Citation: *FA v Canada Employment Insurance Commission*, 2025 SST 433

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (689986) dated November 8, 2024 (issued by Service Canada)

Tribunal member:	Barbara Hicks
Type of hearing:	Teleconference
Hearing date:	January 7, 2025
Hearing participant:	Appellant
Decision date:	January 13, 2025
File number:	GE-24-3999

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's last day as a branch manager for a roofing company was July 21, 2024. He applied for EI benefits. 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 couldn't pay him benefits.

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

[5] The Commission says that, instead of leaving when he did, the Appellant could have discussed his concerns with his employer, refused unsafe work, reported his privacy concerns, found other work before quitting or filed a Labour Standards complaint about the unpaid overtime.[1]

[6] The Appellant disagrees and says that, although he had a long list of complaints about his employer, he didn't quit. He says he was trying to negotiate either a pay raise or a new position that would allow him to earn overtime. He says he was amid negotiations when his employer laid him off.

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[1] See GD4-8.

Issue

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

[8] To answer this, I must first address the Appellant's voluntary leaving. I then must decide whether the Appellant had just cause for leaving.

Analysis

The parties don't agree that the Appellant voluntarily left

[9] The Commission and the Appellant don't agree about how the Appellant's employment came to an end. After considering all the evidence, I find that the Appellant voluntarily left his job.

[10] The Commission decided that the Appellant initiated his own separation from employment when he gave the employer an ultimatum about his salary.[2] On July 9, 2024, the Appellant sent the following text to the employer:

> *"I'll make it easy for you and tell you the min id accept or I'm going back to running my business. $23K in top of what you are paying me, that's $442 a week total $2220 minus tax and all other things would barely clear around $1600 a week. I cleared between $2k to $3k a week contracting and worked only a few months of the year. I'm been very reasonable for what I'm asking [S.] …"*[3]

[11] On July 10, 2024, the Appellant sent the employer a text message as follows:

> "*I've been asking you to review my wage for weeks now, you asked me to give you a number I gave you a very reasonable number and you've been ignoring me. I've predicted this to happen…..I don't get paid enough for this stress. I'm gonna be a decent person and ask how long you'd like my notice for? Two weeks*

[2] See GD4-7
[3] See GD3-52.

> *good enough? Will send an email tomorrow to end employment by tomorrow morning."*[4]

[12] After several texts were exchanged between the Appellant and the employer, on July 15, 2024, the employer sent the following text to the Appellant:

> *"As discussed, go back to your contracting business as it will be the best for you. I accept your two weeks notice."*[5]

[13] The employer says the Appellant gave the employer 2 weeks written notice of his intention to quit if they didn't give him the raise he asked for. The employer says they merely accepted his resignation but, instead of allowing him to work through the 2 weeks notice period, they paid him for both weeks but let him have the second week off.[6]

[14] The employer told the Commission that they couldn't afford to pay the Appellant the amount he wanted.[7] The employer accepted that this meant the Appellant was quitting.[8] The employer issue a Record of Employment that indicated that the Appellant quit.[9]

[15] The Appellant denies that he quit and says he was laid off. He says he had a long list of good reasons for quitting but he didn't quit. Rather, he says he engaged in a negotiation with the employer to either get paid more or get demoted to a non-managerial role. He testified that he sent the text to his employer in the "heat of the moment" when he was upset and that he didn't really want to quit. During the hearing, I asked the Appellant if he ever withdrew his threat to quit and he said no.

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[4] See GD3-55.
[5] See GD3-58.
[6] See GD3-23 and GD3-25.
[7] See GD3-49.
[8] See GD3-23.
[9] See GD3-50. Initially, the Record of Employment was issued with the code "K-Other", which the employer says was an error. The employer issued an amended Record of Employment later indicating that the employee quit.

[16] When deciding whether the Appellant voluntarily left his job, I must determine if he had a choice to stay in the job when he left.[10] If he had a choice, and he chose to leave, then that is what the Employment Insurance Act calls "voluntary leaving."

[17] I find that the Appellant had a choice to stay or leave, and he chose to leave. The Appellant had signed an employment contract on January 18, 2024. His annual salary would be $92,500 plus some other benefits.[11] The Appellant testified that he later found out that other employees in lesser roles than his were making more money than him. This prompted the Appellant to ask for more money.

[18] The Appellant engaged in a negotiation tactic that backfired on him. He demanded a significant raise, saying he would quit if he didn't get it. When the employer couldn't afford to pay him more, the employer understood and accepted that the Appellant was quitting. There is no credible evidence that the Appellant was laid off. The Appellant initiated his separation from work by issuing an ultimatum about his salary. He made the choice to do that.

