



Citation: *ET v Canada Employment Insurance Commission*, 2024 SST 1720

**Social Security Tribunal of Canada**  
**General Division – Employment Insurance Section**

## Decision

**Appellant:** E. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (652829) dated April 5, 2024  
(issued by Service Canada)

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**Tribunal member:** Susan Stapleton

**Type of hearing:** In person

**Hearing date:** June 13, 2024

**Hearing participant:** Appellant

**Decision date:** July 3, 2024

**File number:** GE-24-1716

## Decision

[1] The appeal is allowed.

[2] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant had just cause because he had no reasonable alternative to leaving.

[3] This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

## Overview

[4] The Appellant quit his job driving a garbage truck, on January 12, 2024, and applied for EI benefits.

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

[6] I have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[7] The Commission says that instead of quitting his job when he did, the Appellant could have spoken to the employer about his supervisor mistreating him, contacted the Labour Board about his unsafe working conditions, or tried to find another job before quitting. It says the Appellant hasn't shown that his working conditions were so intolerable that he had no alternative to quitting his job without first trying to get another job. It says the real reason the Appellant quit was because he was starting a full-time course 3 days after he quit.<sup>1</sup>

[8] The Appellant disagrees and says that he had no reasonable alternative to leaving his job, because he was forced to work with unsafe equipment, was exposed to

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<sup>1</sup> See GD4-4-5.

biohazards without training or proper protective equipment, and his manager was mistreating him. He says his manager used a racist word in his presence, and after the manager faced disciplinary action and had to apologize to him, he shunned the Appellant, refusing to speak to him. These conditions were causing him a great deal of stress, and were affecting his physical and mental health.<sup>2</sup> He says he decided to go back to school because he couldn't continue in his job any longer.

## **Matter I have to consider first**

### **I asked the Commission for information**

[9] I asked the Commission to provide all of the pages of the Appellant's application for benefits that related to the reason why he stopped working.<sup>3</sup> The Commission provided the information that I requested, and it was added to the Appellant's file.<sup>4</sup>

## **Issue**

[10] Is the Appellant disqualified from receiving EI benefits because he voluntarily left his job without just cause?

[11] To answer this, I must first address the Appellant's voluntary leaving. Then I have to decide if he had just cause for leaving.

## **Analysis**

### **The Appellant voluntarily left his employment**

[12] I accept that the Appellant voluntarily left his job. He agrees that he quit on January 12, 2024. His employer also says he quit then.<sup>5</sup> I see no evidence to contradict this.

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<sup>2</sup> See GD2-5.

<sup>3</sup> See GD6.

<sup>4</sup> See GD7.

<sup>5</sup> See GD3-14.

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

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

[14] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>6</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[15] 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.<sup>7</sup>

[16] It is up to the Appellant to prove that he had just cause.<sup>8</sup> 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 his job.

[17] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed at the time when he quit. The circumstances I have to look at include some set by law.<sup>9</sup>

[18] After I decide which circumstances apply to the Appellant, he then has to show that there was no reasonable alternative to leaving when he did.<sup>10</sup>

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

[19] The Appellant says that three of the circumstances set out in the law apply in his case. He says that he experienced discrimination,<sup>11</sup> that there was antagonism with his manager,<sup>12</sup> and that his working conditions posed a danger to his health and safety.<sup>13</sup>

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<sup>6</sup> Section 30 of the *Employment Insurance Act* (Act) sets out this rule.

<sup>7</sup> See *Canada (Attorney General) v White*, 2011 FCA 190; and section 29(c) of the Act.

<sup>8</sup> See *Canada (Attorney General) v White*, 2011 FCA 190.

<sup>9</sup> Paragraph 29(c) of the Act.

<sup>10</sup> Paragraph 29(c) of the Act.

<sup>11</sup> See section 29(c)(iii) of the Act

<sup>12</sup> See section 29(c)(x) of the Act

<sup>13</sup> See section 29(c)(iv) of the Act

### **Referral to take a course**

[20] 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 his course.

[21] Case law says:

- If you quit your job to go to school without a referral, you don't have just cause for leaving your job.<sup>14</sup>
- If you choose to go to school without a referral, your choice goes against the idea behind the EI plan.<sup>15</sup>

[22] The parties agree that the Appellant didn't have a referral to take the course. He wasn't referred by the Commission or a program the Commission authorizes, to take the course.

