Citation: *YG v Canada Employment Insurance Commission*, 2024 SST 574

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (575090) dated March 15, 2023 (issued by Service Canada)

Tribunal member:	Mylène Fortier
Type of hearing:	In person
Hearing date:	April 23, 2024
Hearing participant:	Appellant
Decision date:	May 17, 2024
File number:	GE-24-332

Decision

[1] The appeal is dismissed.

[2] The Commission exercised its discretion judicially when it decided to reconsider the payment of Employment Insurance (EI) benefits to the Appellant starting May 22, 2022.

[3] 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 reasonable alternatives to leaving. This means he is disqualified from receiving EI benefits.

Overview

[4] The Appellant in this case is Y. G. He quit his job at X on May 22, 2022. He received regular EI benefits between May 22, 2022, and August 31, 2022. He started a new job as a research program manager on September 1, 2022, but was laid off on November 18, 2022.

[5] He made a renewal claim for benefits on November 18, 2022. He received EI benefits from November 20, 2022, to December 24, 2022. In his renewal application, the Appellant reported that he stopped working at X on May 10, 2022.

[6] The Commission sent a questionnaire to the Appellant concerning the end of his employment at X. The Appellant said that he quit his job because he wanted to find a job in research and wanted to focus on his job search.[1]

[7] On January 17, 2023, the Commission decided the Appellant was disqualified from receiving benefits because on May 22, 2022, he left his job voluntarily without just cause. It imposed an indefinite disqualification starting May 22, 2022. This resulted in an overpayment debt.

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[1] See GD3-17 and GD3-18.

[8] The Appellant appealed to the General Division of the Social Security Tribunal, arguing that it was reasonable to leave his job because of the long commute to work and his lack of skills in restaurants.[2]

[9] The General Division decided that the Commission didn't exercise its discretion judicially when it reconsidered the Appellant's claim under section 52 of the *Employment Insurance Act* (Act).[3]

[10] It decided that the claim should not have been reconsidered and, as a result, that it didn't need to decide whether the Appellant had shown just cause for leaving his job when he did.

[11] The Commission appealed that decision to the Tribunal's Appeal Division.

[12] The Appeal Division decided that the General Division used an unfair process when it decided the Commission should not have reconsidered the Appellant's claim for EI benefits.[4] It didn't notify the Commission and the Appellant about the section 52 reconsideration issue. So, the parties didn't have an opportunity to file evidence and make submissions.

[13] The Appeal Division sent the Appellant's case back to the General Division to reconsider and the case was assigned to me.

[14] Prior to the hearing, the parties were given an opportunity to file evidence and submissions on the reconsideration issue.

[15] The Commission and the Appellant provided additional materials.

[16] The Commission says that it was justified in reconsidering the claim retroactively, since the Appellant didn't tell it that he had quit his job at X until November 18, 2022. As a result, the Commission exercised its discretion judicially.

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[2] See GD2.
[3] See the General Division decision.
[4] See the Appeal Division decision.

[17] It reconsidered the claim because it became aware that the Appellant had voluntarily left his job on May 22, 2022. But no decision had been made regarding the reason for separation, since the Appellant hadn't notified the Commission that he had quit.

[18] The Commission says that it was the Appellant's responsibility to report his end of employment to the Commission. It could reasonably conclude that the Appellant had made a false or misleading statement on his claimant report, since he hadn't reported that he had left his employment in May 2022.

[19] The Commission also says that the Appellant didn't correctly report his earnings, since there is a discrepancy between his report and the Record of Employment (ROE).

[20] It says that although it might be the result of an error on the part of the Appellant, there is still a least one false statement, which opens the possibility for the Commission to reconsider the claim retroactively under its reconsideration policy.

[21] The Appellant disagrees. He says that there was no possibility for him through the Internet Reporting Service to inform the Commission that he stopped working at X when he did.

[22] He says the Commission should have known that his job came to an end because he hadn't declared any earnings after May 15, 2022. The Commission should have questioned him when he stopped reporting earnings from X.

[23] The Appellant says that he answered all the questions in the claimant report correctly and acted in good faith. He didn't know what else he could have done to report his end of employment other than declaring no earnings.

[24] He says that he didn't make a false report of his earnings; he reported them to the best of his knowledge and could not estimate the exact amount, since it varied.

Issues

[25] Did the Commission use its section 52 reconsideration power judicially when it reconsidered the Appellant's claim?

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

Analysis

Did the Commission use its section 52 reconsideration power judicially when it reconsidered the Appellant's claim?

