Citation: *MK v Canada Employment Insurance Commission*, 2024 SST 1640

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	M. K.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (672481) dated July 25, 2024 (issued by Service Canada)

Tribunal member:	Marc St-Jules
Type of hearing:	In person
Hearing date:	November 20, 2024
Hearing participant:	Appellant
Decision date:	December 19, 2024
File number:	GE-24-3362

Decision

[1] The appeal is dismissed. I disagree 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 worked until May 1, 2024, and applied for benefits on May 5, 2024.[1] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for no longer working with his employer. 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] The Commission says that, instead of leaving when he did, the Appellant could have tried to work things out with his employer or remain employed while searching for work elsewhere. He could have asked for a leave of absence as well.

[5] The Appellant disagrees and says that he never quit. His employer advised him that if he took his belongings home, he was quitting. The Appellant argues this was his personal items. He argues he was ordered to quit by his employer.

[6] I must first address if the Appellant voluntarily left. If yes, I then have to decide whether the Appellant had just cause for leaving. If the Appellant did not voluntarily leave his job but was separated from his employment because of his own actions, then I must consider whether he is disqualified from EI benefits because he lost his job due to his own misconduct.

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[1] See GD03 pages 3 to 20.

Matter I have to consider first

I will accept the documents sent in after the hearing

[7] The Appellant testified to many events leading up to his last day of work with the employer. As the Appellant was mentioning many different issues, I offered the opportunity to provide additional submissions after the hearing. And I set a deadline for him to send them to the Tribunal. And he did.[2]

[8] I will accept the new documents for three reasons:

- I gave him the opportunity to send them in.
- It is relevant to a legal issue I have to decide—whether he voluntarily left and if he had a reasonable alternative to quitting. In addition, some of the information responds to the Commission's arguments.
- It would not be unfair to the Commission because the Tribunal gave the Commission an opportunity to respond.

[9] So I have considered the new documents when I made this decision.

Issue

[10] Is the Appellant disqualified from receiving benefits?

[11] To answer this, I must first address the Appellant's reason for no longer being employed there. If the Appellant voluntarily left, I then have to decide whether the Appellant had just cause for leaving. Alternatively, if the employer initiated the separation from employment, I have to decide if he was dismissed because of misconduct.

[2] See GD06 and GD07.

Analysis

[12] In some cases, the evidence may make it unclear as to the cause of a claimant's unemployment. That said, the law has established that what I must deal with is the decision that the Commission made, not that which it might and perhaps, in an exercise of common sense, should have made.[3]

[13] Parliament linked disqualifications for voluntary leaving and misconduct under sections 29 and 30 of the *Employment Insurance Act* (EI Act). So, if I interpret the facts in a slightly different manner, to conclude that the case is one of dismissal rather than one of quitting (voluntary leaving), I don't stray from the subject matter I am called upon to consider, which is a disqualification.[4]

[14] In this case, the Commission considered how the Appellant's job ended and imposed a disqualification. The Commission determined that he voluntarily left his job without just cause. Upon reconsideration, the Commission maintained the disqualification for voluntary leaving.

Voluntary leaving vs dismissal

[15] I find it more likely than not that the Appellant voluntarily left his job. He was not dismissed. My analysis is in the following paragraphs.

[16] 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."[5]

[17] The law says the Commission has the burden to prove the Appellant voluntarily left his employment (job).[6]

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[3] See *Hamilton v. Canada (Attorney General)*, A-175-87.
[4] See *Canada (Attorney General) v. Easson,* A-1598-92
[5] See *Canada (Attorney General) v Peace,* 2004 FCA 56.
[6] See *Green v. Canada (Attorney General)*, 2012 FCA 313.

– Conflicting information

[18] 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.[7]

[19] I prefer the Commission's arguments over that of the Appellant's. I have set out my reasons below.

