Citation: *CB v Canada Employment Insurance Commission*, 2024 SST 1260

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	C. B.
Representative:	J. E.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (565165) dated February 23, 2024 (issued by Service Canada)

Tribunal member:	Jean Yves Bastien
Type of hearing:	Teleconference
Hearing date:	June 10, 2024
Hearing participants:	Appellant Appellant's representative
Decision date:	June 21, 2024
File number:	GE-24-907

Decision

Voluntary Leaving

[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 quitting (voluntarily leaving) her job on September 26, 2021, when she did. The Appellant didn't have just cause because she had reasonable alternatives to quitting. This means she is disqualified from receiving regular Employment Insurance (EI) benefits.

Student Availability

[3] This issue is irrelevant because the Tribunal has already found that the Appellant was disqualified from receiving EI benefits because she quit her job on September 26, 2021. The Appellant didn't requalify for benefits at any time she was attending High School in 2021 – 2022, so she remained disqualified.

Penalty

[4] The Tribunal finds that Employment Insurance Commission (Commission) exercised its discretion fairly in assessing the Appellant's penalty. So the penalty, a warning letter, stands (remains).

Overview

Voluntarily Leaving Employment

[5] The Appellant originally quit (voluntarily left) her job on September 5, 2021, and applied for regular EI benefits on September 7, 2021. A benefit period was established as of September 5, 2021. She then briefly returned to work from September 12, 2021 until September 26, 2021, when she quit again to concentrate on her schoolwork.

[6] To help with the sudden increase in demand for benefits during the COVID-19 pandemic the Commission used a computerized "Automatic Claims Processing (ACP) system".[1] The Commission says:[2]

> ACP automatically approved [the Appellant's] training from 08/09/2021 to 23/06/2022. A transitional measure under which ACP automatically adjudicated and allowed **all** training effective September 27, 2020, has ended on September 11, 2021. The intent of this measure was to prevent any delay in payment to clients who reported training. **For regular benefits, clients must still be able to prove that they are capable and available for work while attending non-referred training**. The commission has the authority to impose a retroactive D3 (disentitlement) if the client is unable to prove availability, even if ACP initially allowed the training. Therefore, if the client reports not being available while attending non-referred training, and benefits were previously paid for this, the officer reviews the client's availability. When the level two officer determines that the claimant has not proven availability from the start date of the course, the officer imposes a retroactive D3.

[7] So, based on the ACP's "automatic" decision, the Commission established a benefit period effective September 5, 2021. The Commission started paying the Appellant regular EI benefits, and continued to do so until September 3, 2022. There was likely no direct human involvement in the making of the initial decision to approve benefits. The Appellant then collected 47 weeks of payments out of 50 weeks of entitlement.

[8] When the Appellant selected "regular benefits" on the EI application form on September 7, 2021, she was also indicating that "[she had] lost her job through no fault of her own and she was available to work, but [couldn't] find a job."[3] But this wasn't correct. If a person chooses to quit a job, they are making themselves unemployed, so it

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[1] This background information is being provided because the Appellant wondered how her claim could have been approved, yet disapproved much later.
[2] See the online Record of Decision dated November 30, 2022 which can be found on pages GD3-118 and GD3-119 of the appeal record. Emphasis added.
[3] See page GD3-7 of the appeal record.

is through their own action. The Appellant said that she (first) quit her job on September 5, 2021.

[9] Even though the Appellant says that she quit her job twice, she also indicated "No" to the question "Have you stopped working for any employer during the period of this report?" on her online, bi-weekly reports to the Commission for the periods of September 5, 2021, to September 18, 2021, and September 26, 2021 to October 9, 2021.[4]

[10] Section 30 of the *Employment Insurance Act* (*Act*) says that a claimant is disqualified from receiving benefits if they quit their job without having "just cause" for doing so.

[11] The Commission has the ability to go back and check a claimant's claims for benefits.[5] Over a year later, in November 2022, the Integrity Services of the Commission started an investigation into the Appellant's case. The Commission determined that the Appellant:[6]

- did not declare that she quit her job in September 2021 when she filled out her application form for benefits. The Appellant could not explain this when she was speaking with Commission investigators[7]
- did not declare her absence from home when she went on a vacation to PEI from July 6, 2022 to July 12, 2022. The Appellant was unable to explain this.[8]
- had voluntarily left (or chose to quit) her job in 2021 without just cause, so it wasn't able to pay her benefits.
- had made 23 misrepresentations on her bi-weekly claimant reports.
- had been overpaid $22,889.00

[4] See line1097 on pages GD3-20 and GD3-27 of the appeal record.
[5] See Section 52 of the *Employment Insurance Act* (*Act*).
[6] See page GD3-188 of the appeal record.
[7] See page GD3-118 of the appeal record.
[8] See page GD3-118 of the appeal record.

