



Citation: *HK v Canada Employment Insurance Commission*, 2024 SST 1722

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

## **Decision**

**Appellant:** H. K.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (680437) dated October 18, 2024  
(issued by Service Canada)

---

**Tribunal member:** Rena Ramkay

**Type of hearing:** Videoconference

**Hearing date:** December 5, 2024

**Hearing participant:** Appellant

**Decision date:** December 18, 2024

**File number:** GE-24-3766

## Decision

[1] The appeal is allowed. This means I agree with the Appellant.<sup>1</sup>

[2] The Canada Employment Insurance Commission (Commission) properly exercised its discretion when it decided to reconsider the Appellant's entitlement to benefits.

[3] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving her job when she did. The Appellant had just cause because she had no reasonable alternative to leaving. This means she isn't disqualified from receiving Employment Insurance (EI) benefits.

## Overview

[4] The Appellant, H. K., was laid off from her full-time job on April 30, 2023. She applied for EI regular benefits on May 1, 2023, and her claim was made effective April 30, 2023.

[5] While working full-time, the Appellant had a part-time job at a retail chain. She kept this job when she was laid off and reported all income she earned from this job to the Commission.

[6] The Appellant says she asked her part-time employer if she could work more hours. She says her employer told her they would see, but her hours kept getting cut instead of increasing as she had requested.

[7] The Appellant quit her part-time job at the retail chain on May 15, 2023. She continued to receive EI benefits until she started a new full-time job on June 19, 2023.

[8] On April 11, 2024, the Commission contacted the Appellant to investigate why she left her part-time retail job on May 15, 2023. It decided she voluntarily left (or chose

---

<sup>1</sup> The *Employment Insurance Act* (EI Act) calls a person who applies for EI benefits a "claimant." A person who appeals a decision of the Canada Employment Insurance Commission (Commission) to the Tribunal is called an "Appellant."

to quit) her job without just cause. So, the Commission disqualified her from receiving benefits from May 14, 2023, until June 24, 2023.

[9] Since the Appellant had already been paid benefits for this period, the Commission processed an overpayment of \$2,448.00 on her claim. The Appellant received a notice of debt for \$2,448.00 and paid it on August 2, 2024.

[10] I must decide if the Commission exercised its discretion properly when it decided to reconsider the Appellant's claim. This is explained in more detail below.

[11] If the Commission did exercise its discretion properly, then I must decide whether the Appellant has proven that she had no reasonable alternative to leaving her job when she did.

[12] The Commission says that the Appellant could have stayed at her part-time job until she found work elsewhere. It says the Appellant hasn't provided evidence that she had to leave her employment, but if she had obligations, she could have asked for a leave of absence before resigning.

[13] The Appellant disagrees and says her part-time employer reduced her shifts to almost none. Despite asking for more hours, she says her employer didn't give her more. She says the work environment was very stressful, so she felt she had to leave.

## **Issues**

[14] The issues in this appeal are:

- Did the Commission properly exercise its discretion when it decided to reconsider whether the Appellant voluntarily left her employment?
- If so, is the Appellant disqualified from receiving benefits because she voluntarily left her job without just cause?

[15] I will start by looking at whether the Commission acted properly (or exercised its discretion judicially) when it reconsidered the Appellant's claim.

## Analysis

### **Did the Commission properly exercise its discretion when it decided to review whether the Appellant voluntarily left her employment?**

[16] Yes. I find that the Commission exercised its discretion properly when it decided to review the Appellant's voluntarily leaving her employment. I explain this below.

[17] The Commission has the power to reconsider (or review) a decision it made about a claim for benefits and to correct its decision retroactively (or after the fact) on its own initiative.<sup>2</sup> If the Commission paid you EI benefits that you weren't really entitled to receive, it can ask you to repay those EI benefits.<sup>3</sup>

[18] But the Commission has to follow the time limits set out by the law. Usually, the Commission has 36 months to review its decisions.<sup>4</sup> If it thinks it was given false or misleading information in connection with the claim, the timeline can be extended to 72 months.<sup>5</sup>

[19] Even though the law gives the Commission this power, it doesn't say that the Commission **must** use this power. The Commission has the choice to use its review power or not. In other words, the power to review is a discretionary power.

[20] When the Commission decides to use its discretion to review your entitlement to EI benefits, it has to show that it used this power properly. This is called using its discretion judicially. This means it must not act in bad faith or for an improper purpose or motive, it must not consider an irrelevant factor or ignore a relevant factor, and it must not act in a discriminatory manner.<sup>6</sup>

[21] The Commission has a policy to help guide how it exercises its discretion to review its decisions about EI benefits. It says this policy ensures "a consistent and fair

---

<sup>2</sup> See section 52 of the EI Act. The Federal Court of Appeal sets out the Commission's broad power under this section in *Briere v Canada Employment and Immigration Commission*, A-637-86.

<sup>3</sup> See section 52(3) of the EI Act.

<sup>4</sup> See section 52(1) of the EI Act and *Canada (Attorney General) v Laforest*, A-607-87.

<sup>5</sup> See section 52(5) of the EI Act.

