Citation: *BF v Canada Employment Insurance Commission*, 2023 SST 2118

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	B. F.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (598229) dated July 13, 2023 (issued by Service Canada)

Tribunal member:	Susan Stapleton
Type of hearing:	In person
Hearing date:	November 8, 2023
Hearing participant:	Appellant
Decision date:	December 12, 2023
File number:	GE-23-2233

Decision

[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 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 for the employer as a feed boat captain on a fish farm, beginning on April 26, 2021. He quit his job on April 11, 2023, and applied for EI benefits.

[4] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[5] The Commission says that the Appellant could have discussed his concerns about being verbally abused by a co-worker with the employer, discussed his options about additional work that might have been available to him with the employer, or found another job before quitting.[1]

[6] The Appellant disagrees and says his hours were significantly reduced, he was verbally abused by a co-worker a few days before he resigned, and he couldn't tolerate his job any longer.[2]

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[1] See GD4-5-6.
[2] See GD2-5.

Issue

[7] I must decide whether the Appellant is disqualified from receiving benefits because he voluntarily left his job without just cause.

[8] To answer this, I must first address whether the Appellant voluntarily left his job. If he did, I then have to decide whether he had just cause for leaving.

Analysis

The parties agree that the Appellant voluntarily left

[9] The parties agree that the Appellant voluntarily left his job. I acknowledge that the Appellant said on his application for benefits that the reason for his separation from employment was a shortage of work.[3] But he told the Commission,[4] and confirmed in his testimony, that he resigned on April 11, 2023. The employer indicated on his ROE.[5] and told the Commission that the Appellant quit his job.[6] So, I accept that the Appellant voluntarily left his job.

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

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

[11] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn’t have just cause.[7] Having a good reason for leaving a job isn’t enough to prove just cause.

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[3] See GD3-7.
[4] See GD3-19.
[5] See GD3-17.
[6] See GD3-39.
[7] Section 30 of the *Employment Insurance Act* (Act) explains this.

[12] 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 of the circumstances.[8]

[13] It is up to the Appellant to prove that he had just cause.[9] 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.

[14] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when he quit. The law sets out some of the circumstances I have to look at.[10]

[15] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to quitting when he did.[11]

The circumstances that existed when the Appellant quit

[16] The Appellant says that four of the circumstances set out in the law apply. Specifically, he says that he had significant changes in his work duties,[12] he had a significant reduction in hours and associated reduction in wages,[13] his working conditions constituted a danger to safety,[14] and he was being verbally abused by a co-worker.[15] He says his work environment was hostile and toxic.

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[8] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[9] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[10] See section 29(c) of the Act.
[11] See section 29(c) of the Act.
[12] See section 29(c)(ix) of the Act.
[13] See section 29(c)(viii) of the Act.
[14] See section 29(c)(iv) of the Act.
[15] See section 29(c)(i) of the Act.

Significant changes in work duties

[17] The Act says just cause for voluntarily leaving exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances, including significant changes in work duties.[16]

[18] The Appellant says that he was hired to work on the employer's salmon farm as a feed boat captain. He testified that on the day he quit, he was sent out to do inventory work. The inventory work was done in the woods, at a different location from where he usually worked operating the feed boat. He said he had only ever worked as a feed boat captain since being hired, and this was the first time he had been asked to do other tasks.

[19] I find that the Appellant had a significant change in work duties. He was hired, and worked, as a feed boat captain on the ocean. On the day that he quit, he was sent to a different location in the woods, to do inventory tasks. This constitutes a significant change in work duties.

