

Citation: *Catch The Fire Toronto. v. Canada Employment Insurance Commission, 2015*

SSTGDEI 134

Date: Le 6 août 2015

File number: GE-15-445

GENERAL DIVISION - Employment Insurance Section

Between:

Catch the Fire Toronto

Appellant

and

Canada Employment Insurance Commission

Respondent

and

L. G.

Added Party

Decision by: Eleni Palantzas, Member, General Division - Employment Insurance

Section Heard In person on July 6, 2015, Toronto, Ontario

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, Catch the Fire (Employer), was represented at the hearing by Ms. L. M., Human Resources Manager, and Ms. M. G., Director of Finance and was the Claimant's direct supervisor, acted as a witness for the Employer.

The Added Party (Claimant), Ms. L. G. also attended in person.

INTRODUCTION

[1] The Claimant made an initial claim for regular benefits on May 26, 2014 after having left her employment on April 30, 2014. On July 9, 2014, the Canada Employment Insurance Commission (Commission) determined that the Claimant voluntarily left her employment with just cause and allowed her claim. On August 1, 2014, the Employer submitted a request for reconsideration however; on October 2, 2014, the Commission maintained its decision.

[2] On January 12, 2015, the Employer appealed late to the General Division of the Social Security Tribunal (Tribunal). The Member allowed for an extension of time to appeal (GD5).

[3] The Member added the Claimant as a party to this appeal since she has a direct interest in this appeal. Her benefits may be affected by the outcome and since this is a case of voluntary leaving, the circumstances and reasons for the Claimant leaving are important for the adjudication of the appeal (GD6).

[4] An in-person hearing was held given the complexity of the appeal and the conflicting information provided, where the credibility of the parties may be a prevailing issue.

ISSUE

[5] Whether the Claimant should be disqualified from receiving any benefits because she voluntarily left her employment without just cause pursuant to section 29 and 30 of the *Employment Insurance Act* (EI Act).

THE LAW

- [6] Section 29 of the EI Act stipulates that for the purposes of sections 30 and 33,
- (a) “employment” refers to any employment of the claimant within their qualifying period or their benefit period;
 - (b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;
 - (b.1) voluntarily leaving an employment includes
 - (i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,
 - (ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and
 - (iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and
 - (c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:
 - (i) sexual or other harassment,
 - (ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,
 - (iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act,
 - (iv) working conditions that constitute a danger to health or safety,

- (v) obligation to care for a child or a member of the immediate family,
- (vi) reasonable assurance of another employment in the immediate future,
- (vii) significant modification of terms and conditions respecting wages or salary,
- (viii) excessive overtime work or refusal to pay for overtime work,
- (ix) significant changes in work duties,
- (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
- (xi)) practices of an employer that are contrary to law,
- (xii)) discrimination with regard to employment because of membership in an association, organization or union of workers,
- (xiii)) undue pressure by an employer on the claimant to leave their employment, and
- (xiv) any other reasonable circumstances that are prescribed.

[7] Subsection 30(1) of the EI Act stipulates that a claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

- (a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or
- (b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

[8] Subsection 30(2) of the EI Act stipulates that the disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

EVIDENCE

[9] The Claimant left her employment with Catch the Fire on April 30, 2014 and subsequently applied for employment insurance regular benefits on May 26, 2014. She indicated in her application that she left because of excessive overtime due to an increased

workload. Although she received a slight raise because she assumed additional duties, the work could not be completed during normal work hours. She expressed her concerns to her supervisor over a period of six months however only temporary help was provided. She was being increasingly stressed and her family was being affected. She discussed her concerns with the Executive Officer and only temporary assistance was provided with the help of an intern. Prior to leaving, she started applying for other jobs with set employment hours (GD3-3 to GD3-16).

[10] On July 9, 2014, the Commission advised the parties that the Claimant was approved for benefits having determined that she left her employment with just cause because she had no reasonable alternative given the circumstances (GD3-19).

[11] On August 1, 2014, the Employer requested that the Commission reconsider its decision and made further submissions because they believed that the Claimant misrepresented the facts of the situation (GD3-21 to GD3-48).

[12] On October 2, 2014, upon further investigation and consideration of the submissions, the Commission maintained its decision to allow benefits (GD3-54 and GD3-57).

