Citation: *FY v Canada Employment Insurance Commission*, 2023 SST 2011

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	F. Y.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (613562) dated September 15, 2023 (issued by Service Canada)

Tribunal member:	Elyse Rosen
Type of hearing:	In person
Hearing date:	November 7, 2023
Hearing participant:	Appellant
Decision date:	November 9, 2023
File number:	GE-23-2823

Decision

[1] The appeal is dismissed.

[2] The Appellant didn't have just cause to voluntarily leave his job. This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.[1]

Overview

[3] The Appellant worked in a research lab. He was employed on a contractual basis.

[4] There was too much work to do and not enough people to do it. This meant many hours of overtime and no opportunity to take time off without compromising the research.

[5] Moreover, the work required a great deal of precision. This, paired with the volume of work, made the Appellant's working conditions very stressful. He began to experience stress related symptoms.

[6] The Appellant refused to renew his contract when it came to term. He applied for EI benefits.

[7] The Canada Employment Insurance Commission (Commission) says it can't pay the Appellant benefits because he voluntarily left his job without just cause.

[8] The Appellant disagrees. He says he didn't voluntarily leave his job. His contract came to an end, and he hadn't been told it would be renewed until the very last minute. He proposed new terms, and they were refused.

[9] Furthermore, he says he had just cause to leave his job. He had to do excessive overtime and the work conditions were a danger to his health and safety. He says he was justified in not accepting to renew the contract.

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[1] Section 30 of the *Employment Insurance Act* (Act) says that Appellants who voluntarily leave their job without just cause are disqualified from receiving benefits.

Matter I must consider first

A new document was added to the record

[10] At the hearing, the Appellant testified that he had contacted his employer before his contract was to end. He wanted to know if the contract would be renewed at the end of the term. He said he would send me a copy of the email he sent to his supervisor asking whether his contract would be renewed. I gave him a delay to send it to me.

[11] The Appellant sent a copy of the email to the Tribunal the next day, within the deadline I had given him. It has been labelled GD9.

[12] I haven't given the Commission an opportunity to provide submissions on the copy of the email labelled GD9. This is because:

- The email simply corroborates the Appellant's testimony.
- The Commission didn't attend the hearing. Had it attended it could have made submissions about the information contained in the email.
- The email shouldn't take the Commission by surprise since much of its content is reflected in GD3-24.
- Providing the Commission with a delay to provide submissions would delay my decision, which would be unfair to the Appellant.
- There are no other fairness considerations which would require me to do so.

[13] GD9 also includes a narrative of facts, which mostly repeat the Appellant's testimony at the hearing. I didn't give the Appellant permission to send that narrative to me, and I'm not accepting it.[2] And I don't feel it adds anything to the record. I will rely on what he told me at the hearing, not his further summary of facts as contained in GD9.

[2] I'm not obliged to consider late evidence (evidence sent after the hearing). See sections 42(1) and 52 of the *Social Security Rules of Procedure*.

[14] So, GD9 will form part of the record, but only the email dated January 25, 2023, from the Appellant to his supervisor.

Issues

[15] Did the Appellant voluntarily leave his job?

[16] If so, did he have just cause to leave?

Analysis

Did the Appellant voluntarily leave his job?

[17] The Appellant argues that he didn't leave his job voluntarily.

[18] The Appellant's contract was to end on February 13, 2023. This was a Monday. The contract says it isn't subject to renewal.

[19] A few weeks prior to the contract end date, the Appellant reached out to his employer to indicate that he would be prepared to renew the contract.[3] However, he wanted the renewal to be on different terms. His employer didn't respond to his proposal.

[20] On the Friday before his contract was supposed to end, the Appellant wrote to his supervisor confirming his understanding that the contract was over. He told his supervisor he intended to take Monday, his last day, as a personal day.

[21] Later that Friday evening, his supervisor sent him a contract renewal. On the Monday (February 13, 2023), the Appellant wrote to his supervisor to tell him he wasn't prepared to accept the new contract. He reiterated that he wanted certain issues resolved and a salary increase before he would accept to renew the contract. His employer wasn't prepared to accept these conditions, so the Appellant's contract wasn't renewed.

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[3] See GD9.

[22] The Appellant says he is no longer working because his contract ended, the renewal offer came at the last minute, and his employer wasn't prepared to accept his new terms and conditions. He says he would have stayed if his employer had addressed his concerns regarding his working conditions and his salary. He argues that this isn't voluntarily leaving his job.

