



[TRANSLATION]

Citation: *BB v Canada Employment Insurance Commission*, 2024 SST 649

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

**Decision**

**Appellant:** B. B.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (619577) dated October 27, 2023 (issued by Service Canada)

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**Tribunal member:** Nathalie Léger  
**Type of hearing:** Videoconference  
**Hearing date:** January 15, 2024  
**Hearing participant:** Appellant  
**Decision date:** January 28, 2024  
**File number:** GE-23-3388

## 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 that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.

## Overview

[3] The Appellant left his job at X on August 2, 2022, 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 have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[5] The Commission says that, instead of leaving when he did, the Appellant could have made sure he had another job before leaving. He could also have seen a doctor about his fatigue problem or talked to the employer about the difficulties he was experiencing before leaving.

[6] The Appellant disagrees and says that he tried several times to contact someone from human resources but was unsuccessful. He says that he isn't suited for night work and that he was risking his safety by driving after his shift, since he sometimes fell asleep behind the wheel. Also, he says that the employer didn't comply with the employment contract by not giving him all the hours advertised.

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

### **The Appellant was supposed to file a document after the hearing, but he didn't.**

[7] At the hearing, the Appellant told the Tribunal that, shortly before the hearing, he had sent it a document from the employer showing the number of hours worked each day.

[8] I then told the Appellant that I would wait for this document to make my decision. A few days later, a registry officer contacted the Appellant at my request to send his document again, since we still hadn't received it.

[9] At the time of this decision, the Appellant still hadn't sent the promised document. This means that it can't be considered. But the Appellant's testimony about its content can be considered.

## **Issue**

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

[11] To answer this, I must first address the Appellant's voluntary leaving. I then have to decide whether he had just cause for leaving.

## **Analysis**

### **The parties agree that the Appellant voluntarily left**

[12] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit. I see no evidence to contradict this.

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

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

[14] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>1</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[15] 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>2</sup>

[16] 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.<sup>3</sup>

[17] 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 law sets out some of the circumstances I have to look at.<sup>4</sup>

[18] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to leaving at that time.<sup>5</sup>

### **The circumstances that existed when the Appellant quit**

[19] The Appellant says that one of the circumstances set out in the law applies. Specifically, there was a significant change in his working conditions in that the employer allegedly didn't comply with the number of hours advertised in the job offer and he wasn't paid the night premium.

[20] At the outset, it should be noted that the Appellant worked only six days during the summer. This is a very small sample to assess whether working conditions were met.

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

<sup>2</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>3</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

<sup>4</sup> See section 29(c) of the Act.

<sup>5</sup> See section 29(c) of the Act.

[21] The Appellant testified that he worked only 3 hours and 15 minutes per day on average in the first week and 4 hours and 45 minutes the only day he worked in the second week. The Appellant also testified that the company guaranteed him at least 5 hours per day. The Record of Employment issued by the employer indicates that 24 hours was worked during the two weeks he was employed.<sup>6</sup>

[22] The job offer from the company says that the number of hours will be [translation] “about 5 hours per day.”<sup>7</sup> As the Commission points out, this isn’t a guarantee of hours, but an approximation of the number of hours that could be granted on average.

[23] The fact that the Appellant wasn’t offered a similar number of hours in the first five days he worked isn’t enough to conclude that his working conditions changed significantly. Given the short period of time and the vacation period, it is quite possible that this is simply a temporary reduction in the number of hours required and not a permanent change in working conditions.

[24] As for the premium allegedly not paid, this can’t be the reason the Appellant decided to leave when he did. The evidence shows that the Claimant left on August 2, 2022, but that he didn’t receive his first pay stub until August 5, 2022.<sup>8</sup>

[25] Even though the Appellant maintained throughout the hearing that he was sure he had a pay before leaving, the evidence shows the opposite. So, he could not find before he left that the night shift premium hadn’t been paid to him.

[26] The Appellant also claims that this job presented a working condition that was a risk to his health in that he would fall asleep behind the wheel on his way home. However, it wasn’t the work itself that caused the problem, but the travel to get there. This situation doesn’t meet the test set out in the Act.

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<sup>6</sup> See GD3-12.

<sup>7</sup> See GD3-25.

<sup>8</sup> See GD2-3.

## **The Appellant had reasonable alternatives**

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

[28] The Appellant says that this was the case because, despite leaving messages, he was unable to talk to an appropriate person in the company to resolve the situation. He also told the Commission that he had reasonable assurance of a job before leaving.

[29] The Commission disagrees and says that the Appellant didn't have a firm job offer before leaving, contrary to what he says. He should have waited until he had such an offer before leaving. He could also have waited until a human resources representative returned to discuss his work hours.

[30] I find that the Appellant had reasonable alternatives and didn't have reasonable assurance of a job before he left. First, the Appellant testified at the hearing that he left several messages on the company's voicemail but didn't really know whether he was contacting the right people.

[31] He said that he didn't know who to contact and that the floor managers changed all the time. When I asked him whether he had asked his coworkers who to contact or how to join his union, he said that he didn't have time because the pace of work was fast. He just asked the security guard who to contact. This response doesn't show that he explored all reasonable alternatives, since he could have taken a few minutes after one of his shifts to find out properly.

[32] In addition, I am of the view that, when he left, the Appellant didn't have enough certainty of a job offer under the Act. The Appellant and the new employer confirmed that, by August 2, 2022, the Appellant had simply been told that his application was very interesting.<sup>9</sup> It wasn't until August 15 that a formal meeting was scheduled and August 25 that he started his new job.

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<sup>9</sup> See GD3-18.

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

## **Conclusion**

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

[35] This means that the appeal is dismissed.

Nathalie Léger

Member, General Division – Employment Insurance Section