– The Commission's discretion

[27] In general, section 52 of the Act gives the Commission the power to reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable. And it has 72 months to reconsider a claim if, in its opinion, a false or misleading statement or representation has been made in connection with the claim.[5]

[28] In this case, the Commission reconsidered the claim for benefits within 36 months. This time frame isn't in issue.

[29] It is up to the Commission to show that it exercised its discretion judicially.[6]

[30] The Federal Court of Appeal has held that there is no authority to interfere with discretionary decisions of the Commission unless it can be shown that the Commission exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it.[7]

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[5] See section 52 of the *Employment Insurance Act* (Act).
[6] See *Dunham*, A-708-95; and *Purcell*, A-694-94.
[7] See *Canada (Attorney General)* v *Uppal*, 2008 FCA 388.

[31] In other words, I can set aside a discretionary decision of the Commission if, for example, an Appellant can establish that the Commission:

- acted in bad faith
- acted for an improper purpose or motive
- took into account an irrelevant factor
- ignored a relevant factor
- acted in a discriminatory manner[8]

[32] The Commission's power under section 52 of the Act is discretionary. The Commission **may** reconsider a claim for benefits and **may** verify a person's entitlement to benefits they have already received, but it doesn't have to.

– **The Commission's guidelines**

[33] The Federal Court of Appeal has recognized that it is helpful for the Commission to have guidelines governing the exercise of its discretion. It has reiterated many times that the Commission was justified in establishing guidelines for itself to guarantee some consistency nationally and to avoid arbitrary decisions.[9]

[34] These guidelines are found in the Digest of Benefit Entitlement Principles (Digest). I note that I am not bound by these guidelines, since they don't have the force of law. Still, I am of the view that they are an important tool that the Commission can use in making EI decisions. So, I find that these guidelines reduce the risk of an arbitrary decision and that the Commission has to explain its decision if it chooses not to follow its own guidelines.

[8] See *Canada (Attorney General) v Purcell*, FCA 1995.
[9] See *Canada (Attorney General) v Hudon*, 2004 FCA 22; and *Canada (Attorney General) v Gagnon*, 2004 FCA 351.

[35] The Appellant argues that the Commission should have known that he wasn't entitled to benefits or should have contacted him to assess his entitlement. He acted in good faith.

[36] The Commission, meanwhile, indicates that the Appellant hadn't informed it of the end of employment until November 18, 2022. It was his responsibility to declare any end of employment. It says that since no decision had been made on the reason of the end of employment, it was justified in reconsidering the claim in regard of this new information.

– **When a claim will be reconsidered**

[37] I refer again to the Digest, where the reconsideration policy says that a claim will only be reconsidered when:

- benefits have been underpaid
- benefits were paid contrary to the structure of the Act
- benefits were paid as a result of a false or misleading statement
- the claimant ought to have known there was no entitlement to the benefits received[10]

[38] As a result, I find that the Commission determined that it would review the Appellant's file and that, in so doing, it decided that the information presented warranted reconsideration and that it was within the time frame. So, it made a decision in accordance with its own guidelines, calculated the amount to be repaid (overpayment), and notified the Appellant of its decision.

[39] So, I will look at the four factors that the Commission considered.

[10] See Digest of Benefit Entitlement Principles (Digest), Chapter 17 – Section 17.3.3.

– **Underpayment**

[40] Under the first factor, an overpayment of $11,910 was created.

[41] The Commission's policy says that no overpayment will be created if it incorrectly paid benefits.

– **Structure of the law**

[42] Concerning the structure of the Act, section 17.3.3.2 of the Digest clearly states that the reason for separation falls outside the definition of structure of the Act.[11] The earnings reporting also falls outside the definition.

[43] But the Commission can reconsider an element that falls outside the definition of structure of the Act as long as it meets one of the other conditions set out under the policy. I find that this is the case here.

– **False or misleading statements**

[44] The third factor for which the Commission will reconsider earlier decisions concerns the payment of benefits as a result of false or misleading statements.

[45] The Commission may reconsider a claim for benefits within 36 months after the benefits have been paid. If, in its opinion, a false statement has been made, the time can be extended to 72 months.[12]

[46] I recognize that the burden on the Commission isn't as strict when it comes to determining whether a false or misleading statement has been made compared to the burden it has to impose a penalty. For example, it doesn't have to show that the false statements were made knowingly.[13]

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[11] See section 17.3.3.2 of the Digest.
[12] See section 52(5) of the Act.
[13] See *Canada (Attorney General) v Langelier*, FCA A-140-01.

