

### PART C – Decision under Appeal

The decision under appeal is the Reconsideration decision of the Ministry of Social Development (the "Ministry") dated October 31, 2012 (the "Reconsideration Decision"). The Reconsideration denied the Appellant's request for income assistance for two calendar months pursuant to Section 13 of the *Employment and Assistance Act* ("EAA ") and Section 29(3)(a) and 29(4) *Employment and Assistance Regulation* ("EAR"). In particular, the Ministry found that the Appellant had been dismissed from employment for inappropriate language and behavior and undermining authorities at work and, thereby, met the criteria for dismissal for just cause. This resulted in the Appellant not being eligible for income assistance for two calendar months.

### PART D – Relevant Legislation

*Employment and Assistance Act*, Sections 13  
*Employment and Assistance Regulation*, 29(3)(a) and 29(4)

## PART E – Summary of Facts

In denying the Appellant's request for reconsideration, the information before the Ministry included:

1. A completed Request for Reconsideration Form signed by the Appellant and dated October 23, 2012 with attached letter dated October 23, 2011. The letter states in part:
 

“...If you would please accept my point of view in regards of my dismissal of my previous job with [EMPLOYER], I do believe that I was dismissed for un-just caused due to the fact that the [EMPLOYER] were (sic) displeased that I wasn't comfortable with the loss of wages and there was no communication or warning from their part advising me that they were lowering my wages and I simply politely and professionally brought that to their attention.

Please read through the documents that I have attached, you will verify there, that my wages were lowered and then put back to its original state.”
2. Record of Employment (“ROE”) dated September 14, 2012. The document indicates the reasons for issuing the ROE as “Dismissal/Terminated within probationary period”.
3. Letter from [Employer] dated September 14, 2012 which reads in part:
 

“This letter is to advise your employment with [Employer] has been terminated effective immediately.

As per the British Columbia Employment Standards Act, no additional notice or compensation will be given as you have not completed three (3) consecutive months of employment with our organization.”
4. Three pages of pay stubs. Although these documents were somewhat illegible, it was agreed by the parties that during the relevant period the column titled “Pay Rate” did indicate four pay periods during which the Appellant was paid \$12/hour, followed by a reduced pay period at \$11/hour before being returned to \$12/hour for the next pay period.
5. The initial decision of the Ministry dated October 5, 2012 which reads in part:
 

“On 2012Oct05, the employer has verified that the dismissal was just due to inappropriate language and behavior at the workplace and undermining the authorities at work.”

At the hearing of the Appeal, the Ministry relied on the Reconsideration Decision and the information cited above. The Ministry conceded that the Appellant's pay rate was in fact reduced to \$11/hour from \$12/hour and then was returned to \$12/hour.

The Appellant indicates in his Reasons for Appeal as outlined in the Notice of Appeal the following:

“In your Decision, you mention that according to the pay slips that I have provided, I have been payed consistently at \$12/h. I must apologize for not have been clearer on where to look, it is on the 2nd page 5th line down. You'll notice there the wage was brought down to \$11/h and then back up to \$12/h. Thanks in advance!”

The Appellant further states that he does not believe there was just cause in his termination and denies that at any time did he use inappropriate language and behavior at the workplace and/or undermined the authorities at his place of work. The Appellant also indicates that at no time was he told by his employer that he was being terminated for cause or for any of the reasons described above. He was merely given a copy of the termination letter dated September 14, 2012 (which is referenced above) and a copy of his ROE. The Appellant also indicates that the lower hourly rate was brought to the attention of his employer who apologized for the mistake and returned his pay rate

to \$12/hr beginning with the next pay period.

