



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Q. G. v Canada Employment Insurance Commission*, 2019 SST 877

Tribunal File Number: GE-19-2211

BETWEEN:

Q. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: July 11, 2019

DATE OF DECISION: July 31, 2019

DECISION

[1] I am dismissing the appeal. I find that the Appellant (who I refer to as the Claimant) left her job voluntarily. I also find that she did not have just cause for leaving since she had reasonable alternatives. This means that she is disqualified from receiving employment insurance (EI) benefits.

OVERVIEW

[2] The Claimant left her employment as an accounts payable clerk and applied for regular EI benefits. The Commission looked at her reasons for leaving and decided that she left her employment voluntarily without just cause. As a result, it could not pay her benefits.

[3] The Claimant disagrees, arguing that the employer dismissed her when it posted a vacancy with her job description. She says the employer wanted to fire her for complaining that she had to wait six months to get on the benefit plan while others only had to wait three months. She had also complained about her increased workload under the new company ownership.

PRELIMINARY MATTERS

[4] After the hearing, on July 16, 2019, the Claimant made a further submission. I accepted this submission as relevant to her appeal and included it in my review of her circumstances.

ISSUE

[5] I must decide whether the Claimant left her job voluntarily, or whether her employer dismissed her. If I find that she left voluntarily, I then have to decide whether she had just cause.

ANALYSIS

[6] When you leave a job, you are not automatically entitled to EI benefits. The law says you are disqualified from receiving benefits if you leave voluntarily and did not have just cause.¹ Having a good reason for leaving is not enough to prove just cause.²

¹ This is set out at s 30 of the *Employment Insurance Act* (EI Act).

² *Attorney General of Canada v Laughland*, 2003 FCA 129.

[7] The Commission first has to prove that you left your job voluntarily. Then it is up to you to show you had just cause to leave. You can show just cause if, considering all the circumstances, you had no reasonable alternative to leaving when you did.³

Did the Claimant leave her job voluntarily or did her employer dismiss her?

[8] I find that the Claimant left her job voluntarily because she could have stayed employed.⁴ The legal test to determine whether you leave voluntarily is whether you had this choice.

[9] The Claimant argues that the company showed it was dismissing her by posting her job on the evening of March 7, 2019, after her conversation with her manager that afternoon. She thinks the job posting was the employer's answer to her complaints about having to wait six months to get on the benefit plan. She does not believe the employer was hiring someone to help her. She says she had no choice but to leave because the manager intended to replace her.

[10] There is no evidence that the employer dismissed her or planned to dismiss her. The job posting was not a dismissal notice. There is no evidence of prior disciplinary measures such as warning letters about poor performance. The Claimant testified that the manager was "arrogant" during their last meeting, but did not threaten to dismiss her. The manager told her she would take her concerns to the president and get back to her.

[11] I find that the Claimant was the one who ended her employment on March 8, 2019, by sending an email to the company's president and vice president (VP) announcing her resignation. She took this action even after an office manager assured her the same morning that the posted vacancy was not to replace her.

[12] The Claimant did not wait for a response from her direct manager to their discussions the previous afternoon. She had expected an immediate response, but then saw the job posting. She said she thought the president and VP would ask her to stay on when she emailed them with her resignation, but her strategy failed. They did not reply to her.

³ *Attorney General of Canada v White*, 2011 FCA 190.

⁴ *Attorney General of Canada v. Peace*, 2004 FCA 56.

[13] I find that the Claimant left her employment voluntarily. Her employer did not dismiss her on March 8, 2019. She pre-empted any possibility that the company might later dismiss her by resigning first.

Did the Claimant have just cause for voluntarily leaving her employment?

[14] No. I find that she did not have just cause because she had reasonable alternatives to leaving her job when she did. The law says you can show just cause if you had no reasonable alternatives to quitting considering all the circumstances.⁵ It is up to you to prove this.⁶

Why did the Claimant leave her job?

[15] Although the Claimant denied that she left her job voluntarily, I considered her submissions on why she left on March 8, 2019, to assess all her circumstances at the time.