Evidence from the Employer

[13] The Employer denies that the Claimant had a heavy workload and she did not tell anyone about feeling overwhelmed. The Employer was happy with the Claimant's performance. The Claimant submitted her resignation without explanation. The Claimant was capable of doing the additional duties that she willingly agreed to take on in February 2013 and August, 2013 and accepted the commensurate raises (GD3-25 to GD3-41). The Employer advised the Commission that the Claimant was offered reasonable alternatives to quitting including (a) on April 7, 2014, offering to restructure her position to 3 days/week and retain her benefits and they would hire a part-time employee for the other two days (GD3-45), and (b) to take a month off to deal with family issues and (c) an intern was brought in to assist the Finance Department in February 2014 because the Claimant worked overtime March and April which she banked to use at a later date. The Employer provided a timeline of events (GD3-22 to GD3-

24) and supporting documentation. The Employer stated to the Commission that they never received a medical note from the Claimant (GD3-17, GD3-22 to GD3- 49, GD3-53).

[14] On April 1, 2014, the Claimant submitted her resignation effective April 30, 2014 without providing reasons (GD3-42). In her exit interview, she stated that she was leaving to pursue other opportunities (GD3-23, GD3-42 to GD3-45).

[15] To the Tribunal, the Employer submitted documentation to show that at no time did the Claimant advise them that she needed to be accommodated due to a disability and/or health reasons due to overtime (GD2-13 to GD2-19); the Claimant was capable of doing the additional duties that she willingly agreed to take on in February and August, 2013 and accepted the commensurate raises (GD2-56 to GD2-58); the Claimant accommodated her requests for time off due to family obligations (GD2-21to GD2-34) and vacation requests (GD2-36 to GD2-39); the Claimant tracked the overtime she worked and was compensated in lieu time from April 2012 to October 2013 (GD2-25,GD2-45 to GD2-55); offered reasonable alternatives to quitting including, time off, reduced work days and assistance from an intern; the Claimant was willing to work a reduced work week in the past from January 2012 to May 2012 (GD2-41 to GD2-44).

[16] The Employer provided examples of 12 internal job postings from May 2013 to March 2014 for various positions (GD9- 4 to GD9-33) and a notice of garnishment wages the Employer received on the Claimant's last day of work (GD9-35 to GD9-41).

Employer testimony at the hearing

[17] Ms. L. M. stated that there was not excessive overtime so there is no resultant stress, thus the medical documentation is irrelevant and brings into question the Claimant's statements. If the doctor recommended she stopped working 8 months prior as she states (GD2-12), that would be August of 2014, why then did the Claimant accepted additional responsibilities at that time (GD3-38). The doctor does not support her statements but recommended she stop working in April and, the Claimant had already submitted her resignation (GD3-42) to the Employer on April 1, 2014.

[18] Ms. L. M. stated that the evidence they provided showing that the Claimant took time off in 2012, banked lieu time, and worked a reduced work week in 2013 because the Claimant

had indicated to the Commission that she (GD3-6, GD3-7 and GD3-18) worked 20 hours/week of overtime for 24 months, therefore that evidence is relevant as it shows that she did not.

[19] The OPSD letter is relevant because it too shows the inaccuracy of the Claimant's statements regarding her employment (GD9-2).

[20] Ms. L. M. stated that there are no working conditions in her job description that constitute a danger to her health and safety (GD3-46 to GD3-48 and GD4-5).

[21] Ms. L. M. stated that she was only off sick for 2 days, although they provide 10 paid sick days. Ms. L. M. testified that she reviewed the Claimant's file and there was no mention of health issues from 2011 to the previous supervisor.

[22] Ms. L. M. stated that the employer's position is that the Claimant's was consistent in her position that her reason for leaving was nothing but excessive overtime (GD3-7 and GD3-18). The Claimant does not state anywhere that the stressors are due to workload as the Commission contends (GD11).

[23] Ms. L. M. stated that there was no excessive overtime and that any overtime was seasonal, and on a short-term basis (GD3-7 and GD2-53). The Claimant received time in lieu (GD2-49 to GD2-53). Any voluntary overtime that is not authorized is a personal choice.

[24] Ms. L. M. testified that the evidence (GD2-49 to GD2-53) confirms that the Claimant tracked lieu time from October 2012 to January 2013 (11 weeks) and there was no overtime during those 11 weeks. Then, in January 2013, she worked a total of 16 hours and February she took all that time in lieu (GD3-52). Then, in 2013 the audit was in June (instead of March/April) so the extra time the Claimant worked that month (equal to one day), she took in lieu on June 2, 2013 (GD3-53). This is the only overtime documented since June 2013 but they would only get busy again during the next audit.