[19] I find that the Appellant voluntarily left his job.

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

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

[21] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[12] Having a good reason for leaving a job isn't enough to prove just cause.

[22] 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 must consider all the circumstances.[13]

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[10] This is set out by the Federal Court of Appeal in *Canada* v. *Peace*, 2004 FCA 54.
[11] See GD3-26.
[12] Section 30 of the *Employment Insurance Act* (Act) explains this.
[13] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

[23] It's up to the Appellant to prove that he had just cause. He must prove this on a balance of probabilities. This means that he must show that it is more likely than not that his only reasonable option was to quit.[14]

[24] When I decide whether the Appellant had just cause, I must look at all the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I must look at.[15]

[25] After I decide which circumstances apply to the Appellant, he then must show that he had no reasonable alternative to leaving at that time.[16]

The circumstances that existed when the Appellant quit

[26] The Appellant says that one of the circumstances set out in the law applies. Specifically, he says that there were significant changes in his work duties.

– Significant changes to work duties

[27] Section 29(c)(ix) of the Act says that a person has just cause for leaving their employment if there are significant changes in their work duties.

[28] The word "significant" has been interpreted as "something of import, something above normal."

[29] Where there is a disagreement as to the terms of employment, a claimant has an obligation to give the employer a reasonable chance to correct the situation.[17]

[30] The Appellant says that there was a significant change in his work duties. He was hired as the first-ever branch manager for K, British Columbia, which was a new location that the employer wished to expand into. The Appellant understood that he

[14] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[15] See section 29(c) of the Act.
[16] See section 29(c) of the Act.
[17] See CUB 57605 and 57628.

would be building this business up from scratch, locating an office, hiring skilled trades, and finding work for them.[18]

[31] The Appellant says he searched with a realtor for an office location and presented about 20 options to the employer for consideration. Each one was turned down, for various reasons such as location or the small size of the yard. The Appellant was very frustrated by this and says the employer was being too picky. The Appellant worked from his own home during this time, which he was also frustrated about.[19]

[32] The Appellant says he was promised to have an office and shop within 2 months of his start date[20] however that isn't stated in the employment contract anywhere. The employer agrees that they would provide him with an office in the future, but no specific date was given. The employer said it would depend on whether they could find something suitable within their budget.[21]

[33] I don't believe that an employer would promise to provide an office within 2 months when it's not within their control to know when a suitable location would be found.

[34] The Appellant says the employer has one estimator on staff to service 6 branches. The estimator is overworked and can't even visit the projects before preparing an estimate. Instead, the estimator just creates an estimate based on the blueprints. The Appellant found this challenging because the estimates were significantly higher than competitor's estimates. The Appellant says the estimator didn't take local market conditions into account. So, the Appellant says he had to re-do a couple of estimates or they wouldn't have gotten the jobs.[22] The Appellant says he spent a lot of time doing this and it wasn't part of his job description.

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[18] See GD3-26.
[19] See GD3-25.
[20] See GD3-39.
[21] See GD3-50.
[22] See GD3-25.

[35] Early on, the Appellant secured two small roofing jobs. Since he didn't have enough volume of work to warrant hiring skilled trades yet, he was told to do the jobs himself. The Appellant says he is a red seal journeyman with lots of experience. He was capable of doing the work but didn't want to do it because he didn't think it was part of his role as branch manager to be using tools. He says he had no choice but to do the jobs or the company would look bad.

[36] The Appellant says he worked up to 14 hours some days and didn't get paid for overtime and get time off in lieu. He says he didn't get paid for travel although his out-of-pocket travel expenses were paid for by the employer.[23]

[37] The employer says that a branch manager must wear more than one hat. If they need to help out, they do. The employer says all 6 branch managers do the same. The employer acknowledged that the Appellant did some work on projects as a labourer, but his primary role was to supervise. The employer says the Appellant never complained about this at the time.[24]

[38] While I do agree that there were some changes to the Appellant's work duties, being performing hands-on work when needed, and creating estimates, I don't find that they were significant changes or permanent in nature.

[39] While the K location was in 'start up' phase, it would be necessary for the branch manager to do managerial tasks as well as hand-on tasks because he didn't have staff in place yet. The Appellant admitted during his testimony that he couldn't hire skilled trades until such time as he had enough work lined up for them to do. He testified that did hire a foreman and 2 workers when he landed a large airport job. In the meantime, the Appellant had to do all the things. He was qualified to do the hands-on work.

