



Citation: *DM v Canada Employment Insurance Commission*, 2023 SST 1664

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: Linda Bell

Type of hearing: Teleconference

Hearing date: June 5, 2023

Hearing participant: Appellant

Decision date: June 8, 2023

File number: GE-23-3

Decision

[1] D. M. is the Appellant. I am dismissing his appeal.

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. This means he is disqualified from receiving regular Employment Insurance (EI) benefits, for this reason.

Overview

[3] The Appellant established a claim for EI benefits effective April 24, 2022. He was working on a farm under the foreign workers' program. After he stopped working on June 28, 2022, he applied to renew his claim for EI benefits.

[4] The Commission looked at the Appellant's reasons for stopping work but was not able to contact the employer. So, the Commission initially determined the Appellant left his job with just cause. He started receiving EI benefits.

[5] The employer submitted a request for reconsideration. The Commission reviewed the reasons why the Appellant left his job. The Commission changed its decision, saying he voluntarily left his job without just cause. The Commission determined the Appellant was disqualified from receiving regular EI benefits. This decision results in an overpayment of EI benefits.

[6] The Appellant disagrees with the Commission. He appeals to the Social Security Tribunal.

Matters I have to consider first

Potential Added Party

[7] Sometimes the Tribunal sends the Appellant's former employer a letter asking if they want to be added as a party to the appeal. To be an added party, the employer must have a direct interest in the appeal. I have decided not to add the employer as a party to this appeal. This is because there is nothing in the file that indicates this decision would impose any legal obligations on the employer.

Issues

[8] Did the Appellant voluntarily leave his job?

[9] If so, did he have just cause for leaving?

Analysis

Voluntary Leaving

[10] I find, for the purposes of EI benefits, the Appellant voluntarily left his job.

[11] The parties agree the Appellant simply stopped going to work before the season ended. So, I find as fact that the Appellant voluntarily left his job.

Just cause

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

[13] The law says you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ Having a good reason for leaving a job isn't enough to prove just cause.

[14] The law explains what it means by "just cause." The law says you have just cause to leave if you had no reasonable alternative to quitting your job when you did.

[15] It is up to the Appellant to prove he had just cause. He has to prove this on a balance of probabilities. This means that he has to show it is more likely than not that his only reasonable option was to quit.²

[16] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed at the time the Appellant quit. The law sets out some of the circumstances I have to look at.³

¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

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

[17] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to leaving at that time.⁴

– **The circumstances that existed when the Appellant quit**

[18] I recognize the Appellant's statements of the events leading up to him stopping work have continued to change. The documents on file show:

- The Appellant selected shortage of work when he applied to renew his claim for EI benefits.
- Several weeks later he told the Commission he stopped working because his employer began to retaliate against him because he had applied for EI benefits.
- He says the employer reduced his hours.
- The Appellant told the Commission he tried to speak with the employer, but the employer provided no explanation for their actions.
- He says the employer was calling him the "smart one," gave him a face, and kept telling him he wouldn't be hired back next year.
- He told the Commission he tried to call the foreign worker liaison, but she didn't return his calls.
- He assumed that he could stop working once he was told he would be transferred.
- He decided he could have some "buffer days" before starting his new term at the other farm.
- He confirmed the final paperwork wasn't completed for his transfer. He wasn't given a start date to transfer to the new farm.

⁴ See section 29(c) of the Act.

- He admits that he was told about the shift change where he was to stop working nights at 12:00 p.m. on June 28, 2022, and to report to work at 6:00 a.m. the next day.
- He was never denied any shifts or sent away. He just didn't feel there was enough work for him.

[19] At the hearing, the Appellant testified that he had worked for this employer in 2019, 2020, 2021, and 2022. So, he knew the process when someone was being transferred. In previous years this employer had transferred him to work at other farms. The transfer process was he would continue to work until someone came to tell him he was transferring. He says he usually was given one day's notice. So, he would have one day off work the day before they took him to the other farm.

[20] The Appellant said the employer kept saying he couldn't wait for him to leave and they're not taking him back next year. He admits the employer's secretary called him into the office to speak to another farmer on the telephone about being transferred. This occurred sometime near the beginning of June 2022, during a week when he didn't have to work every day. He agreed to be transferred to that farm, but it was never finalized before he left.

[21] He argued the employer breached his contract first when the employer said they were releasing him to be transferred. The employer initially said they would transfer him but then started telling him he was free to go, and he had to find his own transfer.

