**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) Reconsideration Decision dated March 12, 2018, which found that the Appellant's family unit was required to have its income assistance (IA) reduced by the prescribed amount for the prescribed period as the Appellant voluntarily left his employment without just cause and failed to accept suitable employment contrary to section 13(1)(a)(i) and (ii) and 13(2)(a) of the *Employment and Assistance Act*.

The Ministry also determined that the prescribed amount and prescribed period of ineligibility for assistance was $100 for each of two calendar months, being February and March 2018, as set out in Section 29(3)(a)(ii) of the Employment and Assistance Regulation, because the Appellant did not meet any of the exemptions set out in Section 29(4) of that Regulation.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act* (EAA) Section 13

Employment and Assistance Regulation (EAR) Section 29

**PART E – SUMMARY OF FACTS**

The Appellant is receiving IA as head of a family unit comprising himself, his spouse and seven dependent children.

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

1. The Appellant's Request for Reconsideration (RFR) dated February 24, 2018 in which the Appellant states that:
   - his hours of work at his previous job (the First Job) had dropped significantly to the point that he only made $410 in his last 2 weeks of employment and "it was costing (him) more (money) to drive back and forth to work", and as a result he was not earning anything;
   - he reported to work for three days after receiving the $410 pay cheque but was sent home without working every time;
   - on December 15, 2017 he spoke to his counsellor at the Ministry's employment services (the Employment Program of British Columbia or EPBC) contractor to discuss a new employment opportunity (the Second Job) starting immediately with another company;
   - upon learning that the owner of the company had come to Canada from another country and that the crew was largely made up of individuals who had come to Canada from a different country within the same geographic region as the owner, the Appellant advised the EPBC counsellor that he was not prepared to work for that particular company.
   - he has no problem working anywhere else or with anyone else.
   - he came to Canada for a better life and he does not want to deal with anybody or anything that reminds him of the past.

2. The Appellant's Record of Employment (ROE) for the First Job, dated December 6, 2017, showing a work start date of August 8, 2017, a last day of work of September 28, 2017, and total insurable earnings of $4,791.96

***Additional Information Submitted after Reconsideration***

In his Notice of Appeal (NOA) the Appellant states that he refused the Second Job "for the reason (he) explained previously" and that because he was new to Canada he "suffered many difficulties that affected (his) adjustment".

***Evidence Presented at the Hearing***

The Appellant explained that he had attended training provided by a social services agency between July 24, 2017 and August 4, 2017, following which he was immediately hired on to the First Job. He referred to several pay stubs from the First Job and provided a verbal account of the hours he had worked during each pay period as follows:

| | |
|---|---|
| August 8 - 11, 2018 (first partial pay period) | 38 hours |
| August 12 - 26 | 79 hours |
| August 26 - September 9 | 51 hours |
| September 9 - 23 | 55 hours |
| September 23 - 30 (last partial pay period) | 24.5 hours |

In addition, the Appellant explained that between October 2 and October 5 he had reported to work at 6:00 AM on 4 consecutive days and was sent home without work each time due to the poor weather. He also went to the First Job assembly point on October 12 and was told there was no work available. He explained that on one occasion he was told to leave his car at the assembly point and was driven to the

work site, which was some distance away. At the end of the workday he was told to find his own way back to his car, that he got lost trying to return to his car by public transit, and didn't get home till 9:30 pm that evening.

The Appellant stated that it was several kilometres from his home to the First Job assembly point, and that he had abandoned the First Job because he was having to drive that distance only to find that there was no work available. He said that he is very interested in working and always takes advantage of training opportunities to make it easier for him to find work.

The Appellant explained that he took additional training after leaving the First Job and was contacted by the EPBC contractor in early December 2017 and told that there was another job available starting on December 15, 2017. He stated that he was told by his EPBC counsellor that the owner of the company offering the Second Job was not originally from a particular country, but he later found out that in fact the owner was from that country and that the other employees of the company were from the Appellant's previous home country in the same geographic region. He said that he was not comfortable working with people from those two countries because he had come to Canada to be safe and was not comfortable working with anyone who came from his previous home country.

The Appellant also stated that he had had a conversation with an interpreter from a social services agency at the time who spoke his language but in a different dialect and that, although it was difficult to communicate with the interpreter because of the different dialect, the Appellant understood the interpreter to say that the Appellant would likely be "punished" by the Ministry for not taking the Second Job.