[47] In my view, this reasoning is valid for reconsiderations within 36 months and within 72 months. But the Commission's opinion alone isn't enough to find that benefits were paid as a result of false or misleading statements.

[48] The Commission says that the Appellant made a false statement by not reporting his earnings correctly. He reported $1,582 in earnings and the ROE indicates that his earnings were $1,737.56. The Commission says that this triggered its right to reconsider the claim.

[49] The Commission also argues the Appellant made a false or misleading statement by not declaring his end of employment to the Commission.

[50] The Appellant says that he reported his earnings at the best of his knowledge, since he didn't know the exact amount he would receive from his employer because it varied. He could not report his end of employment because the reporting service never asked him to.

[51] I find, on a balance of probabilities, that the Appellant's statements weren't false or misleading. Variations or small discrepancies between earnings reported and earnings received cannot be viewed as false or misleading.

[52] Not declaring any earnings starting May 15, 2022, isn't a false or misleading statement either. The Appellant wasn't earning any money, and this is exactly what he reported.

[53] When looking at the reports the Appellant filed between May 1 and May 22, 2022, I note that the question about having stopped working for an employer was only asked for the week of May 8 to May 14, 2022.[14] The Appellant filed this report on May 17, 2022.

[54] At that time, he was still employed by X but in isolation due to COVID-19 since May 10, 2022. So, he didn't make any false or misleading statements.

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[14] See RGD2A-6.

– The Appellant ought to have known there was no entitlement to the benefits received

[55] The last situation described in the Digest is when a claimant should have known there was no entitlement to the benefits received.

[56] The Commission says that the Appellant should have known that he wasn't entitled to benefits because he voluntarily left his job. He was responsible for reporting any end of employment, as set out it in the claimant's listed rights and responsibilities.

[57] The Appellant says that since there was no question about separation, he didn't know that he had to inform the Commission about it. He truly believed that the Commission would have known that his employment came to an end because he stopped reporting earnings from his job.

[58] I disagree with the Appellant. The Tribunal understands that he wasn't aware that he had to contact the Commission to inform it that he left his job. But, it is the Appellant's responsibility to be informed about the system and to be aware of his rights and responsibilities within the system when applying for benefits.

[59] The standard application for EI benefits contains a list of "rights and responsibilities."[15] One of them is to notify the Commission of any separation from employment and the reasons for the separation. The Appellant accepted his rights and responsibilities when he applied for benefits.

[60] I find that the Commission exercised its power judicially when it decided to reconsider the Appellant's claim. Benefits were paid because the Appellant didn't declare his end of employment.

[61] I find that the Appellant should have known that he wasn't entitled to benefits because he quit his job.

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[15] See Appellant's renewal application for benefits GD3-10 as an example.

[62] But I don't agree with the Commission that the discrepancy in the earnings is a false statement that justified reconsidering the claim. The Appellant declared his earnings to the best of his knowledge.

[63] Also, the Commission didn't initially reconsider its decision based on these inconsistencies but on the basis of the reason for termination of employment. This is what triggered the Commission's reconsideration.

[64] Now that I have determined that the Commission acted judicially by reconsidering the Appellant's claim, I will analyze the second issue, which concerns voluntarily leaving.

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

[65] 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.

Voluntary leaving

[66] I find the Appellant voluntarily left his job. The Appellant agrees that he quit on May 22, 2022.[16] The ROE shows the same date.[17]

[67] But the Appellant also says he didn't have much of a choice to quit because the commute was very long, and he could not focus his efforts on finding a more suitable job.[18]

[68] I acknowledge the Appellant feels he didn't have much of a choice to quit when he did. But in this section, I am just looking at whether he had **a choice** to stay or go when he left his job. And I find the evidence shows that he did have this choice. He made a personal decision to quit his job. There is also no evidence to show his employer forced him to quit.

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[16] See GD2-10.
[17] See GD3-14.
[18] See GD3-10.

[69] So, I find the Appellant voluntarily left his job. He had a choice to stay or go at that time.

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

[70] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[19] Having a good reason for leaving a job isn't enough to prove just cause.

[71] 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.[20]

[72] It is 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 is more likely than not that his only reasonable option was to quit.[21]

[73] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The circumstances I have to look at include some set by law.[22] Even if I decide that any of the listed circumstances apply to the Appellant, he still has to show that there were no reasonable alternatives to leaving his job at that time.[23]

[74] The Appellant's employer told the Commission that he quit to work at another job.[24]

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[19] Section 30 of the Act explains this.
[20] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[21] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[22] See section 29(c) of the Act.
[23] See section 29(c) of the Act.
[24] See GD3-32.