[22] The Appellant confirmed that when working the night of June 28, 2022, the boss came and told the supervisor to tell the workers to leave the barn at 12:00 a.m. (midnight) and return to work at 6:00 a.m., for the day shift. He thought the boss' actions were disrespectful.

[23] The Appellant said that he told the other workers, "I'm not coming back" because the boss was rude. He felt disrespected when the boss told the workers to leave the barn at midnight when their shift was not supposed to end until 5:00 a.m. He didn't discuss this with the supervisor or boss.

[24] The Appellant argued he doesn't work well under pressure. If feeling disrespected or pressured, he isn't focused and can't work well. He wasn't in a good state of mind, he was worried about being sent back home, and he hadn't made enough money. He just wanted to go to the next job. He says he couldn't continue to work for this employer because he was being treated unfairly and that took a toll on his health.

[25] The Commission documented that the employer said the following.

- The Appellant simply stopped showing up for work. His shift was to change from night to day shift on June 29, 2022, but he didn't report for work.
- The employer contacted the foreign worker liaison to report the Appellant wasn't coming to work. His contract states he was supposed to work until July 11, 2022. The employer didn't know what to do so reached out to the liaison officer.
- Work was slow at the beginning of the season, but they were in full swing in May 2022. The employer denied reducing the Appellant's shifts or targeting him. Instead, the employer says they had equipment breakdown, which caused all the employees to lose some days of work.
- The employer agrees they had spoken about transferring the Appellant. But that transfer wasn't finalized.
- They confirmed that when the Appellant stopped showing up for work, there was a possibility he was still living at the bunkhouse at the farm.
- The Appellant didn't speak to the employer, bring up any concerns or reasons to them, so they had no idea why he'd stopped working.

[26] The Commission documented that the foreign worker liaison said there were specific days when the Appellant failed to go into work. She indicated he had chosen to go to an attraction in town. The liaison said the Appellant told her that he knew he was expected to be at work and admitted he'd received a text about his shift, but he chose not to go. She says he didn't provide any defence as to why he didn't go to work.

Instead, he expressed he just didn't feel like going into work or didn't want to work. He did mention he thought he was being transferred to work at a different farm.

[27] The Appellant disputed the Commission's documents. Specifically, he said he didn't tell the Commission he wanted buffer days before he was transferred. The Tik Tok video that was posted in June 2022 was taken of him at an attraction in 2019 and not in 2022. He didn't try to speak with the employer to resolve his situation because the employer wasn't speaking with him. He didn't tell the liaison worker what was happening because they always take the boss' side.

Reasonable alternatives

[28] In my view, the circumstances presented by the Appellant, whether considered individually or cumulatively, do not amount to just cause within the meaning of the Act. This is because the Appellant had reasonable alternatives to quitting when he did.

[29] I recognize the Appellant states he wasn't in a good state of mind and couldn't focus or work well. But in such cases, the law says to show just cause, he must provide medical evidence indicating he quit his job due to a medical condition. He is required to demonstrate he attempted to reach an agreement with his employer to accommodate any health concerns, which he didn't do.⁵

[30] If he felt disrespected and uncomfortable to the point he wasn't feeling well mentally, a reasonable alternative to not showing up for work would have been for the Appellant to seek medical assistance, ask for a leave of absence, discuss his situation and concerns with his supervisor, or to tell the liaison worker how he was feeling when she asked him.

[31] The Appellant says he was just waiting to be transferred to work at the other farm, which indicates he was still capable of working. So, another alternative was for the Appellant to continue working all the hours that were available to him until he was transferred. If he just wanted a different job, he could have continued working until his

⁵ See CUB 38804.

transfer was complete, he secured another job, or until the last day of his contract, so as not to create his own unemployment.

[32] If the circumstances were such that the Appellant felt he was being mistreated in any way or harassed, then an alternative would have been to report the situation to a higher level. If the liaison officer didn't return his calls, a reasonable alternative would have been for him to seek assistance by calling Service Canada to discuss his concerns. Alternatively, he could have asked to speak with the liaison officer privately to discuss his concerns when he attended the teleconference with her and the employer.

[33] Overall, I find that when considering all the circumstances that existed at the time the Appellant stopped going to work, even cumulatively, he had reasonable alternatives to leaving when he did. This means the Appellant didn't have just cause for leaving his job. So, he is disqualified from receiving regular EI benefits.

Conclusion

[34] The appeal is dismissed.

[35] The Appellant voluntarily left his job, without just cause. This means he is disqualified from receiving EI benefits as of June 26, 2022.

Linda Bell

Member, General Division – Employment Insurance Section