Citation: *GS v Canada Employment Insurance Commission*, 2024 SST 1027

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (640597) dated March 15, 2024 (issued by Service Canada)

Tribunal member:	Linda Bell
Type of hearing:	Teleconference
Hearing date:	April 30, 2024
Hearing participant:	Appellant
Decision date:	May 2, 2024
File number:	GE-24-1314

Decision

[1] G. S. is the Appellant. I am allowing his appeal.

[2] The Commission hasn't shown that the Appellant voluntarily left his job. This means he isn't disqualified from regular Employment Insurance (EI) benefits, for this reason.

Overview

[3] The Appellant applied for regular EI benefits shortly after his last day worked. He said he stopped working due to a shortage of work.

[4] On November 20, 2023, the Commission received a Record of Employment (ROE), which states the Appellant quit his job. The Commission looked at the reasons why the Appellant stopped working. The Commission decided he voluntarily left that job without just cause. So, the Commission imposed a stop payment (disqualification) starting November 5, 2023.

[5] The Appellant disagrees with the Commission. He appeals to the Social Security Tribunal (Tribunal). He agrees that he asked for his ROE but says he never quit his job.

[6] I have to decide whether the Commission has proven the Appellant voluntarily left his job. If I find he did voluntarily leave, then I have to decide whether he had just cause to leave, within the meaning of the law.

Matter I must consider first

Potential added party

[7] The Tribunal identified the Appellant's employer as a potential added party to the appeal. It sent a letter to the employer asking if it wanted to be an added party. To be an added party, the employer has to show it had a direct interest in the appeal.

[8] The employer did not respond to the Tribunal's letter. As there is nothing in the appeal file to indicate the employer has a direct interest in the appeal, I have decided not to add it as a party to this appeal.

Issue

[9] Did the Appellant voluntarily leave his job?

Analysis

Voluntary Leaving

[10] I find that it is more likely than not that the Appellant didn't voluntarily leave his job. I've set out my reasons below.

[11] The Commission has the burden to prove the Appellant voluntarily left his employment (job).[1]

[12] The law says that when determining whether a claimant has voluntarily left their employment, I must ask the following question. "Did the claimant have the choice to stay or to leave."[2]

[13] When there is conflicting information, I have to decide which version is most likely. I have to consider all of the evidence and make a decision on the balance of probabilities.[3]

[14] In this case, I prefer to rely on the evidence the Appellant provided at the hearing over the Commission's notes on file. I think the Appellant's testimony is the most reliable evidence of whether he voluntarily left his job.

[15] First, the Appellant has firsthand knowledge of what occurred. I found his testimony was credible and was supported by documentary evidence, which included documents he sent to the Tribunal on April 29, 2024. He gave his answers in a

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[1] See *Green v. Canada (Attorney General)*, 2012 FCA 313.
[2] *Canada (Attorney General) v Peace,* 2004 FCA 56.
[3] The Federal Court of Appeal says that the standard of proof is the balance of probabilities for employment insurance matters in its decision *Canada (Attorney General) v. Corner*, A-18-93.

straightforward and direct manner. He was able to answer questions consistently about his statements and evidence.

[16] Second, the Commission's notes were written by a Service Canada officer and aren't an objective transcript of what the Appellant said. There is no recording of the conversation to provide a neutral account. I also considered that the conversation notes were not reviewed and approved by the Appellant at the time they were made, which weakens their reliability.

[17] I acknowledge that the Appellant had difficulties staying on track when talking about what had occurred. This may have frustrated the Commission's officers. It appears to have resulted in the Appellant reacting in an inappropriate manner, while speaking with the Commission. It may also have prevented the Commission from gaining a clear understanding of what the Appellant was trying to explain.

[18] I recognize that the Commission fails to state why they preferred the employer's statements over the Appellant's statements. Further, I see no evidence that the Commission asked the employer about the Appellant's statements that it was a family-run business, or whether the employer had a 5-year contract to pay a replacement driver full-time, at $10 per hour less than they were paying the Appellant.

[19] The Appellant disputes the Commission's submissions. He says the Commission didn't understand how sad, upset, and nervous he was to be without a paycheque. He would never have quit this job because he has bills to pay. He asked for his ROE because the employer had a 5-year contract with a new employee, who replaced him. The employer reduced his hours so he needed to apply for EI benefits. He says he didn't have an opportunity to continue working for this employer.