<sup>6</sup> The Federal Court of Appeal sets out what it means for the Commission to exercise its discretion judicially in *Canada (Attorney General) v Purcell*, A-694-94.

application” of the law and prevents “creating debt when the claimant was overpaid through not fault of their own.”<sup>7</sup>

[22] The Commission’s policy states that a claim will only be reviewed when:

- Benefits have been underpaid
- Benefits were paid contrary to the structure of the law
- Benefits were paid as a result of a false or misleading statement
- The claimant ought to have known they weren’t entitled to the benefits they received.

[23] The Commission’s policy is not the law. It is not binding. But the courts have repeatedly supported the use of such guidelines to guarantee some consistency and avoid arbitrary decision-making.<sup>8</sup>

[24] The Commission says it had the authority to review the Appellant’s claim if it believed she received benefits to which she wasn’t entitled. It says it can reconsider a claim within 36 months after the benefits have been paid.

[25] In this case, the Commission reconsidered the period from May 14, 2023, for which benefits were already paid, and did so on April 11, 2024, which is within 36 months from May 14, 2023.<sup>9</sup>

[26] The Commission investigated the Appellant’s reason for leaving her part-time job, because it believed she may have been paid benefits contrary to what the law allows. It contacted the Appellant and her employer for information before making its decision.

---

<sup>7</sup> See section 17.3.3 of the *Digest of Benefit Entitlement Principles* (Chapter 17).

<sup>8</sup> See *Canada (Attorney General) v Gagnon*, 2004 FCA 351 and *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLii 699 (SCC).

<sup>9</sup> The Commission called the Appellant about her reasons for leaving her part-time job for the first time on April 11, 2024, at GD3-18.

[27] I find that the Commission exercised its discretion judicially. It investigated the Appellant's reasons for voluntarily leaving her employment to ensure she was paid according to the law. In deciding to investigate the reasons the Appellant left her job, the Commission considered relevant facts and didn't consider irrelevant factors. Its actions were within the timeframes allowed under the law. There is no evidence the Commission acted in bad faith, for an improper purpose, or in a discriminatory manner.

[28] Now I will look at whether the Appellant voluntarily left her part-time job with just cause. I must first address the Appellant's voluntary leaving. I then have to decide whether the Appellant had just cause for leaving.

**Is the Appellant disqualified from receiving benefits because she voluntarily left her job without just cause?**

[29] No. I find that the Appellant voluntarily left her job **with** just cause for the reasons I provide below. This means she isn't disqualified from receiving benefits.

**- The parties agree that the Appellant voluntarily left**

[30] I accept that the Appellant voluntarily left her part-time job. The Appellant agrees that she quit on May 15, 2023. The Record of Employment submitted by her employer says she quit on May 15, 2023.<sup>10</sup> I see no evidence to contradict this.

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

[31] The parties don't agree that the Appellant had just cause for voluntarily leaving her part-time job when she did.

[32] The law says you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>11</sup> Having a good reason for leaving a job isn't enough to prove just cause.

---

<sup>10</sup> See the Record of Employment (ROE) submitted by the employer at GD3-14.

<sup>11</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

[33] The law explains what it means by “just cause.” The law says you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says you have to consider all the circumstances.<sup>12</sup>

[34] It is up to the Appellant to prove that she had just cause.<sup>13</sup> She has to prove this on a balance of probabilities. This means 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.

**- What the Commission says**

[35] The Commission says the Appellant quit her job because she wasn’t satisfied with the hours she was getting, but she was aware that her work hours depended upon business needs. It says a decrease in hours and pay resulting from the employer’s business needs don’t constitute just cause for leaving employment. The Commission says the Appellant made no effort to discuss her concerns with her employer before she left.

[36] The Commission says the Appellant provided conflicting statements. It says she only indicated she spoke to her employer about wanting more hours after she was denied benefits. And, it says her resignation email to her employer makes no reference to limited hours, instead it says she had family obligations requiring her immediate attention. But the Commission says she hasn’t provided any information about family obligations requiring that she leave her employment.

[37] The Commission says the Appellant had a choice to remain at her part-time job. It says there was no evidence that she was forced to leave, nor was it evident that the work atmosphere was so intolerable that she had no option but to leave. It says there was no reason she could not continue to commute to her part-time job until she found work elsewhere.

---

<sup>12</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>13</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

[38] The Commission says the Appellant had reasonable alternatives to leaving her part-time job when she did. It says she could have continued to work part-time while she looked for work and secured another job. If she had family obligations, it says the Appellant could have requested a leave of absence before resigning.

- **What the Appellant says**

[39] The Appellant says she left her part-time job because her employer kept reducing her hours of work. She was initially hired to work up to 30 hours per week, but she was getting zero hours some weeks and only seven hours other weeks.

[40] She agrees she didn't ask the store manager for more work. Instead, she says she asked her floor managers, who were her direct supervisors, for more hours when her full-time employer laid her off. She says they told her they would see, but she kept getting fewer hours. At the same time, the Appellant says she was looking for a new full-time job.

