



Citation: *AT v Canada Employment Insurance Commission*, 2024 SST 983

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

## Decision

**Appellant:** A. T.  
**Representative:** West Toronto Community Legal Services  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (639722) dated January 23, 2024  
(issued by Service Canada)

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**Tribunal member:** Kristen Thompson  
**Type of hearing:** Videoconference  
**Hearing date:** April 9, 2024  
**Hearing participants:** Appellant  
Appellant's representative  
Interpreter  
**Decision date:** April 18, 2024  
**File number:** GE-24-759

## Decision

[1] The appeal is dismissed with modifications.

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving her job when she did on July 9, 2023. The Appellant didn't have just cause because she had reasonable alternatives to leaving.

[3] This means she is disqualified from receiving Employment Insurance (EI) benefits, as of July 9, 2023. But she may qualify for EI benefits before this date.

## Overview

[4] The Appellant's last day of work with her previous employer was during the week starting June 4, 2023. As she wasn't scheduled for any work during the weeks starting June 11 and June 18, 2023, she applied for EI benefits.

[5] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It says that, although she wasn't scheduled for any work for a period, she voluntarily left her job without just cause when she didn't respond to the employer's email about being scheduled for more work. So, it wasn't able to pay her benefits.

[6] The Commission says that, instead of leaving when she did, the Appellant could have spoken with the employer, following her period of illness, to see if it could give her more hours. It says that she could have continued to look for full-time work while maintaining part-time hours with her employer.

[7] The Appellant disagrees. She says that she didn't voluntarily leave her job. She says that she was let go by the employer when it didn't give her any hours for more than a two-week period. She says that there were significant changes to her wages, as she was no longer given full-time hours. The employer told her that hours aren't guaranteed, due to production levels.

## Issue

[8] Is the Appellant disqualified from receiving benefits because she voluntarily left her job without just cause?

[9] 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 don't agree that the Appellant voluntarily left

[10] I find that the Appellant voluntarily left her job on July 9, 2023.

[11] The Appellant says that she didn't voluntarily leave her job. She says that she didn't quit or refuse work (other than for medical reasons). She says that she was let go by the employer when it didn't give her any hours for more than a two-week period.

[12] The Commission says that an interruption of earnings may have occurred during the period when she wasn't scheduled for hours. But it says that she voluntarily left her job when she didn't respond to her employer's request to give her work.

[13] Voluntarily leaving your job includes quitting your job. But it also includes:<sup>1</sup>

- the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs
- **the refusal to resume an employment**, in which case the voluntary leaving occurs when the employment is supposed to be resumed
- the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred

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<sup>1</sup> See section 29(b.1) of the *Employment Insurance Act* (Act).

[14] The employer issued a Record of Employment (ROE) saying that the Appellant quit her job. It says that the last day for which she was paid was June 6, 2023.<sup>2</sup>

[15] The Appellant applied for EI benefits on June 22, 2023. In her application for benefits and her request for ROE, she says that her last day worked was June 9, 2023.<sup>3</sup>

[16] The Appellant says that during the week starting June 4, 2023, she only got one 7-hour shift on June 9, 2023. She says that June 9, 2023 (not June 6, 2023), was her last day of work.

[17] The Appellant emailed the employer (her direct supervisor) on June 8, 2023. She asked the employer for full-time work, of 40 hours per week. She said that she only worked two days per week from April 24 to June 2, 2023. She said that she is scheduled for only 7-hours of work for the week starting June 4, 2023.<sup>4</sup>

[18] The Appellant says that she spoke to the employer on June 9, 2023, and was told that full-time hours weren't available due to production demand.<sup>5</sup>

[19] The Appellant says that on June 22, 2023, during the second week with no work, she went to the Service Canada office. She was told to request her ROE from the employer and apply for EI benefits.

[20] The Appellant emailed the employer again on June 23, 2023. She said that, as she wasn't scheduled for any hours for the last two weeks, she requires a ROE.<sup>6</sup>

[21] The Appellant says that she had a medical issue with her eyes. She was told by her doctor to rest her eyes for 10 days. She was told to avoid light, including computer screens, and to wear darkened glasses. She says that her medical issue made it difficult to email the employer and her brother assisted her with emailing her employer.

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<sup>2</sup> See GD3-21 and 22.

<sup>3</sup> See GD3-3 to 18.

<sup>4</sup> See GD3-30.

<sup>5</sup> See GD7-3.

<sup>6</sup> See GD3-27.

[22] The Appellant got a doctor's note, dated June 29, 2023. It says that she is under care from June 29 to July 9, 2023. It says that she can return to work on July 9, 2023.<sup>7</sup>

[23] The Appellant says that she was offered four days of work the week of June 25, 2023, but not a 40-hour workweek. She was unable to work, due to her medical issue. She spoke with the lead hand and told him that she couldn't go to work. The lead hand said he would tell the employer.

