Citation: *BF v Canada Employment Insurance Commission*, 2024 SST 1708

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 (652777) dated April 12, 2024 (issued by Service Canada)

Tribunal member:	Linda Bell
Type of hearing:	Teleconference
Hearing date:	September 23, 2024, and November 14, 2024
Hearing participants:	
September 23, 2024	Appellant
November 14, 2024	None
Decision date:	November 18, 2024
File number:	GE-24-2419

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 quitting his job when he did. This means he is disqualified from receiving regular Employment Insurance (EI) benefits as of October 22, 2023, for this reason.

Overview

[3] The Appellant established a claim (benefit period) for sickness benefits, starting March 19, 2023. He received 4 weeks of sickness EI benefits ending April 22, 2023. Then the Appellant received 8 weeks of regular benefits for the period he was attending apprenticeship training from April 23, 2023, to June 17, 2023.

[4] The Appellant says he worked for U, before he accepted the job with F. At U, he worked as a self-employed electrical apprentice, where he submitted bills or invoices to be paid for his work. When the Appellant worked at F, he was an employee for two days, starting on October 23, 2023. He chose not to return to work for F after October 24, 2023.

[5] On January 2, 2024, the Appellant submitted an application to renew his benefit period for regular benefits. The Appellant says he applied for EI benefits because he was attending his fourth year of electrician apprenticeship training.[1] The Commission renewed his claim for regular EI benefits, starting December 31, 2023.

[6] The Commission looked at the reasons why the Appellant left his job at F. The Commission decided that he had voluntarily left (or chose to quit) his job without just cause. So, the Commission decided it was not able to pay him regular EI benefits as of December 31, 2023 (the date his benefit period was renewed). The Commission imposed an indefinite stop payment (disqualification), effective October 22, 2023. Upon reconsideration, the Commission maintained this decision.

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[1] The Appellant was enrolled in his fourth year of apprenticeship training from January 2, 2024, to March 23, 2024.

[7] After the Appellant learned he was disqualified from receiving regular EI benefits, he asked for his renewal application to be treated as though it were made 10 weeks earlier, (this is called antedating), starting on October 22, 2023. He also asked to convert his claim to sickness EI benefits as of that date. For this to happen, the Appellant has to prove that he had good cause for the entire period of delay.

[8] The Commission refused the Appellant's requests to antedate his renewal application and to convert his claim to sickness benefits. This is because the Commission determined he failed to show good cause for the delay in submitting his renewal claim. The Appellant didn't request reconsideration of this decision.

[9] The Appellant disagrees with the Commission's decision to deny him EI benefits while he attended apprenticeship training. He appeals to the Social Security Tribunal. The Appellant says he provided as much information about his situation as possible, and he "has a sense of confidentiality." He is wanting benefits for when he was attending apprenticeship training from January 2, 2024, to March 23, 2024. He believes he is eligible for EI apprenticeship benefits whether or not it is classified as medical or regular benefits.

Matters I have to consider first

Adjournments

[10] The hearing was initially scheduled for September 18, 2024. When the Appellant failed to appear, the Tribunal tried to contact him. The Tribunal left the Appellant a message asking him to call the Tribunal.

[11] The Appellant called the Tribunal and said he missed his hearing because he didn't receive the Notice of Hearing that was emailed to him on August 13, 2024. The Appellant was granted an adjournment, and the hearing was rescheduled for September 23, 2024.

[12] On September 19, 2024, the Tribunal sent the Appellant an email with the Notice of Hearing for his new hearing date, and copies of all the appeal documents. The

Appellant appeared at the September 23, 2024, hearing. But after the hearing started, the Appellant said he had not read all the appeal documents. The Appellant refused to present evidence about his personal and medical circumstances. The Appellant argued that he was entitled to his privacy. He says he should automatically get EI benefits while attending training because he had an apprenticeship code.

[13] After a brief discussion about confidentiality orders and his right to have someone assist him or represent him in this matter, I adjourned the hearing to November 14, 2024. I also wrote to the Appellant on September 25, 2024, setting out the legal test and information about how he could get assistance with his appeal.[2]

No one attended the hearing

[14] No one appeared at the November 14, 2024, hearing. I think both parties received the Notice of Hearing the Tribunal sent by email on September 25, 2024. This is because there is no indication that the emails failed to send.

