Citation: *AE v Canada Employment Insurance Commission*, 2024 SST 832

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (607531) dated August 1, 2023 (issued by Service Canada)

Tribunal member:	Audrey Mitchell
Type of hearing:	In person
Hearing date:	March 21, 2024
Hearing participant:	Appellant
Decision date:	April 10, 2024
File number:	GE-23-2646

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 carpenter on December 7, 2022. He applied for EI benefits after he was laid off from another job. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving his job on December 7, 2022. 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 the Appellant could have stayed at his job and secured another one before quitting.

[6] The Appellant disagrees. He says worked on a trial basis for the employer for three weeks. He says the employer never gave him a contract after that.

Matter I have to consider first

The Appellant's withdrawal of his appeal was set aside

[7] The Appellant withdrew his appeal. So, the Tribunal sent him a letter confirming the withdrawal and notifying him that its file would be closed.

[8] The Appellant asked the Tribunal to re-open the appeal because he felt misled. Based on exceptional circumstances and in the interests of justice, the Tribunal set aside the withdrawal of the appeal and proceeded to hear the Appellant's appeal.

The Appellant raised the *Administrative Tribunal Act*

[9] The Appellant asked for his appeal to be accepted based on section 58 of the *Administrative Tribunals Act*.

[10] The Appellant explained that the reason for his request is that he didn't get procedural fairness from the Commission. He gave examples of what he meant by that.

[11] The *Administrative Tribunals Act* is a law of the province of British Columbia that gives details of the appointment, practices, procedures and authorities of tribunals in that province. But the Social Security Tribunal is a federal institution that's established under the *Department of Employment and Social Development Act*. So, I don't have authority under the provincial law the Appellant referred to and can't accept his appeal in the way he requests.

[12] As explained at the appeal hearing, I am independent from the Commission that made the decision he's appealing. And my decision is based on my review of the evidence including the Appellant's testimony, the *Employment Insurance Act*, and what the court has said about how the law should be applied.

[13] If the Appellant continues to be dissatisfied with service he received from the Commission, he may wish to give that feedback to the Office for Client Satisfaction.

Issues

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

[15] 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.

[16] Depending on the answer to the Appellant's voluntary leaving, I also have to decide if since he voluntarily left his job, he has worked enough insurable hours to qualify for EI benefits.

Analysis

The parties don't agree that the Appellant voluntarily left

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

[18] The Commission says the Appellant made a personal choice to leave his job after his request for an increase in hourly pay was denied.

[19] The Appellant says he didn't get a job offer from the employer.

[20] The Commission has to prove that the Appellant voluntarily left his job.[1] To determine if the Appellant voluntarily left his job, I have to ask if he had a choice to stay or leave.[2]

[21] The Appellant worked as a carpenter for a construction company. But he said he only worked for the employer for a trial period. He said he never got a formal offer of employment to accept.

[22] The employer issued a record of employment (ROE). It said the Appellant worked from November 21, 2022, to December 7, 2022.

[23] The Appellant testified that he found an ad for the job on Craig's list. He said he contacted the employer and asked if the employer would like to try him for some time. He testified that he worked for a trial period and told the employer that it could pay him whatever it wanted for the trial period.

[24] The Commission spoke to the Appellant's former employer. The employer said the Appellant worked for three weeks at an agreed upon rate of $25 per hour. It said the Appellant asked for more money, which was denied, so the Appellant chose not to return to the job.

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[1] See *Canada (Attorney General) v White*, 2011 FCA 190
[2] See *Canada (Attorney General) v Peace*, 2004 FCA 56.

[25] I asked the Appellant about what his former employer said. The Appellant said the employer forgot about the trial period.

[26] The Appellant sent the Commission copies of text messages between himself and the employer. One message from November 17, 2022, shows the Appellant responding to the employer's ad for a job. He proposed a one-week trial. The employer responded the same day, saying that it would try out the Appellant for a week.

