



Citation: *TM v Canada Employment Insurance Commission*, 2025 SST 90

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: T. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (0) dated October 29, 2024
(issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Teleconference

Hearing date: January 6, 2025

Hearing participant: Appellant

Decision date: January 31, 2025

File number: GE-24-3675

Decision

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

[2] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant had just cause because he had no reasonable alternative to leaving. This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant was working part-time at a grocery store. He was working night shift stocking shelves. He was also working a full-time job during the day.

[4] He decided to quit his part-time job because he was exhausted from working night shifts and then having to go to his day job. He also wasn't getting very many hours at work, which made it hard for him to rely on this job as a source of income. Most importantly, though, he felt his supervisor was discriminating against him at work because of his religion and country of origin. He had to put up with discriminatory comments from other workers, as well. It affected his mental health and retriggered his past trauma as a survivor of the war in Syria.

[5] The Appellant was laid off from his full-time job around the same time. He applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving his part-time job. It decided that he voluntarily left (or chose to quit) his job without just cause, so he couldn't be paid benefits.

[6] I have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[7] The Commission says that, instead of leaving when he did, the Appellant could have tried to remedy the situation by discussing the issue with his employer.

[8] The Appellant disagrees and says that he had no choice but to leave his job because of the impact it was having on his mental health.

Matter I have to consider first

The Appellant's appeal was returned from the Appeal Division

[9] The Appellant first appealed the Commission's decision that he voluntarily left his job without just cause to the Tribunal's General Division in August 2024. The General Division dismissed his appeal.

[10] The Appellant appealed this decision to the Tribunal's Appeal Division. The Appeal Division agreed with the Appellant that the General Division member hadn't given due consideration to his circumstances. Specifically, that the Member hadn't properly considered whether he had been subject to discrimination at work.

[11] The Appeal Division ordered the appeal to be returned to the General Division for a new hearing on this issue alone. This decision is a result of that hearing.

Issue

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

[13] To answer this, I must first address the Appellant's voluntary leaving. I then have to decide whether the Appellant had just cause for leaving.

Analysis

The parties agree that the Appellant voluntarily left

[14] I accept that the Appellant voluntarily left his job. The Appellant agrees that he quit as of March 30, 2024. I see no evidence to contradict this.

The parties don't agree that the Appellant had just cause

[15] The parties don't agree that the Appellant had just cause for voluntarily leaving his job when he did.

[16] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ Having a good reason for leaving a job isn't enough to prove just cause.

[17] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.²

[18] It is up to the Appellant to prove that he had just cause. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his only reasonable option was to quit.³

[19] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I have to look at.⁴

[20] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to leaving at that time.⁵

The circumstances that existed when the Appellant quit

[21] The Appellant says that one of the circumstances set out in the law applies. Specifically, he says that he was subject to discrimination based on his religion and national origin.⁶ He says other circumstances also applied. Namely, that the job didn't provide enough hours for him to rely on as a source of income, and that he found himself exhausted working nights.

¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

⁴ See section 29(c) of the Act.

⁵ See section 29(c) of the Act.

⁶ See section 29(c)(iii) of the Act. This considers whether a claimant had no reasonable alternative to leave their job having regard to all circumstances, including discrimination on a prohibited ground of discrimination with the meaning of the *Canadian Human Rights Act*. Prohibited grounds of discrimination are set out in section 3(1) of the *Canadian Human Rights Act* as: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Did the Appellant experience discrimination on a prohibited ground?

[22] Yes. I find the Appellant experienced discrimination in the workplace because of his national origin. The remarks his coworkers made were discriminatory and created a hostile working environment for the Appellant.

[23] The Appellant worked night shift stocking shelves at a grocery store. He said the employer treated him unfairly compared to other employees in several ways.

[24] Firstly, the employer assigned him more work than other employees. He said that other employees would be stocking one aisle or two aisles with light items, like potato chips. But he was told to restock two aisles full of heavier items, like bottles of water.

[25] Secondly, the manager made religious remarks that made the Appellant uncomfortable. The Appellant said that the manager spoke to him about his own religion. The manager would make comments about how the Appellant should convert to the manager's religion. The Appellant didn't want to talk about religion. He said this made the working environment highly uncomfortable.

[26] Thirdly, his co-workers made comments about his English skills. They told him that his English wasn't very good. He said they also told him that he should return to his country. He said this created a hostile work environment. He didn't feel safe or comfortable.

[27] Fourth, he felt the Human Resources (HR) representative treated him disrespectfully when she threw his resignation letter on the floor. The Appellant said he gave the HR representative his resignation letter while she was putting bread on one of the trolleys. He didn't know whether she dropped the letter on purpose or if it was an accident, but he felt it was very disrespectful.

[28] I acknowledge the Appellant felt he was being treated unfairly at work. He said that he was consistently assigned more work than his colleagues, including having to restock heavier items in the aisles than other workers. However, he hasn't produced

any evidence to show that this was because the employer was discriminating against him due to his religion, national origin, or any other protected class.