Based on the material submitted, the Panel concludes as a finding of fact that the Appellant's hourly pay rate was unilaterally lowered from \$12/hour to \$11/hour by mistake and was then returned to \$12/hour, contrary to the findings of the Reconsideration Decision which concluded that the Appellant's pay stubs indicated a consistent pay rate of \$12/hour. The Panel further finds that the Ministry at the Reconsideration Decision was not in a position to conclude whether or not the Appellant was dismissed for just cause, given the above-referenced inaccuracy in describing the hourly pay rate of the Appellant by the Ministry, the wording of the ROE in describing the "Reasons for Issuing the ROE", the letter of termination by [Employer] dated September 14, 2012, and the evidence of the Appellant, all of which will be canvassed in more detail under PART F – Reasons for Panel Decision.

## PART F – Reasons for Panel Decision

The issue to be determined on this Appeal is whether the Reconsideration Decision, in denying the Appellant eligibility for income assistance for two calendar months, was reasonably supported by the evidence or a reasonable application of the legislation. The Reconsideration Decision stated that pursuant to Section 13 of the EAA and Section 29(4) of the EAR, the Appellant was not eligible for income assistance for two calendar months as a result of having been dismissed from employment for just cause, in particular, for inappropriate language and behavior and undermining authorities at work.

The relevant subsections of Section 13 of the EAA state as follows:

### **"Consequences of not meeting employment-related obligations**

13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if

(a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has

- (i) failed to accept suitable employment,
- (ii) voluntarily left employment without just cause, or
- (iii) been dismissed from employment for just cause, or

(b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment. (B.C. Reg. 263/2002)

(2) For the purposes of subsection (1),

- (a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and
- (b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period."

Section 29 of the EAR states as follows:

### **"Consequences of failing to meet employment-related obligations**

29 (1) For the purposes of section 13 (2) (a) [*consequences of not meeting employment-related obligations*] of the Act,

- (a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each of 2 calendar months starting from the later

of the following dates:

(i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation; (B.C. Reg. 304/2005)

(ii) the date the default occurred, and (B.C. Reg. 263/2002)

(b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each calendar month until the later of the following occurs:

(i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;

(ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment. (B.C. Reg. 263/2002)

(2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) [consequences of not meeting employment-related obligations] of the Act.

(3) For the purposes of section 13 (2) (b) [*consequences of not meeting employment-related obligations*] of the Act, the period of ineligibility for income assistance lasts

(a) for a default referred to in section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:

(i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation; (B.C. Reg. 304/2002)

(ii) the date the default occurred, and (B.C. Reg. 263/2002)

(b) for the default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:

(i) the family unit has been ineligible for income assistance for one calendar month;

(ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment. (B.C. Reg. 263/2002)

(4) Section 13 [*consequences of not meeting employment-related obligations*] of the Act does not apply to a family unit of an applicant or recipient who is in any of the following categories:

(a) Repealed (B.C. Reg 116/2003);

(b) sole applicants or sole recipients who have at least one dependent child who

(i) has not reached 3 years of age, or

(ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;

- (c) Repealed (B.C. Reg. 48/2010);
- (d) sole applicants or sole recipients who have a foster child who
  - (i) has not reached 3 years of age, or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
- (e) persons who receive accommodation and care in a special care facility or private hospital;
- (f) applicants or recipients admitted to hospital because they require extended care;
- (g) persons who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the person from leaving home for the purposes of employment;
- (h) applicants or recipients in a family unit that includes only applicants or recipients who are
- (i) Repealed. (B.C. Reg. 160/2004)
- (ii) persons who are participating in a treatment or rehabilitation program approved by the minister, if their participation in that program, in the minister's opinion, interferes with their ability to search for, accept or continue in employment,
- (iii) persons who have separated from an abusive spouse or relative within the previous 6 months, if, in the minister's opinion, the abuse or the separation interferes with their ability to search for, accept or continue in employment,
- (iv) persons not described in section 7 (2) [*citizenship requirements*], or
- (v) persons who have persistent multiple barriers to employment;
- (vi) persons who have reached 65 years of age; (B.C.Reg. 116/2003)
- (i) Repealed (B.C. Reg. 48/2010);
- (j) sole applicants or sole recipients who are providing care under an agreement referred to in section 8 [*agreements with child's kin and others*] of the Child, Family and Community Service Act for a child who
  - (i) has not reached 3 years of age, or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment; (B.C. Reg. 331/2003)
- (k) sole applicants or sole recipients who are providing care under an agreement referred to in section 93 (1) (g) (ii) [*other powers and duties of directors*] of the Child, Family and Community Service Act for a child who
  - (i) has not reached 3 years of age, or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment. (B.C. Reg. 331/2003)"