[15] I also considered the fact that the Appellant was made aware of the November 14, 2024, hearing, during the teleconference hearing he attended on September 23, 2024. The Tribunal attempted to remind the Appellant of this hearing by telephone, but he didn't answer. So, the Tribunal left him a voice message on November 7, 2024. The Tribunal also sent the Appellant an email reminder on November 13, 2024. But the Appellant failed to respond to those messages.

[16] The Notice of Hearing states the hearing may go ahead even if one of the parties is missing. A hearing can go ahead without a party if the Member is satisfied that they got the notice of hearing.[3] There is no indication that either party requested an adjournment or contacted the Tribunal to advise they were unable to dial into the teleconference or attend the hearing.

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[2] See the GD11 document.
[3] Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

[17] I am satisfied both parties were notified of the teleconference hearing. So, I proceeded to determine the merits of this appeal based on the evidence on file.

Jurisdiction

[18] I find I don't have jurisdiction to determine matters relating to the Appellant's request to antedate his claim for sickness benefits, starting the week of October 22, 2023.

[19] For me to have jurisdiction to decide an appeal on the Appellant's request for an antedate to pay sickness EI benefits, the Commission must have reconsidered its initial decision to refuse the Appellant's requests. The Commission has not yet made a reconsideration decision on these issues.[4] This is because the Appellant never requested reconsideration of the Commission's decisions on these issues.

[20] The courts have established that what the Tribunal 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.[5]

[21] I acknowledge that the Appeal Division of the Tribunal (AD) has held that the Tribunal should take a broad view of its jurisdiction (in other words, what it has the authority to make decisions about) in order to manage appeals fairly.[6] I agree with that principle, even though I'm not bound by the AD's decisions.

[22] However, I find that my jurisdiction in this case doesn't extend to the Appellant's request for an antedate and to change his claim to sickness EI benefits. This is because the Appellant refused to present further evidence in support of those requests, and he hasn't asked the Commission to reconsider its decision on these issues.

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[4] See section 112 of the *Employment Insurance Act* (EI Act).
[5] See *Hamilton v. Canada (Attorney General)*, A-175-87
[6] See *MS v Canada Employment Insurance Commission*, 2022 SST 933.

[23] Accordingly, I find I only have jurisdiction to determine whether the Appellant is disqualified from receiving regular EI benefits, while attending apprenticeship training, because he voluntarily left his job with F, without just cause.

Issues

[24] Did the Appellant voluntarily leave his job?

[25] If so, did the Appellant have just cause for leaving?

[26] If the Appellant didn't have just cause for leaving his job with F, what is the period of disqualification?

[27] Does the Appellant qualify for regular EI benefits while attending apprenticeship training?

Analysis

Voluntary Leaving

[28] The Appellant voluntarily left his job. There is no dispute that the Appellant voluntarily left his job with F, on October 24, 2023. There is nothing in the file that would make me find otherwise. So, I find it as fact that the Appellant voluntarily left his job.

Just Cause

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

[30] The law says that you are disqualified from receiving regular 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.

[7] Section 30 of the EI Act explains this.

[31] 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.[8]

[32] It is up to the Appellant to prove he had just cause. The Appellant 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.[9]

[33] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed at the time he quit.[10] Then the Appellant has to show that he had no reasonable alternative to leaving at that time.[11]

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

[34] The Appellant worked as an apprentice electrician for F. He worked two 10-hour days and then quit. His last day worked was October 24, 2023.

[35] The Appellant testified that he believes he qualifies for EI benefits because he was attending school (apprenticeship training), and he had the apprenticeship code. He argues that the Commission went down a rabbit hole when looking at why he left his job at F.

[36] The Appellant initially told the Commission that he quit his job at F "due to unsafe working conditions," caused by weather and the work environment.[12] After being denied benefits, the Appellant said that he had to quit his job because of sudden health concerns that arose while working there. He spoke about being impaired but refused to share any details about his medical condition.

