



Citation: *NG v Canada Employment Insurance Commission*, 2023 SST 1981

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

## Decision

**Appellant:** N. G.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (589220) dated June 7, 2023 (issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Teleconference

**Hearing date:** August 28, 2023

**Hearing participant:** Appellant

**Decision date:** September 16, 2023

**File number:** GE-23-1701

## **Decision**

[1] The appeal is dismissed.

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

## **Overview**

[3] The Appellant separated from his employment and applied for Employment Insurance (EI) benefits.

[4] The Canada Employment Insurance Commission (Commission) decided they could not pay the Appellant EI benefits because he voluntarily left his job, in other words chose to quit, and he had reasonable alternatives to quitting his job.

[5] The Appellant says he did not quit, he was terminated for refusing to drive an unsafe truck. He says he only requested layoff papers from his employer because they were refusing to give him a truck to drive. He says he never sent in a resignation or told his employer he was quitting.

[6] I must decide why the Appellant is no longer working for his employer and if he can be paid EI benefits.

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

[7] At his teleconference hearing the Appellant said that he had someone that he had thought about bringing to the hearing as a witness, but that person was unable to attend a hearing due to their work schedule.

[8] As an accommodation, I offered the Appellant the chance to have his potential witness send me information by writing. I have him a deadline to send in this information.

[9] After the hearing, the Appellant wrote to the Tribunal and said that his witness did not want to send in information by writing and requested I call the witness to obtain the witness' information.

[10] The Appellant says his witness is worried their testimony, if sent in writing by email, will be "flagged" by their company and would be a conflict of interest.

[11] On September 1, 2023, I made a decision denying the Appellant's request for the following reasons:

[12] First, if providing testimony in writing is considered a conflict of interest by the Appellant's witness, then providing it orally would not change that.

[13] Second, neither the Appellant's employer, nor any other employer such as the witness', is a party to the appeal, so it is not clear how the Appellant's witness providing written testimony would result in something being "flagged".

[14] Third, it is not clear how the witness, using their own email, would have an email "flagged" by his employer, or what exactly that means in relation to the witness.

[15] I informed the Appellant that if he wants to have his potential witness provide their testimony to me, it needs to be done in writing, and sent to the Tribunal's email address, and received by the Tribunal no later than end of day September 7, 2023.

[16] I did not receive any information by the deadline I set, so I proceeded with making a decision based on what was said at the hearing and the information that is on file.

## **Issues**

[17] Why is the Appellant no longer working for his employer?

[18] Can the Appellant be paid EI benefits?

## Analysis

### Why is the Appellant no longer working for his employer?

[19] The Commission says there is no indication in the evidence on file that the employer was dismissing the Appellant. The employer told the Appellant he was not being dismissed and offered him work.

[20] The Commission says that there is no evidence there was a shortage of work at the Appellant's employer. Other drivers were sent to do work when the Appellant declined work and the employer said they hired someone to replace the Appellant.

[21] The Commission says the Appellant contacted the employer to ask when he would be issued his severance pay two days after declining an offer of work. Six days later, after the Appellant again refused to come into the workplace, he told his employer it would be in his best interests to be given a layoff for lack of work.

[22] The Commission submits the Appellant initiated a separation from his employment and that is considered voluntarily leaving.

[23] The Appellant says that he did not quit, he was fired. He says that he never told his employer he was quitting, and he never sent them a resignation letter. He says the reason he requested layoff papers was because his employer was never giving him any work.

[24] I find the Appellant was not fired from his employment.

[25] On February 2, 2023, the Appellant specifically asked if he was fired. His employer says he was not fired.<sup>1</sup> From that date on, I do not see any evidence that would convince me the Appellant was fired by his employer. I do not see any letters, texts, emails, or anything else that supports the Appellant was fired.

