

Employment  
and Assistance  
Appeal Tribunal

Tribunal Decision

APPEAL

2015-00623

PART A – Panel Information

On, 2015-12-14 a hearing was held, pursuant to Part 3 of the *Employment and Assistance Act*  
DATE (YYYY MM DD)

to hear the appeal of

NAME OF APPELLANT (PLEASE PRINT)

GA

FILE NUMBER

in

ADDRESS

PART B – Persons in Attendance at the Hearing

PANEL CHAIR

Helene Walford

MINISTRY REPRESENTATIVE

PANEL MEMBER

Meg Gaily

APPELLANT

PANEL MEMBER

Richard Roberts

APPELLANT'S REPRESENTATIVE

Witnesses

FOR APPELLANT

FOR MINISTRY

FOR APPELLANT

FOR MINISTRY

Other

FOR APPELLANT

FOR MINISTRY

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### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of November 9, 2015, which found that the appellant was not eligible for income assistance as he voluntarily left his employment without just cause contrary to section 13(1)(a)(ii) and 13(2)(b) of the *Employment and Assistance Act* (EAA). The ministry also determined that the prescribed period of ineligibility for assistance was two calendar months, being October and November 2015, as set out in section 29(3)(a)(ii) of the *Employment and Assistance Regulation* (EAR) as the appellant did not meet any of the exemptions set out in EAR section 29(4).

### PART D – Relevant Legislation

EAA section 13  
EAR sections (29)(3)(a) and 29(4)

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Information from Employment Programs of BC (EPBC) provided on October 1, 2015 that the appellant had obtained full time employment as a roofer.
- Information from the appellant provided on October 15, 2015 indicating that he had not taken the roofing job because it was only seasonal.
- Information from the appellant provided on October 21, 2015 indicating that he had not turned down the job as the job was temporary and there were no more hours available after he had put in two shifts.
- Information from the appellant's former employer provided on October 22, 2015 indicating that the appellant had received two pay cheques in September covering more than 2 shifts, that there were hours available for work and that the appellant had been dismissed due to not showing up for work.
- Information from the appellant provided on October 28, 2015 that he had quit the job and providing a copy of his Record of Employment (ROE).
- The appellant's Request for Reconsideration dated November 2, 2015 (RFR) in which the appellant states that he did not voluntarily leave his employment without just cause. The appellant states that he quit because his employer did not give him notice before he had to work and would call him the same morning, without giving him time to prepare. The appellant also states that his employer was swearing at him, which he found very unprofessional. The appellant also states that the employer did not use safety gear and that he felt unsafe on the roof, so he left to search for more suitable and safe work.

In his Notice of Appeal the appellant states that he disagrees that he quit his job without just cause. The appellant states that he only received one pay cheque in September 2015, not two as the reconsideration decision indicates. The appellant states that his reason for quitting work was lack of hours, a rude phone call from the employer, expectations that the appellant would attend work without sufficient notice, and unsafe work conditions. The appellant provided copies of paystubs for periods ending August 13, 20, 27 and September 3, 2015. The appellant also provided a copy of his ROE indicating his last day for which paid was September 8, 2015.

At the hearing the appellant provided additional oral testimony regarding his employment circumstances, stating that he had good hours in August but that his hours were cut in September as evidenced by the paystubs provided with his Notice of Appeal. The appellant stated that he was put "on call" in September and that his employer called him into work on September 8 or 9, 2015 around 8 or 9 am in the morning while he was on a bus on his way to do some shopping, was rude on the phone and swearing at him. The appellant stated that he quit work to find more suitable work. The appellant also stated that there was no safety equipment on the job and that the employer did not use any ropes, harnesses or tie-downs and safety concerns were a big issue for him. The appellant stated that he disagreed with the information provided from his employer that he was dismissed due to not showing up for work. In answer to a question, the appellant stated that he did not at any time file a complaint with WorkSafeBC about his safety concerns.

### *Admissibility of New Evidence*

The panel admitted the information in the Notice of Appeal, the paystubs, and oral testimony into evidence as it was in support of the information before the ministry at the time of reconsideration in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new evidence is in support of the information before the ministry at the time of reconsideration as it tends to substantiate the appellant's work hours in September 2015 and the total earnings received from his employer before he quit.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's reconsideration decision finding the appellant ineligible for income assistance for voluntarily leaving his employment without just cause, and imposing a two month period of ineligibility for October and November 2015 was reasonable, pursuant to EAA section 13(1)(a)(ii) and 13(2)(b) and section 29(3)(a)(ii) of the EAR.