[16] I find that having to wait to get on the company's benefit plan was the main reason behind her decision to quit once she saw the job posting. She told me that in spite of her increased workload, she would not have left if she had could have joined the plan right away. She feels that the employer treated her unfairly. Although she has no proof, she believes she was the only employee who had to wait six months. New employees got coverage after three months.

[17] The Claimant reported antagonism with her direct manager who was "arrogant" during their last meeting.⁷ She complained that she had a heavier workload than any other employee. This meant she had to work through her lunch break and do overtime.⁸ She also felt the manager was forcing her to leave.⁹ The legislation allows that such circumstances may show just cause for quitting a job, but you still have to show that you first tried all reasonable alternatives to leaving.

Did the Claimant have reasonable alternatives to leaving her job?

⁵ S 29(c) of the EI Act.

⁶ *Attorney General of Canada v White*, 2011 FCA 190

⁷ This situation is listed in s 29(c)(x) of the EI Act..

⁸ This situation is listed in s 29(c)(viii) of the EI Act.

⁹ This situation is listed in s 29(c)(iii) of the EI Act.

[18] Yes. She argues that she no choice but to quit once she saw the job posting, but I find that she had several reasonable alternatives to leaving when she did.

[19] I agree with the Commission's submissions that the Claimant could have waited for her manager to get back to her about the concerns she brought up on March 7, 2019. The Claimant expected a response that same day. She quit when she did not hear back and saw the job posting.

[20] The Claimant resigned even though the office manager had already told her that morning that the vacancy was not a measure to replace her, but a job posting for an extra person. The Claimant did not believe this. In her opinion, the department did not need any extra help. She later discovered the employer did not hire an extra person after she left. She argues that this proves the manager did post her job on March 7, 2019, because the company planned to replace her.

[21] I find that what the company might later have done in response to its operational needs at that time is not relevant to this appeal. I can only consider the circumstances in place when the Claimant decided to leave her job.

[22] I find that she took a risk when she quit based on her opinion that the job posting was the equivalent of a dismissal notice. Claimants have a responsibility not to risk unemployment.¹⁰ That is why protecting your job by staying employed is a reasonable alternative to quitting.¹¹

[23] Employees have to raise concerns with their employer before leaving to see if they can be resolved.¹² Raising concerns includes allowing a reasonable time for a response. I accept that the Claimant discussed her concerns with her manager. However, she did not wait for a response to their meeting on March 7, 2019.

[24] I find that the Claimant could have waited to verify her belief that the employer was replacing her, rather than quitting less than 24 hours after that final meeting. On the morning of

¹⁰ *Attorney General of Canada v Langlois*, 2008 FCA 18.

¹¹ *Attorney General of Canada v Murugaiah*, 2008 FCA 10.

¹² *Attorney General of Canada v. Hernandez*, 2007 FCA 320.

March 8, 2019, the office manager had tried to reassure her that the employer was not replacing her, but the Claimant quit anyway. Whatever she feared, the employer did not dismiss her.

[25] The Claimant could also have waited until she found another job as a reasonable alternative to quitting when she did. She knew she was dissatisfied with her job. She considered her workload too heavy after the company changed hands and she was upset about the benefit plan. She reported no new issue that compelled her to leave other than her shock at seeing the job posting. She said she looked for another position, but knew she did not have one when she quit.

[26] The Claimant reported that she felt desperate at the thought of staying in her job and was worried that she would get depressed. She thought the job was bad for her, but did not consult a doctor to get advice on whether she should leave. Getting medical advice would have been another reasonable alternative to quitting.

[27] She could also have asked for leave to deal with her shock and stress, and allow her time to consider her position. On the date she quit, she was only six weeks away from the end of her probation and her acceptance into the benefit plan.

[28] Since the Claimant had these reasonable alternatives to leaving her job, she did not have just cause to quit when she did. As a result, she cannot receive benefits.

CONCLUSION

[29] I find that the Claimant is disqualified from receiving benefits. This means that the appeal is dismissed.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	July 11, 2019
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METHOD OF PROCEEDING:	In person
APPEARANCES:	Q. G., Appellant