with a done deal.

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

[44] The appeal is without merit on this issue.

Availability for work

[45] Two sections of the Act indicate that claimants have to show that they are available for work.³⁴ Both sections deal with availability, but they involve two different disentitlements.³⁵

[46] First, a claimant isn't entitled to receive benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was capable of and available for work and unable to find a suitable job.³⁶

[47] Second, to prove availability for work, the Commission may require the claimant to prove that they are making reasonable and customary efforts to find a suitable job.³⁷

[48] To determine whether a claimant is available for work, I have to consider the specific criteria set out in the Act for determining whether the claimant's efforts to find a suitable job are reasonable and customary.³⁸ According to these criteria, the efforts must be 1) sustained, 2) directed toward finding a suitable job, and 3) consistent with nine specified activities that can be used to help claimants get a suitable job.³⁹ These activities include assessing employment opportunities, registering for job search tools or

³⁴ See sections 18(1)(a) and 50(8) of the Act.

³⁵ See sections 18(1)(a) and 50(8) of the Act.

³⁶ See section 18(1)(a) of the Act.

³⁷ See section 50(8) of the Act.

³⁸ See section 9.001 of the Regulations.

³⁹ See section 9.001 of the Regulations.

with online job banks or employment agencies, contacting prospective employers, and submitting job applications.⁴⁰ See section 9.001 of the Regulations.

[49] The criteria for determining what constitutes a suitable job are the following:

1) the claimant's health and physical capabilities allow them to commute to the place of work and to perform the work, 2) the hours of work aren't incompatible with the claimant's family obligations or religious beliefs, and 3) the nature of the work isn't contrary to the claimant's moral convictions or religious beliefs.

[50] The notion of "availability" isn't defined in the Act. Court decisions have set out criteria for determining a person's availability for work and whether they are entitled to EI benefits.⁴¹ These three criteria are:

- wanting to go back to work as soon as a suitable job is available
- expressing that desire through efforts to find a suitable job
- not setting personal conditions that might unduly limit the chances of going back to work⁴²

[51] When determining whether a claimant is available for work, their attitude and conduct have to be considered.⁴³

[52] In this case, the Appellant met the Court's criteria to prove his availability for work from February 6, 2023. He has shown that his efforts to find a job from then on were reasonable and customary.

⁴⁰ See section 9.001 of the Regulations.

⁴¹ The Court established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

⁴² The Court established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

⁴³ See the following Court decisions: *Carpentier*, A-474-97; *Whiffen*, A-1472-92; and *Rondeau*, A-133-76.

[53] The Appellant's testimony and statements indicate the following:

- a) He was available for work.⁴⁴
- b) He made sustained efforts to find work, either through the Internet or through employment agencies, or by visiting prospective employers. He noted that he spent a lot of time looking for a new job.⁴⁵
- c) He focused his job search on places accessible by public transit, as was the case for several jobs he has had in the past. He noted that he could even bike to work if necessary, distance permitting.⁴⁶
- d) His family responsibilities weren't a restriction for work.⁴⁷
- e) The Commission didn't ask him for proof of his job search.⁴⁸
- f) The Commission didn't do an objective analysis of his availability for work.⁴⁹
- g) He started a new job in early October 2023.

[54] In its additional arguments, submitted on August 29, 2023, the Commission said that it was conceding the issue before the Tribunal concerning the Appellant's availability for work.⁵⁰

[55] The Commission argued that:

- a) the Appellant had shown job search efforts since February 6, 2023
- b) the Appellant had looked online, contacted employment agencies, and visited employers who were hiring

⁴⁴ See GD6-1 and GD6-2.

⁴⁵ See GD6-1 and GD6-2.

⁴⁶ See GD6-1 and GD6-2.

⁴⁷ See GD6-1.

⁴⁸ See GD6-1.

⁴⁹ See GD6-1 and GD6-2.

⁵⁰ See GD7-1.

- c) the Appellant had shown, since February 6, 2023, that he had no transportation restrictions when it came to looking for work or getting to a work location
- d) the Appellant's family obligations weren't a restriction in his case, since he could work evenings or nights

[56] Although the Commission explained why it was conceding the appeal on the issue of the Appellant's availability for work, it had said in a reconsideration decision dated August 4, 2023, that it was upholding the April 26, 2023, initial decision on this issue.⁵¹

[57] That decision was appealed on August 9, 2023,⁵² and the Commission could not change it at that point.

[58] The Court tells us that, once a decision by the Commission has been appealed, that decision is out of its hands, and any change to a decision after it has been appealed is invalid.⁵³

[59] However, I agree with the Commission's submissions that the Appellant has proven his availability for work from February 6, 2023.

[60] In this case, I find that, from then on, the Appellant showed a desire to go back to work as soon as a suitable job was available.

[61] I find that, from that date, he expressed that desire through efforts to find a suitable job.

[62] This means that the Appellant fulfilled his responsibility of actively looking for a suitable job.

⁵¹ See GD02-10, GD3A-29, GD3A-30, GD3B-27, and GD3B-28.

⁵² See GD02-1 to GD02-11.

⁵³ The Court established or reiterated this principle in the following decisions: *Wakelin*, A-748-98; *Poulin*, A-516-91; and *Von Findenigg*, A-737-82.

[63] I also find that, from February 6, 2023, the Appellant didn't set personal conditions that unduly limited his chances of going back to work in a suitable job.

[64] In summary, the Appellant has proven that he was available for work from then on.

[65] The appeal is allowed on the issue of the Appellant's availability for work.

Conclusion

[66] Considering all the circumstances, I find that the Appellant hasn't shown that he had just cause for voluntarily leaving his job. He had reasonable alternatives to leaving. This means that his disqualification from receiving EI benefits from January 29, 2023, is justified.

[67] I find that the Appellant has proven his availability for work from February 6, 2023.

[68] This means that the appeal is allowed in part.

Normand Morin
Member, General Division – Employment Insurance Section