[25] Ms. L. M. testified that restructuring started October 2012, when 2 of the 5 people that the Claimant mentioned took their duties to another new department. A 3rd person Risk Manager (GD3-39) never had any accounting responsibilities so those tasks went to other

departments. The Claimant did not take on the functions of 5 other people as she contended in her application.

Witness/Supervisor Testimony

[26] Ms. M. G. testified that the Claimant never discussed medical reasons for leaving.

[27] Ms. M. G. testified that her own work hours were 7:30 to 6:30 and she did not witness the Claimant working overtime. The Claimant left at 3:30 pm every day and she can provide proof from the security pad when the Claimant left every day. As of October 2012, due to new work efficiencies, no overtime was required. The only time there was overtime, was from January to April annually in order to get ready for the audit and that was 15 hours of overtime/month (not weekly).

[28] Ms. M. G. testified that the Executive Director (Mr. S.) and the Claimant met monthly to discuss efficiently/streamline processes/policies, overtime was not discussed/mentioned or how it affected the Claimant personally (example is the December 4, 2013 meeting topics, GD3-41).

[29] Ms. M. G. testified that the Claimant was insistent in August 2013, that they let another employee go and that she could perform the extra duties at a 25% pay increase. As time went on, it was apparent that we had to streamline more and so they met with the Executive Director monthly. They were very accommodating to her personal needs and she was a valued employee; there was never any pressure for the work to get done immediately.

Regarding alternatives offered by the employer ...

[30] Ms. L. M. stated that the Claimant was offered to restructure her job to a full-time, 3-day work week or to take a month off, but the Claimant declined both offers.

[31] Ms. L. M. stated that the Claimant could have applied to any of the 12 job postings posted within a year of her leaving, 6 of which are full-time administrative jobs that did not require specific certifications/requirements (GD9-4 to GD9-21). These show that if the Claimant just wanted a change and wanted to remain employed with the Employer, other jobs were available.

[32] Ms. M. G. testified that because the Claimant was valued, they discussed hiring another person again since it was not working out for her, they offered her reduced hours and going part-time, a leave of absence to think about it, restructuring her position to accommodate her needs; at no time did she ask to apply to other positions in the organization. Ms. M. G. stated that they have accommodated employees with health/disabilities in the past and would have gladly accommodated the Claimant had they known that she was having difficulty due to stress. At no time was that requested.

Evidence from the Claimant

[33] To the Commission, the Claimant stated that she has been discussing the workload with the Employer since November 2013. Regarding the employer's statements, the Claimant stated to the Commission (a) The employer did not offer part-time work while she retained her benefits and had they done so that would have been wonderful. She stated that even if they had offered, there's no way that the work could be done as there was no one to complete the work plus, all the work had to be completed in less time. (b) Temporary help was provided from February 2014 from an intern which helped however; when she found out that the intern was going on holidays on April 15, 2014, she submitted her resignation (April 1, 2014) because she could not continue to work like that. She was advised by the Employer that she was not going to have any further assistance after the intern leaves in August. (c) The Employer offered that she take an unpaid leave however; she declined because the employer was not listening as they kept having meetings, plus, she would just come back to the same situation at work. Regarding the overtime, the Claimant stated to the Commission that in October 2013, the employer changed the policy and only authorized overtime could be used toward lieu time. The Claimant stated that she would not submit for overtime since it was not asked of her officially. Further, she stated that she could not physically handle the stress of the long hours on a continuous basis any more. The Claimant advised the Commission that she had been under her doctor's care and that her doctor told her to find another job about 8 months before she actually left. She now agrees that she has no other option. The Commission advised the Claimant to submit medical documentation (GD3-18, GD3-50 and GD3-51)

[34] On October 1, 2014, the Claimant's doctor stated in a letter that "Ms. L. G. is a longstanding patient of mine. In April of this year, 2014, L. G. came to me about her health due to the stress at work. I recommended that she stop working." (GD3-52).