[20] The Appellant testified that he moved his family to this remote town to work for this employer, which was a family-owned business. He was told it was going to be a full-time job, 40 hours per week, but the employer never had enough work to keep him

working full-time hours. The slowest months were from November to February. This is supported by the hours listed for each biweekly pay period in section 15c on his ROE.[4]

[21] The Appellant said that when the previous driver left, he was the only employee who had the proper licence and certification to operate the large crane truck. Some of his duties included completing safety checks, maintenance, loading, off-loading products, and driving the crane truck to complete deliveries.

[22] The Appellant testified that in approximately November 2022, the employer hired a new driver. That driver told the Appellant that he signed a 5-year contract with the employer to work for approximately $22.00 per hour if the employer agreed to pay for him to get his class 3 drivers' licence and a class B crane operators' licence.

[23] The Appellant said that in October 2023, the employer asked him to train the new employee to operate the large crane truck. The Appellant agreed because the employer needed him to do the work while the Appellant was on vacation in November 2023. But because that new employee wasn't fully licenced to operate the large crane, the Appellant had to remain in cellphone contact with him throughout his vacation.

[24] The Appellant was scheduled to return to work on Tuesday, November 14, 2023. But the employer called him into work to do one delivery on November 13, 2023. He went to work that day but after he loaded the truck and drove to the barge, he was told that the new employee cancelled the delivery.

[25] The next morning when he arrived at work, the Appellant saw the new employee driving off in the crane truck he was supposed to drive. But the Appellant's safety equipment was inside that truck, and he couldn't work without that equipment. He said that is when he realized the employer was replacing him with the new guy.

[26] The Appellant admits that he became upset. He yelled and swore at the new employee and the employer. The employer told him to go start up the old, smaller crane truck. But that truck wasn't road worthy and there were no jobs for him to do. He

[4] See the ROE at page GD3-16.

explained how that truck had a broken windshield and mechanical issues, so it had been parked for some time.

[27] The Appellant said that he went into the yard office and looked at the work computer. The employer showed him there were only 2 jobs scheduled for November 14, 2023, on the big crane, which the new driver was doing. There were no jobs scheduled for the small truck that day and no jobs schedule for either truck on November 15, 2023. That is when he asked for his ROE so he could apply for EI benefits and make sure he had money to pay his bills.

[28] The Appellant consistently said that this was a family-run business, so they all worked out a plan on what to say so they didn't have to pay him severance pay. Upon review of the email that CM sent describing the events of that morning, it was noted that this email wasn't sent until 9:49 a.m., which was two hours after the events occurred the morning of November 14, 2023.[5]

[29] The Appellant has consistently said that he didn't quit this job. He loved his job and never missed a day of work. He asked for his ROE so he could get EI benefits to pay his bills. It was obvious to him that the employer decided to have the new employee operate the large crane truck, with only a B licence, being paid $10 per hour less than what the Appellant was making. He said this is supported by the fact that the employer sent the new employee out in the only truck that was operational, on the day the Appellant was scheduled to return to work full-time. There wasn't enough work to keep him working full-time, which means there wasn't enough work to keep them both working full-time. He believes the employer worked out this plan to get rid of him without paying him severance pay.

[30] The Appellant doesn't agree with the Commission's statements that the employer asked him to come to work after November 14, 2023. He said the employer never contacted him and never asked him to return to work. Instead, he tried to speak with the employer several times, but they refused to answer his calls or reply to his text

[5] See the email at page GD3-29.

messages. He says they won’t talk to him because they owe him several hours of wages, pay for November 13, 2023, his two weeks of holiday pay, and severance pay.

[31] After careful consideration of the evidence before me, I find the Commission has failed to prove that the Appellant voluntarily left his job. Instead, the evidence supports the finding that there was a shortage of work once the new employee was trained to operate the bigger crane truck, working full-time for much less money under a 5-year contract with the employer. Accordingly, the Appellant is not disqualified from receiving regular EI benefits.

Conclusion

[32] The appeal is allowed.

Linda Bell

Member, General Division – Employment Insurance Section