Citation: *AA v Canada Employment Insurance Commission*, 2024 SST 824

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. A.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (624705) dated November 8, 2023 (issued by Service Canada)

Tribunal member:	Paul Dusome
Type of hearing:	Videoconference
Hearing date:	January 22, 2024
Hearing participant:	Appellant
Decision date:	February 1, 2024
File number:	GE-23-3365

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 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 Employment Insurance (EI) benefits.

Overview

[3] The Appellant left his job as a dishwasher in a restaurant on September 16, 2023, and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[4] I must decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[5] The Commission says that the Appellant could have remained on the job until he found a new job.

[6] The Appellant disagrees and states that his hours and income had been reduced so he could not support himself. The work environment was bad.

Matter I have to consider first

The Appellant failed to submit a post-hearing document

[7] The Appellant testified about an email that he sent to the employer about leaving his job. I gave the Appellant until January 26, 2024, to send a copy of that email to the Tribunal. I would then accept the email as part of the evidence in this appeal.

[8] The Appellant has not submitted that document to the Tribunal by the date of this decision. He did send two emails to the Tribunal on January 22 and 25. Both ask for

the decision as soon as possible. Neither deals with the Appellant's email to the employer about leaving. As a result, I make this decision without taking that document into account.

Issue

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

[10] 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

[11] The parties don't agree that the Appellant voluntarily left his job.

[12] The Appellant says that he was fired by the employer because the employer did not like him. That was shown by the employer reducing his hours of work and treating him poorly. His job ended on September 2, 2023. He says he was fired because the employer forced him to quit by reducing his number of hours worked per week.

[13] The Commission says that the Appellant voluntarily left his job. He chose to end his employment because he was dissatisfied with the reduced hours of work he was receiving and was looking for another job. His employment ended on September 16, 2023, not on September 2, 2023.

[14] The test for deciding whether an employee had voluntarily left a job is this: did the employee have a choice to stay or to leave?[1] If the employee chose to leave, he has quit.

[15] I find that the Appellant voluntarily left his job on September 16, 2023.

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[1] See *Canada (Attorney General) v Peace*, 2004 FCA 56.

[16] The Appellant filed his application for EI benefits on September 19, 2023. He stated that he quit for another job and his last day worked was September 2, 2023. He did not select either of the two other reasons for not working that might have applied: shortage of work or dismissed. He attested that the information he gave in the application is true to the best of his knowledge. In his conversation with the Commission before it made its decision, he talked about quitting and the reasons for quitting. He did not mention being fired in another way or being forced to quit.

[17] In his request for reconsideration, the Appellant said that the Commission misunderstood him: he did not quit voluntarily. His hours had been reduced, and "that forced me to be fired in a different way". In a later conversation with the Commission, the Appellant repeated that he had been forced to quit because of the reduced hours. He repeated that claim in his testimony. He also testified that he was not directly fired and that he had no choice to stay in the job due to the treatment by the employer.

[18] There are two Records of Employment (ROE) in this matter. The first shows a last day for which he was paid of September 2, 2023. The reason for issuing the ROE was "Other/At the employee's request". The second ROE shows a last day for which he was paid of September 16, 2023. The reason for issuing is "Quit".

[19] The Appellant told the Commission that the employer made up the second ROE and that he did not work from September 9 to 16, 2023 as stated on that ROE. In testimony about this ROE, the Appellant said he did not recall working for that week. On reviewing with the Appellant that ROE compared to his bank statement for September 2023, showing a deposit from the employer's payroll department on September 22, 2023, the Appellant said that he did work for that week. The ROE shows the pay period ending on September 19, 2023, with a gross pay of $300.56. The bank deposit three days later is for $285.79. That is consistent with the gross amount being paid for the week of September 9 to 16. The difference between the gross pay shown on the ROE and the net pay after deductions shown in the bank statement is explained by mandatory deductions such as income tax and EI contributions. It is also consistent with the gross pay of $208.90 shown on the first ROE for the pay period

ending on September 5, 2023. That amount being less than the net amount of $285.79 deposited by the employer on September 22, 2023, that deposit cannot be for the pay up to September 5, 2023.

[20] The Appellant's inconsistency about whether he quit, and about whether he worked the week of September 9 to 16, raise some concerns about the reliability of his evidence. The change from the Appellant saying he quit to saying he did not quit but was fired in a different way, occurred after the Commission made its decision.

[21] The Tribunal in making findings of fact may be entitled to discount an appellant's later statements as compared to his earlier statements, particularly where the later statements raise new matters not mentioned in the earlier statements.[2]

[22] The initial spontaneous statements made by a claimant which he later changed and adjusted in response to the statements of other individuals raises a significant issue regarding his credibility which the Tribunal must assess, then make findings and justify those findings.[3]

[23] Both those principles in the preceding two paragraphs apply to this case. The Appellant's earlier statements say that he quit, and that the employer made up the second ROE.