The Claimant's testimony at the hearing

[35] The Claimant testified that the reason she left the Employer was the excessive overtime she had to do in order to perform the duties she was given. When she was hired in July 2011 she had a specific role and duties, 40 hours/week but by June/August of 2012, her duties changed and the time required to complete those duties changed. The roles were changing and that did not let up; it was consistent (not seasonal) right up until the time she left in April 2014. Her days were getting longer (going in early and staying late) that's when the overtime was excessive. It affected her family obligations by having to reschedule personal appointments. She made a decision to leave because the job was no longer fitting into her life and it was time for her to move on.

[36] The Claimant was clear to state that at no time did she ask to be given somebody else's job or to take on extra duties but as result of the restructuring, she was allocated some of the duties that were left in the department (referred to GD3-22). Her duties did not decrease but the opposite happened: her duties and pay increased, but so did the hours required to do the job also increased without extra compensation. The Claimant stated "That was the one and only reason for leaving". There was no indication that the situation was going to change any time soon so she had to make a decision to continue to work as she had for the past 3 years or find something else. Had the hours, pay and duties stayed the same she would not leave.

[37] By August 2013, the Finance department had gone from 7 to 2 staff members (herself and Ms. M. G.). When she agreed to take on more tasks/duties, she made it very clear in a meeting with the Executive Director (Mr. S.) and Ms. M. G. that she was already doing overtime, that there had to be more changes and more help had to be provided to that department. She was willing to take on the new tasks as long as she did not have to put in more time. They agreed to meet monthly, review her position every 3 months, and they agreed to take on an additional employee. Nothing was put in writing/signed at that time.

[38] The Claimant testified that she was not paid for the overtime. As a salaried employee she was required to put in the extra time so she never questioned it and never asked. In 2011 and 2012 she logged her time and took the time off but after to 2012 she took time as needed. She was paid her regular 37.5 hours/week and there was no agreement to pay extra for overtime. She does not feel that the time she took in lieu made up for/offset the overtime she had worked and, she had to still make up the work.

[39] Regarding her health, the Claimant stated that she was spending all her time at work and missing her appointments. When she made the decision to leave, she went to see her doctor because she was asked by the Commission to provide evidence that her doctor was in agreement with her decision and that the job she was doing was affecting her health. She wasn't resting and eating properly because she was not taking breaks and was getting home late. The Claimant testified that she is capable of functioning and performing her daily duties however, she had to leave before she became ill/incapacitated. The Claimant stated that no other medical notes were provided to Ms. M. G. however; in 2011 the previous Director was aware of her health situation. The Claimant stated that she did not have any special requirements nor were any accommodations required on her job except to take time to go to doctor's appointment. Just prior to leaving, she did not discuss any accommodation with her employer. Her hours of work were 7:30 to 3:30 so that she could fulfill her familial and medical appointments however, the problem arose when she was given work at 3:30 and she had to stay.

Regarding alternatives offered by the employer ...

[40] The Claimant testified that discussions with Ms. M. G. and Mr. S. started in August 2013 and continued consistently where she clarified that she had issues regarding the type or work and the hours required to do the work. In March 2014 just prior to handing in her resignation and during the entire month of April 2014, she had discussions with Mr. S. . On April 1, 2014, she was asked by Mr. S. whether she wanted to work part-time hours but she declined because the duties could not be done during at full-time hours so reducing the hours would not help. The Claimant confirmed that in the middle of April, Mr. S. offered that she take a 6 month sick leave (unpaid but on sick benefits), to deal with her family matters and then come back. The Claimant state that she declined, stating "No Brian, I am not sick. My health is

still good ...if I leave now; I am able to find other employment that fits in with my lifestyle". Her understanding was that she would not be able to look for other work while claiming she is sick. She wanted to be able to look for other work. Further, she would be coming back to the same situation and that work was too much for her; it was not a solution.

[41] The Claimant stated that the job posting provided are not relevant to her given her 20 years of experience and training in finance so she would not have applied to them. She presently is holding a finance position as of February 2015 (started training in September 2014).

SUBMISSIONS

[42] The Employer submitted that:

- a) the Claimant's only stated reason for leaving was because of excessive overtime; their evidence shows that any overtime performed was temporary/seasonal; the Claimant tracked the overtime that she worked and was compensated in lieu time;
- b) at no time did the Claimant advise them that she needed to be accommodated due to a disability or the effects of overtime on her health; she only took two days off for personal illness in 3 years;
- c) the Claimant was capable of doing the additional duties that she willingly agreed to take on in February and August, 2013 and accepted the commensurate raises;
- d) offered reasonable alternatives to quitting including, time off, sick leave, reduced work days and assistance from an intern; there were also several internal job posting to which could have applied.