[23] It's clear that the employment relationship between the Appellant and his employer ended because the Appellant's contract came to term and wasn't renewed. It wasn't renewed because the parties couldn't agree on terms. So, neither party can really be said to have initiated the termination of the Appellant's employment. But the law nonetheless considers the Appellant to have voluntarily left his job. This is because the definition of voluntarily leaving in the law includes refusing an offer of employment that would allow you to continue working.[4]

[24] The Appellant agrees that he received an offer to renew the contract and that he refused it. So, I find that he voluntarily left his job.

Did the Appellant have just cause to leave his job?

[25] I find that the Appellant didn't have just cause to refuse to renew his contract.

[26] The law says that you're disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[5] Having a good reason for leaving a job isn't enough to prove just cause.

[27] The law says that you have just cause if you had no reasonable alternative to quitting your job when you did.

[28] I have to consider all the circumstances at the time the Appellant left his job when I decide if he had a reasonable alternative to leaving.[6] The law sets out some of the circumstances I have to look at.[7]

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[4] See section 20(b.1)(i) of the Act.
[5] See section 30 of the Act.
[6] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[7] See section 29(c) of the Act.

[29] It's up to the Appellant to prove that he had just cause. He has to prove this on a balance of probabilities. This means that he has to show that it's more likely than not that his only reasonable option was to refuse to renew his contract.[8]

The circumstances the Appellant was in

[30] The law provides a list of circumstances I should consider when I decide if a claimant has just cause to leave their job. They include working conditions that constitute a danger to health and safety and excessive or unpaid overtime work.

i. Working conditions that are a danger to health and safety

[31] I don't find that the Appellant's working conditions were dangerous to his health and safety.

[32] The Appellant testified that the work he did required a great deal of precision. He says the precision required, paired with the volume of work, was extremely stressful.

[33] I don't doubt that this was the case. However, I'm unable to find that the work was taxing to the point of being dangerous to his health and safety. This is because:

- there is no evidence that the Appellant suffered any serious health issues due to his work[9]
- the Appellant didn't provide any medical evidence about the impact his work was having on his health
- the Appellant didn't contact the Labour Standards Board to report his work conditions as dangerous to health and safety[10]
- the Appellant was willing to continue doing the work if his employer gave him a raise[11]

[8] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[9] See GD3-39.
[10] See GD3-39.
[11] See GD3-24 and GD9.

ii. Excessive and unpaid overtime

[34] The Appellant says that his supervisor had unrealistic demands regarding the amount of work required of the researchers. And there weren't enough researchers working on the project. This resulted in his having to do very long hours, which he wasn't compensated for.

[35] During his testimony the Appellant explained that because of the nature of scientific research, once a task had begun it couldn't be left until it was completed. Leaving a task unfinished could result in losing all of the work put into it up until the point where it was left. He says that because of this, researchers are expected to do overtime. You don't leave the bench until the task you commenced is complete. And you don't take a day off until you have completed work that, if left incomplete, would compromise the research.

[36] He and his colleagues complained to the supervisor on numerous occasions about the volume of work and the long hours they had to do, but their complaints weren't addressed. The Appellant's supervisor told him that if he found the work too taxing, he could take time off when he felt he needed to.

[37] The situation worsened when one of his colleagues quit. He says she was extremely unhappy with their working conditions. Another colleague left shortly thereafter on maternity leave. So, the Appellant, who was already overtaxed, found himself having to do the work of three people.

[38] The Appellant says he was never able to take any time off, and he worked very long hours every day—eight to nine hours at the bench, and then hours more of paperwork once he got home.

[39] The Appellant says he wasn't paid for overtime.

[40] Although the Appellant accepts that he may not have been contractually bound to do so much overtime work[12], in the face of unreasonable demands placed on him by his

[12] See GD3-39.

employer, his professional integrity compelled him to put in those hours. He wasn't prepared to waste the time and effort he and his colleagues had put into the project by refusing to complete matters in progress that required his sustained attention.

[41] I admire the Appellant's professional integrity and willingness to do what it took to get the job done. But this is something he required of himself. It wasn't imposed on him by his employer.

[42] To fall under this section of the law, a claimant must be compelled by his employer to work overtime. It doesn't apply when the claimant does this by choice.

