



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. R. v Canada Employment Insurance Commission*, 2019 SST 1314

Tribunal File Number: GE-19-3246

BETWEEN:

T. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: October 10, 2019

DATE OF DECISION: October 11, 2019

DECISION

[1] The appeal is allowed. The Claimant has shown just cause because she had no reasonable alternatives to leaving her job when she did. This means she is not disqualified from receiving benefits.

OVERVIEW

[2] The Claimant left her job as an accountant at a small company and applied for employment insurance (EI) benefits. She says she left because of harassment from a co-worker. The Commission looked at the Claimant's reasons for leaving and decided that she voluntarily left her employment without just cause, so it was unable to pay her benefits.

[3] I must decide whether the Claimant voluntarily left her job and if so, whether she has proven that she had no reasonable alternatives to leaving her job. The Commission says that the Claimant chose to quit her job and she could have either requested a leave of absence, or discussed her concerns with the Health and Safety representative or a medical professional, or secured other work before leaving. The Claimant disagrees. She says she was being harassed by a co-worker and had no choice but to leave. She says she had no reasonable alternatives to leaving because she had tried to resolve the problem with her employer on multiple occasions without success. She says she had to leave because her health was being negatively impacted and she could no longer tolerate the situation.

[4] I find that the Claimant was being harassed by a co-worker and having regard to all the circumstances, she had no reasonable alternative to leaving.

ISSUES

[5] I must decide whether the Claimant is disqualified from being paid benefits because she voluntarily left her job without just cause. To do this, I must first decide whether the Claimant voluntarily left her job. If she did, I then have to decide whether the Claimant had just cause for leaving.

ANALYSIS

The Claimant disputes that she voluntarily left her job

[6] The law says the test for determining whether a person voluntarily left their employment is whether they had a choice to stay or leave.¹ The Commission must prove that it is more likely than not that the Claimant voluntarily left her employment.²

[7] The Record of Employment (ROE) from the employer dated May 31, 2019 notes the Claimant's first day of work was November 5, 2018 and her last day paid was May 31, 2019. The reason for issuance of the ROE is noted as "quit".³

[8] The Claimant told the Commission that she gave her two-week notice of resignation on May 17, 2019. She said she was handed her final pay and told that she was done by the employer on May 21, 2019.⁴

[9] The Claimant acknowledges in her testimony that she quit her job but says it was not "voluntary". She says that she gave her employer a two-week notice, knowing the employer would then ask her to leave before that two weeks was up, which the employer did. The employer walked her out the next workday after she gave her resignation. The Claimant says she quit because she felt she had no choice. She testified that her health was such that she could no longer tolerate working with this employer due to the harassment by one particular employee.

[10] I find that the Claimant voluntarily left her employment. I understand the Claimant felt she could no longer tolerate the work environment. However, she still made a choice to leave her employment. The Claimant's action in submitting her resignation initiated the separation from employment. There is no evidence that the employer initiated the separation or that the Claimant's employment would not have continued, absent her providing her employer with her resignation.

¹ *Attorney General of Canada v. Peace* 2004 FCA 56.

² *Attorney General of Canada v. White*, 2011 FCA 190.

³ GD3-25.

⁴ GD3-28.

The parties dispute that the Claimant had just cause for voluntarily leaving

[11] The parties do not agree that the Claimant had just cause for voluntarily leaving her job when she did.

[12] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.⁵ Having a good reason for leaving a job is not enough to prove just cause.

[13] The law says that you have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.⁶ It is up to the Claimant to prove this.⁷ The Claimant has to show that it is more likely than not that she had no reasonable alternatives but to leave when she did. When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant quit.

[14] The Claimant says that she left her employment because of harassment from another employee and that she had no reasonable alternatives to leaving. She says she had tried on multiple occasions to have the other employee's behaviour dealt with but nothing was done. She also tried to find other work before quitting but was not successful. The Claimant says she was experiencing health problems due to the work environment and could no longer tolerate the situation so had to leave.

[15] The owner of the employer told the Commission that they have a Health and Safety person and policies concerning harassment, which are made available to the employees and are kept in a common location. The owner confirmed that if an employee had an issue with another employee, the employer has a formal way to file complaints and the Claimant did not file any complaints. The owner confirmed that a leave of absence would have been possible with a

⁵ This is set out at s 30 of the *Employment Insurance Act*.

⁶ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

⁷ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

doctor's note but that was not requested. The owner confirmed that a transfer would not have been possible for the Claimant because she worked at the only location.

[16] The Claimant's testimony was that a co-worker was harassing her. She testified that she was hired to work as a senior accountant in the accounting department of a small company. There were about 13 people in her department. The Claimant explained that almost everyone in the company was related to each other or friends with each other. With the exception of a few people, the owner and all the employees belonged to one cultural group and they often socialized together outside of work. The Claimant related that usually people were only hired if they were known already by others working there.