[43] The Commission submitted that:

- a) the Claimant left her employment because she was overwhelmed and stressed due to additional duties and overtime; her reasons are supported by the Employer's documentation that in March and August 2013 the Claimant was assigned additional duties and responsibilities; and by the Employer's extensive documentation allowing her requests for medical, personal and vacation time;

- b) the employer's documentation regarding banked hours prior to January 2013 are not relevant to the additional duties provided to the Claimant thereafter;
- c) paragraph 29(c)(iv) of the EI Act provides that just cause is shown when "working conditions that constitute a danger to health or safety" and in the case at hand, the Claimant provided credible statements supported by medical documentation recommending that she leave her employment; she produced the medical when asked by the Commission and was not obligated to provide medical proof to the employer to substantiate why she was leaving her employment;
- d) the Claimant's reasons for leaving due to family and employment stressors are supported by medical documentation that advised the Claimant to leave her employment; the Commission does not have the authority to question the validity of the medical documentation or the opinion of the medical professional (GD11).

[44] The Claimant submitted that:

- a) she left because of excessive overtime due to an increased workload that could not be completed during normal work hours; she expressed her concerns to her supervisor and Executive Officer over a period of six months however only temporary help was provided by an intern; prior to leaving, she started applying for other jobs with set employment hours;
- b) she stated that she could not physically handle the stress of the long hours on a continuous basis anymore; her doctor recommended that she leave her employment;
- c) working at reduced hours was not an option because there was no one else to complete the work plus, all the work would have to be completed in less time;
- d) taking an unpaid leave was not an option because she would just come back to the same situation at work;
- e) help from the intern was only temporary from February to August; she was not going to have any further assistance after the intern leaves;

- f) she declined taking 6 months off on sick leave benefits because she was not incapacitated; she would not be able to actively seek other employment if she was claiming she was sick.
- g) the job postings to which the Employer was referring were not relevant to her 20 years of experience in finance and therefore, were not positions to which she would apply.

ANALYSIS

[45] Sections 29 and 30 of the EI Act stipulate that a claimant who voluntarily leaves his/her employment is disqualified from receiving any benefits unless he/she can establish 'just cause' for leaving.

[46] The Member recognizes that it has been a well-established principle that just cause exists where, having regard to all the circumstances, the Claimant was left with no reasonable alternative to leaving pursuant to subsection 29(c) of the EI Act (Patel A-274-09; Bell A-450-95; Landry A-1210-92; Astronomo A-141-97; Tanguay A-1458-84).

[47] The Member first considered that it is incumbent of the Commission to show that the Claimant left her employment voluntarily. In this case, it is undisputed evidence that the Claimant left her employment on April 30, 2014 after submitting her resignation to her employer on April 1, 2014 (GD3-16 and GD3-42).

[48] The onus of proof then shifts to the Claimant to show that she left her employment for just cause (Green 2012 FCA 313; White A-381-10; Patel A-274-09).

[49] The Member first considered the circumstances referred to in subsection 29(c) of the EI Act and whether any existed at the time the Claimant took leave from her employment on April 30, 2014. According to case law, these circumstances must be assessed as of that time (Lamonde A-566-04).

[50] In this case, the Claimant was clear to state that the reason she left her employment was the excessive overtime she had to do in order to perform the duties required of her. When she

was hired in July 2011 she had a specific role and duties, 40 hours/week but by June/August of 2012, her duties changed and the time required to complete those duties changed so that by the time she left the overtime was excessive. She testified that although her duties and pay increased, so did the hours required to do the job without extra compensation stating “That was the one and only reason for leaving”. To the Commission (GD3-51) and at the hearing, the Claimant also stated that having to work the overtime was affecting her health and her doctor had recommended that she find another job.

[51] Given the Claimant’s comments regarding the changes in her role/duties, the Member first considered whether the Claimant left her employment with just cause because of significant changes in work duties pursuant to paragraph 29(c)(ix) of the EI Act. The Member notes however, that (a) the Claimant did not leave her employment because of the duties themselves being changed, but the time required to complete those duties and (b) the duties themselves were changed and agreed upon in February and August of 2013 and consideration must be given to the circumstances at the time that the Claimant left her employment. The Claimant did not quit her job at that time. The Member finds therefore, that the circumstances referred to paragraph 29(c)(ix) of the EI Act do not pertain to this case.

