



Citation: *GD v Canada Employment Insurance Commission*, 2024 SST 1732

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

## Decision

**Appellant:**

G. D.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (681394) dated September 17,  
2024 (issued by Service Canada)

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**Tribunal member:**

Susan Stapleton

**Type of hearing:**

In person

**Hearing date:**

December 12, 2024

**Hearing participant:**

Appellant

**Decision date:**

December 23, 2024

**File number:**

GE-24-3636

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Canada Employment Insurance Commission (Commission) has not met its burden to show that the Appellant voluntarily left his job. So, the Appellant isn't disqualified from receiving employment insurance (EI) benefits.

## Overview

[3] The Appellant began working for the employer in April 2023. He stopped working on February 8, 2024.

[4] The 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] I must decide whether the Appellant voluntarily left his job, and if he did, whether he has proven that he had no reasonable alternative to doing so.

[6] The Commission says that the Appellant had reasonable alternatives to leaving his job, including continuing his working schedule, and using support he had in the community for his wife and father, until his job ended. It says he could have discussed his circumstances with his employer and/or union, asked if the rumours of end of contract were accurate and negotiated an earlier end of contract, maintained contact with the employer and updated them on a proposed return to work date, or contacted his doctor to discuss his own mental health and exhaustion.<sup>1</sup>

[7] The Appellant disagrees. He says he didn't quit, or abandon, his job. He left work on February 8, 2024, on an indefinite leave of absence, to take care of his father, who was ill. He was told during a phone call with Human Resources (HR) and his union representative to take as much time off as he needed. He always intended to return to his job when he could. He was blindsided when the employer submitted a Record of

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<sup>1</sup> See GD4-7.

Employment (ROE) that said he had quit. The employer hadn't contacted him to make arrangements for his return-to-work date. He feels the employer should have contacted him before sending the ROE, to give him the opportunity to return to work, as he had every intention to return to work.<sup>2</sup>

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

### **The Appellant didn't receive the appeal documents before the hearing**

[8] The Appellant advised at the hearing that he hadn't received the reconsideration file (GD3) or the Commission's Representations to the Tribunal (GD4).

[9] I discussed the Appellant's options with him, including asking an employee at the Service Canada where the hearing was being held to print the documents, and giving him time to review them. I advised him that the hearing could be adjourned and rescheduled at a later date, so that the documents could be sent to him, and he could review them. The Appellant chose to proceed with the hearing and have the documents sent to him after the hearing. The documents were sent to the Appellant by email after the hearing, and he was given a deadline to provide any additional comments/submissions that he had in response to the documents.<sup>3</sup>

[10] The Appellant sent an email to the Tribunal office on December 20, 2024, with his comments.

## **Issue**

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

[12] To answer this, I must first address the Appellant's voluntary leaving. If I find that he voluntarily left his job, I then have to decide whether he had just cause for leaving.

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

<sup>3</sup> See GD6.

## Analysis

[13] The law says that you are disqualified from receiving EI benefits if you left your job voluntarily and you didn't have just cause.<sup>4</sup> Having a good reason for leaving a job isn't enough to prove just cause.

### **The Appellant didn't voluntarily leave his job**

[14] The Commission has to prove on a balance of probabilities that the Appellant voluntarily left his job.<sup>5</sup>

[15] To decide if the Appellant voluntarily left his job, I have to consider whether he had the choice to stay in or to leave his job.<sup>6</sup>

[16] I find that the Appellant didn't voluntarily leave his job. This is because he didn't quit, or abandon, his job. He was on an authorized leave of absence with an undetermined end-date, and he intended to return to work when he could.

[17] The Commission says the Appellant voluntarily left his job, because he initiated the separation from his employment. It says the Appellant was aware he had quit his employment and "provided reasons for the quit" during calls to the Commission on May 14, 2024, and June 10, 2024.<sup>7</sup>

[18] The file contains a phone call record from when the Appellant spoke to the Commission on May 14, 2024. It says the Appellant reported that he failed to return to his employment because his father was ill, and he had to return to NS to take him for treatments. He said he explained this to his employer, and the employer said it was OK.<sup>8</sup>

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<sup>4</sup> See Section 30 of the *Employment Insurance Act* (Act).

<sup>5</sup> See *Green v Canada (Attorney General)*, 2012 FCA 313.

<sup>6</sup> In *Canada (Attorney General) v Peace*, 2004 FCA 56, the Federal Court of Appeal says that a claimant has voluntarily left their job if they have a choice and they choose to leave.

<sup>7</sup> See GD4-6.

<sup>8</sup> See GD3-17.