[41] The Appellant says she didn't tell the Commission about asking for more hours when it called her because the agent who spoke to her didn't give her the chance to respond. She also says she didn't know she needed to make her request for more hours in writing in order to have proof. She thought she had done enough by asking her supervisors for more hours.

[42] The Appellant believes she was singled out for unequal treatment at her job. She says she showed up for her work shift twice and was told she wasn't needed and should go home. She says this happened in front of all the staff and was very demeaning. The Appellant says she had to take the bus to work because she doesn't drive, and that it took 45 minutes to get to work. So, when she was told to go home, she wasted one and a half hours of her time.

[43] The Appellant also says she was called and told not to come into work sometimes. She says her part-time work wasn't reliable and had become very stressful because of the way she was being treated. She made the decision to leave her part-time job and look for full-time work, which she felt confident she would find.



[44] The Appellant says she told her store manager that she was leaving due to family obligations to keep the working relationship professional and avoid further conflict about her employment. She says she wasn't represented by a union, and she wasn't getting any support from her direct supervisors. So, she felt she had no option but to keep a professional relationship with her employer to ensure a good reference.

[45] The Appellant says she had no reasonable alternative to leaving at that time because she wasn't getting enough hours at work to survive and, due to the stress at work, she wasn't in the right mental capacity to be actively looking for other work.

- **My findings**

[46] I find that the circumstances that existed when the Appellant left her part-time job were:

- Her work hours had been reduced so that there were some weeks when she received zero hours.<sup>14</sup>
- She had asked her supervisors for more hours when she was laid off from her full-time job but wasn't getting any.
- She showed up at work for two scheduled shifts and was told to go home because she wasn't needed in front of all the other staff at work. She felt demeaned when this happened.
- She was called at home before shifts and told she didn't need to come in.
- She didn't feel that she was being fairly treated at work which caused her considerable stress and affected her ability to confidently look for work elsewhere.

[47] I accept the Commission's argument that the Appellant knew her work hours could change because they were dependent on business needs. But I don't agree that

---

<sup>14</sup> See the Record of Employment at GD3-14, which shows hours worked every two weeks.

the Appellant made no effort to request more hours. The Appellant testified that she did ask her floor managers for more hours.

[48] I am satisfied that the Appellant asked her supervisors at work for more hours. Her testimony was honest, direct, and she easily answered my questions about this issue. I accept the possibility that she didn't have the chance to tell the first Commission agent she spoke to that she had made requests for more hours. So, I don't find that she changed her response when her benefits were denied.

[49] I am satisfied the Appellant continued to look for full-time work while employed part-time. The fact that the Appellant started a new job on June 19, 2024, tells me that she wanted to work full-time and was actively searching for work.

[50] The Appellant described that other staff, including those hired after her, weren't told to go home when they showed up for shifts. And she was called at home before shifts and told not to come in. I find this to be a significant modification to her schedule of work and salary and may amount to refusal to pay the Appellant for her work.<sup>15</sup>

[51] Even though the Appellant's work was part-time, taking away scheduled shifts resulted in a significant change to her hours and earnings. The Appeal Division at the Tribunal has found that a change in schedule that would significantly reduce an appellant's earnings was a significant change that justified leaving.<sup>16</sup>

[52] I acknowledge that the Appellant felt demeaned when she was told to go home in front of other staff. She testified that this treatment, along with her employer's lack of response to her request for more hours, caused her considerable stress. Since this undermined her confidence, I accept the Appellant's testimony that she was under considerable stress and, as a result, had a more difficult time looking for other work.

---

<sup>15</sup> Section 29(c)(vii) of the EI Act recognizes significant modification of terms and conditions respecting wages or salary as just cause for leaving employment if there are no reasonable alternatives to leaving.

<sup>16</sup> See *LC v CEIC*, 2021 SST 766. I don't have to follow other decisions of our Tribunal. I can rely on them to guide me where I find them persuasive and helpful. I find this decision relevant to this appeal.

– **Did the Appellant have reasonable alternatives to leaving when she did?**

[53] No. I find that the Appellant had no reasonable alternatives to leaving when she did.

[54] I don't find that a leave of absence would have addressed the issues the Appellant was facing at work. She wanted more hours, not fewer. And she testified that she had family obligations like any new immigrant child in Canada, but these weren't the reason she left her job. I accept that she told her employer she had to leave due to family obligations to keep her relationship professional and to get a good reference. This makes sense to me because she wanted a new full-time job and needed good references to get one.

[55] The Commission thinks it would have been reasonable for the Appellant to remain in her part-time job while seeking and finding work elsewhere. I find the Appellant already was seeking other work while remaining in her part-time employment.

[56] And I find that the Appellant was in an increasingly intolerable situation where she felt her employer didn't want her working there because they kept cancelling her shifts and telling her to go home when she showed up to work. In my view, it isn't reasonable to expect the Appellant to remain in a part-time job that was affecting her mental health and ability to seek other employment.

[57] Considering the circumstances that existed when the Appellant quit, I find that the Appellant had no reasonable alternatives to leaving when she did. This means the Appellant had just cause for leaving her job.

## **Conclusion**

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

[59] This means the appeal is allowed.

Rena Ramkay

Member, General Division – Employment Insurance Section