[23] But I find that the Appellant didn't quit his job simply because he made a personal decision to go to school, even though he started his course within a few days of leaving his job. I find that he quit his job for other reasons, which I will explain below.

### **Working conditions that pose a danger to health or safety**

[24] The law says that a claimant has just cause for voluntarily leaving if the claimant had no reasonable alternative to leaving, having regard to working conditions that constitute a danger to health or safety.<sup>16</sup>

[25] The Appellant told the Commission that he was required to handle plastic garbage bags that contained used, uncapped needles, without proper protective equipment. Although he was given puncture-proof gloves, he was afraid the needles would puncture his pants. Safety training for handling biohazardous "sharps" wasn't

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<sup>14</sup> See *Canada (Attorney General) v Caron*, 2007 FCA 204.

<sup>15</sup> See *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

<sup>16</sup> See section 29(c)(iv) of the Act.

provided by the employer.<sup>17</sup> He testified that there were “tons” of uncapped needles in the garbage he had to collect, particularly at public housing seniors’ homes. The needles were sticking out of the plastic bags, and were also all over the ground, and he had to pick them up. The bags were heavy and to carry them, he had to rest them against his legs. He was afraid he would be stuck by a used needle. He complained about this to the employer numerous times, without resolution. He called the Labour Board many times and asked questions, but was told his concerns were “in-house safety matters,” and not related to labour laws.

[26] The Appellant also told the Commission that he was required to operate unsafe equipment. He was driving a truck that had a faulty switch, which had still not been repaired by the time he left his job. It was a safety issue. When he told his manager about it, his manager said, “a lot of things in life are not safe.”<sup>18</sup>

[27] The Appellant testified that he had to drive a truck that had brakes that were burning and smoking, giving off toxic fumes that hurt his lungs. He said in his notice of appeal that this caused him to have headaches and difficulty breathing, and he got sick after driving the truck. When he complained to the employer, the employer said the truck couldn’t be fixed, and there was no resolution. After several months, he was finally assigned to a different truck, but that truck soon broke down, and he was back in the original truck again.

[28] I found the Appellant’s testimony about his experiences with unsafe working conditions to be credible. This is because his testimony was given to me directly under affirmation, and he answered my questions in a manner that was straightforward and consistent throughout the hearing. His testimony was also consistent with what he told the Commission. I accept that the Appellant was required to work in conditions that posed a danger to his health and safety. I therefore find that this circumstance applies.

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<sup>17</sup> See GD3-16.

<sup>18</sup> See GD3-16.

## Discrimination

[29] The law says that a claimant has just cause for voluntarily leaving if the claimant had no reasonable alternative to leaving, having regard to discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*.<sup>19</sup>

[30] The Appellant says he was discriminated against by his manager because of his race, and that the discrimination was a specific one-time incident, on August 21, 2023. He says his manager used a racist word in his presence, and in the presence of another manager and a Human Resources (HR) representative. He spoke to someone in HR about it, and his manager was suspended for 3 days, and had to apologize to him. He says that after he apologized, his manager refused to speak to him, making him very uncomfortable at work. He spoke to the director of operations, which made things worse. His manager shunned him, continued to refuse to speak to him, isolated him from the work group chat, and acted like it was the Appellant's fault he had gotten in trouble for using racist language.<sup>20</sup>

[31] The Appellant testified that at the end of every workday, he had to go to his manager's office. When he entered the office, his manager would turn his back to him, close a door between them, or walk away. He wouldn't speak to him unless he had no choice. On one occasion, his manager said to him, "today is my bad luck, I drew the short straw, I have to deal with you." Cela le rendait très mal à l'aise et il marchait toujours sur des œufs au travail.

[32] The Appellant testified that when he spoke to the director of operations about this, he asked him if he wanted the manager to lose his job. The Appellant replied that he didn't want anything to do with that. The director of operations told him it "was handled," and not to tell anyone about what had happened.

[33] I find that the Appellant experienced discrimination on a prohibited ground. He was subjected to racist language, used by his manager in his presence. Although the

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<sup>19</sup> See section 29(c)(iii) of the Act.

<sup>20</sup> See GD2-5 and GD7.

manager was disciplined, the Appellant was told by the director of operations not to tell anyone it had happened. After being disciplined, his manager shunned him, refused to talk to him, and treated him like it was his fault he had gotten in trouble for using racist language. I therefore find that this circumstance applies.

