



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. D. v Canada Employment Insurance Commission*, 2019 SST 1065

Tribunal File Number: GE-19-2939

BETWEEN:

M. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: September 5, 2019

DATE OF DECISION: September 11, 2019

DECISION

[1] I am allowing the appeal. The Commission has not proven that the Claimant quit her job.

OVERVIEW

[2] The Claimant stopped working for her employer in August 2018. She returned to work with the same employer in January 2019. After a few months, the employer laid her off. The Claimant applied for employment insurance benefits. The Canada Employment Insurance Commission (Commission) decided that the Claimant had quit her job in August without just cause. The Commission disqualified the Claimant from receiving benefits because she had not worked enough hours after quitting to qualify again for benefits. The Claimant asked the Commission to review its decision. The Commission did not change its decision. The Claimant appealed to the Tribunal.

[3] I am allowing the appeal. The Commission has not proven that the Claimant quit her job in August 2018. The Claimant and her employer say that she took a leave of absence. The Claimant returned to work for the same employer. The evidence demonstrates, on a balance of probabilities, that the Claimant took a leave of absence.

ISSUE

[4] Issue 1 – Did the Claimant quit her job?

ANALYSIS

Issue 1: Did the Claimant quit her job?

[5] The Commission has not proven that the Claimant quit her job.

[6] Sometimes it is not clear whether a claimant has quit their job or stopped working for some other reason. To make a decision about whether the claimant quit, I must consider a very simple question: did they have the choice to stay or to leave the job? If they had a choice, and

they chose to leave the job, then the claimant has quit their job. The *Employment Insurance Act* calls this “voluntary leaving.”¹

[7] The Commission has to prove that the claimant quit their job.²

[8] The Claimant stopped working for her employer on August 21, 2018. On the Record of Employment (ROE), the employer said that she stopped working because she quit. The employer told the Commission that the Claimant spoke to them about resigning for health reasons. The employer suggested that the Claimant take a leave of absence instead. In an email to the Claimant, the employer said that they changed her resignation to a leave of absence.

[9] The Claimant told the Commission that she told the employer that she wanted to resign. However, she also said that the employer told the other employees that she was on a leave of absence. At the hearing, she said that her doctor told her that she should take time off work. She spoke to the employer and they agreed to hold her job for her until she recovered.

[10] There is inconsistent information about whether the Claimant quit her job or took a leave of absence. The employer and the Claimant have said different things to the Commission. However, the Claimant returned to work for the same employer on January 2, 2019. She provided copies of email exchanges with her employer from December 2018. In these emails, she and her employer discuss details about her return to work.

[11] It is important that the Claimant returned to work for her employer in January 2019. It is important that she stayed in contact with her employer while she was off work. This evidence demonstrates that the Claimant stopped working due to a leave of absence. This evidence does not suggest that the Claimant quit her job.

[12] The Claimant argues that she did not quit her job. She argues that she took a leave of absence. She is credible because she returned to work with the same employer.

¹ In *Canada (Attorney General) v. Peace*, 2004 FCA 56, the Federal Court of Appeal says that a claimant has voluntarily left their job if they have a choice and they choose to leave.

² The Federal Court of Appeal says this at paragraph 49 of its decision *Green v. Canada (Attorney General)*, 2012 FCA 313.

[13] Because of the Claimant's statements, and because she really did return to work with her employer, I believe that the Claimant was on a leave of absence. The Commission has not proven that the Claimant quit her job.

CONCLUSION

[14] I am allowing the appeal. The Commission has not proven that the Claimant quit her job.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	September 5, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	M. D., Appellant