[24] With respect to quitting, the Appellant changed quitting to being fired either indirectly or in a different way. The change occurred after he received the Commission's initial decision, by phone and letter, on October 5, 2023. Both told him that he was not entitled to receive EI benefits because he voluntarily left his employment without just cause. When the Appellant filed his request for reconsideration on October 13, 2023, he said the Commission misunderstood him. He did not quit voluntarily. His hours had been reduced, and "that forced me to be fired in a different way". He testified that he had been fired in a different way rather than directly and did not have a choice to stay. There is a major contradiction between his earlier

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[2] See *Cundle v Human Resources and Skills Development Canada*, 2007 FCA 364.
[3] See *Bellefleur v Canada (Attorney General)*, 2008 FCA 13.

attested application statement that he quit and his statements to the Commission before its initial decision, and his later statements and testimony about being fired in a different way and having no choice to stay. The change occurred after the Appellant learned that he would not receive EI benefits because he quit. It is a reasonable inference that those later statements were made to avoid losing benefits based on quitting. I therefore discount those later statements as providing a basis for deciding this appeal.

[25] With respect to the second ROE, the Appellant changed from saying that he did not work September 9 to 16, 2023 and that the employer made up the ROE, to admitting in testimony that he worked that week. That admission came after reviewing the ROEs and the Appellant's bank statement showing a deposit of pay from the employer on September 22, 2023. The Appellant's statements that he did not work that week and that the ROE was made up are demonstrably false. That too undermines the reliability of the Appellant's evidence.

[26] Based on those considerations, I find that the Appellant did voluntarily leave his job. That is what he said initially. His claims of being fired, or fired in a different way, or having no choice to stay are not credible. I do not accept them. The Appellant had a choice between staying or quitting. He decided to quit.

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

[27] The parties don't agree that the Appellant had just cause for voluntarily leaving his job when he did.

[28] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[4] Having a good reason for leaving a job isn't enough to prove just cause.

[4] Section 30 of the *Employment Insurance Act* (Act) explains this.

[29] 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.[5]

[30] It is up to the Appellant to prove that he had just cause.[6] 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.

[31] The Appellant says that he left his job because he was not given enough hours of work. He was being treated poorly by the employer and staff. He felt persecuted. People did not like him because he was not from Canada. He may have been discriminated against on the basis of religion. The Appellant says that he had no reasonable alternative to leaving at that time because he was not getting enough income to live on because his hours had been reduced.

[32] The Commission says that the Appellant didn’t have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says that the Appellant could have stayed working with the employer until he found another job. Quitting to improve his situation or income or for an uncertain job are not just cause.

[33] I find that the Appellant has not proven that he had just cause for quitting at the time he did quit.

[34] The initial reasons given by the Appellant for leaving were set out in his application, and in his first conversation with the Commission. In the application, he said he was expecting to be offered a job. He also referred to the employer preferring Canadian workers to foreign workers. He expected the employer to provide him with more hours or a better position after his five years working there. He felt that the

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

employer did not want him anymore because it did not give him more hours to cover himself.

[35] The Appellant spoke with the Commission before it made its decision. He said he quit because he was not given enough hours. He said that he did not like the work environment and was not happy working as a dishwasher. He tried to look for other work but could not get a job.

[36] In the conversation with the Commission about its reconsideration decision, the Appellant raised the matters of the hours and of the work environment. Specifically, the Appellant said that the employer did not like him, nobody there liked him because he is not from Canada. The Commission referred the Appellant to labour standards and human rights bodies, but he did not provide any proof of those matters.

[37] I now turn to reviewing the Appellant's reasons in support of just cause, and to reasonable alternatives to quitting.

– **Looking for another job.**

[38] The Appellant had been looking for another job before he quit. At the time he quit, he was expecting to be offered a job. But there was no definite job arranged prior to quitting.

[39] The *Employment Insurance Act* recognizes "reasonable assurance of another employment in the immediate future" as a ground for just cause.[7] This section requires the Appellant to prove three elements. At the time of quitting, he needs to know: 1) if he would have a job, 2) what job he would have with what employer, and 3) know at what moment in the future he would have the job.[8] The Appellant does not meet any of those three elements. His expectation of being offered a job is not enough. He therefore cannot prove this ground for just cause.

[7]See section 29(c)(vi) of the Act.
[8] See *Canada (Attorney General) v Imran*, 2008 FCA 17.