[52] Next, although the Claimant stated that her one and only reason for leaving was the excessive overtime, she did also state that working so many hours, affected her health. The Member therefore considered whether the Claimant had just cause for leaving her employment because of both, (1) the excessive overtime work and the Employer’s refusal to pay for overtime work pursuant to paragraph 29(c)(viii) of the EI Act and (2) whether the working conditions constituted a danger to her health or safety pursuant to paragraph 29(c)(iv) of the EI Act. Further, regarding both concerns, the Member notes that in order for the Claimant to show just cause for leaving her employment according to subsection 29(c) of the EI Act, she must not only show that the circumstance(s) existed, she must show that she had no reasonable alternative but to leave.

Overtime

[53] In the first instance regarding overtime worked, the Employer submitted that the Claimant did not have a heavy workload, she was capable of performing her duties, and they

were happy with her performance. As a result, there was no excessive overtime performed. When there was overtime, it was temporary during the audit season (typically, March/April annually), it was not excessive, and the Claimant was compensated with time in lieu. The Employer supported its position with the provision of documentary evidence that shows that the Claimant did not work 20 hours of overtime/week for 24 months as she contends, because during past audits, she submitted requests for time in lieu that equated to approximately a day of overtime; the Claimant did not document any overtime since June 2013 (GD2-49 to GD2-55). The Employer's witness (the Claimant's direct supervisor) provided testimony that she did not witness the Claimant working overtime. She offered to provide proof from their security pad that logs when the Claimant left every day. She testified that no overtime was required since October 2012 except during the annual audit period from January to April. The Claimant worked 15 hour of overtime/month, not 15 hours/week during this time. The witness also testified that during the monthly meetings with the Executive Director, neither overtime or how it affected the Claimant personally was discussed, and she referred to a documented meeting (GD3-41).

[54] On the contrary, the Claimant testified at the hearing that in order to complete the duties required of her, she had to do excessive overtime and it was consistent, not seasonal as the Employer contends. In the three years, that she had been employed with the Employer, her role, duties and pay increased, and so did the hours required to do the job without extra compensation. As a salaried employee, she expected to work extra hours, but she was never paid for the overtime. The Claimant does not feel that the time in lieu made up for/offset the overtime she had worked plus, she still had to do the work. The Claimant stated to the Commission that since October 2013, when only authorized overtime could be claimed in lieu time, she did not submit for overtime since she did not ask for it officially (GD3-50).

[55] The Member noted that the Commission did not make a determination as to whether the Claimant was in fact, performing excessive overtime and/or whether she was paid for the overtime pursuant to paragraph 29(c)(viii) of the EI Act. The Commission argued that the Claimant demonstrated just cause for leaving her employment for health reasons caused by the additional duties and overtime performed by the Claimant (see below).

[56] The Member considered that although the Employer and the Claimant hold opposing positions, they were both adamant and consistent in those positions. The Member therefore found them equally credible. The Member however, placed more weight on the Employer's position that was supported by documentary evidence and witness testimony, than on the unsupported position of the Claimant. The Member understands and recognizes that the Claimant performed overtime work during her tenure with the Employer; however, she has not provided any evidence to support her testimony or to rebut the Employer's evidence. The Member finds therefore, that the Claimant was not required to do excessive overtime and she was compensated for any overtime worked through the provision of time in lieu.

Medical/Health Reasons

[57] Secondly, the Member considered the Commission's position that according to paragraph 29(c)(iv) of the EI Act, the Claimant had just cause for leaving her employment because she demonstrated that her working conditions constituted a danger to health or safety. It submitted that the Claimant provided credible statements supported by medical documentation recommending that she leave her employment (GD3-52). Further, it noted that the Claimant produced the medical documentation when asked by the Commission and was not obligated to provide medical proof to the Employer to substantiate why she was leaving her employment. In response to the Employer's submissions, the Commission indicated that it does not have the authority to question the validity of the medical documentation or the opinion of the medical professional (GD11).

[58] The Member agrees with the Commission that the validity of the medical documentation and the opinion of the medical professional should not be questioned. Further, although the Claimant may not be obligated to provide medical proof to the Employer to substantiate why she was leaving, she does have to meet the criteria set out in case law to demonstrate just cause for leaving her employment for health reasons.