Significant change in hours and wages

[20] The Act says just cause for voluntarily leaving exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances, including significant modification of terms and conditions respecting wages or salary.[17]

[21] The Appellant told the Commission that he normally worked 40-50 hours a week. His hours were reduced a few weeks before he quit, and he was only working around 12 hours a week. He said the employer told him his hours would pick up again, but they didn't.[18] The employer told him in an email that hours weren't guaranteed.[19] But he couldn't support his family working only a few hours a day. He wasn't making enough

[16] See section 29(c)(ix) of the Act.
[17] See section 29(c)(vii) of the Act.
[18] See GD3-20.
[19] See GD3-30.

money to pay his bills.[20] He testified that he was going into debt and using up all of his savings.

[22] The Appellant told the Commission that when he was sent to do inventory work, he was told the work would last for two weeks, at four hours a day. But the employee in charge of inventory told him the work would only last for a few days, and that nobody knew what would happen after the inventory work was done. He said he heard that after doing the inventory, he would be sent to another site that was an hour to an hour and a half away. He said that he asked the employer for a lay-off due to the reduction in his hours, but the employer refused him, and told him if he wasn't happy with the hours, he could find another job.[21]

[23] The Commission officer noted that the Appellant's ROE didn't show that his hours were less in the two weeks before he quit. The Appellant explained that $1,700 of his last pay was his vacation pay.[22]

[24] The Appellant's manager told the Commission that the Appellant's hours were decreasing in his last few weeks of work. He said the employer told the Appellant he could work at its X site, where he would get 40 or more hours of work a week. He said the Appellant refused that offer, and said he would stay where he was, and take the cut in hours.[23]

[25] The Appellant confirmed to the Commission that he refused to go to the X site, where he would get full-time hours, because it was about an hour away.[24]

[26] At the hearing, I asked the Appellant if the employer offered him another position with full time hours in X. He testified that the employer never made him that offer. He said the regional manager told him he could go work in Y, which was a lot farther from home, and he would have to live there in a dorm. But he has a wife and baby at home,

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[20] See GD3-34.
[21] See GD3-33.
[22] See GD3-34.
[23] See GD3-39.
[24] See GD3-34.

so he didn't want to do that. He said the only other offer was to work a few hours in the woods doing inventory. He said he was never offered another full time position.

[27] I find that the Appellant had a reduction in hours, and therefore a reduction in wages, over the few weeks before he quit. This is what he told the Commission and said in his testimony at the hearing, and the employer confirmed that his hours were reduced in the weeks before he quit.

Working conditions that constituted a danger to safety

[28] The Act says just cause for voluntarily leaving exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances, including working conditions that constitute a danger to safety.[25]

[29] On my review of the file, I don't see that the Appellant mentioned safety issues to the Commission. He testified that when he applied for EI benefits, he only said he quit because of the reduction in his hours and pay. He said he thought that should be enough to show that he had just cause for quitting.

[30] He testified that the crew of four people who worked with him sometimes drank alcohol and smoked weed on site. The manager didn't do this, but he let it slide when the crew did. The Appellant thinks the crew wanted to get him fired, because he didn't let them vape or smoke weed on the boat.

[31] The Appellant testified that he mentioned his safety concerns to his manager and to the employer's safety manager many times, because he was afraid someone would get seriously hurt. But the employer didn't do anything about his concerns.

[32] The Appellant testified that he often went out on the boat alone, leaving the crew onshore, to "avoid their nonsense."

[33] I find that the Appellant didn't quit his job because his working conditions posed a danger to his safety. While I accept his testimony that crew members engaged in unsafe

[25] See section 29(c)(iv) of the Act.

behaviours by drinking alcohol and smoking weed at work, the Appellant said that his job was to operate the boat, and he didn't allow the crew to engage in these behaviours when they were on the boat, so safety wasn't compromised.

