



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. B. v Canada Employment Insurance Commission*, 2019 SST 739

Tribunal File Number: GE-19-2161

BETWEEN:

C. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christopher Pike

DATE OF DECISION: July 17, 2019

DECISION

[1] The Appellant, C. B., is the Claimant in this appeal. Her appeal is allowed. The result is that the Claimant qualifies for benefits because she has proven that she had just cause for choosing to leave her employment. These reasons explain why.

OVERVIEW

[2] The Claimant worked as a teacher. She is a member of a First Nation. She sustained injuries in a motor vehicle collision in November 2017. She developed stress and anxiety after her injury. These conditions worsened and she developed depression after her sister passed away suddenly in March 2018.

[3] The Claimant resigned from her employment to take a healing journey in the tradition of her First Nation. The Canada Employment Insurance Commission (which I call the Commission in this decision) determined that she had not shown just cause for choosing to resign from her employment. The Commission upheld its decision on reconsideration. The Claimant appealed to the Tribunal.

PRELIMINARY MATTERS

[4] The Tribunal may conduct hearings through written questions and answers.¹ The Claimant asked that the Tribunal conduct her hearing in this manner. We included a series of questions for the Claimant to answer in the Notice of Hearing issued to her on June 7, 2019. We sent the Notice of Hearing to the Claimant by Xpresspost to the address she gave in her Notice of Appeal. Canada Post's records show that the Notice of Hearing was delivered to the Claimant on June 25, 2019.

[5] We asked the Claimant to answer the questions in her Notice of Hearing by June 27, 2019. Considering that her deadline to respond was only two days after Canada Post delivered the Notice of Hearing, we attempted to contact the Claimant to offer her extra time to give her

¹ Section 21(a) of the *Social Security Tribunal Regulations* gives the Tribunal this authority. These regulations and the *Employment Insurance Act* set the legal requirements to make a claim and to appeal the Commission's decisions in relation to them as established by Parliament. I refer to other provisions of this legislation in this decision.

answers. We tried to contact her by telephone on July 3 and July 4, 2019, but she did not answer these calls.

[6] If a claimant does not attend their hearing, I may make a decision in their absence if I am satisfied that they received notice of the hearing.² The Canada Post records I mentioned above show that the Claimant received the Notice of Hearing on June 25, 2019, so I find that the Claimant received notice of her hearing.

[7] For the foregoing reasons, I have made my decision about the Claimant's appeal in her absence as allowed under the *Social Security Tribunal Regulations*.

ISSUES

[8] I have to decide if the Claimant had just cause under the *Employment Insurance Act* to leave her employment. I have to consider:

- a) whether the Claimant voluntarily left her employment,
- b) and if so, whether the circumstances relating to the Claimant's decision to start her healing journey show just cause voluntarily leaving her employment.

ANALYSIS

[9] Employment insurance pays benefits to individuals involuntarily separated from employment and who are without work.³ The Commission disqualifies a claimant from receiving benefits if they cannot show that they had just cause for choosing to leave their employment.⁴

[10] The Commission has to prove that the Claimant had the choice to stay in her job but chose to leave. If I find that the Commission has met this obligation, the Claimant must then prove that she had just cause for leaving.⁵

² Section 12(1) of the *Social Security Tribunal Regulations* allow the Tribunal to proceed.

³ *Canadian Pacific Ltd. v. Attorney General of Canada*, [1986] 1 S.C.R. 678 explains this principle. The law requires me to apply the principles set by courts. I refer to other cases that explain the *Employment Insurance Act* and related legislation in this decision.

⁴ Section 30(1) of the *Employment Insurance Act* sets out this principle.

⁵ *Canada (Attorney General) v Peace*, 2004 FCA 56 explains that if a claimant chooses to leave their employment when they could have stayed, then they have voluntarily left their employment within the meaning of sections 29

The Claimant chose to leave her employment

[11] The Claimant stated in her Notice of Appeal that she resigned from her employment. She did not dispute that she chose to do so. I therefore find that the Claimant made a choice to voluntarily leave her employment as set out in the *Employment Insurance Act*.