[75] The Appellant gave several reasons for leaving his employment:

- The job was not suitable for him. He gave it a try but realized it wasn't for him. It was a fast-paced environment and he found it difficult to memorize all the different menus.
- The job was part-time, only three to five hours per day, and with a low wage of $14 per hour, not close to what he was earning at his previous research position.
- He was living 26.3 km away from his job which created transportation issues. He could not afford to use a car to go to work and had no one to carpool with.
- Commute in public transportation took him about three hours per day.
- He wanted to find a job in research and could not focus on his job search properly by staying at X.

[76] I find the Appellant left his job specifically when he did because he wanted to focus on his job search in research. This is the reason he wrote on his application for benefits and on the voluntary leaving questionnaire.[25] This is also the reason he gave to the Commission.[26]

[77] Then on his notice of appeal to the Tribunal, the Appellant added other reasons for quitting.

[78] I acknowledge that the Appellant says that he quit this job for various reasons. But I find the evidence shows he mainly quit his job to have time to focus on his job search. The other reasons he mentioned are inconveniences or different aspects of his job that he didn't like.

[79] The long commute, the part-time shift, and the low wages may have been circumstances that were present at the time the Appellant decided to quit. But I am also

[25] See GD3-8 and GD3-17.
[26] See GD3-20.

of the view that those circumstances already existed when he decided to accept this job.

[80] He accepted this job knowing that he didn't have previous experience in restaurants. He could reasonably expect a period of adjustment in learning the tasks.

[81] The Federal Court of Appeal tells us that a person who accepts a job while aware that this position has certain conditions can't later rely on the existence of those conditions as just cause for leaving that job.[27]

The Appellant had reasonable alternatives

[82] I must now look at whether the Appellant had no reasonable alternative to leaving his job when he did.

[83] The Appellant says that he had no reasonable alternative to quitting because he could not have focused on his job search if he had stayed at his job. He got a job offer on May 28, 2022, for a job that would start on September 1, 2022. He had to prepare properly for this job. He explained that between May and September, he attended unpaid preparation sessions with his future employer. He could not have worked at X at the same time.

[84] The Commission disagrees and says that the Appellant could have stayed in contact with his employer and could have kept working until the new job started in September.

[85] I find that The Appellant had other reasonable alternatives to quitting his job when he did. He decided to quit without talking to his employer or asking it for some time off to find another job in research.

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[27] See *Lau*, A-584-95.

[86] In my view, the alternatives the Commission gave are reasonable. The Appellant could have kept working at X until he started his new job. Or he could have found another job, closer to his home, before quitting.

[87] I understand that for the Appellant, it seemed reasonable to him to leave this job considering the factors he mentioned. Wanting to work in one's field of expertise is quite commendable and understandable.

[88] But the question isn't whether it was reasonable for the Appellant to leave his job, but whether the only reasonable alternative, having regard to all the circumstances, was for him to leave his job.[28]

[89] The purpose of the Act is to compensate people whose employment has been involuntarily terminated and who are left out of work. That isn't the case here.

[90] The Appellant's employment didn't end involuntarily. By leaving a job to focus on his job search, the Appellant placed himself in a situation of unemployment. He hasn't shown that he did everything possible to avoid becoming unemployed.

[91] The Federal Court of Appeal tells us that while it is legitimate for claimants to want to improve their situation by changing employers or the nature of their work, it isn't the responsibility of taxpayers to assume that cost through EI benefits. This isn't just cause within the meaning of the Act.

[92] Considering all the circumstances that existed when the Appellant quit, the Appellant had reasonable alternatives to leaving when he did, for the reasons set out above.

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

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[28] See *Canada (Attorney General) v Laughland*, 2003 FCA 129.

[94] I am sympathetic to the Appellant's personal situation but I cannot circumvent, rewrite, or ignore the EI Act or EI Regulations even out of compassion. The Tribunal is bound by the law.[29]

Conclusion

[95] I find the Commission exercised its discretion judicially when it decided to reconsider the payment of EI benefits to the Appellant starting May 22, 2022.

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

[97] This means that the appeal is dismissed.

Mylène Fortier
Member, General Division – Employment Insurance Section

[29] See *Knee v Attorney General of Canada*, 2011 FCA 301.