



Citation: *TB v Canada Employment Insurance Commission*, 2023 SST 1983

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

# **Decision**

**Appellant:** T. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (597483) dated June 21, 2023 (issued by Service Canada)

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**Tribunal member:** Elizabeth Usprich

**Type of hearing:** Teleconference

**Hearing date:** August 30, 2023

**Hearing participant:** Appellant

**Decision date:** September 7, 2023

**File number:** GE-23-1870

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving her job when she did. The Appellant didn't have just cause because she had reasonable alternatives to leaving. This means she is disqualified from receiving Employment Insurance (EI) benefits.

## Overview

[3] The Appellant says she didn't quit her job. The Appellant worked for an employment agency (employer). The employer placed the Appellant with a business. After working with the business for many months, the business decided they no longer wanted the Appellant to work for them. After that happened, the Appellant says she never heard back from her employment agency employer for other work.

[4] The Canada Employment Insurance Commission (Commission) decided that because the Appellant didn't stay in contact with the employer that she voluntarily left. It decided that she voluntarily left (or chose to quit) her job without just cause, so it wasn't able to pay her benefits.

[5] I must decide whether the Appellant has proven that she had no reasonable alternative to leaving her job.

[6] The Commission says the Appellant could have stayed in touch with her employer. The employer says they would have found other work for the Appellant.

[7] The Appellant disagrees and says she didn't know it was a requirement for her to stay in contact with the employer. She thought the employer would contact her if there was other work available.

## **Matter I have to consider first**

### **This hearing was heard along with GE-23-1872**

[8] The Appellant had two cases she had filed an appeal on. To make it easier for the Appellant the two appeals were held on the same hearing day. This means one appeal was heard and then the second appeal was heard. The appeals were treated separately.

## **Issue**

[9] Did the Appellant voluntarily leave her job?

[10] If she voluntarily left, is she disqualified from receiving benefits because she voluntarily left her job without just cause?

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

## **Analysis**

### **The parties don't agree that the Appellant voluntarily left**

[12] If the Appellant had a choice to stay or leave her job, then she voluntarily left.<sup>1</sup> The Appellant and the Commission do not agree on whether the Appellant had this choice.

### **The Appellant voluntarily left her employment**

[13] To decide if the Appellant voluntarily left her employment, I must first decide whether or not she had a choice to stay in or leave that employment.<sup>2</sup>

[14] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>3</sup>

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<sup>1</sup> *Canada (Attorney General) v Peace*, 2004 FCA 56.

<sup>2</sup> *Canada (Attorney General) v Peace*, 2004 FCA 56.

<sup>3</sup> Section 30 of the *Employment Insurance Act* sets out this rule.

[15] The burden of proof is on the Commission to show that the leaving was voluntary.<sup>4</sup>

[16] The Appellant worked for an employment placement agency (employer) since January 2022. The employer placed the Appellant at a business in January 2022. In June 2022, the business no longer wished to have the Appellant work for them. The Appellant's last day with the business was on June 17, 2022.<sup>5</sup>

[17] The employer told the Commission that the business had concerns about the Appellant's attendance. The Appellant doesn't dispute that she had absences with the business. She says she was sick and had court appearances. However, the Appellant and the business aren't the issue here.

[18] The Appellant agrees the business asked that she no longer come to work for them. The Appellant agrees the last day she worked for the business was on June 17, 2022.

[19] The employer says even though the business didn't want the Appellant, the employer would have found other placements for her.<sup>6</sup>

[20] The employer told the Commission the last day they heard from the Appellant was on June 21, 2022.<sup>7</sup> The employer says it is a requirement of their contractual agreement that employees contact them every seven days to declare their availability and see what opportunities are available.<sup>8</sup> The employer says they didn't hear from the Appellant for seven days so they issued a ROE.<sup>9</sup>

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<sup>4</sup> See *Green v Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v White*, 2011 FCA 190; *Canada (Attorney General) v Patel*, 2010 FCA 95.

<sup>5</sup> See GD3-17.

<sup>6</sup> See GD3-28.

<sup>7</sup> See GD3-27.