[20] The Appellant argues he did not quit. This has been consistent from the start. He argues he was ordered to quit. He understood that this meant the employer had fired him.[8]

[21] The Appellant argues that he was only bringing his personal items home. He had a few days off; his co-workers were using his computer and he decided to take his belongings home. The employer told him that if he brings his belongings home, he was quitting. The Appellant argues the employer's statement was strange because the employer knew these were his own personal items. The employer wanted to get rid of him and that the employer ordered him to quit would be the most logical conclusion.[9]

[22] **Bringing personal item home means quitting.** I am not giving a lot of weight to this evidence. I find that the events afterwards are more important. This is because these were his personal items. The Commission did not provide any evidence to suggest the Appellant was required to provide these items for him to work there.[10] The Appellant testified that the drafting table and books were his. He had another assigned desk to him while at work, and these personal items were not required at work. In addition, the Commission did not obtain a statement about how bringing personal items home could lead a person to conclude this is quitting.

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[7] 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.
[8] See GD03 page 46.
[9] See GD07 page 7.
[10] In some industries, it is common for employees to provide their own tools.

[23] **Returning keys.** I find that this is an important factor. It is uncontested that the Appellant returned the keys. The Appellant, however, says he did so because he was ordered to quit. He did not want to be accused of theft.[11] He also returned the key because the employer "suggested" he quit so he decided to give the key back.[12] The Commission says this action confirms the Appellant's quitting. I find that this is an important piece of evidence I need to consider.

[24] **Time off.** The Appellant says he was approved for a few days off when he left with his belongings. The employer told the Commission they were aware he was going to visit his aunt but had not asked for time off.[13] I favour the Appellant's evidence on this. The Commission documented only the answer, "he had not requested time off." I find that this is not conclusive. Was this question in relation to a leave of absence or the time off to visit his aunt? I do not have strong evidence to support the Appellant did not have a few days off. I believe the Appellant. In addition, the Appellant's email sent on a Friday to his employer suggests the following Tuesday was the day he was to return to work.[14]

[25] **Comment about hiring east Indians.** On the Appellant's last day, the Appellant made a comment that his employer should hire another East Indian so they could get along.[15]

[26] **Friday emails.** The taking home of personal belongings was on a Thursday. On Friday morning, there was an exchange of emails.

- The Appellant received an email from R. This email included the wording: "I don't know exactly what happened but according to SRW, you quit. I wish you well M."[16]

[11] See GD06 page 16.
[12] See GD03 page 35. This was an email from the Appellant.
[13] See GD03 page 44.
[14] See GD03 page 34.
[15] See GD06 page 15.
[16] See GD03 page 29.

- The Appellant replied, “OK R. just informed me that SRW said I quit. That is my understanding of what happened.”[17] He also added that he removed company stuff from his phone. The Appellant testified that his “understanding” was that he was told he quit and not that he agrees he quit.

- The employer then wrote back stating they accept his resignation.[18]

- The Appellant replied that “I disagree with your assessment. Furthermore, you suggested I quit so I decided to give your key back.”[19] This email supports the Appellant’s continued argument that he never quit. This email also included allegations of double standards at work and his feeling that that stories were made up.

- The employer then emailed back with a reply that they were considering having him return but this made up his mind, he will never work with the Appellant again.

[27] I find it important to note that even the employer told the Commission that the Appellant’s departure was confusing.[20] The employer then added that he assumed the Appellant was quitting and that this assumption was reinforced when the Appellant was rude and argumentative in emails. I find it important for two reasons. Even the employer found this to be confusing and needed his assumption reinforced with events that occurred after the Appellant would have allegedly quit.

[28] I acknowledge this evidence. However, as explained below, the actions he took after being told he was quitting by taking his personal items home outweigh this evidence.

[29] The Appellant had the choice when he was told **if** you take these items home, you are quitting. The first was not to bring the items home. However, I agree that this was his right to do so. Bringing his items home was not quitting.

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[17] See GD03 page 30.
[18] See GD03 page 31.
[19] See GD03 page 31.
[20] See GD03 page 25.

[30] I am not persuaded by the Appellant's argument he was ordered to quit. There are a few reasons.

