



Citation: *RH v Canada Employment Insurance Commission*, 2024 SST 1625

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: R. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (665979) dated May 15, 2024
(issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: In person

Hearing date: September 12, 2024

Hearing participant: Appellant

Decision date: September 16, 2024

File number: GE-24-2250

Decision

[1] I am allowing this appeal in part.

[2] The Commission failed to consider that the Appellant quit in anticipation of losing his job. This means the Appellant **isn't** indefinitely disqualified from receiving Employment Insurance (EI) benefits.

[3] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job in anticipation of the loss of his employment. This means he **is disentitled** from receiving regular EI benefits from May 27, 2022, to June 6, 2022.¹

Overview

[4] The Appellant was working as a concession attendant / runner during the NHL hockey playoff games. While driving to work on May 26, 2022, he was involved in a motor vehicle accident. He knew his job would end in a couple weeks when the playoff hockey games ended, so he decided not to return to work.

[5] The Commission looked at the reasons why the Appellant stopped working. It determined the Appellant voluntarily left his job without just cause. The Commission imposed an indefinite stop payment (disqualification) starting May 22, 2022.

[6] The Appellant disagrees with the Commission. He appeals to the Social Security Tribunal. He says he knew his job would end when the playoff games ended so he thought he was laid off. He also suffered a concussion in a motor vehicle accident, so he had to stay off electronics. He was dealing with personal issues, and his employer never called him to come back to work.

¹ See section 33 of the *Employment Insurance Act* (EI Act).

Matter I have to consider first

Potential added party

[7] Sometimes the Tribunal sends the Appellant's former employer a letter asking if they want to be added as a party to the appeal. To be an added party, the employer must have a direct interest in the appeal. I have decided not to add the employer as a party to this appeal. This is because there is nothing in the file that indicates my decision would impose any legal obligations on the employer.

Issues

[8] Did the Appellant voluntarily leave his job in anticipation of his job ending?

[9] If so, did he have just cause for leaving?

[10] If so, what is the period of disentitlement?

Analysis

Voluntary Leaving

[11] I find, for the purposes of EI benefits, the Appellant voluntarily left his job.

[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] The Commission submits that the Appellant voluntarily left his job. This is because the employer said he abandoned his job.

[14] The Appellant readily admits that he never returned to work after his motor vehicle accident. He was on his way to work when the accident happened. He can't recall if he sent a text message to his employer to say he wouldn't be at work that day. He was nervous, scared, and dealing with a lot of stress in his life at that time. He said

² See *Canada (Attorney General) v Peace*, 2004 FCA 56.

he suffered a concussion but didn't have a medical note to prove this. He knew his job would end soon when the NHL playoff games ended. So, he decided not to return to work.

[15] After careful consideration of the evidence before me, I find as fact that the Appellant voluntarily left his job.

Just cause

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

[17] The law says you are **disentitled** from receiving benefits if you left your job within three weeks before your job would end.³ Having a good reason for leaving a job isn't enough to prove just cause.

[18] 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 at the time the Appellant quit.⁴

[19] It is up to the Appellant to prove he had just cause. He has to prove this on a balance of probabilities. This means that he has to show it is more likely than not that his only reasonable option was to quit.⁵

[20] 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.⁶

[21] 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.⁷

³ Section 33 of the EI Act explains this.

⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the EI Act.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

⁶ See section 29(c) of the EI Act.

⁷ See section 29(c) of the EI Act.

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

[22] The Appellant testified that he was hired as a casual, temporary employee to serve alcohol, drinks, and snacks at the NHL hockey playoff games. His job would have ended on June 6, 2022, as that is when their city's hockey team played their last NHL playoff game that season.

[23] As stated above, the Appellant says he was involved in a motor vehicle accident on his way to work. He can't recall if he sent a text message to his employer to say he wouldn't be at work that day. He was nervous, scared, and dealing with a lot of stress in his personal life at that time. He said he suffered a concussion in the accident but didn't have a medical note to prove this. He knew his job would end soon when the NHL playoff games ended. So, he decided not to return to work.

