



[TRANSLATION]

Citation: *ES v Canada Employment Insurance Commission*, 2024 SST 336

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

## Decision

**Appellant:** E. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (626772) dated November 1, 2023 (issued by Service Canada)

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**Tribunal member:** Josée Langlois

**Type of hearing:** In person

**Hearing date:** January 4, 2024

**Hearing participant:** Appellant

**Decision date:** January 5, 2024

**File number:** GE-23-3198

## Decision

[1] The appeal is allowed.

[2] I find that the Appellant didn't voluntarily leave his job.

## Overview

[3] The Appellant applied for sickness benefits on September 18, 2023. He then indicated that he had stopped working for health reasons on September 6, 2023, but that his return-to-work date was unknown.

[4] On November 1, 2023, the Canada Employment Insurance Commission (Commission) decided that the Appellant wasn't entitled to sickness benefits from September 10, 2023, to September 23, 2023, because he voluntarily left his job on September 6, 2023. For this reason, the Commission found that he hadn't proven that he was available for work while he was sick. In addition, it says that the Appellant can't receive regular benefits because he voluntarily left his job and had reasonable alternatives to leaving when he did.

[5] The Appellant explains that he had a high level of anxiety during that period and that, after an incident at work on September 6, 2023, he left the worksite impulsively. But he made an appointment with his doctor and contacted his employer about going back to work as soon as his health issues were resolved.

[6] I have to decide whether the Appellant left his job and, if so, whether he has proven that he had no reasonable alternative to leaving.

## Issues

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

[8] To answer this, I must first address the Appellant's voluntary leaving. I then have to decide whether he had just cause for leaving.

## Analysis

### Did the Appellant voluntarily leave his job?

[9] To determine whether the Appellant voluntarily left his job, I have to answer the following question: Did the Appellant have a choice to stay or leave his job?<sup>1</sup>

[10] The Commission says that the Appellant voluntarily left his job because he asked his employer to be rehired. It argues that he had reasonable alternatives to leaving his job on September 6, 2023. It says that, although he took the initiative of contacting his employer again two weeks later, this doesn't justify his voluntary leaving on September 6, 2023.

[11] The Appellant explains that, after an incident with two foremen on September 6, 2023, he left the worksite impulsively. The Appellant says that he is a power shovel operator and that his foreman wanted to restrict his workspace on the pretext that another foreman wanted to put equipment in his workspace. The Appellant explains that he didn't understand this request and that, since he was finishing his workday at 2:00 p.m., the foreman could have waited to implement his plan.

[12] He then told his foreman that he would leave if his workspace was restricted. The foreman then spoke with the second foreman. But when he returned, he told the Appellant that the decision was unchanged. The Appellant explains that he had a high level of anxiety during that period and, impulsively, he told the foreman that he was leaving. When he left the worksite, he also contacted the manager, but he wasn't there.

[13] The Appellant testified that he had a high level of anxiety during that period, particularly because of a separation, but also because of an accumulation of irritants at work. He said that, on September 6, 2023, he made an appointment with his doctor because he wasn't feeling well.

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<sup>1</sup> See *Peace* 2004 FCA 56.

[14] A medical certificate, dated September 13, 2023, says that his doctor prescribed a leave of absence from work and that the Appellant would be seen again on September 29, 2023.<sup>2</sup>

[15] That same day, the Appellant contacted the employer to tell it that he had a medical note showing that he had stopped working because of health issues. On September 15, 2023, the Appellant's foreman contacted him and told him to take his time, that he understood, and that he could return to work after his period of illness.

[16] The Appellant explains that, on September 13, 2023, he started taking medication to better manage his anxiety and that, after a few days off work, he was feeling better. So, he went back to work on September 25, 2023, which was before the end of his planned leave on September 29, 2023. The Appellant says that he still saw his doctor on September 29, 2023.

[17] The Appellant says that he left the worksite on September 6, 2023, and that, if his anxiety level hadn't been so high and if he had been able to manage it, he would not have left the worksite in this way. He explains that he doesn't want to focus on his anxiety to justify his "voluntary leaving" because the accumulation of various irritants, both at work and in his personal life, led to this situation.

[18] In my view, the Appellant didn't voluntarily leave his job. Even though the explanations given to the Commission and at the hearing show the use of terms like "voluntary leaving" or that he was "rehired," and while it is true that the Appellant left the worksite impulsively on September 6, 2023, the facts show that he had health issues at that time and that he contacted his doctor and then his employer to resolve the situation. After a period of sick leave, the Appellant went back to work on September 25, 2023.

[19] On this point, a medical note, dated September 13, 2023, prescribes a medical leave of absence until September 29, 2023. The Appellant started taking medication for

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<sup>2</sup> See GD3-17.

anxiety on September 13, 2023, and because he was feeling better, he went back to work before the end of his leave.

[20] Although he left the worksite suddenly on September 6, 2023, he immediately contacted his absent manager and made a doctor's appointment to resolve the situation.

[21] As soon as the appointment with his doctor ended on September 13, 2023, the Appellant contacted his manager again to resolve the situation.

[22] So, I accept his explanations that, on September 15, 2023, his foreman contacted him to confirm that he understood that he had to take sick leave and that he could return to work as soon as his leave ended.

[23] So, although the situation on September 6, 2023, may appear to be voluntary leaving, the facts set out later show that it isn't. On that day, the incident added to the events he was already experiencing, and he could not manage his anxiety. He left the worksite impulsively, but he didn't intend to leave his job.

[24] The facts show that the Appellant contacted his doctor and manager to resolve his issues and that he made an agreement with the employer. After taking medication for anxiety, the Appellant went back to work even before his leave ended. When he applied for benefits, the Appellant indicated that he would go back to work for the same employer, but that his return-to-work date was unknown.

[25] So, although the Commission argues that the Appellant voluntarily left his job because he admitted it, I am of the view that the terms the Appellant chose to explain his story must be interpreted in context. In addition, by arguing that the Appellant did go back to work under the same conditions two weeks later, the Commission isn't weighing the evidence that the Appellant was sick at the time and that this is why he left his worksite on September 6, 2023. It also doesn't consider that the reason he was able to go back to his job was because he started taking medication and that his employer understood the situation.

[26] I have to make my decision on a balance of probabilities, and the facts show that the Appellant left the worksite on September 6, 2023, but that he wanted to keep his job. Of course, there were some irritants at work, such as the fact that he was working on a project more than 450 kilometres from his home, but he wanted to keep his job and he made an agreement with his employer. He agreed not to be paid vacation pay in September 2023 because of the separation from employment.<sup>3</sup>

[27] I find that the Appellant didn't voluntarily leave his job. The employer understood the situation, and the Appellant had the choice to stay employed. The facts also show that he went back to his job after his period of illness.

[28] Since the Appellant didn't voluntarily leave his job on September 6, 2023, he doesn't have to show just cause for leaving.

## **Conclusion**

[29] The appeal is allowed.

Josée Langlois  
Member, General Division – Employment Insurance Section

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<sup>3</sup> See the Record of Employment the employer provided at GD3-3.