

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated June 23, 2014 which held that the appellant was denied income assistance for two calendar months due to dismissal from employment for just cause pursuant to section 13(1)(a)(iii) of the Employment and Assistance Act (the “EAA”) and section 29(3)(a) of the Employment and Assistance Regulation (the “EAR”).

PART D – Relevant Legislation

The Ministry relied on the following legislation in making their determination:

Employment and Assistance Regulation (the “EAR”), section 29
Employment and Assistance Act (the “EAA”), section 13

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following documents:

Employment and Assistance Request for Reconsideration dated June 5, 2014 in which the appellant stated the reason for his appeal was that he was not let go for just cause as indicated. The appellant stated that he left as he was verbally harassed by an employee. He indicated that he was passing by her with a meat tray and clearly communicated by saying “behind you with a tray” and she told the appellant and other employees that the appellant had “bad communication” which made the appellant feel very uncomfortable at work. The appellant indicated that the manager was not giving him full time hours as was agreed upon as well. The manager also stated that the appellant was doing to many “no nos” which also made the appellant feel uncomfortable.

The Request for Reconsideration Decision had the following attached documents:

1. Letter from the appellant dated June 5, 2014 stating that the appellant left his employment as he was being verbally harassed at work by the manager and one other employee; that the appellant was guaranteed full time employment but was only given two shifts a week; and that the appellant is on the BC transit so it is not worth his while for him to travel for a couple of shifts.
2. Record of Employment (ROE) issued from the appellant’s former employer showing the first day of work May 9, 2014 and the last day May 17, 2014 and showing the reason for issuing the ROE as dismissal.

The appellant’s Notice of Appeal dated June 24, 2014 stated that the appellant disagrees with the ministry’s reconsideration decision as he was not let go from his position for just cause. The appellant stated he quit because he was being verbally harassed from a manager and one other employee. The appellant explained that he was passing with a meat tray and in a polite but firm voice said to an employee “passing behind you with a meat tray, excuse me.” The employee told other employees that the appellant had “bad communication” and they all ignored him and treated him unfairly the rest of the day which made it uncomfortable to work. The appellant also submitted that the manager yelled at the appellant and told him that he didn’t like to get mad at work for the appellant wasting food. The appellant stated that meat had fallen on the ground and could not be served to the public. The appellant also stated he was guaranteed full time hours but only given two shifts per week which was not suitable for him as he took BC transit and he couldn’t cover the costs of his bills or bus fare with so little hours.

The appellant’s mother attended the hearing and gave testimony that the appellant expressed his discontent about his current working condition and the problems he was having at the store.

At the hearing, the appellant provided the following additional oral evidence:

1. The appellant stated that the head manager yelled at him. He said he was cleaning the meat grinder and meat fell on the ground. The appellant picked it up and put it into the trash can. The manager was very unhappy and weighed it and then told the appellant that he was wasting the company’s money. He claimed that the head manager told him to put it on a tray

and he refused so the manager was not happy with him.

2. The appellant stated he did not miss any shifts and that he spoke to someone at the store and informed them he would not be attending his scheduled shift because he was uncomfortable and that it was not worth it as his bus pass was \$120.00. The appellant said he was told he still had to come in. The appellant said he was scheduled to work two more shifts but he quit prior to the shift so he did not technically miss any shifts.
3. The appellant did notice when he retrieved his ROE that the noted reason for the ROE was "dismissal" but he did not question or ask the employer to change it to "quit." The appellant stated that he couldn't be bothered to argue with him.
4. The appellant had no dependants.

The Ministry did not submit additional evidence on appeal.

The panel finds that the additional evidence provided by the Appellant clarified his situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the Ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue at appeal is whether the Ministry's decision to deny the Appellant income assistance for two calendar months on account of being dismissed with just cause is a reasonable application of the legislation in the circumstances of the Appellant or is a reasonably supported by the evidence.

The ministry relied on section 13(1)(a)(ii) and 13(2)(b) of the EAA and section 29(3)(a) and 29((4) to find the Appellant was not eligible for income assistance for two calendar months.

The relevant sections have been reproduced below:

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.

(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.

(A) 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 in to 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)

Ministry Argument

In determining the appellant was not eligible for income assistance for two calendar months the ministry stated the following in the Reconsideration Decision:

The minister finds that it was within reasonable ground for dismissal based on the circumstances of your case. You did not show up for a scheduled shift – then again missed 2 more shift after being given a second chance, as reported by your employer. The minister notes that you are relied upon when committing to work for a company. Although you state that you didn't receive full time hours and taking public transit isn't worth it for a couple of shifts per week; these are not reasonable excuses. You could have discussed your concerns with the employer and formally reported if you were feeling uncomfortable with any situation; simply not showing up for shift is not an appropriate way to deal with these issues. Therefore, the minister finds reasonable grounds to dismiss you; thus, as you are not a person described under Section 29(4), you are subject to the consequences and are not eligible for income assistance for two calendar months.

The ministry argued that the appellant was dismissed from his job with just cause having found that the appellant failed to show up for a total of three shifts and it was therefore reasonable for his employer to dismiss him with cause.