– **Hours of work.**

[40] The Appellant was hired as a part-time dishwasher in a restaurant. He worked three to four shifts per week. He asked the employer to learn how to cook. The employer agreed and gave him three shifts per week as a cook. The employer said that the Appellant had poor performance compared to the other cooks. The Appellant was not picking up fast enough and the other cooks were better than the Appellant. The employer reduced him to one shift per week because the other cooks were better at the job. The employer asked if the Appellant wanted to go back to being a dishwasher. He did not want to do that, so the employer continued to schedule him for one shift per week. The Appellant requested more shifts, but the employer would not give him any. The employer said that the number of shifts and hours vary with sales. The usual slow months in the business were January to March.

[41] Leaving employment because the hours of work do not provide an adequate income is not just cause.[9] The Appellant falls under the principle from this court decision, so does not prove just cause.

– **Discrimination.**

[42] This was implicit in the Appellant's initial statement in his application. He said that the employer preferred Canadian workers to foreign workers. That raises the possibility of discrimination on the basis of national or ethnic origin, or religion, contrary to the *Canadian Human Rights Act*. Discrimination on a prohibited ground of discrimination within that Act is recognized as a possible ground for just cause for quitting.[10]

[43] I find that the Appellant has not proven this ground for just cause. That is because the evidence to support it is quite weak. The bulk of the evidence came in his testimony at the hearing.

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[9] See *Canada (Attorney General) v Campeau,* 2006 FCA 376.
[10] See section 29(c)(iii) of the Act.

[44] With respect to national or ethnic origin, the Appellant talked of poor treatment, mostly by staff. His testimony focused on one co-worker who mentioned the Middle East, where the Appellant came from. The co-worker kept mentioning religion and politics in talking with the Appellant. He ignored the co-worker. No one in management had engaged in this behaviour. But he did testify that the employer fired him because he was not from Canada. I do not accept that particular testimony. The Appellant quit, the employer did not fire him.

[45] With respect to religion, the Appellant referred to management in his testimony. But he did not provide specific evidence to show that religion was a factor in his treatment by management.

– **Pressure to leave.**

[46] This was first raised by the Appellant at the hearing. It is a ground on which just cause may be based.[11] He said that the pressure to leave was the reason he referred to not being fired directly. The only reason he gave for the pressure was his being limited to one eight-hour shift per week. That was despite having requested more hours and having been turned down. That evidence does not establish undue pressure by the employer to leave. It is consistent with the variable demands for staff that are part of the restaurant industry.

– **Treatment at work.**

[47] Most of the Appellant's concerns about how he was treated at work have been reviewed under the bold headings above, starting with "Hours of work". One matter not dealt with was his expectation that the employer should provide him with more hours or a better position after his five years working there.

[48] The workplace was not unionized. There was no formal seniority system to support his expectation. In that situation, the Appellant's expectation that he should get

[11] See section 29(c)(xiii) of the Act, "undue pressure by an employer on the claimant to leave their employment".

more hours or a better position simply for the length of his employment was unreasonable.

[49] In addition, the employer did in fact place the Appellant in a better position, as a cook trainee. That did not work out. The Appellant did not pick up the skills quickly enough. The other cooks were better at the job. As a result, the employer reduced his shifts from three a week to one a week. The Appellant declined the employer's offer to return to the dishwasher position.

[50] Based on those considerations, the Appellant's disappointed expectation does not amount to just cause.

– **Do all the above matters combined amount to just cause?**

[51] Just cause requires that the Appellant prove that he had no reasonable alternative to quitting, in all the circumstances at the time he quit.

[52] The combination of the above matters does not prove that there was just cause for quitting. The combination does show that the Appellant had reason to be dissatisfied with his position at work. But the combination does not rise to the level of showing no reasonable alternative to quitting. The reasonable alternatives that existed when the Appellant quit are set out in the following paragraphs.

– **Reasonable alternatives to quitting.**

[53] The Appellant did have some reasonable alternatives to quitting at the time he quit.

[54] The main reasonable alternative was to remain in the job until he found another job. Remaining in employment until a new job is secured is, without more, generally a reasonable alternative to taking a unilateral decision to quit a job.[12] The Appellant had been looking for work before he quit. He did not have a job to go to when he quit. He

[12] See *Canada (Attorney General) v Graham,* 2011 FCA 311.

was working only one shift per week. That left him a large amount of time each week to be searching for a job.

[55] Taking a leave of absence can be another reasonable alternative. The Appellant said that he did not request a leave. The employer said if asked it would allow a leave of absence. The first ROE supports the employer on that point, as it was given at the request of the Appellant. This alternative is less important because the Appellant only worked one day a week, so he had six other days to look for work. That reduced the need to have a leave of absence.

[56] Requesting a transfer can be another reasonable alternative. The Appellant did speak to another franchisee for a transfer but was not successful. He could have continued pursuing this alternative.

Conclusion

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

[58] This means that the appeal is dismissed.

Paul Dusome

Member, General Division – Employment Insurance Section