[40] The Appellant says it was time-consuming for him to prepare the estimates, but I find that it was part of his role in securing work for the K branch to be involved in bidding on jobs. The Appellant acknowledges that the estimator was overworked. The Appellant

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[23] See GD3-28.
[24] See GD3-50.

says he had to prepare 2 estimates and I don't' find that to be significant over the course of 5 or 6 months.

[41] As for the overtime, the Appellant's employment contract says he was paid an "annual salary". Inherent in that is the understanding that he wasn't being paid by the hour. A salaried employee is paid a fixed amount regardless of the number of hours they work, meaning they are not paid for overtime but can often bank the hours for time off at a future time. While I understand that the Appellant felt that he was working a lot of hours, it appears that the contract contemplated that he would put in the time that was needed to fulfill the role.

[42] In conclusion, I don't find the changes were significant or permanent in nature, and were necessary as the business was in start-up mode.

[43] I don't find that a significant change to his work duties was a circumstance that existed at the time the Appellant left his job.

– **Other arguments**

[44] The Appellant raised some other lesser arguments that weren't argued in any meaningful way but that I wish to acknowledge.

[45] For example, the Appellant complained that his employer didn't follow safety protocols on one roofing job. The employer didn't provide enough guard rails. A government office, Work Safe B.C., put a stop work order on the job until it was rectified.[25] The employer said they supplied more guardrails the next day[26]. The Appellant was frustrated by the situation and says it caused him to work extra hours. I find that this was a one-off situation and not one that would create reasonable grounds for leaving employment.

[46] The Appellant also says that he wasn't paid for the use of his home office during his employment. There are conflicting positions about this. The employer told the

[25] See GD2-5 and GD3-31.
[26] See GD3-50.

Commission that they paid him something for the use of his home.[27] When the Commission told the Appellant that the employer says they paid him, the Appellant gave no rebuttal.[28] The Appellant may wish to pursue this issue in another venue but I don't find that it was a circumstance that existed at the time he quit and wouldn't have given him just cause for leaving.

The Appellant had reasonable alternatives

[47] I must now look at whether the Appellant had no reasonable alternative to leaving his job when he did.

[48] The Commission says that the Appellant could have discussed his concerns with the employer rather than issuing ultimatums, refused unsafe work, reported his privacy concerns, secured a new job before quitting or filed a Labour Standards complaint.[29]

[49] The Appellant did try to discuss his concerns with his employer but unfortunately, he backed his employer into a corner with his salary demands coupled with a threat to quit. When the employer couldn't meet the salary demands, the employer accepted his resignation. The Appellant could have approached this in a different way, and it would have been reasonable for him to request a sit-down meeting with the employer to go over his complaints without first making the threat of quitting if he didn't get what he wanted.

[50] The Appellant says he couldn't have reported the unsafe work situation because he would have essentially been reporting himself since he was the employer's representative at the work site. I don't find this was a reasonable alternative.

[51] The Appellant was upset that his personal home address being used as the business address. When he brought the concern to the employer's attention, they rectified it by renting a post office box and using that as the address going forward. The Commission says he could have reported this privacy concern but, since the employer

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[27] See GD3-50 and
[28] See GD3-60.
[29] See GD4-8.

rectified it quickly, there wasn't really anything to report. The Appellant hasn't said he suffered any damage as a result.

[52] The Appellant admitted at the hearing that he didn't look for work before threatening to quit. I agree that it was a reasonable alternative for the Appellant to find a new job before quitting this one. The Appellant had a long list of complaints about his job and, since his concerns weren't being addressed the way he wanted or as quickly as he wanted, he should have started looking for a new job.

[53] The Commission says if the Appellant feels that he should have been paid for overtime, he has the option of taking that up with the Labour Standards office. The Commission says the employment contract doesn't say he would be paid overtime and I agree that it doesn't. This is a reasonable alternative.

[54] I find that the Appellant had reasonable alternatives besides quitting. Namely, he could have raised his concerns with his employer without issuing ultimatums, found a new job before quitting and filed a complaint with the Labour Standards office about the overtime issue.

[55] Considering the circumstances that existed when the Appellant quit, the Appellant had reasonable alternatives to leaving when he did, for the reasons set out above.

[56] There is important case law that says that the fact that an employee thinks their wages are insufficient doesn't justify them being a burden on the employment insurance system. The fact that the claimant's view is that an employment is not sufficiently well paid cannot justify him abandoning it and compelling others to support him through the employment insurance program.[30]

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

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[30] See *Canada (Attorney General)* v. *Tremblay*, A-50-94.

Conclusion

[58] I find that the Appellant is disqualified from receiving benefits.

[59] This means that the appeal is dismissed.

Barbara Hicks

Member, General Division – Employment Insurance Section