[12] So the Commission sent the Appellant a letter on November 30, 2022 saying that it had re-examined her EI claim. The Commission said that they are unable to pay the Appellant EI benefits starting September 26, 2021 because she voluntarily left her job, without just cause, within the meaning of the *Act*.[9]

[13] The Commission sent the Appellant a notice of debt on December 3, 2022 in the amount of $22,889.00. This represents the amount the Commission says that the Appellant was overpaid.[10]

[14] The Commission also disqualified the Appellant from receiving any benefits because it says she quit her job without just cause.[11] This means the Appellant would have to requalify before getting any future benefits.

[15] I have to decide whether or not the Appellant has proven that she had no reasonable alternative to quitting her job.

[16] The Commission says that instead of quitting her job the Appellant could have spoken to her employer about working on weekends or to have attempted to get another more suitable job prior to quitting.[12]

[17] The Appellant disagrees and states that she tried to juggle some of her school hours and shifts but that this didn't work. She testified that she had no choice to quit her job since she had to commute 45 minutes each way, and she was not comfortable doing this, especially in the winter in the dark with snow and ice on the roads.

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[9] See pages GD3-120 to GD3-121 of the appeal record.
[10] See pages GD3-122 to GD3-124 of the appeal record.
[11] See page GD4-1 of the appeal record.
[12] See page GD4-5 of the appeal record.

Student Availability

[18] If you qualify to receive EI benefits, you still have to be available for a suitable job. But if you are disqualified from getting benefits, then it doesn't matter if you are available for work or not, because you can't get benefits anyway until you work enough hours to requalify.

[19] Even though the Appellant put out resumés and says that she was looking for a job while she was in school, she wasn't able to land a job during the school year. The Appellant testified she wasn't able to accumulate any of the approximately 455 hours required to requalify for EI benefits after having voluntarily left her job on September 26, 2021. So the Appellant remained disqualified during the entire time she received benefits.

[20] The Canada Employment Insurance Commission (Commission) also decided that the Appellant was disentitled from receiving EI regular benefits as of September 26, 2021, because she wasn't available for work. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be actively searching for a job.

[1] I have to decide whether the Appellant has proven that she was available for work. The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she was available for work.

[2] The Commission says that the Appellant wasn't available because she was in school full-time. The Commission also says that the Appellant failed to rebut the presumption that full-time students are not available for work because she didn't make efforts to find work other than the job she left in September 2021.

[3] The Appellant disagrees and says that she was looking for work closer to home because of her workload at school, and the long commute made worse by the road conditions, especially in the winter.

Penalty

[21] The Commission gave the Appellant a warning letter (non-monetary penalty) because it says the Appellant misrepresented her circumstances by failing to disclose her voluntary leaving (quitting) as well as her vacation in Canada.

[22] The *Act* says the Commission has the discretion to award penalties. The Tribunal can only interfere in the Commission's decision to award a penalty if the Commission has acted unfairly (failed to exercise their discretion judicially).

Automatic Claims Processing System (ACP)

[23] Even though the Appellant indicated that she said she was going on training, the computerized Automatic Claims Processing (ACP) system - which was in operation when the Appellant made her initial application for benefits - "automatically" approved the Appellant's EI claim (and EI benefits) . This was done without human input.[13] The system was purposely set up to rapidly get benefits to students who were taking training. Verification of claims would happen later, as was the case for the Appellant.

[24] The Appellant argues that the Commission should have noticed that she had left a job to go on non-referred training, flagged her file, and that benefits should not have been approved in the first place. However, that is not the case. It is the claimant's responsibility to ensure that they comply with the Act and that they provide accurate information. If the Appellant had answered "Yes" to the question on her bi-weekly report asking if she had recently left her job, the Commission would have most likely intervened early.

[25] The Commission is free to choose how they process claims. Therefore the Tribunal has no jurisdiction in the matter.