Applying the relevant sections to the Appellant, if the Appellant was dismissed from his employment for just cause (Section 13(1)(a)(iii) of EAA), the Appellant would not be eligible for income assistance until two calendar months had elapsed from the date of the Appellant's application for income assistance (Section 29(3)(a)(i) of EAR).

In the Notice of Appeal (and attachments) and at the Appeal hearing, the Appellant indicated that there was never at any time just cause for his termination and, in particular, at no time did he use inappropriate language or behavior or undermine the authority of his employer. The Appellant did indicate in his letter of October 23, 2012 that his employer was displeased with him (the Appellant) not being comfortable with the reduction of the hourly rate from \$12/hour to \$11/hour. The Appellant further indicated in his letter and orally at the hearing that after pointing out the lowering of the hourly rate in a "polite(ly) and professional(ly)" manner, the \$12 hourly rate was reinstated.

The salient issue on this Appeal is whether the finding of just cause was reasonably supported by the evidence before the Ministry at the Reconsideration Decision.

The Panel has the following concerns with the Reconsideration Decision:

1. The Ministry found that the pay stubs indicated a consistent pay rate of \$12/hour. As conceded by the Ministry on Appeal and, as evidenced by the pay stubs, this was incorrect. What is of concern is that a great deal of weight was placed on this incorrect finding in concluding just cause. In part, the Reconsideration Decision states:
 

"You state that you believe you were dismissed for un-just cause due to the fact that management was displeased with your reaction to loss of wages and there was no communication or warning from [Employer] in advance. You attach your termination letter dated September 4, 2012 and pay stubs indicating a consistent rate of \$12/hour." (emphasis added);
2. The ROE does not indicate that the Appellant was dismissed for just cause but merely states that the Appellant was "*Dismissal/Terminated* within probationary period";
3. The termination letter from [Employer] dated September 14, 2012 does not indicate that the Appellant was dismissed for just cause. Paragraph 2 of the letter states:
 

"As per the British Columbia Employment Standards Act, no additional notice or compensation will be given as you have not completed three (3) consecutive months of employment with our organization."

The implication being that but for the Appellant completing three consecutive months of employment, he would have been entitled to additional notice or compensation (such entitlement would not be the case for a just cause termination); and
4. The Reconsideration Decision indicates that on October 5, 2012, a Ministry employee contacted the Appellant's previous employer and was advised that the Appellant was dismissed "due to inappropriate language and behavior and undermining authorities at work". At the hearing, the Ministry advised that this was the actual note in the file concerning this conversation. There would appear not to be any notes of what actually was said, what was the behavior undermining the authorities at work and when it took place. As previously indicated, the Appellant has denied any such behavior or use of inappropriate language. The Reconsideration Decision does not appear to have considered the conflicting and most important evidence on this point. In reading the Reconsideration Decision, the only logical conclusion the Panel can come to is that the Ministry preferred the evidence of the employer to

that of the Appellant on the mistaken belief that the Appellant's evidence was not reliable in stating that management was displeased with his reaction to loss of wages since the "pay stubs indicated a consistent pay rate of \$12/hour".

Accordingly, the Panel finds that given the error in the Ministry's Reconsideration Decision in concluding that the pay stubs indicated a consistent pay rate of \$12/hour and the importance of that incorrect finding in deciding that there was just cause and for the other reasons noted above, the Reconsideration Decision was not reasonably supported by the evidence. Having said that and to be clear, although the Panel finds that the Reconsideration Decision must be rescinded, it would be beyond its jurisdiction to make any further decision as to whether or not there was just cause in the circumstances.

The Panel thus rescinds the Reconsideration Decision.