- The word "if" is conditional. While I agree that the Appellant had the right to bring his personal items home, he could have objected. In other words, he could have answered, no, I am not quitting. These are my personal belongings.

- The employer did not use the word fired or dismissed. Using this word would have been more definitive.

[31] The statement that the Appellant was quitting is perhaps putting words in the Appellant's mouth, but the Appellant did not refute it. In testimony he agreed he did not argue against this with the employer. In addition, the Appellant himself wrote that "I suppose I could have argued with him at this point."[21] The Appellant is adamant that he never quit but there is no evidence that he ever objected to the employer at the time.

[32] The Appellant also argues he was told that he could perhaps get his job back if he apologizes and had he talked to R. However, he was denied this opportunity, and he is not sure what he needs to apologize for. I acknowledge this evidence. However, I find that it does not change my findings. By the time he would have been denied, he already had not objected to quitting, returned the keys, made the comment about his co-worker and possibly removed the company's information from his phone.[22]

[33] I find that the act of returning the keys, deleting employer information from his phone, telling his former employer that they should hire East Indians so that they can get along and not objecting to the employer's statement are signs that he did in fact quit.

[34] The reason I added the comment he made to his employer about hiring East Indians is that such a comment could complicate his return to work on his next scheduled day. This suggests the Appellant knew he would not be returning.

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[21] See GD07 page 4.
[22] I have evidence before me to suggest that the phone information was by 7:45 a.m. on Friday, May 3, 2024. The deleting of the information was also possibly earlier. I am unaware of when the Appellant was formerly denied this opportunity to talk.

[35] There is no evidence before me to suggest he was dismissed. There are no allegations brought forward by the employer to suggest any wrongdoing on the Appellant's part to warrant dismissal. The employer did mention that the Appellant's recent performance was not up to par and did not meet their standards.[23] This is too vague to suggest the Appellant was dismissed. The Appellant acknowledged he was told that he was doing a good job.[24] I have no evidence provided by either party to suggest the Appellant had been warned to improve his performance to avoid possible dismissal.

[36] I acknowledge the fact that the Appellant says his contract mentioned he could be terminated at any time. I am not placing a lot of weight on this. This, by itself is not evidence he was actually terminated as there is nothing to support a dismissal.

[37] Based on the evidence before me, I find it more probable than not that the Appellant voluntarily left. I make this statement even if I believe everything the Appellant testified to and wrote. In other words, even if I believe his statements, I do not agree that he has proven he was ordered to quit.

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

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

[39] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[25] Having a good reason for leaving a job isn't enough to prove just cause.

[40] 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.[26]

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[23] See GD03 page 25.
[24] See GD07 page 18.
[25] Section 30 of the *Employment Insurance Act* (EI Act) explains this.
[26] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

[41] 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.[27]

[42] 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.[28]

[43] 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.[29]

The circumstances that existed when the Appellant quit

[44] The Appellant's testimony, written statements and evidence was grouped into four of the circumstances set out in the law. The four circumstances I reviewed are:

- Discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*.
- Working conditions that constitute a danger to health or safety.
- Excessive overtime or refusal to pay for overtime work.
- Significant changes in work duties.
- Undue pressure by an employer on the claimant to leave their employment.

– Discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*

[45] Discrimination on a prohibited ground within the meaning of the *Canadian Human Rights Act* (CHRA) could constitute just cause for voluntarily leaving.[30]

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[27] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[28] See section 29(c) of the EI Act.
[29] See section 29(c) of the EI Act.
[30] See section 29(c)(iii) of the EI Act.

[46] I do not find that this circumstance applies to the Appellant quitting. There is very little evidence to support discrimination. The Appellant said his co-workers were speaking their language in front of them and that is a sign of disrespect.[31]

[47] His co-worker would not accept a ride from him but would accept from the other co-worker.[32] The Appellant argues that he was told that clients and possibly co-workers were trying to figure out if the Appellant was a racist. This bothered the Appellant.[33] The Appellant says he is not racist. However, I have no details to support why this is an issue. This is not evidence of discrimination towards the Appellant.

