



Citation: *CB v Canada Employment Insurance Commission*, 2024 SST 773

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

## Decision

**Appellant:** C. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (622818) dated October 23, 2023 (issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Teleconference

**Hearing date:** March 22, 2024

**Hearing participant:** Appellant

**Decision date:** April 15, 2024

**File number:** GE-24-175

## 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 left her job as a dispatcher on July 4, 2023, and applied for EI benefits. 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 Commission says that the Appellant could have contacted her employer to verify her employment status, or she could have for more time off work if she needed it.

[5] The Appellant disagrees and states that she didn't quit her job. She says she was harassed and then fired.

[6] I must decide whether the Appellant voluntarily left her job or if she was dismissed. Depending on that, I have to decide whether has proven that she had no reasonable alternative to leaving her job or if she lost her job due to misconduct.

## Issues

[7] Is the Appellant disqualified from receiving benefits because she voluntarily left her job without just cause or because she lost her job due to misconduct?

[8] To answer this, I must first address whether the Appellant voluntarily left or if she was dismissed from her job.

[9] If the Appellant voluntarily left her job, I have to decide whether she had just cause for leaving. If she was dismissed from her job, I have to decide whether she lost her job because of misconduct.

## Analysis

### **Did the Appellant voluntarily leave or was she dismissed from her job?**

[10] The law deals with dismissal for misconduct and voluntarily leaving without just cause together.<sup>1</sup> This is because both refer to actions a claimant has taken that result in the loss of employment.<sup>2</sup> The legal issue at stake for both is disqualification from receiving EI benefits.

[11] Sometimes it isn't clear if a claimant is unemployed because they were dismissed or because they voluntarily left their job. In cases like these, since the legal issue at stake for both is the same in the law, based on the evidence, I can decide the grounds for disqualification.<sup>3</sup>

[12] I find that it isn't clear in this case if the Appellant is unemployed because of dismissal for misconduct or voluntary leaving. So, I will first look at whether the Appellant voluntarily left her job.

[13] The Commission has to show that the Appellant voluntarily left her job.<sup>4</sup> If it does so, then the Appellant has to show that she had just cause to leave her job. To determine if the Appellant voluntarily left her job, I have to decide if she had a choice to stay or leave.<sup>5</sup>

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<sup>1</sup> See section 30 of the *Employment Insurance Act* (Act).

<sup>2</sup> This reasoning appears in two Federal Court of Appeal decisions. See *Canada (Attorney General) v Easson*, A-1598-92; *Canada (Attorney General) v Desson*, 2004 FCA 303.

<sup>3</sup> See *Canada (Attorney General) v Borden*, 2004 FCA 176.

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

<sup>5</sup> See *Canada (AG) v. Peace*, 2004 FCA 56.

[14] In her application for benefits, the Appellant said she was dismissed from her job, but her employer didn't tell her why.

[15] The employer issued a record of employment (ROE). The reason identified for issuing the ROE is that the Appellant quit. The last day the employer says it paid the Appellant for was July 9, 2023.

[16] A mother and son co-owned the company where the Appellant worked. For clarity, I will refer to them as owner 1 (mother) and owner 2 (son).

[17] The Commission spoke to owner 1. Owner 1 explained that the Appellant was sick and unable to work. So, owner 1 had to work for the Appellant and needed to get a workbook, tablet and work phone from the Appellant. Owner 2 asked the Appellant to bring in the items.

[18] The Appellant told the Commission that she didn't quit her job. She said what happened before she stopped working for the employer. She said she was sick, so owner 1 had to cover her shifts for the weekend. She said owner 2 asked her to bring in all her equipment including her book. The Appellant said that because he asked her to bring in the book, he was firing her.

[19] I asked the Appellant how and when she was notified that she was dismissed. She said she believes owner 2 notified her on Facebook Messenger. She said when she started working for the company, there was a master book that had everything they needed to know for dispatching. The Appellant said the manager gave her a smaller book and the manager told her that the only way she would be asked to return this book was when she was being let go.

[20] I asked the Appellant if owner 2 told her she was dismissed. The Appellant said no. I asked the Appellant if she wrote back to owner 2 on Facebook Messenger to ask if she was being fired. The Appellant said she asked owner 2 what he meant. She said he told her, "like basically, you're done". She added that she tried to screenshot what owner 2 said, but he has since deleted and blocked her on Facebook, so she can't say word for word what he said.

[21] The Appellant testified that she asked the employer after the fact why it would ask for the book back if she wasn't dismissed. She said owner 1 told her she needed the book to know what to do. But the Appellant added that there was more information in the employer's master book than she could ever put in her book, so the employer was "lying through their teeth".

[22] Owner 1 said the Appellant sent messages on Facebook after her last day of work. Owner 1 sent screenshots of the messages to the Commission. They show that on July 12, 2023, owner 1 asked the Appellant if she decided to quit. The Appellant replied that owner 2 asked her to bring in her equipment and book and that meant she was let go. Owner 1 replied that she needed the equipment to do dispatch while the Appellant was away and that this did not mean the employer dismissed the Appellant.

[23] I find from the screenshots of the messages between the Appellant and owner 1 that the employer had expected the Appellant to return to work after her weekend of illness. I find this because the owner asked the Appellant if she had quit.

[24] The Commission spoke to owner 2. He told the Commission that he didn't say anything to the Appellant about dismissing her or about the Appellant quitting her job. He explained that all dispatchers had a book. He said that if one of the dispatchers called in sick and one of the owners had to cover for them, the owners would use the dispatcher's book since they didn't have their own, since they are not dispatchers.