[27] The Appellant told the Commission that he was on a trial for a three-week period, and if the employer liked his work, the employer would have a contract prepared. The Appellant said that when he contacted the employer after three weeks, no contract was offered.

[28] The Commission asked the employer about what the Appellant said. The employer said it doesn't sign contracts with anyone. The employer said it didn't fire the Appellant; he just left.

[29] I asked the Appellant about what the employer said. He said the employer was upset because he thought they had agreed to a wage. He again said the job was a trial and the employer didn't offer him anything, verbally or in writing.

[30] Despite the Appellant's testimony, I give more weight to the Commission's evidence from the employer and the text messages than to what the Appellant said about trying out the job for three weeks. I find that the text messages and the ROE are likely more accurate than the Appellant's testimony because they are much closer in time to the events that the Appellant testified to.

[31] I also find that the employer's statements to the Commission are consistent with the Appellant's request in the text message to try out the job for one week. The employer told the Commission that he hired the Appellant, he did good work, and if it hadn't worked out, it would not have kept the Appellant on for work.

[32] Because of the weight I have given to the Commission's evidence from the employer, I find that the Appellant was properly employed by the employer. The

Appellant testified that he was hired to work as a carpenter, he entered the hours he worked on an app used by the employer, he got paid by direct deposit, and he received pay stubs. So, I find that if there was a trial period of employment it was likely only for one week.

[33] I also find that the Appellant was the one who initiated the separation from his job. He didn't dispute that he asked his employer to pay him more than $25 per hour. He suggested that because the employer was upset about his request and didn't give him a formal verbal or written contract, the employer let him go.

[34] The Commission asked the Appellant whether he had agreed to keep working for the employer at a rate of pay of $25 per hour, since the employer had said it had more work for the Appellant. The Appellant told the Commission that he didn't get back to the employer, stating he was working at another job at the time. He later said the employer would not pay him more, but he can always find work in construction.

[35] Since the Appellant doesn't dispute asking the employer for more money, I find it more likely than not that when the employer said it could not pay him more, the Appellant chose not to continue working for the employer. And I find that his statement that he could always find work in construction supports this finding, since he felt he could get another job somewhere else that would pay him what he wanted.

[36] So, based on the above, I find that the Appellant could have continued to work for the employer at the wage they had agreed to. But he chose not to continue working with the employer. I find that this means he voluntarily left his 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 his job when he 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.[3] 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 you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says you have to consider all the circumstances.[4]

[40] It is up to the Appellant to prove that he had just cause.[5] 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.

[41] A claimant has just cause for voluntarily leaving a job if they had no reasonable alternative to leaving.[6] This includes having reasonable assurance of another job in the immediate future.[7]

[42] The Appellant says he had just cause to leave his job. He says it was just a trial job for three weeks.

[43] The Commission says the Appellant didn't have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says the Appellant could have secured another job before quitting.

[44] I find that the Appellant could have stayed at his job until he had another job to go to.

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[3] Section 30 of the *Employment Insurance Act* (Act) explains this.
[4] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[5] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[6] See section 29(c) of the Act.
[7] See section 29(c)(vi) of the Act.

[45] The Appellant worked as a carpenter for the employer. As noted above, he asked the employer for more money, which was denied. The employer said it had more work for the Appellant. But the Appellant didn't return to the job.

[46] I asked the Appellant about the Commission's submission that he could have continued to work for the employer until he found another job. The Appellant first said the Commission is dishonest and are liars. I asked the Appellant again what he would say to the Commission's submission. He said he was told many times that leaving his job with this employer would not affect him since he had enough hours to qualify for benefits.

[47] As noted above, the Appellant said he was working at another job when he stopped working for the employer. The Commission said the Appellant worked at the other job sporadically from October 5, 2022, to January 26, 2023.

[48] The Appellant confirmed to the Commission that he continued working with the other employer when he stopped working for the employer in question. So, I don't find that this is a case where he left his job because he had reasonable assurance of another job.