[24] The employer emailed the Appellant on June 30, 2023. The employer said that the Appellant was scheduled for the week starting June 25, 2023, for 40 hours of work, and she didn't attend. It asked if she still wants to work for the employer.<sup>8</sup>

[25] The Appellant emailed the employer on July 3, 2023. She said that she called the employer on June 25, 2023, and told the lead hand that she was unable to work, due to a medical issue. The lead hand told the Appellant that he informed the employer. She said that she requested full-time hours by email on June 8, 2023, and she wasn't scheduled for two weeks. She said that she requested her ROE, and her request wasn't answered in a timely manner.<sup>9</sup>

[26] The employer emailed the Appellant on July 7, 2023. The employer said that it wasn't told that she was ill. The employer said that it's able to allocate the hours available, according to production, and it isn't able to give the Appellant as many shifts as she would like. It asks if the Appellant is still able to work, as it's doing the schedule for the week starting July 9, 2023.<sup>10</sup>

[27] The Appellant emailed the employer on July 10, 2023. She asked the employer to send an "exit sheet" to another worker, so that worker can complete the ROE.<sup>11</sup>

[28] The Appellant says that she received further correspondence from the employer. The employer asked to speak with her, by email on July 11, 2023. The employer asked

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<sup>7</sup> See GD3-29.

<sup>8</sup> See GD3-26.

<sup>9</sup> See GD3-25.

<sup>10</sup> See GD3-25.

<sup>11</sup> See GD3-34.

her if she “made a decision,” by email on July 13, 2023. The employer called her in late July 2023, asking why she didn’t go to work the week starting June 25, 2023. She says that she didn’t see these emails until weeks later, due to her medical issue.<sup>12</sup>

[29] The Appellant argues that her employer didn’t offer her further full-time or other work. She says that she wasn’t obligated to wait or plead for her employer to give her more hours. She says that the Commission says that she made a personal choice to quit, but it didn’t say when this choice was made.

[30] The Appellant relies on a decision of this Tribunal that said the claimant didn’t voluntarily leave her job when the employer never scheduled her for any more shifts, even though the claimant spoke with her employer and completed timesheets listing her availability.<sup>13</sup> I think this case can be differentiated, based on the facts. The claimant completed time sheets listing her availability but wasn’t given any work by the employer. Whereas, in the Appellant’s circumstances, the employer asked her if she was available for work during the week of July 9, 2023, and she didn’t respond.

[31] In another decision, this Tribunal said that the claimant ended the employment relationship when he declined to resume working as a school bus driver at a time when the employer had work for him at the beginning of the new school year. The claimant refused his old route because it had decreased working hours, and he said that he needed to look for full-time employment. He also refused a longer route because he said it was a big responsibility.<sup>14</sup> I think this case is similar to the Appellant’s circumstances, and I’m adopting its reasoning. Although in this case the claimant was offered both more and fewer hours than he previously worked, he was found to have voluntarily left his job by refusing both jobs offered to him.

[32] I find that the Appellant voluntarily left her job as of July 9, 2023. I rely on the employer’s email to the Appellant of July 7, 2023, to show that the employer was offering work to the Appellant for the week starting July 9, 2023. In this email, the

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<sup>12</sup> See GD7-5.

<sup>13</sup> See *ER v Canada Employment Insurance Commission*, 2019 SST 1728.

<sup>14</sup> See *AD v Canada Employment Insurance Commission*, 2023 SST 1705.

employer asks if the Appellant is able to work, as it's doing the schedule for the week starting July 9, 2023. According to the doctor's note, the Appellant could return to work on July 9, 2023. The Appellant emailed the employer on July 10, 2023. She requested the paperwork for her ROE to be issued, but there is no evidence showing that she indicated her availability or told the employer of any continuing medical issue. By failing to respond to the employer to indicate her availability, the Appellant voluntarily left her job by refusing to resume employment as of the week starting July 9, 2023.

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

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

[34] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>15</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[35] 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 voluntarily leaving your job when you did. It says that you have to consider all the circumstances.<sup>16</sup>

[36] It is up to the Appellant to prove that she had just cause. 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 leave.<sup>17</sup>

[37] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant left. The law sets out some of the circumstances I have to look at.<sup>18</sup>

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<sup>15</sup> Section 30 of the Act explains this.

<sup>16</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>17</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

<sup>18</sup> See section 29(c) of the Act.

[38] After I decide which circumstances apply to the Appellant, she then has to show that she had no reasonable alternative to leaving at that time.<sup>19</sup>

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

[39] The Appellant says that one of the circumstances set out in the law applies. Specifically, she says that there were significant changes of terms and conditions respecting her wages.<sup>20</sup>

[40] The Appellant says that she had a history of working full-time hours with the employer, for many years. But her hours gradually decreased between April to June 2023, until she wasn't given any work for more than a two-week period. She couldn't pay her expenses on the part-time hours she got from her employer.