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[13] The Appellant and her Representative wondered why someone from the Commission didn't review the Appellant's application in September of 2021 and "put a stop to it right away". Unfortunately, The Automatic Claims Processing system works without direct human input.

Issues

Voluntarily Leaving Employment

[26] Is the Appellant disqualified from receiving EI benefits because she quit her job without just cause?

[27] To answer this, I first have to address the Claimant's quitting. I then have to decide whether the Appellant had just cause for quitting.

[28] If the Tribunal finds that the Appellant is disqualified from receiving EI benefits because she quit her job, then the Law says that before she can get EI benefits, she must requalify by working the number of hours required by the Law.[14] At the time of this Hearing that number of hours is approximately 455.

Student Availability

[29] If the Tribunal finds that the Appellant is disqualified from receiving EI benefits, **and** if she has not subsequently requalified, then the Appellant's availability is irrelevant.

[30] If the Tribunal finds that the Appellant is not disqualified from receiving EI benefits then the Appellant must show that she was available for work while in school.

Penalty

[31] The Commission's decision to issue a penalty is discretionary. The Tribunal can only step in and change the penalty if it finds that the Commission acted unfairly. To determine this the Tribunal will look at how the Commission came to its decision.

[14] See Section 30.(1)(a) of the *Employment Insurance Act* (*Act*)

Analysis

Voluntarily Leaving Employment

– The parties agree that the Appellant quit (voluntarily left) her job

[32] The Appellant agrees that she quit work twice, on September 5th, 2021, and also on September 26, 2021, to return to school to complete Grade 12. The Commission agrees. I see no evidence to contradict this, so I accept it as fact.

– What it means to have just cause

[33] The parties don't agree that the Appellant had just cause for quitting 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.[15] Having a good reason for leaving a job isn't enough to prove just cause.

[35] Section 29 of the *Employment Insurance Act* (*Act*) gives a list of 14 situations or "circumstances" that could lead to someone having "just cause" to voluntarily leave a job. But the situations generally have to be a result of the work, or the work environment. Wanting to return to school is not one of these circumstances. The Appellant has not claimed that any of the situations listed in Section 29 of the *Act* applied to her, and I agree.

[36] The law explains what it means by "just cause." The law says that you have just cause to quit if you had no reasonable alternative to leaving your job when you did. It says that you have to consider all the circumstances.[16] Also, just cause has to relate to the job itself, and not to the individual claimant's circumstances.[17]

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[15] Section 30 of the *Employment Insurance Act* (Act) sets out this rule.
[16] See *Canada (Attorney General) v White*, 2011 FCA 190; and section 29(c) of the Act.
[17] See CUB 17491.

[37] It is up to the Appellant to prove that she had just cause.[18] 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 quit. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit.

– Referral to take training or a program

[38] Sometimes, the Commission (or a program the Commission authorizes) refers people to take training, a program, or a course. One of the circumstances I have to consider is whether the Commission referred the Appellant to take her Grade 12 program.

– The parties agree that there was no referral

[39] Case law clearly says that, if you quit your job just to go to school without a referral, you don't have just cause for leaving your job.[19]

[40] The parties agree that the Appellant didn't get a referral to go to school. So I accept this as fact. School was the only circumstance relating to the Claimant's decision to quit. So, the case law applies to the Claimant. This means that the Appellant doesn't have just cause.

– Reasonable Alternatives

[41] For added certainty, the Commission also argues that the Appellant did not have just cause for quitting her job in September 2021 because she had reasonable alternatives. The Commission says that the Appellant could have spoken to her employer about working on weekends when the commute would not be affected by her school schedule. The Commission also argues that the Appellant could have stayed employed until she found a job closer to home before she quit the job that she had.

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[18] See *Canada (Attorney General) v White*, 2011 FCA 190.
[19] See *Canada (Attorney General) v Caron*, 2007 FCA 204.

[42] The Appellant testified that she had no reasonable alternative to quitting her job at that time because her 45 minute commute was too long, she was a new and anxious driver, the road was difficult in the winter with the accumulation of ice and snow, and that her car "was not in the best mechanical shape".

[43] "Just cause" is a higher standard than "good cause". The fact that a claimant has a good motive or reason for leaving does not mean that there is "just cause" for [quitting].[20]

[44] The difficulties which the Appellant mentions may amount to good cause to have quit her job, but they don't amount to just cause. As mentioned above, issues amounting to just cause have to come from the job and not from the Appellant's personal situation. The fact that the Appellant considered that her commute was too long, that she was a new driver, that she had to drive in winter conditions and the mechanical state of her car are all personal circumstances.