[48] The Appellant also wrote he was demoted and that a co-worker was promoted, and this person was a different ethnicity than himself.[34] The Appellant says that this was after an incident that occurred on April 12, 2024. This event is discussed in more detail below. What is not known is if he approached his employer for an explanation or reason? The Appellant has not provided any evidence to support that he was demoted, or his co-worker promoted **because** of discrimination. He suggested it was but there is a lack of supporting evidence.

[49] The prohibited grounds of discrimination under the CHRA include race, national or ethnic origin, colour, religion, age, sex (including pregnancy), sexual orientation, marital status, physical or mental disability (including dependence on alcohol or drugs), and pardoned conviction.

[50] I find that based on lack of evidence, the Appellant has not proven that is circumstance is something I need to consider when looking at his reason for leaving.

– **Working conditions that constitute a danger to health or safety**

[51] I find the Appellant has not shown working conditions that constitute a danger to health or safety. The Appellant says that he once did an attic inspection but, on the way, there, the employer refused to stop and purchase masks. The Appellant was therefore

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[31] See GD06 page 8.
[32] See GD06 page 13.
[33] See GD06 page 10 and page 15.
[34] See GD07 page 7.

forced to breathe in attic air as his head was just inside the attic. The Appellant says he felt disrespected and had breathing issues for months afterwards.

[52] The Appellant also argues that ventilation was a concern at the office.[35] Even his mother felt sick when she visited.[36]

[53] While I agree these are important concerns. I find that I do not have enough details to support working conditions which constitute a danger to health or safety.

[54] For one, the attic was an isolated incident. The Appellant could decline to do similar tasks in the future.

[55] As for the ventilation, I do not have sufficient information. The Appellant says the ventilation issue was in the lab. However, I do not have any specific information on what was not acceptable. Did the Appellant need to work there on a consistent basis? Were there pollutants in the air or concerns about mould?

[56] How often would issues occur? Did he ask for action in writing? Did he ask for air quality tests to be administered? Did he ask to work from another location? Did he ask for an air filter near his workstation? When the employer offered masks, why was this not acceptable?[37]

[57] Based on the lack of details, I find this circumstance is not applicable to the Appellant's departure.

– **Excessive overtime or refusal to pay for overtime work**

[58] I find the Appellant has not shown that he experienced excessive overtime or that the company refused to pay for work overtime. I acknowledge that the Appellant did not allege that the employer refused to pay for overtime work. Rather, the Appellant argues he had to put extra time to learn the job because of the lack of training. He was sometimes overwhelmed with the volume of work or the deadlines he was given. He

[35] See GD06 page 5.
[36] See GD06 page 11.
[37] See GD06 page 5.

would also mop the office floors and clean during weekends on his own time as a gift to the company.

[59] I do not have specific details from the Appellant to see if there was excessive overtime. I reviewed the evidence the Appellant provided. I do not have a number of hours of overtime he had to do to help me determine if there was excessive overtime. There are a few reasons. The first is that the Appellant did not provide any numbers. In addition, what breakdown of his overtime was required because of workload issues versus the Appellant cleaning as a "gift." He also said that his office cleaning did not affect his work.[38]

[60] The EI Act does not define excessive. The Cambridge dictionary defines it as "too much." I find that without specifics, I can not find the Appellant was given excessive work requiring overtime.

– **Significant changes in work duties**

[61] The law says a person has just cause for voluntarily leaving their job if they experienced significant changes in work duties and they had no reasonable alternative to leaving their job.[39]

[62] I find the Appellant hasn't shown that he experienced significant changes in work duties when he quit.

[63] The Appellant testified that the job description was vague. He also argues that every Tuesday the employer would adjust his work schedule.[40] He also had to report different people so work priorities were always changing.

[64] Similar to the excessive overtime, I find that the Appellant has not provided any specific examples. He wrote that the employer would add work and taken other work away. I find that changing priorities is something that is to be expected in an office. It is

[38] See GD06 page 11.
[39] See section 29(c)(ix) of the EI Act.
[40] See GD06 page 13.

not a situation where I do not believe the Appellant. It is simply a conclusion that he has not proven his argument.