[29] I understand that the unequal assignment of work may have raised the Appellant's suspicion that he was being targeted; however, I cannot conclude that the employer's actions were discrimination.

[30] There are several reasons why the employer might have assigned the Appellant different tasks than his co-workers. The Appellant may have been more productive than, which could explain why he was given two aisles to manage instead of one. It's also possible some of his co-workers were unable to lift heavy objects, like bottles of water, or had other medical accommodations. Without further evidence, it's impossible to conclude the employer's work assignments were discriminatory.

[31] In the same vein, the Appellant felt disrespected by the HR representative throwing his resignation letter on the floor. But, he acknowledged that the HR representative was in the middle of a task when he gave her the letter and that he did not know whether her action was accidental or on purpose. From the information I have, it's not possible to determine that the HR representative was acting in a discriminatory way.

[32] Furthermore, I accept that the Appellant felt uncomfortable with the manager's talk about religion. It's reasonable that he didn't want to discuss religion at work. But, the manager discussing religion with the Appellant isn't a discriminatory act in itself.

[33] However, the comments made by the Appellant's co-workers are different. Remarks about the Appellant's lack of English skills and suggesting he should return to his country are clearly discriminatory. These comments serve no other purpose than to make the Appellant feel like an outsider in his workplace.

[34] Comments like these can certainly contribute to a hostile work environment for the Appellant. Such remarks not only undermine his sense of belonging but also create a toxic atmosphere that he says affected him mentally and emotionally.

The Appellant had no reasonable alternative

[35] I must now look at whether the Appellant had no reasonable alternative to leaving his job when he did.

[36] The Appellant says that he had no reasonable alternative because of the discrimination and hostile working environment.

[37] The Appellant stated the discrimination had a particularly severe impact on him because he is a survivor of the war in Syria. He moved to Canada to escape the conflict, but the trauma left him deeply affected, and he continues to struggle with its mental and emotional repercussions. When his co-workers made discriminatory remarks, he shut down, fearing further targeting.

[38] Additionally, the Appellant mentioned that he was facing financial difficulties at home, which strained his domestic relationship. These personal issues made it impossible for him to cope with the stressful and hostile work environment. So, he had no reasonable alternative to leaving his job.

[39] The Commission disagrees and says that the Appellant could have tried to resolve his issues at work by discussing his concerns with the employer. It also noted that the Appellant had contacted the employer several months after resigning, attempting to regain his job. According to the Commission, this indicates that the working environment was not so intolerable that the Appellant had to quit.

[40] The courts have said that in most cases, it's reasonable for a claimant to make efforts to find another job before deciding to quit. It's also expected that a claimant should take all reasonable actions to resolve workplace issues before making the unilateral decision to leave.⁷

[41] The Appellant said that he had been looking for other work all along. This job didn't offer enough hours for him to rely on it as a source of income. He was working a full-time job at the same time, but needed the extra money to help him pay down debt.

⁷ See *Canada (Attorney General) v White*, 2011 FCA 190.

He had been searching for another job to replace this one for months but was unable to find anything.

[42] However, the Appellant did not discuss his concerns with his employer before resigning. He admitted that he was too afraid to address these issues, fearing the discrimination might escalate. He acknowledges that this fear may have been influenced by his mental and emotional state, but says he felt scared and powerless.

[43] I find that attempting to resolve these issues with the employer wasn't a reasonable option for the Appellant at the time. Even though this would have been a reasonable thing to do in normal circumstances, I believe the Appellant experienced deeply traumatic incidents that impaired his ability to take such steps.

[44] He gave open and credible testimony that he felt threatened and unsafe because of his co-workers' remarks. In past decisions, the Tribunal has described the impact of events like this as a psychological injury.⁸ I find it credible the Appellant was psychologically injured by the discriminatory comments and hostile working environment. I believe him when he said that his mental health deteriorated throughout his employment.

[45] The Appellant acknowledged at the hearing that he had tried to return to this job several months after quitting. He explained that he was in severe financial distress, unable to afford basic living expenses. He said he was desperate and was willing to return to this job just to survive.

[46] Given the financial stress he was under, I don't consider his willingness to return to this job as an indication that he had reasonable alternatives to leaving. It's understandable that someone might take a job, or stay in a job, because of fear of the financial consequences of leaving. However, this does not negate their just cause for quitting.

⁸ See *JA v Canada Employment Insurance Commission and X*, 2021 SST 160.

[47] When I consider all of the Appellant's circumstances, I find that he had no reasonable alternatives to leaving his job when he did. This means the Appellant had just cause to voluntarily leave his job.

Conclusion

[48] I find that the Appellant isn't disqualified from receiving benefits.

[49] This means that the appeal is allowed.

Catherine Shaw

Member, General Division – Employment Insurance Section