[43] That said, I accept that the Appellant's working conditions were very difficult.

[44] Now I must decide if the Appellant had no other reasonable alternative but to refuse the proposed renewal of his contract given the circumstances he was in.

The Appellant had reasonable alternatives

[45] I find that the Appellant had reasonable alternatives to refusing to renew his contract.

[46] The Commission says that the Appellant failed to exhaust all reasonable alternatives when he refused to renew his contract. It claims that he only raised the issues he had with his working conditions after he had made the decision not to renew.

[47] But the evidence doesn't support the Commission's position.

[48] The Appellant testified that he and his colleagues had spoken numerous times with his supervisor, during the course of 2022, about their supervisor's unreasonable expectations and the excessive workload. His testimony was sincere, cogent, and credible. He was very animated during his testimony, visibly upset to have been placed in the impossible conditions he was working in.

[49] His testimony is consistent with the written explanation he provided to the Commission at the time of his reconsideration request. In that written explanation, he

confirms that he had communicated his concerns about his working conditions to his employer well before his contract was to expire.[13]

[50] Notes from a conversation between the Appellant and the Commission held on September 14, 2023, suggest that the Appellant would have said that he only advised his employer that he had concerns about his work conditions after he decided not to accept the offer of renewal.[14] The Commission relies on this to argue that he should have spoken to his employer sooner.

[51] The Appellant insists he never said that he only spoke to his employer after he made the decision not to renew his contract. I believe him.

[52] The Appellant says the Commission fabricated the notes of the conversation of September 14, 2023, and was clearly biased against him. I don't believe this to be the case.

[53] The Appellant speaks English, but it isn't his first language. I found that he didn't always express himself as clearly as someone whose mother tongue is English. I believe the Commission simply misunderstood him. I think it confounded the Appellant's employer with the Appellant's human resources (HR) department.[15]

[54] It's clear to me from the evidence that the Appellant spoke with his supervisor about his difficult working conditions on a number of occasions prior to deciding not to renew his contract. He did so in an attempt to have his supervisor address his concerns about the workload.

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[13] See GD3-19.
[14] See GD3-39.
[15] The Appellant says he spoke to his HR department after he made the decision not to renew his contract in order to get his record of employment, discuss the payment of severance, and make arrangements to continue his benefits. He says he addressed his concerns about the workload directly with his supervisor well before he spoke to HR about the circumstances of his departure. I think that when the Appellant told the Commission he spoke to his HR department after he decided not to renew the contract, it mistakenly understood that this was the first time he raised his concerns about his working conditions.

[55] The Appellant tried again, when he received the proposed contract renewal, to address these issues.[16] He reminded his supervisor that he had been attempting for some time to get them resolved.[17]

[56] So, contrary to what the Commission asserts, I accept that the Appellant addressed the issues he had with his working conditions well prior to deciding not to renew his contract, and that he had done so repeatedly for an extended period of time. But this doesn't mean he exhausted all reasonable alternatives.

[57] It's clear from the evidence that although the Appellant's working conditions were very difficult, he was prepared to renew his contract and to give his employer more time to resolve the issues he had raised. But he wanted a salary increase.[18]

[58] The fact that the Appellant didn't get the salary increase he asked for doesn't mean he had no other choice but to refuse to renew his contract. He could have continued working at the same wage while he looked for other work with better working conditions and better pay. He could have taken more days off, as his supervisor had suggested he do. Or he could have stopped working the extra hours he wasn't contractually bound to work, even if doing so might compromise the research. Had he done so, his employer might have hired more researchers to help him, and his working conditions might have improved. Refusing to renew his contract wasn't the only option available to him.

[59] The Appellant can't expect the EI system to pay him benefits when he could have continued working, even though it was at a lower hourly rate than he felt was fair.[19]

[60] I find that the Appellant had reasonable alternatives to refusing to renew his contract. So, he doesn't have just cause for not doing so.

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[16] See GD3-18.
[17] See point 3 of the email.
[18] See GD3-24 and GD9.
[19] See *Tanguay v Unemployment Insurance Commission*, A-1458-84.

Conclusion

[61] The appeal is dismissed.

[62] I find that the Appellant didn’t have just cause not to renew his contract. Because of this, the Appellant is disqualified from receiving EI benefits.

Elyse Rosen

Member, General Division – Employment Insurance Section