<sup>8</sup> See GD3-28.

<sup>9</sup> See GD3-28 and ROE at GD3-17.

[21] The Appellant testified she wasn't aware of any requirement to contact her employer every seven days. Yet, the Commission says the Appellant agreed that this was a requirement.<sup>10</sup>

[22] During the hearing the Appellant tried to find her contract with the employer, but was unable to do so. I find it more likely than not that the Appellant may have forgotten what the requirements of her employer were. The Appellant first started working for her employer in January 2022. The Appellant's application for benefits was more than a year later. The hearing itself was a year and seven months later.

[23] As well, the Appellant testified she only had one placement through her employer. This means that the Appellant was at the same place of business from the day she started until June 17, 2022. I find it is more likely than not that the Appellant may have forgotten about the requirement to communicate every seven days. It wasn't something she had to do for six months because she was at the same placement.

[24] I find, on a balance of probabilities, that a term of the employer's contract required the Appellant to contact the employer every seven days.

[25] This means that the Appellant had an option to continue with her employer. All she had to do was let them know that she continued to be available and they would have found placements for her. This means that the Appellant had a choice to stay or go.

[26] The employer says they could have kept looking for work for the Appellant. This means the Appellant could have kept working. But she chose not to remain in touch with her employer. This means she was responsible for the separation from her employer. I find this because she had the choice to stay or go. This means it was the Appellant's actions, not her employer's, that led to her not having work. I find this means the Appellant voluntarily left her employment.

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<sup>10</sup> See GD3-30, the record from the Commission says the "Appellant agreed with this statement. 'Yeah', she said."

## **The parties don't agree that the Appellant had just cause**

[27] The parties don't agree the Appellant had just cause for voluntarily leaving her job when she did.

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

[29] 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. It says that you have to consider all the circumstances.<sup>12</sup>

[30] It is up to the Appellant to prove that she had just cause.<sup>13</sup> She has to prove this on a balance of probabilities. This means she has to show that it is more likely than not that her only reasonable option was to quit. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit.

[31] The Appellant testified she thought she was still employed with her employer. She said she thought if her employer had work for her, they would contact her. But she didn't hear from them after June 21, 2022.

[32] Since the Appellant doesn't accept that she voluntarily left her employment, it makes it more difficult for her to explain why she had just cause for leaving. Yet, I find the Appellant could have explained why she didn't remain in contact with her employer.

[33] The Appellant testified she didn't know it was required that she stay in contact with her employer. Yet, I found above that it is more likely than not that this was communicated to the Appellant and she has just forgotten given the passage of time.

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<sup>11</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

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

<sup>13</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

[34] So, the circumstance that existed for the Appellant was that her placement business didn't wish to have her continue on there. The last day she worked was June 17, 2022. The employer placement agency didn't hear from the Appellant after June 21, 2022 and didn't know she still wanted work.

### **The Appellant had reasonable alternatives**

[35] The Appellant testified she never left her employer placement agency. Yet, she agrees she didn't speak with the employer after June 21, 2022.

[36] The Commission says the Appellant could have remained employed and working by continuing to communicate with her employer.

[37] The Appellant says she assumed the employer would reach out to her if there was work for her.

[38] I find that by not communicating with her employer, it meant the employer didn't know the Appellant was still looking for work. I find the Appellant could have attempted to contact her employer to find out if there were other opportunities. But she didn't. This means the employer didn't think she was still interested in finding other work.

[39] The Appellant testified the only reason she applied for EI benefits is because she was told she had before she could receive other social assistance. I find the Appellant hasn't established that she had just cause for failing to remain in touch with her employer. I find that this means she had a reasonable alternative. It would have been reasonable for the Appellant to keep communicating with her employer.

[40] Considering the circumstances that existed when the Appellant quit, the Appellant had a reasonable alternative to leaving when she did, for the reasons set out above.

[41] This means the Appellant didn't have just cause for leaving her job.

## **Conclusion**

[42] I find that the Appellant is disqualified from receiving benefits.

[43] This means that the appeal is dismissed.

Elizabeth Usprich

Member, General Division – Employment Insurance Section