Harassment

[34] The Act says just cause for voluntarily leaving exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances, including harassment.[26]

[35] "Harassment" is not defined in the Act. But the concept of workplace harassment is usually seen as acts or verbal comments that could mentally hurt, embarrass or isolate a person in the workplace. It often involves repeated incidents or a pattern of behavior intended to intimidate, offend, degrade, or humiliate a person or group of people.[27]

[36] The Tribunal's Appeal Division has set out "key principles" for considering whether there was workplace harassment[28]:

> a) harassers can act alone or with others, and do not have to be in supervisory or managerial positions
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> b) harassment can take many forms, including actions, conduct, comments, intimidation, and threats
>
> c) sometimes a single incident will be enough to constitute harassment

[26] See section 29(c)(i) of the Act.
[27] See *CUBs 55611, 56604,* and *57338*. These factors are similar to the factors in the *Canada Labour Code* (Code), a federal workplace law. Section 122(1) of the Code defines "harassment and violence" as "any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment."
[28] See *ND*v*CEIC*, 2019 SST 1262, at paragraph 34.

d) focus on whether the harasser knew or should reasonably have known their behaviour would cause the other person offence, embarrassment, humiliation, or other psychological or physical injury.

[37] I can also consider whether the employer appeared to condone the harasser's conduct.[29] It isn't harassment where an employer or supervisor takes reasonable action to manage and direct workers or the workplace.[30]

[38] During the reconsideration process, the Appellant told the Commission that he submitted three incident reports about his co-worker, DS, verbally abusing him on the job, in the week before he quit. He said the third incident was when DS swore at him and called him a profane name after he accidentally splashed water on him. He said he told DS "I would like to hear you say that outside of work." DS said "go ahead, attack me, right here, right now."[31]

[39] The Appellant said his manager told him he had sent in an incident report about this, and that HR would deal with it. The Appellant said he was the one who ended up being written up, and that he was never told whether DS was punished for his part in the altercation. He never received an apology from DS. He said he believes DS and his manager were in a relationship, and what was why nothing was done about DS's verbal abuse towards him. The Commission Officer asked the Appellant why he didn't originally tell the Commission about DS verbally abusing him. He said that was why he asked for a reconsideration – to give the Commission information about the verbal abuse he experienced.[32]

[40] The Appellant's manager told the Commission there was an incident between the Appellant and DS shortly before the Appellant quit. He said he wouldn't call it verbal abuse of the Appellant. He said there was a lot of yelling back and forth, and that foul language was used by both the Appellant and DS. He said he reported the incident to

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[29] See *Bell* v *Canada (Attorney General)*, A-450-95 (FCA).
[30] Some provincial laws include this. See, for example, Ontario's *Occupational Health and Safety Act*, at section 1(4).
[31] See GD3-34.
[32] See GD3-34.

HR, and didn't know what action was taken after that. The Commission Officer tried to speak to an employee in HR, without success.[33]

[41] The Appellant testified that he had been getting into confrontations with DS, who was in charge of the crew. He said DS verbally abused him a few times. He said he wrote to HR and the regional manager about DS verbally abusing him, and that they both got written up for verbal abuse of each other. He said the employer had a zero tolerance policy for harassment. He said the employer wouldn't give him a copy of the incident report, and wouldn't tell him the outcome of his complaint. He texted the regional manager and told him he didn't want to work with DS anymore. He thought DS would get suspended, but nothing happened. He said the primary reason he quit was the reduction in hours, but that the verbal abuse from DS contributed to his decision to leave.

[42] The Commission says that the situation of verbal abuse appears to have been an isolated incident, which would not amount to ongoing harassment. It says the altercations only happened during the week the Appellant decided to resign, and he didn't discuss this situation with his employer prior to leaving, so he failed to prove that he had just cause to quit his job.[34]

[43] I accept the Appellant's evidence that DS swore at him and called him a name at work. His evidence is consistent. He said essentially the same thing to the Commission, in his notice of appeal, and in his testimony at the hearing.

[44] However, I find that DS's behaviour towards the Appellant wasn't harassment. The Appellant said he got into a few confrontations with DS at work. He said he was the one who ended up being written up after the third incident in a week with DS. His manager told the Commission that incident involved a lot of yelling back and forth, and that foul language was used by both the Appellant and DS.