[65] I find that without any specific data or arguments, I can not find that there were significant changes to his duties.

– **Undue pressure by an employer on the claimant to leave their employment**

[66] The Appellant says that his employer wanted him gone.

[67] I find that the Appellant has not provided evidence to support his argument. He testified that he had previously been employed there and the employer was reprising against him as they believed he had quit without warning the previous time.

[68] I am not persuaded by this. I acknowledge that the Appellant worked there for a short time in 2022.[41] However, he had to leave when he fell sick and was in a hotel. He could not work and could not afford to stay in a hotel while he was sick.

[69] If anything, this demonstrates an employer who was willing to give him a second chance and rehire him. The employer told the Commission he was rehired based on his previous work.

[70] The Appellant argues that there was an event on April 12, 2024, which occurred where a client provoked and insulted him to the point where he had to leave.[42] However, I have no details regarding what was said to provoke or insult him. In response to this, what did he ask the employer to do? Did he ask not to work with this client anymore?

[71] The Appellant argues that the employer told him that his issues were all in his head. The Appellant sought to obtain an explanation. However, did the Appellant approach the employer with texts, dates and details to support that the allegations he was bringing forward are legitimate?

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[41] See GD06.
[42] See GD06 pages 11 and 12.

[72] I find that the evidence before me does not prove that the there was undue pressure to quit.

The Appellant had reasonable alternatives

[73] I find the Appellant had reasonable alternatives to leaving that he did not explore before he quit.

[74] The Appellant says that he had no reasonable alternative because he did not quit. He was ordered to quit. He was also treated badly, and his employer was dismissing his concerns. They never addressed his concerns while he was there.

[75] The Appellant argues that a transfer to a less demanding position was not offered to him. Neither was the possibility of a leave of absence.[43]

[76] The Commission disagrees and says that the Appellant could have discussed with management, request a leave of absence or remain employed and actively search for work while remaining employed.

[77] I find that an active job search prior to leaving was a reasonable alternative the Appellant had. The Appellant could also have asked for a leave of absence. I acknowledge that the Appellant says the employer did not offer a leave of absence. I find that I can not consider this argument. All claimants who voluntarily left their jobs have the burden of proof. In other words, it is claimants who have to take the steps to avoid their reliance on employment insurance benefits.[44]

[78] The Appellant argues that he did ask for time off. He felt that three days was enough. However, the Appellant is also arguing that he had not been treated fairly or that he was trained. From the Appellant's testimony, these issues were long standing. I find that a leave of absence longer than three days was a reasonable alternative. Three

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[43] See GD07 page 18.
[44] *Canada (Attorney General) v. White*, 2011 FCA 190; *Canada (Attorney General) v. Hernandez*, 2007 FCA 320; *Canada (Attorney General) v. Campeau*, 2006 FCA 376; *Canada (Attorney General) v. Murugaiah*, 2008 FCA 10.

days would not address these longstanding issues. I find that a longer period of time would have allowed him to search for work prior to leaving.

[79] I also find that remaining there while searching for work was another reasonable alternative the Appellant had. I acknowledge that he says he was treated badly. However, the Appellant also wrote things were fine until the last week.[45] He also tried to get his job back at the end of May 2024 along with an apology.[46] The Appellant wanted to return to work there even knowing about the work environment, the workload. This suggests there was not an immediate need to leave his employment when he was still employed.

[80] Based on the evidence before me and the circumstances, I find that searching for work prior to leaving was a reasonable alternative.

[81] Considering the circumstances that existed when the Appellant quit, the Appellant had reasonable alternatives to leaving when he did, for the reasons set out above.

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

Conclusion

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

[84] This means that the appeal is dismissed.

Marc St-Jules

Member, General Division – Employment Insurance Section

[45] See GD03 page 9.
[46] See GD07 page 17.