[41] The ROE shows that the Appellant worked between 73 to 96 hours bi-weekly between December 19, 2022, to April 22, 2023. Bi-weekly hours then decreased as follows:<sup>21</sup>

- 70 hours for the pay period ending April 23, 2023
- 28 hours for the pay period ending May 7, 2023
- 32 hours for the pay period ending May 21, 2023
- 43 hours for the pay period ending June 4, 2023
- 8 hours for the pay period ending June 18, 2023

[42] The previous ROE shows that the Appellant worked between 73 to 114 hours bi-weekly between August 8, 2021, to April 24, 2022.<sup>22</sup>

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<sup>19</sup> See section 29(c) of the Act.

<sup>20</sup> See section 29(c)(vii) of the Act.

<sup>21</sup> See GD3-21 to 22.

<sup>22</sup> See GD3-19 and 20.



[43] The Appellant says that from June to December 2022, she switched to part-time hours so that she could complete a college course. She then went back to working full-time for the employer.

[44] The Appellant says that she spoke with the scheduler to request more hours, nearly every time the weekly schedule was released, starting in April 2023. She was told that hours were being cut for employees because of lower production demands and full-time hours weren't available.

[45] The Appellant says that she repeatedly asked her employer for full-time hours, verbally and by email (as detailed above).

[46] The Appellant says that she was offered hours at the end of June 2023, but she was unable to work these hours due to her medical issue.

[47] The Commission didn't speak with the employer.

[48] I don't find that there were significant changes of terms and conditions respecting the Appellant's wages when she voluntarily left her job. Yes, there was a significant change in her wages for the pay periods ending May 7 to June 18, 2023, as she worked only between 8 to 43 hours bi-weekly. However, both the employer and the Appellant said that more work was available the week of July 25, 2023, either 40 hours as indicated by the employer or 4-days as indicated by the Appellant.

[49] I have to look at the circumstances that existed when the Appellant left on July 9, 2023. The Appellant and employer agree that there was more work available in the week starting July 25, 2023. The Appellant didn't make further inquiries of the employer about production demands or work available to her around the time she left her job. Neither the Commission nor the Appellant gave evidence whether her hours of work were guaranteed, according to any employment contract. As such, I find that there is insufficient evidence to show that there were significant changes of terms and conditions respecting her wages on the day the Appellant left her job on July 9, 2023.

[50] However, I find that the Appellant's hours or wages were no longer reliable or consistent. I rely on her testimony and the ROEs to show that she had a history of working full-time hours for the employer, except when she specifically requested part-time hours. As of the pay period ending May 7, 2023, she was no longer getting full-time hours reliably or consistently, even though she requested full-time hours of the employer on many occasions.

[51] The circumstance that existed when the Appellant voluntarily left her job was her hours of work or wages were no longer reliable or consistent.

### **The Appellant had reasonable alternatives**

[52] I must now look at whether the Appellant had no reasonable alternative to leaving her job when she did.

[53] The Appellant says that she had no reasonable alternative. She says that she wasn't required to keep having the same conversation with her employer, asking for full-time hours.

[54] The Commission disagrees. It says that the Appellant could have spoken with the employer, following her period of illness, to see if it could give her more hours. It says that she could have continued to look for full-time work while maintaining part-time hours with her employer.

[55] The Appellant says that she started looking for full-time work elsewhere as of May 2023. She provided several application forms that she submitted to prospective employers, dated May 19, 2023, onward.<sup>23</sup>

[56] The Court said that it is the responsibility of insured persons, in exchange for their participation in the scheme, to not provoke the risk of unemployment or transform what was only a risk of unemployment into a certainty.<sup>24</sup>

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<sup>23</sup> See GD2-28 to 35 and GD3-55 to 57.

<sup>24</sup> See *Canada (Attorney General) v Langlois*, 2008 FCA 18 and *Unemployment Insurance Commission v Tanguay*, A-1458-84.

[57] I find that the Appellant had reasonable alternatives. She could have continued to look for a full-time job while maintaining work with her employer. Or she could have secured a new full-time job before leaving this job. She had just recently started searching for a new job, two months before leaving. If she was only receiving part-time work going forward, it may not have interfered with an active job search.

[58] As well, the Appellant could have spoken with the employer, following her period of illness, to see if it could give her more hours. The employer's email indicates that the Appellant was offered 40 hours of work for the week starting June 25, 2023. The employer communicated with the Appellant several more times. The Appellant could have asked her employer about its estimated production levels going forward, as the evidence indicates that more hours may have been available to her.

[59] Considering the circumstance that existed when the Appellant voluntarily left her job, the Appellant had reasonable alternatives to leaving when she did, for the reasons set out above.

[60] This means the Appellant didn't have just cause for leaving her job.

## **Conclusion**

[61] I find that the Appellant is disqualified from receiving benefits, as of July 9, 2023. But she may qualify for EI benefits before this date.

[62] This means that the appeal is dismissed with modifications.

Kristen Thompson  
Member, General Division – Employment Insurance Section