The Ministry relied on the Reconsideration Decision and explained that the prescribed penalty of a $100 deduction in the amount of IA for each of two consecutive months was considered a "benefit under appeal" and as such had not yet been applied, and would only be applied in the event that the Appellant lost his appeal. The Ministry also pointed out that the ROE included the code for the reason for issuing the ROE was "Code E" which is used when an employee quits or initiates the separation from employment.

The Ministry also confirmed that the prescribed penalty had been applied both because the Ministry had found that the Appellant had voluntarily left employment without just cause and because he had failed to accept suitable employment.

***Admissibility of Additional Information***

Section 22(4) of the EAA provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the Ministry when the decision being appealed was made and "oral and written testimony in support of the information and records" before the Ministry when the decision being appealed was made, i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of a panel established under section 24 of the EAA, which is to determine whether the Ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. Therefore panels are limited to determining if the Ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The Panel considered the information provided in the NOA to be argument and the verbal information regarding the social agency training and the detailed information regarding hours worked on the First Job and the Appellant's reasons for not taking the Second Job to be evidence is support of information that the Ministry had at reconsideration.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry's Reconsideration Decision finding the Appellant's family unit was required to have its IA reduced by $100 per month for two calendar months as the Appellant voluntarily left his employment without just cause and failed to accept suitable employment, pursuant to EAA Section 13 and EAR Section 29, was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the Appellant.

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 … the applicant or recipient has

(i) failed to accept suitable employment, (or)

(ii) voluntarily left employment without just cause …

(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 …

## 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, (and)

(ii) the date the default occurred…

(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: …

(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; …

(d) sole applicants or sole recipients who are providing care to a child in care 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 …

(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],

(v) persons who have persistent multiple barriers to employment, or

(vi) persons who have reached 65 years of age

* * * *

***The Panel's Decision***

The Ministry's position is that the Appellant's family unit is required to serve a 2 month sanction resulting in a reduction in IA benefits in the amount of $100 per month because the Appellant had voluntarily left employment without just cause and because he had failed to accept suitable employment.

Section 13 of the EAA states that a family unit of an income assistance recipient who has dependent children is subject to a reduction by the prescribed amount for the prescribed period if the recipient has failed to accept suitable employment or voluntarily left employment without just cause.
Despite the small amount of work available under the First Job in the days leading up to the date that the Appellant stopped working there, the Panel notes that the appeal record shows that there was no evidence presented to the Ministry to indicate that the employer had initiated a layoff of employees or provided notice of either a permanent or temporary ceasing of operations due to a shortage of work. The ROE indicates that the Appellant initiated the separation from employment and, although the Appellant was frustrated by reporting for work and being sent home, he did not leave the First Job for another employment opportunity. As the Appellant had not been dismissed for cause or laid off from the First Job when he made the decision to cease to report to work, the Panel finds that the Ministry reasonably determined that the Appellant voluntarily left employment without just cause pursuant to section 13(1)(a)(ii) of the EAA.

Regarding the Ministry's determination that the Appellant failed to accept suitable employment, the Panel notes that the Appellant's argument is that the Second Job was not suitable due to the fact that the company owner and other workers were originally from two particular countries. Despite the Appellant's argument that he came to Canada for a better life and to feel safe and that he did not want to deal with anybody or anything that reminds him of the past, no evidence was presented to the Ministry by the Appellant to indicate that the people with whom he would have to work presented a danger to his safety or that he was not technically qualified for the Second Job. Therefore, the Panel finds that the Ministry reasonably concluded that there was no evidence that the Second Job was not suitable employment for

the Appellant. As a result, the Panel finds that the Ministry reasonably determined that, the Appellant had failed to accept suitable employment pursuant to section 13(1)(a)(i) of the EAA.

Where a recipient has failed to accept suitable employment or voluntarily left employment without just cause under section 13(1) of the EAA, section 13(2) of the EAA states that the IA provided to or for a family unit including dependent children must be reduced by the prescribed amount for the prescribed period. Section 29 of the EAR defines the prescribed amount to be $100 and the prescribed period to be 2 calendar months starting from the date the default occurred, except for IA recipients who meet certain conditions prescribed in section 29(4) of the EAR. As there is no evidence that any of the conditions prescribed in section 29(4) of the EAR apply in this instance, the Panel finds that the Ministry reasonably determined that the IA provided to the Appellant's family unit must be reduced by $100 for 2 calendar months.

Therefore the Ministry's decision is confirmed and the Appellant is not successful in his appeal.