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[33] See GD3-39.
[34] See GD4-5.

[45] I accept that the Appellant had the confrontations he described with DS at work. But he hasn't proven he was harassed by DS at work. He described altercations and confrontations involving both him and DS. But he hasn't shown that DS engaged in repeated incidents or a pattern of behaviour intended to intimidate, offend, degrade, or humiliate him. While he said that DS used foul language that was offensive to him, I don't find that this is enough to conclude that DS harassed him. According to his manager, who witnessed the last altercation, he was also yelling and using foul language. The Appellant didn't claim that he didn't also behave that way.

[46] I have considered whether the employer appeared to condone DS's conduct toward the Appellant. The Appellant says he believes nothing was done about DS's behaviour because their manager had a personal relationship with DS. However, he also acknowledged that the manager submitted incident reports about the three altercations he had with DS, which the manager confirmed in his conversation with the Commission. He said the employer had a zero tolerance policy for harassment. The evidence doesn't persuade me to conclude that the employer condoned harassing behaviour by DS towards the Appellant.

[47] When I asked the Appellant if he would have quit his job because of DS's behaviour towards him if his hours hadn't been reduced, he said "that's iffy." I don't think he would have. Up until he quit, he had been asking the employer for full time hours. He quit three hours into doing the inventory work, after the employee in charge of inventory told him there would only be a few hours of work for a few days. I also cannot ignore that the Appellant only raised the issue of DS verbally abusing him after he received a negative decision from the Commission about his entitlement to benefits.

Toxic workplace

[48] The Act doesn't specify a "toxic" workplace or environment as a circumstance to be considered. The courts have said that unsatisfactory working conditions will be just cause for leaving employment if they are so manifestly intolerable that a claimant had

no reasonable alternative but to leave.[35] And there is a high obligation on a claimant to seek solutions to intolerable conditions before leaving.[36]

[49] The Appellant says that his workplace was "toxic." He said the manager and crew were between 18 and 24 years old and "had their whole own thing going on." He said the crew drank alcohol and smoked weed on site, and didn't like being told what to do, so he often went out on the boat to feed the fish by himself, "to avoid their nonsense." He said the whole environment was "bullying and kiddish and hostile and not professional."

[50] The Appellant testified that the day before he quit, an employee was caught stealing fish and was fired. He said he had called the regional manager a couple of days earlier, and reported the employee. He said everyone but the manager was involved in stealing and selling fish. After this happened, he was afraid the crew would retaliate against him. But he didn't say this was why he quit his job.

[51] I find that the Appellant hasn't shown that his workplace was so manifestly intolerable that he had no reasonable alternative but to leave. He shown that if his hours had not been reduced, he would have quit his job because his workplace was manifestly intolerable. And he testified that up until the time when he quit, he had approached the employer on a number of occasions to say he wanted full time hours. It doesn't make sense that he would want to work full-time hours in a "toxic" and manifestly intolerable workplace.

[52] So, the circumstances that existed when the Appellant quit his job on April 11, 2023, were that he had a significant change in work duties, and he had a reduction in hours and pay. He had gotten into confrontations with DS, and had reported another employee for stealing fish, who was then fired, but these latter two issues were not why he quit his job.

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[35] See *CUBs 11890, 12767, 16473, 16704, 17143, 17108, 11738, 20434,* and*20926*. And see Tribunal cases *ME* v *CEIC*, 2015 SSTGDEI 112, and *IO* v *CEIC*, 2019 SST 1483.
[36] See *RC* v *CEIC*, 2016 SSTADEI 160, and *Green* v *Canada (Attorney General)*, 2020 FCA 102.

The Appellant had reasonable alternatives

[53] I must now look at whether the Appellant has proven that it is more likely than not that he had no reasonable alternative to leaving his job when he did.