[37] The Appellant gave the Commission a medical note dated March 15, 2024, which is almost five months after he quit his job. That note states he has a "medical condition

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[8] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the EI Act.
[9] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[10] See section 29(c) of the EI Act.
[11] See section 29(c) of the EI Act.
[12] See page GD3-23.

that affects prevents him from working at his regular job at this time." The dates of incapacity listed on the medical note are from October 24, 2023, to March 29, 2024.[13]

[38] The Appellant worked as an apprentice electrician at F. He told the Commission that shortly after he left F, he continued to work as an apprentice electrician with U. This contradicts his medical note because he continued to work in his regular job, which was as an apprentice electrician.

[39] The Commission submits that the Appellant completed a questionnaire in which he states he didn't consult his doctor before quitting, but states his doctor recommended he quit his employment with F, after the fact.[14] The Appellant also told the Commission that there was no opportunity for a transfer, his medical condition is temporary, and he didn't request any sort of leave.

[40] After consideration of the foregoing, I am satisfied that the Appellant's fear of the possibility of negative health consequences, is what ultimately led to him leaving this job. I must now consider whether he had no reasonable alternative but to leave when he did.

– **Reasonable alternatives**

[41] I find the Appellant had reasonable alternatives to leaving when he did. This means he has not proven that he had just cause to leave when he did. Here is what I considered.

[42] The law says to show just cause the Appellant is required to demonstrate he attempted to reach an agreement with his employer to accommodate his health and safety concerns.[15] In this case, there is no evidence the Appellant spoke with the employer to request any accommodations.

[43] The Commission submits that the Appellant failed to explore all reasonable alternatives such as requesting a medical leave or a leave of absence. The Appellant

[13] See the medical note at page GD3-30.
[14] See page GD3-41.
[15] See CUB 38804.

could have discussed his issue with the employer to determine if there was another position more suited to his medical needs. As the Appellant failed to disclose what was preventing him from working with this employer, the Commission was unable to determine if he truly exhausted all reasonable alternatives.

[44] I recognize that the Appellant said there were unsafe working conditions due to weather and the work environment. However, there is insufficient evidence to prove there were any unusual weather conditions or unsafe conditions in his work environment.

[45] The Appellant must provide medical evidence indicating he sought medical advice prior to quitting. The Appellant said that he didn't seek medical advice or speak with his doctor before quitting on October 24, 2023. Rather, the medical note he provided was signed by his doctor almost five months after he quit.

[46] The Commission submits the medical note states he was unable to work from October 24, 2023, to March 29, 2024, but the doctor does not indicate he needed to quit his employment when he did. The Appellant declared he was involved in self-employment activities, where he worked as an apprentice electrician for U shortly after quitting his job at F. This contradicts his medical evidence because he was clearly working in his regular job as an apprentice electrician during the period of alleged incapacity.

[47] I find there is insufficient medical evidence to conclude that the weather and work environment at F was causing the Appellant health concerns and that he should leave his job (quit) when he did. The Appellant's medical note offered some support for his health-related concerns. But that medical note was obtained almost five months after he left his employment. The note also didn't indicate that he should have quit immediately or that he couldn't continue working in a different capacity.

[48] The documents on file show that after leaving F he worked as an apprentice electrician in his self-employment for almost a month before going on vacation. So, there is insufficient evidence to prove he was suffering from a medical condition that

prevented him from working at his regular job. Further, there is no documentary evidence to prove there were environmental conditions that posed a health and safety concern.

[49] I am of the view that voluntary leaving was not the only reasonable alternative in the Appellant's situation. Although the Appellant argued that he had no choice but to leave, there is no way to know what may have happened if he asked for sick leave and went immediately to see his doctor, reported the issue to the health and safety officer at the site, asked for a transfer, or asked if the employer would accommodate him somewhere else, so he could continue working.

[50] Employers have a duty to accommodate employees with disabilities to the point of undue hardship. The *Alberta Human Rights Act* prohibits discrimination at work based on one or more protected grounds, including physical and mental disability. An employer can't terminate, refuse to hire, or otherwise negatively impact an employee because of their disability, injury, or illness.[16]

[51] For the Appellant, his impairment and sensitivity to the weather may have presented a good reason for him to leave when he did. It appears that he may be genuinely concerned about his health. But a good reason to leave is different from just cause to leave. To establish just cause, it must be shown that he had no reasonable alternative to leaving when he did. The Appellant had alternatives that may have resulted in a change providing for his continued employment. But he didn't explore any of those alternatives.