The ministry acknowledged that the appellant was not happy with the number of shifts he was being scheduled but concluded that these were not reasonable excuses. The ministry also stated that missing his shifts was not the way to deal with work place issues and that the appellant should have discussed his concerns with his employer and formerly reported the situation.

The ministry argued that ROE is sufficient confirmation that the appellant was "dismissed" as this was noted as the reason on his ROE and the appellant did not dispute it at the time he received the ROE from his employer.

The ministry determined that as the appellant the appellant was dismissed for just cause and was not a person described in section 29(4), he was therefore ineligible for income assistance for a total of two calendar months.

Appellant Argument

The appellant argued that he quit his employment and was not dismissed for just cause. The appellant stated that he was the subject of harassment by one of the stores employees and the manager. The appellant submitted that he was not getting the shifts he was guaranteed, but this was not the main reason he quit his job. The appellant claimed he quit primarily because of the verbal harassment that made working in the store uncomfortable. The inadequate number of shifts he was scheduled to work was the secondary reason for his departure.

The appellant submitted that there were two incidents at the workplace: one with an employee who the appellant claims verbally harassed him and a second incident with the employer that who yelled and told him the appellant he was doing too many "no nos."

The first incident was with an employee and took place as the appellant was passing the other employee with a meat tray. The appellant claimed that he said to an employee in a polite but firm voice "passing by with a meat tray" and this was received poorly by the employee who in turn told other employees that the appellant had "bad communication." According to the appellant the employee then proceeded to roll her eyes at the appellant and treat him unfairly the rest of the day.

The appellant also submitted that he was also not comfortable with an exchange that took place between himself and his employer which appears to be the outcome of the appellant making errors on the job or too many "no nos."

The appellant gave evidence that he was yelled at by his employer when meat fell to the ground. The appellant claimed he was cleaning the meat grinder and he had dropped meat on the ground and put it in the garbage can. This made his employer unhappy and the employer informed the appellant that he was wasting company money and said that the appellant had been making too many "no nos."

In addition to the two incidents at the workplace, the appellant also indicated that he was also not happy with the number of shifts he had been given. He claimed that he was offered full time shifts but only given part time hours and that it was not worth it financially to go to work as his bus pass cost \$120.

As a result of the two incidents at the workplace and insufficient shifts, the appellant claimed he notified his employer prior to the start of his shift that he was not going to be there because he was uncomfortable with the incident that took place with the employee (he did not mention the incident with the employer), as well as the insufficient number of shifts. The employer informed the appellant he was still was required to come in. The appellant claimed he chose not to go in and then he quit.

Panel Decision

The panel notes sections 13(1)(a)(ii)(iii) and (2)(b) of the EAA outlines the consequences of not meeting employment-related obligations and states that if an applicant has either voluntarily left employment without just cause or has been dismissed from employment for just cause the family unit that does not include dependent children is not eligible for income assistance for a prescribed period.

Sections 29(3)(a) of the EAR provides the period of ineligibility for income assistance for defaults referred to in sections 13(1)(a) of the EAA are two calendar months from the later of the date of the applicant's submission of the application for income assistance or the date the default occurred.

The panel accepts that the appellant had two incidents with an employee and the employer and that he was dissatisfied with the number of shifts he had been scheduled for the week. It is likely that as a result of the incidents the appellant may have felt uncomfortable which would have made it challenging for him to go work.

The panel accepts that the appellant expressed his discontent to his employer only after he called to notify his employer that he would not be making his scheduled shift and that the appellant informed the employer that he was uncomfortable with the incident that took place between himself and the employee. There is no evidence to indicate that the appellant was told he did not need to attend his shift.

While the appellant was clearly having problems with an employee and felt uncomfortable at the workplace, the proper course of action would have been to address the incident with his employer. The appellant had the opportunity to bring up the exchange that took place between himself and the employee prior to missing his shifts but he elected to forego his scheduled shifts.

Whether or not the appellant quit or was dismissed, if the appellant was not comfortable with his treatment in the workplace or the number of shifts he received in the week he had a responsibility to discuss this with his employer. The appellant made no efforts to discuss the problem and possibly remedy the situation in order to create an environment that he would not feel uncomfortable in. This is particularly true in light of the actual number of days the appellant worked at the store. The panel notes that the ROE shows that the appellant had worked at the store for eight days in total.

It would appear that the appellant left the employer with no options in view of his insubordination other than to dismiss him for just cause. The appellant refused to work his scheduled shift on account of feeling uncomfortable and being dissatisfied with the number of shifts he received and this all took place shortly after starting his employment.

The panel therefore finds it is more likely that the appellant was dismissed by his employer when the appellant refused to go into work as instructed to by his employer. Failing to make a scheduled shift on account of feeling uncomfortable or on account of insufficient shifts is not acceptable workplace conduct. This is particularly important in light of the fact that he had only worked at the store for a total of eight days.

The Panel therefore finds the Ministry's determination that the appellant was not eligible for income assistance for two calendar months having been dismissed for just cause was a reasonable application of the applicable enactment in the circumstances of the Appellant and was reasonably supported by the evidence and confirms the decision.