Citation: *LD v Canada Employment Insurance Commission*, 2024 SST 452

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	L. D.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (623138) dated October 25, 2023 (issued by Service Canada)

Tribunal member:	Marc St-Jules
Type of hearing:	Teleconference
Hearing date:	February 21, 2024
Hearing participant:	Appellant
Decision date:	March 4 2024
File number:	GE-23-3537

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 last worked on June 3, 2023. The Appellant then applied for benefits on July 18, 2023, stating shortage of work.[1] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that she voluntarily left (or chose to quit) her job without just cause, so it wasn't able to pay her benefits.

[4] The Appellant is a personal caregiver, and her car broke down. Her job was to travel to clients to provide care. Because of the car issues, she was no longer able to continue. There is bus service but not being a huge city, public transportation was not feasible. A short visit to care for a client would require well over an hour before and after. All of this for sometimes as little as 1 hour of work.

[5] The Appellant is arguing that she was accepting some of the few jobs offered to her, but the employer would then not actually schedule her. The Appellant says that she would have been available for a more full-time client or office work that involved spending a full day somewhere.

[6] Because the employer would not or could not offer her a more consistent work location and would not schedule her for the ones she was accepting, the Appellant says there was a shortage of work.

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[1] See GD03 pages 3 to 15.

[7] The Commission is saying that there was public transit available to her. The Appellant could have accepted those. The Commission is also relying on the Employer's statement that there was no shortage of work. It is just that the Appellant could not do it. Alternatively, the Commission is arguing the Appellant could have accepted the leave of absence the Employer had offered instead of quitting.

[8] I have two decisions to make. I first need to determine if the Appellant voluntarily left or if there was a shortage of work. If I determine that the Appellant voluntarily left, I then need to determine if the Appellant had a reason the law can accept to allow for benefits to be paid.

Matter I have to consider first

Missing documents

[9] Prior to the hearing, the Appellant provided a document.[2] This document was received on February 1, 2024. In this document, the Appellant wrote she was enclosing records of her hours worked from January to June 2023.

[10] The hearing started as scheduled on February 21, 2024. This issue was discussed with the Appellant. The Appellant did not want to delay the hearing so that this information can be resent or located. The Appellant stated her financial need. She was not interested in delaying the hearing.

[11] The Appellant testified that the extra sheets show that she was scheduled for a very few hours at a time from January to June 2023. I agreed to proceed for a few reasons. They are as follows:

- This is what the Appellant wanted.
- Her testimony under solemn affirmation is also considered.

[2] See GD07.

- The Record of Employment (ROE) supports fluctuating earnings.[3] I had reviewed the ROE prior to the hearing. By looking at the earnings, an estimate can be done for the hours. The lowest average for a two-week period is just over 15.5 hours. That would be just over 2 hours per day on average during a two-week period. The Appellant worked up to seven days a week.[4]

[12] I find that proceeding with the hearing without these documents is not being unfair to the Appellant. I have no reason to doubt her testimony regarding few daily hours being given to her. The ROE is documentary proof that supported her testimony.

The hearing was rescheduled once

[13] The original hearing was scheduled for February 20, 2024. However, I had a scheduling conflict.

[14] For this reason, the hearing was rescheduled for the following day.

[15] The Appellant attended as scheduled.

Issue

[16] Is the Appellant disqualified from receiving benefits because she voluntarily left her job without just cause?

[17] 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 do not agree that the Appellant voluntarily left

[18] I find the Appellant voluntarily left her employment. My analysis is in the following paragraphs.

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[3] See GD03 page 16.
[4] See GD02 page 2. The Appellant provided her schedule from May 22 to June 3, 2023. It shows she worked 7 days a week.

– **What the Appellant says**

[19] The Appellant says that her car broke down. This meant it was not feasible for the Appellant to work with many of the previous clients.

[20] The Appellant testified that she would accept clients when speaking to her Employer. However, these were never added to her schedule. She wanted to work but nothing was getting added to her schedule.

[21] The Appellant says the Employer would communicate regularly to find out if her vehicle had been fixed.

[22] The Appellant argues she was terminated without cause due to a shortage of work. She has an email confirmation of this.[5] I reviewed this email. It says "..this letter is to confirm that your employment with Bayshore HealthCare is terminated without cause; due to a shortage of work, effective immediately."

[23] The Appellant also argued she was hired full time but was then only working casual work. She sometimes worked as little as 1 hour a day.

– **What the Commission says.**

[24] There was no shortage of work. The Appellant was refusing work and demanded a lay-off. The Appellant was forceful and demanded a lay-off. The Employer admitted that the lay-off was wrongfully approved due to pressure from the Appellant.[6]

[25] The Commission is arguing that the Appellant was offered a leave of absence and declined this offer. She insisted instead of being issued a record of employment.

– **My findings on voluntary leaving.**

[26] I find that the Appellant voluntarily left her job. A review of the evidence before me reveals the following:

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[5] See GD03 page 48.
[6] See GD03 page 39.

- The Appellant sent an email on June 23, 2023, which stated, “I have no car. I need to be a lay-off work.”[7]

- The Appellant was offered a 30-day leave of absence on July 14, 2023.[8] The Appellant confirmed she had declined the offer.

- The Employer would communicate with her regularly to see if her car had been fixed.

[27] I am not placing a lot of weight on the Appellant’s email request to be laid off. The main reason is that I did not ask the Appellant to comment regarding this email. I am, however, placing a lot of weight on the other two. It is uncontested that the Appellant was offered a leave of absence while she was having car issues. The Appellant declined the leave.