The relevant legislation is as follows:

### **EAA - 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.

(3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

### **EAR - 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 are providing care to a child in care who (B.C Reg. 145/2015)
    - (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)

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Panel Decision:

The ministry's position, as set out in the reconsideration decision, is that the appellant obtained work as a roofer, but failed to continue in his job and voluntarily left employment without just cause. The reconsideration decision states that the appellant initially reported that he had not taken the job because it was only seasonal, temporary and there were no more hours available after he put in two shifts, but then later the appellant advised the ministry that he quit due because of unsafe work conditions and unprofessional behavior from his employer, as well as lack of notice of work hours. However, the ministry's position is that the appellant has not provided sufficient evidence of these concerns, and that in the opinion of the ministry, the appellant did not have just cause for leaving his

employment. In addition, the reconsideration decision indicates that the appellant's employer informed the ministry that the appellant received two pay cheques in September 2015, covering more than 2 shifts, that there were more hours available for work, and that the appellant had been dismissed because he did not show up for work. The ministry's position is that as the appellant left his employment without just cause contrary to section 13(1)(a)(ii) of the EAA, he is not eligible for assistance pursuant to section 13(2)(b) of the EAA for the prescribed period.

The ministry's position is that the appellant does not meet any of the exemptions set out in EAR section 29(4), and as outlined in the ministry's policy that the ministry representative read out at the hearing, that allow the appellant to be exempted from employment obligations so he is ineligible for assistance for two calendar months as per EAR section 29(3). The ministry's position is that as the appellant quit his job on September 9, 2015 he is ineligible for assistance for October and November 2015 pursuant to EAR section 29(3)(a).

The appellant's position is that he left his job due to unsafe conditions, short notice for work hours, and unprofessional behavior on the part of his employer. The appellant's position is that his safety concerns are valid and reasonable and that the last straw was his employer being rude and swearing at him on the phone when he called him in on short notice for work on September 8 or 9, 2015.

Based on the pay stubs provided by the appellant, the panel finds that the appellant's information that he only received one pay cheque in September, not two as the employer advised the ministry, is accurate. In particular, the paystub for pay period September 3, 2015 indicates that the appellant's year to date gross pay was \$1,536, matching the ROE for his total gross pay. In addition the ROE indicates that the appellant quit his employment and was not dismissed as the employer advised the ministry.

However, the panel finds that the information provided by the appellant is inconsistent for the following reason: he first advised the ministry that he quit due to a shortage of hours, whereas he later indicated that he quit due to unsafe work conditions, unprofessional conduct from his employer, and short notice for work. Moreover, the appellant has not provided any further information supporting his reports of an unsafe work environment or details regarding the unprofessional behavior of his employer that would demonstrate that he quit his job under the "just cause" circumstances described in ministry policy, which considers exemptions including but not restricted to the following: reasonable assurance of another job, having a physical or mental condition which precludes maintaining employment; sexual or other harassment; discrimination; leaving an abusive or violent domestic situation; or having to care for a child or other immediate family member who has a mental or physical condition which requires the person to care for them. The appellant confirmed that despite his safety concerns he did not report the unsafe work conditions to WorkSafe BC or Employment Standards and that he quit his job before finding other employment.

EAR section 29(4) provides that the consequences of failing to meet employment related obligations do not apply if certain conditions are met such as: applicants with a dependent under age 3, applicants receiving accommodation and care in a special care facility or private hospital, applicants admitted to hospital because they required extended care, persons residing with and caring for a spouse who has a physical or mental condition that precludes the person from leaving home for the purposes of employment, persons participating in a treatment program approved by the minister, persons who have separated from an abusive spouse, persons with persistent multiple barriers to



employment or persons who are 65 or older. The panel finds that the ministry was reasonable in determining that the appellant does not meet any of the exemptions set out in EAR section 29(4); therefore the consequences set out in EAR section 29(3)(a) apply.

The panel finds that the ministry reasonably concluded that the appellant was ineligible for income assistance for leaving his employment without just cause as set out in section 13(1)(a)(ii) of the EAA. The panel also finds that the ministry was reasonable in finding the appellant ineligible for income assistance for the two months being October and November 2015 as section 29(3)(a) of the EAR.

The panel therefore confirms the ministry's decision.

**PART G – Order**

THE PANEL DECISION IS  UNANIMOUS  BY MAJORITY (Check one)

THE PANEL  CONFIRMS THE MINISTRY DECISION  RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?  YES  NO

LEGISLATIVE AUTHORITY FOR THE DECISION:

*Employment and Assistance Act*

Section 24(1)(a)  and/or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – Signatures**

SIGNATURE OF CHAIR	DATE (YYYY MMM DDD)
	2015-12-16
PRINT NAME	
Helene Walford	

SIGNATURE OF MEMBER	DATE (YYYY MMM DDD)
H. Walford, on behalf of	2015-12-16
PRINT NAME	
Meg Gaily	
SIGNATURE OF MEMBER	DATE (YYYY MMM DDD)
H. Walford, on behalf of	2015-12-16
PRINT NAME	
Richard Roberts	