[49] I find that the Appellant continued doing a job he had before he started working for the employer. And since he worked only sporadically for this other employer, I find that the Appellant could have stayed at his job until he found another job that was at least comparable to the one that he left. I don't find that the other job he continued to do was comparable to the one he left.

[50] Despite the Appellant's statements that the employer didn't offer him a job verbally or in writing, I have already found that the Appellant was properly hired by the employer. And this was beyond the one-week trial period. So, I find that he could reasonably have stayed at this job until he found another one.

[51] I can understand why the Appellant would want to get paid more for the work he did for the employer. But based on the above, I find that he had reasonable alternatives

to leaving his job. So, I don't find that he has proven that he had just cause to leave his job when he did.

Has the Appellant worked enough hours since voluntarily leaving his job to qualify for EI benefits?

[52] If a claimant has enough insurable hours to qualify for benefits since leaving their job without just cause, they aren't disqualified from receiving benefits because of leaving that job.[8]

[53] The Commission says the Appellant worked only 202 insurable hours after leaving his job. It says he needed to have worked 700 insurable hours since leaving that job to qualify for benefits.

[54] The Appellant says that an officer assigned to his EI application told him that he has enough hours and is entitled to EI benefits. He said he was told that his leaving his job with the employer in question would not affect his benefits.

[55] The Commission included three ROEs from other employers where the Appellant worked after he left his job without just cause. Although one of the ROEs has hours of employment from before the Appellant left this job, the total hours on the three ROEs is 202.

[56] The Commission used the Appellant's postal code from his application for benefits to determine that he lives in the economic region of Vancouver. But this was the postal code of his mailing address. Since the Appellant gave his residential address as the city of Vancouver, I'm satisfied that he does live in the economic region of Vancouver.

[57] The Commission's evidence shows that the rate of unemployment was 5% when the Appellant applied for EI benefits. This means that he needed to have worked 700 hours since leaving his job without just cause to qualify for EI benefits.

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[8] See section 30(1)(a) of the Act.

[58] The Appellant asked the Commission to reconsider its decision that he didn't have enough hours after leaving his job without just cause to qualify for benefits. He said he had more hours and not all his ROEs were uploaded. But the Commission maintained its decision.

[59] The Appellant sent the Tribunal several recordings of conversations he had with the Commission about his application for benefits. He testified that he was told several times that his case was accepted, that leaving his job without just cause would not affect him, and that he had enough hours to qualify for benefits. He said he was also told twice that he should expect payment of benefits in two or three days, and he was told to complete a report and he would get paid.

[60] I listened to each of the recordings the Appellant sent. The recordings confirm that the Appellant completed bi-weekly reports with an officer by telephone, he was told more than once that he should expect payment in two to three business days, and he was given a dollar amount of benefits that he should expect. In one call which appears to be from September 7, 2023, the officer tells the Appellant that he has enough hours to qualify for benefits.

[61] I asked the Appellant about the Commission's submission that he needed to have worked 700 insurable hours since leaving his job without just cause, but he has only 202. The Appellant responded by speaking about what the Commission's officers had done. But he did say earlier that he said that from December to April, he worked as much as he could, so he has enough hours to qualify for benefits.

[62] Despite the above, the onus is on the Appellant to show that he has enough hours to qualify for benefits since leaving his job without just cause. And the hours the Appellant may have worked to qualify for benefits before leaving his job without just cause can't be used for the purpose of this part of the law. I don't find that he has shown that he has enough hours to qualify for benefits.

[63] The Appellant applied for benefits on April 15, 2023. The three ROEs referred to above show that the Appellant worked no more than 202 insurable hours from the time

he left his job without just cause up to March 31, 2023. And in the absence of testimony or documents showing he has worked more insurable hours since leaving his job without just cause, I don't find that the Appellant has worked the necessary 700 hours to qualify for benefits.

Conclusion

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

[65] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section