[28] I prefer the Commission’s position on this. The refusal to accept a leave of absence is an important factor. The Appellant’s testimony that the Employer communicated with her regularly regarding the status of her vehicle is supporting evidence that there was work. The issue is that the Appellant was not able to travel to what work was available.

[29] I am not persuaded by the letter stating the Appellant was terminated due to a shortage of work. There are a few reasons for this. The first is the Employer is saying this was issued only because of pressure from the Appellant. The Commission is relying on the Employer’s statement that there was no shortage of work.

[30] The second is the fact that the Employer communicated with the Appellant regularly to enquire the status of her vehicle. This leads me to believe that there was in fact work. The problem is that it was not feasible to travel to many of the clients. I am referencing clients that were not feasible for public transit.

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[7] See GD03 page 27.
[8] See GD03 page 30.

[31] Based on the evidence before me, I find the Appellant voluntarily left her employment.

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

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

[33] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[9] Having a good reason for leaving a job isn't enough to prove just cause.

[34] 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 have to consider all the circumstances.[10]

[35] It is up to the Appellant to prove that she had just cause.[11] She has to prove this on a balance of probabilities. This means that 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.

[36] The law sets out some of the circumstances I have to look at. [12] After I decide which circumstances apply to the Appellant, she then has to show that she had no reasonable alternative to leaving at that time.

The Circumstances that existed when the Appellant quit

- The Appellant says she was hired as a full-time employee. However, the Employer only gave her casual hours. There are 14 such circumstances in section 29(c) of the EI Act. I find the one which closest fits the Appellant's

[9] Section 30 of the *Employment Insurance Act* (Act) explains this.
[10] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[11] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[12] See section 29(c) of the Act.

arguments is: (vii) significant modification of terms and conditions respecting wages or salary.

– **Significant modification of terms and conditions respecting wages or salary**

[37] The Appellant says she was hired for full-time work but was only working casual hours. I find I do not need to consider this circumstance. My analysis of this is below.

[38] The Appellant testified that she was hired as a full-time Personal Support Worker (PSW). However, she was given sometimes very few hours. In support of this, she submitted her hours in the last weeks of May 2023 until June 3, 2023. She also provided her hours from January 2023.[13]

[39] The Commission says the Appellant was a casual Employee with varying hours.[14]

[40] As mentioned above, I accept that the Appellant worked very few hours some days. However, the Appellant had worked on this type of schedule for a significant time. The ROE supports that she had worked varying hours with some week very few per day. Even if she had been hired as a full time PSW in 2019, I find that the Appellant had accepted the casual nature of her employment for some time.

[41] I find that this circumstance is something the Appellant had accepted. I therefore will not accept this as a circumstance when considering reasonable alternatives.

The Appellant had reasonable alternatives

[42] I find the Appellant had reasonable alternatives. My analysis will show this.

[13] There are the ones which were not added to the file. As explained above, I accept that the Appellant sometimes worked very few hours. Her testimony and ROE support this.
[14] See GD03 page 22.

– What the parties say

[43] The Commission says the Appellant could have accepted the work offered to her. The Commission says the Appellant could also have accepted the offer of a leave of absence.

[44] The Appellant says she never declined any work. The Appellant says the work offered to her verbally was never actually put on her schedule. The Appellant says that public transportation in the city she lives in makes it impractical to accept some of the work.

– Transportation issues

[45] Generally, transportation issues don't constitute just cause for leaving employment.[15] This was from a Federal Court of Appeal decision. In another decision, a three-hour round-trip commute via public transportation did not give just cause to the claimant.[16] These individuals were disqualified from receiving benefits.

[46] In the Appellant's case, she is saying she did not refuse any shifts. They were not added to her schedule.

[47] I agree with the Appellant regarding public transportation. Public transportation is acceptable for many jobs. However, as a PSW, where help is offered to clients for a short duration, public transportation is not feasible in some communities or cities.

[48] There are a few reasons for this. There is the cost. The fares need to be paid with after tax salary. This is not a factor I would consider for long shifts. However, for working an hour or two a day, it is. Public transportation is also a much bigger factor when there is more than one client to visit. Moving from one client to another then back to home, I do not see it as a reasonable alternative.

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[15] See *Canada (Attorney General) v Desilets,* [1994] FCAD 3514-05.
[16] See CUB 42829. CUBs are Canadian Umpire Benefit decisions. They are not binding on me but I can find them persuasive.

[49] It is evident from the file that the Appellant tried different things. She looked into a loan from a bank and discussed the car issues with her mechanic. The Appellant testified that she was able to get her vehicle fixed in early August 2023. She borrowed money from her brother to do so.

[50] The Appellant also approached the employer to work full days at one location. The Appellant testified that she would have accepted this type of work assignment.

[51] While all these steps are commendable, I find that a leave of absence was a reasonable alternative. With a leave of absence, the Appellant would have had time to try to resolve her transportation issues.

[52] The offer of a leave of absence is uncontested. There is an email from the Employer to support this.[17] The Appellant testified that she had declined this offer.

[53] A leave of absence would also have allowed the Appellant to search for work elsewhere. The Appellant could also have applied for EI benefits while on leave. The Commission would then have evaluated her application. A leave of absence does not prevent a person from applying for benefits. The payment of benefits while on a leave of absence is a possibility.

[54] I find that the Appellant did not exhaust all reasonable alternatives.

Conclusion

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

[56] This means that the appeal is dismissed

Marc St-Jules
Member, General Division – Employment Insurance Section

[17] See GD03 page 30.