[25] I find the Commission's explanation from both owners about their need of the dispatchers' books if they had to fill in for a dispatcher is plausible. I find it likely that these work books would likely have day-to-day details from the dispatchers' interactions with tow truck drivers that may not be available in the master book.

[26] The Commission's reconsideration file has notes of a conversation with the Appellant. It shows that the Appellant said that she assumed that because owner 2 asked her for her book, he was dismissing her. But the Appellant said owner 2 never said those words or anything like that.

[27] I asked the Appellant about the note referred to above. The Appellant again spoke about what she was told, namely that if she was asked to bring in the book she had, she was being dismissed. She said the owners had the master book.

[28] I again asked the Appellant about the note that shows that she assumed she was being fired because owner 2 asked for the book. She said owner 2 was in the office when the manager said the Appellant would only be asked for the book back if she was being let go. After asking the question a third time, the Appellant said she never said she assumed she was being dismissed.

[29] I find that the employer didn't tell the Appellant it was dismissing her. I find this from the statements of both owners to the Commission as well as from the Appellant's testimony.

[30] The Commission spoke to the manager from the employer's company. The manager said she sent a text message to the Appellant asking when she would be able to work, but the Appellant never responded. The manager said she didn't hear anything about the Appellant quitting or being dismissed.

[31] I asked the Appellant about what the manager said. The Appellant first said that the manager didn't text her to ask when she would be coming in. Then she said if the manager did send her a text message, it would have been sent after she was fired. She added that this would be the only reason she would have ignored the manager.

[32] Despite the Appellant's testimony and statements to the Commission that she was dismissed from her job, I find that she chose to leave her job. I'm not persuaded that the manager told her that if she was asked to return what appears to have been a notebook, that meant that she was being dismissed. I find it more likely that the employer would either have told her she was being dismissed or it would not have contacted her to ask if she had quit.

[33] I find the statement from the manager that she sent a text message to the Appellant asking when she would be coming in shows that the manager thought that the Appellant was still employed by the employer. And this is consistent with the finding

that owner 1 expected the Appellant to return to work after being off sick on the weekend.

[34] Although the Appellant first said the manager didn't send her a text message asking when she would be coming in, I don't find that the Appellant's response was definite. This is because she gave a reason for ignoring the manager's text message if she had sent it.

[35] I also find that the manager is a neutral and disinterested in the outcome of the Appellant's application for benefits. I find this especially since the Appellant said she thinks the manager no longer works for the employer. So, I give more weight to the manager's statement about having sent the message.

[36] I find from the evidence that the Appellant assumed based on a likely misunderstanding of what the manager told her, that she was dismissed from her job and didn't return to her job. So, I find that she had a choice to return to work after she had been sick over the weekend. I find that this means that she voluntarily left her job.

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

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

[38] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>6</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[39] 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.<sup>7</sup>

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<sup>6</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>7</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

[40] It is up to the Appellant to prove that she had just cause.<sup>8</sup> 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.

[41] A claimant has just cause for voluntarily leaving a job if they had no reasonable alternative to leaving.<sup>9</sup> This includes harassment.<sup>10</sup> But a claimant should discuss working conditions with an employer to see if the employer can change the conditions in response to the claimant's concerns.<sup>11</sup>

[42] The Appellant maintains that she never quit her job. She questioned why anyone would quit when they love their job, had amazing people to work with, and were promised and had been trained to move up in the company.

[43] The Commission says the Appellant didn't have just cause, because she had reasonable alternatives to leaving when she did. Specifically, it says the Appellant could have verified if her employer was dismissing her when it asked her to return a book instead of deciding to stop showing up to work.

[44] I find that the Appellant had reasonable alternatives to leaving her job when she did.

[45] I have already found that the Appellant assumed that her employer had dismissed her, so she didn't return to her job. Because of this, I find that she didn't take action to stay employed.

[46] I asked the Appellant about verifying her employment status and asking for more time off work if she needed it as an alternative to leaving her job. The Appellant said she did talk to owner 1. But she said she did so after the fact. I find that she could have

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<sup>8</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

<sup>9</sup> See section 29(c) of the Act.

<sup>10</sup> See sections 29(c)(i) of the Act.

<sup>11</sup> *Canada (AG) v. White*, 2011 FCA 190; *Canada (AG) v. Hernandez*, 2007 FCA 320; *Canada (AG) v. Murugaiah*, 2008 FCA 10.



reasonably asked the employer if she still had a job instead of assuming that she had been dismissed. Also, she could have responded to the manager's text message so that she could return to her job instead of ignoring the manager's message.

[47] In her notice of appeal, the Appellant said she was harassed the whole weekend when she was sick and then dismissed the following week. I asked the Appellant about this. She said that on the weekend she was sick, owner 2 and his daughter called her many times asking her when she was coming in to pick up the work phone.

[48] I acknowledge that an employee would not expect an employer to call them when they have told the employer they are sick and will be off work for a specific period. And getting many calls from the employer may be disturbing in the circumstances. But I don't find that the employer calling the Appellant to find out when she would be returning to work to pick up the work phone as the Appellant described is harassment. I find that the Appellant could have returned to work and spoken to the employer about the calls she got while she was sick.

[49] I sympathize with the Appellant in the circumstances since she testified that she really liked her job. But I find that she had reasonable alternatives to leaving her job. So, I find that she hasn't shown that she had just to leave her job when she did.

## **Conclusion**

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

[51] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section