The Claimant had just cause to leave her employment

[12] A claimant has just cause for choosing to leave their employment.⁶ The *Employment Insurance Act* lists circumstances for decision makers to consider when determining whether a claimant had just cause.⁷ The list is not closed, so I must weigh all of the circumstances to determine whether she has established just cause.⁸ What a claimant has to prove is that all of the circumstances, whether listed or not, show it is more probable than not that they had had no reasonable alternative to leaving their employment.⁹

[13] The Commission asserts that the Claimant had reasonable alternatives to explore taking a leave from her employment with her employer and to discuss her stress, anxiety, and depression issues with a doctor. The Claimant asserts that her actions show she exhausted all reasonable alternatives for quitting her employment.

[14] Decision makers include me and the Commission have to assess the reasonability of the alternatives available to the Claimant on an objective standard informed by the Claimant's subjective appreciation of her circumstances.¹⁰

[15] The Claimant sustained injuries in a motor vehicle collision in November 2017. Her injuries limited her mobility. Her doctor recommended that she take on light duties at work and avoid using stairs. Her employer accommodated her mobility limitations. After the collision, the Claimant found her 90-minute one-way commute to work stressful.

and 30 of the *Employment Insurance Act*. *Green v Canada (Attorney General)*, 2012 FCA 313 explains that the Commission must prove that a claimant voluntarily left their employment.

⁶ *Canada (Attorney General) v Imran*, 2008 FCA 17 explains this general requirement.

⁷ Section 29(c) of the *Employment Insurance Act* sets out the list.

⁸ *Canada (Attorney General) v Lessard*, 2002 FCA 469 discusses the requirement to consider all circumstances.

⁹ *Canada (Attorney General) v White*, 2011 FCA 190 says section 29(c) of the *Employment Insurance Act* requires claimants to prove just cause.

¹⁰ *Quadir v. Canada (Attorney General)*, 2018 FCA 21 establishes this test for assessing reasonableness.

[16] The Claimant also stated that after her sister died suddenly in March 2018 she became more anxious and developed depression. She chose not to ask a doctor to treat these conditions. Instead, she chose to treat them by asking elders to help her take a healing journey in the traditions of her First Nation. She told the Commission that a healing journey in her First Nation's tradition might take as much as a year to complete.

[17] The Claimant stated that she asked her union for advice on taking time off from her employment to take her healing journey. She was told that resigning was the best thing to do.

[18] The Claimant's employer told the Commission that the Claimant had the right to take sick leave and to claim long-term disability benefits. The Claimant stated she was not aware that her employer offered these benefits when the Commission discussed this alternative on with her on June 28, 2018.

[19] This evidence shows that the Claimant explored the alternatives which the Commission asserts were reasonably open her.

[20] The Claimant has to meet the objective standard of seeking treatment for her stress, anxiety, and depression issues. When a claimant is faced with two treatments to address a health issue, the Commission cannot assert that choosing one over the other is a failure to exhaust all reasonable alternatives.

[21] The Commission's assertion that the Claimant had the reasonable alternative of seeking advice from a doctor to address her discuss her stress, anxiety, and depression issues does not consider the therapeutic value of a healing journey in the First Nations tradition.

[22] In the Claimant's subjective appreciation of her circumstances, she chose a healing journey in the tradition of her First Nation to address her stress, anxiety, and depression issues. As between the two treatments available, I find that the healing journey was a reasonable choice to make. Accordingly, I find that the Claimant has exhausted the reasonable alternative of seeking treatment for her illnesses. The fact that she did not choose the path the Commission asserts she could have taken to address this issue does not mean she failed to exhaust all reasonable alternatives.

[23] The Claimant also has to meet the objective standard of considering any leave or income replacement benefits available from her employer.

[24] In the Claimant's subjective appreciation of her circumstances, she believed that her union could give her appropriate advice on her options to take leave and related matters. Her evidence shows that she consulted her union about the leave options available in her workplace before she started her healing journey. Her union told her that resigning was her best option.

[25] The evidence in the appeal file does not explain why the Claimant chose to speak to her union instead of speaking directly to her employer about the leave options, if any, she might have. As well, that evidence does not explain why her union believed that resigning was the Claimant's best option.

[26] However, the language used by the Claimant as recorded in the notes of her June 28, 2018 conversation with a Commission agent suggests that she and her union weighed the options available to her before she chose to resign. This shows that the Claimant discussed with her union the leave options which her employer could offer. As a result, I find that the Claimant exhausted the reasonable alternative of exploring the leave and income replacement benefits options available to her.

[27] Considering this evidence, I find it is more probable than not that the Claimant had no reasonable alternatives to leaving her employment when she did.

CONCLUSION

[28] The appeal is allowed.

Christopher Pike

Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	On the record
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