– **Finding**

[45] The Tribunal finds that the Appellant quit (voluntarily left) her job on September 26, 2021, to return to school and complete Grade 12. The Tribunal finds that the Appellant was not referred for training. Having examined the circumstances of the Appellant's departure from her employment, the Tribunal finds that the Appellant has not proven that she had good cause to quit her job for the reasons mentioned above.

[46] Because the Appellant quit her job without just cause this means that she is disqualified in accordance with Section 30 of the *Act*. This means that she would need to requalify for benefits by working the number of hours required by Section 7(2) of the *Act*. This is approximately 455 hours.

[20] See CUBs 18583, 16991,12228A.

Student Availability

[47] The Tribunal has already found that the Appellant is disqualified because she voluntarily left her job without having just cause.

[48] Section 30 of the *Act* says that in this situation a claimant remains disqualified until they have "since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 to qualify to receive benefits."[21]

[49] There is no evidence to support, and the Appellant agrees, that while she was attending Grade 12 in 2021- 2022, she did not work the number of insurable hours needed to requalify for benefits. So therefore I find that the Appellant remained disqualified while she was attending Grade 12.

[50] To get EI benefits you have to first qualify, **and then** be available for work. So because the Appellant was not qualified for EI benefits in the first place, whether or not she was available for work is irrelevant.

Penalty

Did the Commission prove that the Appellant knowingly provided false or misleading information on her claim reports?

[51] To impose a penalty the Commission has to prove the Appellant knowingly provided false or misleading information.[22] The Commission also has to show that it is more likely than not the Appellant provided the information knowing it was false or misleading.

[52] If it is clear from the evidence that the questions were simple and the Appellant answered incorrectly, then I can infer that the Appellant knew the information was false

[21] See Section 30.(1)(a) of the *Act*.
[22] See section 38(1)(a) of the *Employment Insurance Act*.

or misleading. Then, the Appellant must explain why she gave incorrect answers and show that she did not do it knowingly.[23]

[53] The Commission may impose a penalty for each false or misleading statement knowingly made by the Appellant. I do not need to consider whether the Appellant intended to defraud or deceive the Commission when deciding whether she is subject to a penalty.[24] The burden is on the Appellant to ensure that her claims are completed truthfully. This is supported by the attestation on the reports that includes, in part, "…that giving false information for myself or someone other than myself constitutes fraud. I also understand there are penalties for knowingly making false statements."[25]

[54] The Commission submits that the Appellant made false statements on her reports when she failed to disclose that she had voluntarily left (quit) her job on September 26, 2021. The Commission argues that the Appellant completed her bi-weekly report for the period September 26, 2021 to October 9, 2021 in a timely manner as required to receive payment and therefore she was providing false information when she indicated that she had not stopped working during the period of the report.[26] The Commission also submits that the Appellant provided false information in one of her bi-weekly reports in the Summer of 2022 when she reported that she was ready, willing and capable of working each day, Monday through Friday, during each week of the of the report for the period July 3, 2022, to July 16, 2022.

[55] The Appellant argues that she didn't lie about any information provided and that she was not aware she was making false statements when receiving EI benefits. During the hearing the Appellant argued while she was on vacation in July 2022 she could have quickly returned home to attend a job interview. This was because she had asked her mother to monitor any phone calls and get in touch with her immediately if any requests for interviews or job offers came in.

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[23] See *Nangle v Canada (Attorney General)*, 2003 FCA 210.
[24] See *Canada (Attorney General) v Miller*, 2002 FCA 24.
[25] See for example GD3-38.
[26] See page GD4-8 of the appeal record.

[56] But case law has already determined that “It is not sufficient that, while away, the claimant could be contacted by another person if an employment opportunity arose.”[27] Also “although the claimant left a telephone number and address where she could be reached, it was doubtful that she could have been able to return in a timely fashion if she was advised of suitable employment.[28]

[57] The Appellant admits that she was on vacation in PEI for one of the two weeks of the report. The Commission discussed this situation with the Appellant on February 20, 2024 at which time the Appellant told the Commission that she **could not** have returned from her vacation within a short period of time to accept employment and that she did not apply for any jobs while on vacation.[29] So this means that the Appellant was in fact, not “ready, willing and capable of working each day.”