[59] The Member considered that it has been well established case law that claimants who submit that they had just cause for leaving their employment as a result of health issues must (a) provide medical evidence to substantiate their claim by indicating that the claimant is unwell and that he or she was obligated to leave work due to the medical condition (b) demonstrate that

he or she had attempted to reach an agreement with the employer to accommodate the health concerns and (c) prove that he or she attempted to find alternative employment prior to leaving (CUB 80905).

[60] The Member considered that the medical documentation indicates that the Claimant's doctor recommended that she stop work due to stress in April 2014 (GD3-52). The Member also noted that the Claimant testified that she was capable of functioning and performing her daily duties however, she had to leave before she became unwell and/or incapacitated. The Member finds that the medical documentation supports the Claimant's position that she was overwhelmed and stressed, and that she had to leave her employment. The Member further finds that it is undisputed evidence that the Claimant attempted to find alternative employment prior to leaving as per the third criteria. The Member finds however, that the Claimant did not demonstrate she had attempted to reach an agreement with the Employer in order to accommodate her health concerns. The Claimant testified that she did not provide any medical documentation to her Employer. She stated that she did not require any accommodations at work other than to take time for doctor's appointments. The Employer representatives, on the other hand, testified that they would have accommodated the Claimant's needs. She however, never discussed medical reasons for leaving and had only taken 2 sick days off (GD2-13 to GD2-19).

[61] The Member therefore finds that the Claimant, by not discussing or attempting to reach an agreement with the Employer to accommodate the health concerns, did not meet the three criteria established in case law, and thus, did not demonstrate just cause for leaving her employment for health reasons.

Alternatives

[62] Further the Member notes that in order for the Claimant to show just cause for leaving her employment pursuant to subsection 29(c) of the EI Act, she must show that she had no reasonable alternative to leaving. In this case, the Claimant had several alternatives/suggestions offered by the Employer, including (1) restructuring her position so that she worked a reduced 3-day work week with full benefits (2) taking a one month leave (3) taking a 6-month sick leave

(4) having the assistance of an intern until August 2014 and (5) applying to other internal positions.

[63] Initially, to the Commission, the Claimant stated that it would have been wonderful if the Employer had offered her reduced hours and full benefits (GD3-50). At the hearing however, she testified that on the day that she submitted her resignation, the Executive Director offered her to stay part-time however; she did not think that the work could be done on a full-time basis so reducing her hours wouldn't help. The Member noted however, that the Employer would have hired somebody else for the other 2 days (GD3-45). Whether the work could/would be done in the allotted time/days would be the concern of management and not the Claimant especially if she was working part-time. Plus, the Claimant was willing to work a reduced work week in the past (GD2-41 to GD2-44), so she could have attempted to do the same again. Further, the Claimant testified that she declined taking a sick leave (on sick benefits) because she was not incapacitated and wanted to look for other work. The Member notes however, that given her medical documentation, this was a possible option until she was fit to look for other work or return with the employer under negotiated accommodation. The Member acknowledges the Claimant's explanation that even taking a one-month leave, or having the assistance of an intern would have resulted in only temporary solutions, and she would just come back to the same situation. The Member finds however that although some alternatives were going to be of a temporary nature, they would have provided the Claimant the opportunity to remain employed while she considered her options and/or employment with another employer. Alternatively, since the Employer had submitted that there was no pressure for work to be done immediately, the Claimant could have remained employed and worked only the expected regular hours/week. She could have also obtained prior authorization for any overtime she wanted to do, and for which she would be officially compensated in lieu time. Finally, although the Member agrees with the Claimant that the job postings put forth by the Employer were not suitable to her experience and background, she had several other alternatives offered while she remained in her own position.

[64] The Member finds therefore that, having regard to all the circumstances, and considering all the evidence provided by the parties, the Claimant had reasonable alternatives to leaving her employment.

[65] The Member therefore finds that the Claimant did not meet the onus placed upon her to demonstrate that she had just cause for voluntarily leaving her employment on April 30, 2014 and therefore is disqualified from any benefits pursuant to sections 29 and 30 of the EI Act.

CONCLUSION

[66] The appeal is allowed.

Eleni Palantzas
Member, General Division - Employment Insurance Section