[24] The Commission submits the Appellant said he wasn't working enough shifts in order to make it worth his while to continue at this place of employment. The Commission documented that the employer said the Appellant voluntarily left his job through job abandonment.

[25] The Appellant disputes the Commission's documents of what was said during their telephone conversations. He said the Commission's officer kept talking over him, was rude, didn't let him say his peace, talked down to him, and assumed he was trying to lie. Those conversations felt like an argument. He wasn't comfortable speaking with him. So much so that he filed a complaint on the Service Canada client satisfaction website.

[26] The Appellant consistently said that he was hired to work only NHL playoff games. It was a temporary job that would end when the playoffs ended. He didn't say he wasn't working enough shifts to make it worth his while to continue working. Rather, he tried to explain he was hired to work during the NHL playoff season. He only worked when there was a playoff game, and his job would end when the playoffs ended. This is

supported by his Record of Employment (ROE) which shows his first day worked was April 22, 2022, which was during the NHL playoffs.⁸

[27] I am satisfied that the Appellant may have been dealing with personal stress at home, which increased when he was involved in the motor vehicle accident. It is probable that he may have suffered a concussion during the motor vehicle accident. The first day he worked as listed on his ROE supports that he was hired to only work during the NHL playoff season.

[28] I am satisfied that it was the cumulation of his personal issues at home, the motor vehicle accident, and knowing that his job was going to end when the NHL playoff games ended, that ultimately led to the Appellant leaving his job, prior to the expected date it would end. I must now consider whether he had no reasonable alternative but to leave when he did.

– **Reasonable alternatives**

[29] I find the Appellant had reasonable alternatives to leaving his job when he did.

[30] I recognize that the Appellant may have had good reasons for quitting before the NHL playoffs ended on June 6, 2022. However, just cause is not the same as a good reason. The question is not whether it was reasonable for the Appellant to leave his job. Instead, I must consider whether leaving his job was the only reasonable course of action open to him, having regard to all the circumstances.⁹

[31] I agree with the Commission's submission that considering all the evidence, a reasonable alternative to leaving would have been for the Appellant to request time off or a leave of absence from his employer during the period that he was unable to work due to the accident. Once recovered, it would have been reasonable for him to seek out other shifts to continue working, earning some money, until such time where he secured other work, to prevent a period of unemployment.

⁸ See page GD3-15.

⁹ See *Canada (Attorney General) v. Laughland*, 2003 FCA 12.

[32] After considering the cumulative effect of all the circumstances set out above, I find the Appellant had reasonable alternatives to quitting his job when he did. This means the Appellant hasn't shown just cause for voluntarily leaving his job at CGCL.

Period of disentitlement

[33] The EI Act states that a claimant is not entitled to receive benefits if they voluntarily leave a job without just cause within three weeks prior to when they anticipate their job will end.¹⁰

[34] In this case, the Appellant was hired to work during the NHL playoff season. He started work on April 22, 2022, and the playoff season ended on June 6, 2022. He was dealing with a lot of stress at home and when he was involved in the motor vehicle accident, he felt it was too much to continue working at that time. He didn't return to work after his last day on May 26, 2022.

[35] I find that it is more likely than not that the Appellant's job would have ended within three weeks of his last day worked. His last day worked was May 26, 2022, and the date of their NHL team's last playoff game was June 6, 2022. This means the Appellant quit within three weeks of anticipating that his job would be ending.

[36] After consideration of the foregoing, I find the Appellant is disentitled from receiving regular EI benefits from May 27, 2022, to June 6, 2022.

Conclusion

[37] The appeal is allowed, in part.

[38] The Appellant voluntarily left his job, without just cause, in anticipation of losing his job. This means he is disentitled from receiving regular EI benefits from May 27, 2022, to June 6, 2022.

Linda Bell

Member, General Division – Employment Insurance Section

¹⁰ See section 33 of the EI Act.