[19] The file contains a phone call record from when the Appellant spoke to the Commission on June 10, 2024. It says the Appellant reported that he had to take his father to his cancer treatments. He informed the employer and the employer understood and told him to come back when he could.<sup>9</sup>

[20] The employer issued an ROE saying the Appellant had quit.<sup>10</sup>

[21] The employer told the Commission that the client was scheduled to return to work on March 15, 2024, however, he cancelled his flight to stay back with his father who was getting treatment for cancer. After 90 days without notice of extension or return, the employer processed the ROE as a quit, for job abandonment. The employer said that the Appellant may be rehired at some point if he chose to return, but for the time being, they considered it to be a quit.<sup>11</sup>

[22] On September 17, 2024, the Appellant told the Commission that he didn't quit his job. He said he returned home to NS in February 2024, and took his father to his last 5 or 6 treatments. After that, he had personal problems. He said he never submitted a resignation, and never told the employer he quit. He spoke to Marty in HR, and to his shop steward, and they gave him a leave of absence, but there was no return to work date set. He didn't have any correspondence with the employer after this. He didn't give the employer any updates on his situation. The employer also didn't contact him. As far as he was concerned, he was on an indefinite leave. His wife told him if he went back, she wouldn't be there when he got home. He wasn't going to jeopardize his marriage for a job. Even if the employer reached out to him, he would have told them he had to quit anyway.<sup>12</sup>

[23] The employer submitted a second ROE, saying that it had been issued due to "shortage of work/end of contract or season."<sup>13</sup>

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<sup>9</sup> See GD3-21.

<sup>10</sup> See GD3-14.

<sup>11</sup> See GD3-24.

<sup>12</sup> See GD3-33.

<sup>13</sup> See GD3-36.

[24] The Appellant testified as follows:

- He lives in Nova Scotia (NS), and he worked for the employer in British Columbia (BC), on a rotation basis. He worked 20 days on, and 8 days off, and 2 of his days off were spent travelling.
- He was laid off in December 2023, then returned to work in January 2024.
- His father, who was 85 years old, was diagnosed with cancer. He was the only one who could take his father for his treatments, which were over an hour away from where he lives. So, he returned to NS on February 8, 2024.
- Before he left the jobsite, he spoke to his senior foreman. He explained what was happening with his father, and told him he would need some time off. He said he probably wouldn't make it back for his next rotation, and that he wasn't sure when he could get back. His foreman was more than understanding, and said "do what you have to do." His foreman told him the employer had programs to work with him, and that they wanted him to return to the job. The foreman gave him his shop steward's phone number, and said to call HR if he couldn't get back for his next hitch.
- On February 14 or 15, 2024, he called his shop steward. The shop steward spoke to HR, on speakerphone. The HR representative asked when he thought he would be back, and he told them he couldn't give them a return date, because he didn't know when his father's treatments would end. The HR representative said it was not a problem, and to take as much time as he needed. He didn't ask him to keep in touch or provide updates while he was off. He expected that the employer would reach out to him if necessary. He told HR that as soon as he was freed up, he would return to the job. Quitting his job was never mentioned.
- He figured he would be laid off early in the spring of 2024, and the employer would contact him when they were laying everyone else off, to tell him they were laying him off too.

- The employer never contacted him about returning to work while he was off. So, he was blindsided when the Commission told him the employer had submitted an ROE saying he had quit. In 45 years of construction work, he has never once quit a job. He thinks the employer should have contacted him before saying he quit his job.
- He was not aware that the employer had a policy about job abandonment.
- A number of other issues cropped up after he returned home. His family doctor retired and he couldn't get his required prescriptions refilled. He had to get an eye test to renew his licence to drive the vehicles he drove at work. He unexpectedly had to go out of the country to deal with an issue related to a property he owns.
- He doesn't recall ever telling the Commission that even if the employer reached out to him, he would have told them he had to quit, as was indicated in the September 17, 2024, phone call record. He never had any intention of quitting.
- He wanted to return to work as soon as he was able to. If the employer had contacted him while he was off and told him he had to return to work or they would have considered him to have quit, he would have gotten on a plane and gone back to work.
- He wrote to his union representative, who then sent a letter to the employer, explaining that he didn't quit. Two days later, the employer issued a new ROE, saying it was issued due to shortage of work/end of contract or season. Soon after this, the employer laid everybody off. He never returned to work for the employer.

[25] The Commission says the Appellant quit his job because he didn't return after he stopped working in February 2024.<sup>14</sup> I disagree.

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<sup>14</sup> See GD4-6.

[26] The Appellant told the Commission that he didn't quit his job. He also testified that he didn't quit his job. I found his testimony in this regard to be credible. This is because he provided his testimony directly to me under affirmation and answered my questions in a manner that was straightforward and consistent throughout the hearing. I was able to question the Appellant and test the evidence. I accept his account of being on an indefinite leave from his employment, and that he didn't quit or abandon his job. I believe that he intended to return to his job once the issues he had to sort out at home in NS were resolved.

[27] This means that the Appellant didn't voluntarily leave his job.

[28] The Commission therefore has not met its burden of proving that it is more likely than not that the Appellant voluntarily left his job.

[29] Having determined that the Appellant did not voluntarily leave his job, I do not need to determine whether he had just cause for doing so.

## **Conclusion**

[30] The Commission has failed to meet its burden to show that the Appellant voluntarily left his job. So, the Appellant isn't disqualified from receiving EI benefits.

[31] This means that the appeal is allowed.

Susan Stapleton  
Member, General Division – Employment Insurance Section