[58] I prefer the Commission’s earlier evidence where they report that the Appellant told them that she could not return within 24 hours because the ferry tickets had already been bought, and she could not return earlier than the [ferry reservations].[30] A quick search of Google reveals the distance from Charlottetown PEI to Gander NL is 1,100 kilometers. Taking into account the two marine ferries involved, once started, the trip is estimated to take 19 and a half hours. So that is a solid, two-day journey. I find it more likely than not that the Appellant would not have been able to return home within 24 hours to accept a suitable job.

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[27] See CUBs 17009, 24797
[28] See CUB 25551.
[29] See page GD3-136 of the appeal record.
[30] See the Commission’s Report of Interview (formal) conducted on November 28, 2023, which can be found at pages GD3-111 to GD3-113 of the appeal record.

[59] I find the Commission has proven the Appellant knowingly provided false or misleading information when she answered “no” to questions asking her if she had stopped working for any employer (voluntary leaving),[31] and also if she was ready, willing and capable of working each day, Monday to Friday during each week of this report ,when she in fact she was on vacation for a week, inside of Canada.[32]

Did the appellant improperly receive benefits to which she was not entitled?

[60] The Appellant received a total of $22,889 in benefits [33]

[61] The Tribunal has found that the Appellant is disqualified because she voluntarily left her job without having just cause. So she was not entitled to receive any of the EI benefits she did receive.

[62] Therefore I find that the Appellant **did** receive benefits to which she was not entitled.

Did the Commission act judicially (fairly) when it imposed a monetary penalty?

[63] The Commission’s decision to issue a penalty is discretionary.[34] This means it is open to the Commission to impose a penalty because of a claimant’s false or misleading statements.

[64] I have to look at how the Commission made its decision. I can only change the penalty if I decide the Commission didn’t exercise its discretion fairly (judicially) when it set the amount of the penalty.[35]

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[31] See line 1097 of the Appellant’s E-Report Questions and Answers, 2310/26Sep21 – 2311-6/09Oct21 on page GD3-17 of the appeal file.
[32] [32] See line 1170 of the Appellant’s E-Report Questions and Answers, 2350/03Jul22 – 232351-6/16Jul22 on page GD3-88 of the appeal file.
[33] See “Notice of Debt” at page GD3-122 of the appeal record.
[34] See *Canada (Attorney General) v Kaur*, 2007 FCA 287.
[35] *Canada (Attorney General) v Kaur*, 2007 FCA 287. The Commission’s decision can only be interfered with if it exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it: *Canada (Attorney General) v Tong*, 2003 FCA 281. Discretion is exercised in a non-judicial manner if, the decision maker acted in bad faith, for an improper

[65] The Commission argues that it has met the onus of establishing that the Appellant made a misrepresentation when she failed to report that she had quit her job in September 2021.

[66] The Commission considered the Appellant's circumstances when deciding to impose a penalty. It considered:[36]

- There was a total of 23 misrepresentations on claimant reports
- The net overpayment amount was $22,889,00
- It was a first level of violation
- No mitigating circumstances were provided

[67] Commission policy is that the maximum penalty it will usually impose for a first time offender is 50% of the overpayment. In this case that would be $11,444.50. If there are mitigating circumstances the Commission can also reduce the penalty more, up to another 50%. In this case the penalty could be $5,722.25.

[68] But the Commission decided that it would only impose a warning since it decided that it was the Appellant's first incident of improper reporting or of omitting to provide information.

[69] I find that the Commission considered all relevant factors and didn't consider any irrelevant factors when it imposed the monetary penalty. For these reasons, I find that the Commission exercised its discretion fairly (judicially). Therefore, the Tribunal cannot adjust or cancel the Appellant's penalty. So, the penalty, a warning letter, stands.

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purpose or motive, considered an irrelevant factor or ignored a relevant factor or acted in a discriminatory manner (*Canada* (*Attorney General) v Purcell*, A-694-94).

[36] See pages GD3-118 to GD30119 of the appeal record

Conclusion

[70] I find that the Appellant is disqualified from receiving EI benefits, and the non-monetary penalty stands.

[71] This means the appeal is dismissed.

Jean Yves Bastien
Member, General Division – Employment Insurance Section