### **Antagonism with a supervisor**

[34] The law says a claimant has just cause for voluntarily leaving if the claimant had no reasonable alternative to leaving, having regard to antagonism with a supervisor, if the Appellant isn't primarily responsible for the antagonism.<sup>21</sup>

[35] "Antagonism" is not defined in the Act. However, dictionary definitions suggest that antagonism includes an element of "hostility."<sup>22</sup>

[36] I find that the behaviour of the Appellant's manager, as described above, constitutes antagonism for which the Appellant wasn't responsible. The manager, after being disciplined for using racist language, proceeded to treat the Appellant with hostility, shunning him, refusing to speak to him, isolating him from the group chat, and behaving as if it were the Appellant's fault that he got in trouble for using racist language at work. I therefore find that this circumstance applies.

[37] So, the circumstances that existed when the Appellant quit his job were that his working conditions posed a danger to his health and safety, he experienced discrimination, and he was being subjected to antagonism from his manager, for which he was not responsible.

[38] I realize that the Appellant was registered to start a full-time course a few days after he quit his job, and that he told the Commission that he wanted to advance himself and work with more educated people. But I find that the reason he quit, and decided to go back to school, was because of the circumstances described above, not simply

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<sup>21</sup> See section 29(c)(x) of the Act.

<sup>22</sup> *Merriam-Webster online dictionary* defines "antagonism" as "actively expressed opposition or hostility." *Collins online dictionary* defines "antagonism" between people as "hatred or dislike between them."



because he made a personal decision to go back to school. He testified, and I accept, that if it weren't for these circumstances, he would have stayed in his job. He said he used to love his job before these issues occurred, but that these issues led him to apply for the course in December 2023, and make the decision to take the course shortly before he quit. He told the Commission it was hard going to work everyday when his manager was ignoring him, and that his manager's words symbolized hate. When the Commission asked him what his final reason was for quitting, he said that he told the employer he was depressed and unable to pull himself up for work.<sup>23</sup>

### **Reasonable alternatives**

[39] The Commission says that the Appellant didn't have just cause to leave his job, because he had reasonable alternatives to leaving when he did. It says he could have spoken to the employer about his supervisor mistreating him, contacted the Labour Board about his unsafe working conditions, or tried to find another job before quitting. It says the Appellant hasn't shown that his working conditions were so intolerable that he had no alternative to quitting his job without first trying to get another job.<sup>24</sup>

[40] The Appellant says that he had no choice but to quit his job when he did, because his physical and mental health were suffering due to the conditions he was experiencing at work. He said he was depressed, sleeping a lot, and having a lot of anxiety about going to work. He has diabetes and the stress was having a negative impact on that condition as well.

[41] The Commission says the Appellant could have looked for another job before quitting. The Appellant said in his application for benefits that he looked for other work before quitting his job, but he decided to better his education instead of making less money in a different job. The Commission says the Appellant hasn't shown that his working conditions were so intolerable that he had no alternative to leaving his employment without having attempted to secure another job.

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<sup>23</sup> See GD3-26.

<sup>24</sup> See GD4-4-5.

[42] I disagree. I find that the Appellant's working conditions had become intolerable. I find that staying in his job was not a reasonable alternative to the Appellant leaving when he did. I have found that his working conditions posed a danger to his health and safety, that he experienced discrimination, and that he was experiencing antagonism from his supervisor, for which he was not responsible. Continuing to work in conditions that jeopardized his health, including being required to drive a truck that was unsafe, being exposed to biohazards without proper training or protective equipment, and being subjected to discrimination and antagonism by his manager, was not a reasonable option.

[43] The Commission says the Appellant could have spoken to the employer about his manager mistreating him. However, given that the director of operations had told the Appellant it "was handled," and not to tell anyone that his manager had used racist language in his presence, it is understandable that the Appellant didn't address it with him again.

[44] The Commission says the Appellant could have contacted the Labour Board about the unsafe working conditions. However, the Appellant told the Commission that he didn't contact the Labour Board because they never do anything, a position that is understandable given his testimony that he had called the Labour Board several times with questions, and was told his concerns were in-house safety matters, and not related to labour laws.

[45] Considering all of the circumstances that existed when the Appellant quit his job, I find that he had no reasonable alternative to leaving when he did, for the reasons set out above.

[46] This means the Appellant had just cause for leaving his job.

## **Conclusion**

[47] I find the Appellant isn't disqualified from receiving benefits.

[48] This means the appeal is allowed.

Susan Stapleton

Member, General Division – Employment Insurance Section