[54] The Appellant says that he could not tolerate staying in his job any longer. He says he had no reasonable alternative because the reduction in his hours was causing him financial issues, and because he was verbally abused by his co-worker a few days before he resigned.[37]

[55] The Commission disagrees and says that the Appellant had reasonable alternatives to quitting his job when he did. It says he could have looked for another job before quitting. It says he could have gone to HR to discuss his concerns about being verbally abused by DS. It says he could have talked to the employer about additional work, or accepted the transfer to the X location for a position with full-time hours.[38]

[56] I find that the Appellant had reasonable alternatives to leaving his job when he did. I find that he had the reasonable alternatives of looking for another job before he quit, and accepting the transfer to the X location for a full-time position.

[57] The Appellant gave contradictory statements about whether he looked for another job before quitting.

[58] The Appellant told the Commission that he didn't look for other employment before quitting his job. He said he sent out resumes right away after he quit, and had a few interviews within two days of quitting. He said he started a new job four days after he quit. He said he didn't wait until he had found a new job to quit, because he knew he would have no problem getting another job. He said he has a lot of training and skills, and could get a job anywhere he wanted.[39]

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[37] See GD2-5.
[38] See GD4-5-6.
[39] See GD3-33.

[59] The Appellant testified that he didn't apply for any jobs before he quit. He said he only applied for other jobs starting on the day that he quit. He said he had an interview at a nursing home on April 14, 2023, and started working there on April 17, 2023.

[60] I asked the Appellant why he didn't wait to quit his job until he had found a new one. He said he was "going to go hardcore into getting a different job."

[61] Later in his testimony, the Appellant said he started applying for other jobs the Friday before he quit, the day the employee was fired for stealing fish. He said he already had an interview lined up for the day that he quit.

[62] When there are contradictory statements, I have to decide what is most likely to be true. I have to consider all of the evidence and make a decision on the balance of probabilities.[40]

[63] I find that the Appellant's earliest statements are most likely to be true. This is because those statements were made spontaneously when the Commission asked him whether he had looked for other work before quitting. This was also his spontaneous response when I asked him at the hearing whether he had looked for other work before quitting. I don't accept his later statement in his testimony that he had been looking for other work before quitting, and already had an interview lined up for the day he quit. If that were the case, I think that he would have told the Commission this when he was asked about it. But he told the Commission he would have no problem getting another job anywhere he wanted, so he didn't wait until he had a new job to quit.

[64] There are many cases from the court imposing an obligation on EI claimants to seek alternative employment before making a unilateral decision to quit a job.[41] I cannot ignore this obligation, or the fact that the Appellant voluntarily put himself into a position of unemployment, without first making an effort to find another job.

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[40] 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.
[41] Consider the analysis in *White, supra*.

[65] The Appellant also had the reasonable alternative of accepting the transfer to the X location, instead of quitting his job.

[66] The Appellant gave contradictory evidence about whether the employer offered him a transfer to a full-time position in its X location. He confirmed to the Commission the employer's statement that he had refused the employer's offer of a transfer to the X location. But at the hearing, he said the employer never offered him a full-time job at a different location. He said "there's noting in X, there's no ocean in X."

[67] I find that the evidence supports that the Appellant was offered a transfer to a full-time position in X, and that he refused that offer. This is what he told the Commission when he was originally asked about it. He said he refused the offer because the X location was almost an hour away. I prefer his original response to this question to his later statement at the hearing, because his original statement was made spontaneously when the Commission asked him directly whether he had refused the offer of the transfer.

[68] Considering all of the circumstances that existed at the time that the Appellant quit, I find that he had reasonable alternatives to leaving his job when he did, for the reasons set out above.

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

Conclusion

[70] The Appellant has not shown that he had just cause for leaving his job when he did, because he had reasonable alternatives to leaving his job.

[71] He is therefore disqualified from receiving benefits.

[72] This means the appeal is dismissed.

Susan Stapleton

Member, General Division – Employment Insurance Section