[52] The courts have consistently held that it must be remembered that the overall purpose of the EI Act is to provide benefits to those who are truly unemployed, and not those who have contributed to their state of unemployment when this was not the only reasonable alternative.[17] The evidence supports that it wasn't the job conditions which

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[16] See https://albertahumanrights.ab.ca/issues-at-work/disability-illness-and-injury/#:~:text=A%20drug%20or%20alcohol%20dependency,disability%20under%20human%20rights%20law.

[17] See *Uvaliyev v Canada (Attorney General),* 2021 FCA 2022, and *Canada (Attorney General) v. Marier*, 2013 FCA 39, 450 N.R. 122.

caused the detrimental effect on the Appellant's health. Rather, it was the fact that he was impaired, a self-inflicted condition that may not qualify as just cause.[18]

[53] After considering the totality of the circumstances that existed when the Appellant quit, I find he had reasonable alternatives to leaving when he did. This means the Appellant did not have just cause for leaving his job when he did. Accordingly, the Appellant is disqualified from receiving regular EI benefits.

Period of disqualification?

[54] A disqualification is a suspension of benefits imposed due to a specific action or inaction by the claimant. It can be either indefinite or for a specific number of complete weeks. The length of disqualification is determined by the reason(s) the disqualification is being imposed.[19]

[55] Circumstances that could lead to a disqualification from EI benefits may occur before the claim for benefits was made, or during the benefit period. Events such as voluntarily leaving employment or losing employment due to misconduct may be grounds for an indefinite disqualification.[20]

[56] In this case, the Appellant's benefit period started on March 19, 2023. He quit his job during that benefit period, on October 24, 2023. This means he is indefinitely disqualified from receiving regular EI benefits starting October 22, 2023, the Sunday of the week in which he quit.[21]

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[18] See CUB 544245 where the claimant's substance addiction was held not to be just cause for quitting.
[19] See section 1.6.0 of the Digest of Benefit Entitlement Principles.
[20] See sections 29 and 30 of the EI Act.
[21] Section 30(2) of the EI Act says a disqualification is for each week of the benefit period following the date a claimant voluntarily leaves without just cause. Section 2(1) of the EI Act defines a week to mean, "a period of seven consecutive days beginning on and including Sunday, or any other prescribed period." This means the effective date of disqualification is the Sunday of the week in which the disqualifying event occurred.

Does the Appellant qualify for regular EI benefits while attending apprenticeship training?

[57] No. I find the Appellant can't be paid regular EI benefits while attending apprenticeship training from January 2, 2024, to March 23, 2024.

[58] In order to be paid regular EI benefits while attending apprenticeship training, a claimant must **qualify** for benefits, be **entitled** to EI benefits, and have the apprenticeship code, which shows they are attending approved training.[22]

[59] In this case, there is no dispute that the Appellant was attending referred training. He provided the Commission with an apprenticeship code for that training.

[60] However, the Appellant is disqualified from receiving regular EI benefits as of October 22, 2024, because he voluntarily left his job without just cause. There is no evidence that he worked enough hours to establish another claim for regular EI benefits. So, this means he doesn't qualify (is disqualified from) for regular EI benefits while attending apprenticeship training from January 2, 2024, to March 23, 2024.

[61] I recognize that after learning he was disqualified from receiving regular EI benefits while attending apprenticeship training, the Appellant asked the Commission to antedate his claim and change it to sickness EI benefits. The Commission denied that request. As set out above, I don't have jurisdiction to determine whether the Appellant's claim can be antedated and changed to sickness EI Benefits.

[62] Accordingly, the Appellant can't be paid regular EI benefits while attending apprenticeship training. This is because he is indefinitely disqualified from receiving regular EI benefits and hasn't shown he has enough hours to qualify for a new claim (benefit period).

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[22] This is set out in sections 48 and 25 of the EI Act.

Conclusion

[63] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section