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<sup>1</sup> GD03-46

[26] What I do see is a February 8, 2023, text from the Appellant to his employer, in which the Appellant demanded his employer lay him off by February 15, 2023, or he would be escalating these issues to the labour board.<sup>2</sup>

[27] There is also a letter from the Appellant's employer, dated February 14, 2023, saying that they had a phone call with the Appellant on February 9, 2023, where the Appellant resigned, as he informed the employer that he would not be returning to work.<sup>3</sup>

[28] The Appellant says this letter is distorting what happened in the February 9, 2023, call. The Appellant says that he was told in the call it was best if he did not come back to work because of all the issues he was raising with his truck and his pay.

[29] The Appellant says he clarified in the phone call with his employer that he was willing to work, he just needed to be provided with a truck.

[30] I do not find the Appellant's testimony regarding the February 9, 2023, phone call credible because the day prior to the call he was demanding a layoff by February 15, 2023, and he testified that he did not think any of his employer's trucks were fixed and safe to drive.

[31] I find this lends greater credibility to the employer's statements about the February 9, 2023, phone call, that the Appellant said he would not be returning to work.

[32] I find that as it was the Appellant that initiated the separation from employment, as he was demanding a layoff and refused to come into work, he quit his job.

[33] While the Appellant did not specifically tell his employer he is quitting, or send in a letter of resignation, this is not necessary to be considered as having quit his employment. The Appellant could have remained employed because he was not being fired or laid off. However, he chose to end the employment relationship by refusing to

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<sup>2</sup> GD03-51

<sup>3</sup> GD02-38

work and demanding a layoff. Since it was the Appellant's choice whether to stay or to go this means his leaving was voluntary.<sup>4</sup>

### **Can the Appellant be paid EI benefits?**

[34] Since I have found the Appellant voluntarily left his employment, he must prove, on a balance of probabilities, that he had just cause for his voluntary leaving, otherwise he will be disqualified from EI benefits.<sup>5</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[35] The law explains what it means by "just cause." The law says that the Appellant has just cause to leave if he had no reasonable alternative to quitting his job when he did.

[36] It is up to the Appellant to prove that he had just cause.<sup>6</sup> He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his 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.

[37] I find the Appellant did not have just cause for leaving, as he had reasonable alternatives to quitting.

[38] While the Appellant argues he was never being given a truck to use, so was not being assigned any work, that does not mean the Appellant had no reasonable alternative but to quit. It would have been reasonable for him to remain attached to his employer and search for and secure a different job, while waiting to get assigned a truck and a load.

[39] The Appellant argues that he was not sure the trucks his employer had to offer were repaired properly, but again, this does not mean he had no reasonable alternative

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<sup>4</sup> To determine whether the Appellant voluntarily left his employment the question to be asked is as follows: did he have a choice to stay or to leave, *Canada (Attorney General) v Peace*, 2004 FCA 56

<sup>5</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>6</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

to quitting. It would have been reasonable for him to have gone to the shop to see if any truck he was offered by his employer was repaired to his satisfaction, rather than quitting.

[40] Finally, while the Appellant has argued that his employer was paying him incorrectly, and his employer admits there were some pay issues,<sup>7</sup> this does not give him just cause to quit. His employer was working with the Appellant to correct the pay issues, as shown by text messages<sup>8</sup> and the Appellant's statement to the Commission his employer did give him some missing pay.<sup>9</sup> This shows it would have been reasonable for the Appellant to have stayed with his employer and continued to work out any pay issues that still existed.

[41] So, in considering all the circumstances that existed at the time the Appellant quit as a totality, I find he does not have just cause for his voluntary leaving because he had reasonable alternatives to quitting. This means he is disqualified from EI benefits.

## **Conclusion**

[42] The appeal is dismissed.

[43] The Appellant does not have just cause for quitting his job as he had reasonable alternatives to quitting. Since he does not have just cause, this means he is disqualified from receiving EI benefits.

Gary Conrad  
Member, General Division – Employment Insurance Section

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<sup>7</sup> GD03-53

<sup>8</sup> GD03-52

<sup>9</sup> GD03-55