[17] The Claimant testified that the owner of the company hired her and the owner was her supervisor. She was not provided with a job description. The owner asked the financial controller of the company to train her. The Claimant explained that the controller bullied her. The Claimant related that the controller could be nice one minute but then the next minute would scream at her and tell her she was "stupid". The Claimant said she was told she was "stupid" at least once a week to a week and a half. The Claimant advised this sometimes occurred in front of other people but sometimes in private when they were alone in an office. The Claimant explained she was not the only employee who was subject to this behaviour. The controller would say these things on almost a daily basis to someone. The Claimant testified that everyone was afraid of this employee. The Claimant said that she had to interact with this individual every day, a few times each day.

[18] The Claimant testified that in addition to calling her "stupid", if she did something wrong, the controller would be told she "had no right to do that" and ask her "why did you do that" and tell her "it was wrong". The controller would then complain that she had to fix the problem, which she had no time to do as she was working 14 hours a day. The Claimant said that, however, if she the controller a question – the controller would tell her that "I don't know" and "what makes you think I know anything". The Claimant said no matter what avenue she took, she could not get the answers she needed to do the work the way the controller wanted it to be done. As such, she had to make assumptions and then that got her into trouble. The Claimant said that this person was not her direct supervisor but wanted to control everything.

[19] The Claimant explained she had trouble getting work to do because of this employee's desire to control everything and her lack of trust of anyone to do anything. The Claimant said her main task was to do the partners' reporting. However, this was done only once a month and only took three days. The Claimant went to the owner about not getting work from the controller. The owner then sent an email to the controller setting out the Claimant's tasks. However, the Claimant testified, this did not solve the problem because when the Claimant would go to do her work, the controller had already done it or if the Claimant did the work, the controller would then redo it.

[20] The Claimant explained, as well, she would be confronted by the controller when going home. Her hours were 9 a.m. to 5 p.m. and she was usually in early. When it was time to leave, the Claimant would have to walk by the controller's office. The controller would question her why she was leaving at 5 p.m. The Claimant would explain it was because she had no work and the controller would then start telling her that she had to be there until 10 p.m. The Claimant said that it got to the point where she would wait until the controller was in the washroom or got called somewhere so she could sneak out.

[21] The Claimant said that in March or April 2019 she addressed the situation directly with controller. She told her that she did not need to yell at her and call her "stupid". The individual just "huffed" about it and walked away. However, her behaviour did not change. The Claimant said this individual did not think she was doing anything wrong.

[22] The Claimant testified that she talked to the Human Resources person in January 2019 and several other times after that asking if something could be done about the controller's behaviour. The Human Resources person even witnessed one of the controller's rants at which time the Claimant told the Human Resources person that this was what she was talking about and asked what can we do about this. On that occasion, the Claimant had asked a co-worker to help her scan something. The controller started yelling, "What, you can't make a machine work. What's your problem? You don't know how to use it." The Claimant said the Human Resources person would kind of agree with the Claimant's concerns but then do nothing about it. The Claimant explained that the Health and Safety representative was the Human Resource's person's husband. She was aware of him but she was not aware there was a complaint process.

The Claimant testified that she did not file an official complaint against the controller with the Health and Safety representative as she thought nothing would have been done as a result of the complaint and it just would have made things even worse for the Claimant. She said everyone working there either were friends or related. There was no one impartial there she could have gone to.

[23] The Claimant said before she left, the owner gave her a performance review that was unsatisfactory. The owner told the Claimant that she had missed deadlines. The Claimant asked the owner for specifics as the only task she had with a deadline was the partners' reports, which were never late. The owner said she could not give her specifics, as she did not know what they were. The Claimant explained that this was part of the reason for leaving but not a big part. The Claimant said she did not want to work at a place where she was being blamed for things she did not do.

[24] The Claimant said that she did not ask the owner for help with the controller's behaviour as the owner and the controller had been friends for 40 to 50 years. She said the owner once told her to change a number on an accounting document and when the Claimant told her that she could not back up the number the owner wanted her to put in, the owner said "I can lie to you straight faced and not feel bad about it." The Claimant thought that the owner would only provide lip service to a complaint about the controller.

[25] The Claimant testified that the final straw was on May 16, 2019 when the Claimant was researching an excel formula for work on the internet. The controller saw her and accused her of not doing any work and surfing the internet. The Claimant says the controller was screaming and yelling at her, saying that she works 14 hours a day and the Claimant does nothing and leaves at 5 o'clock. The Claimant said she realized she could no longer tolerate this employment further. No matter what she did, it was not right.

[26] The Claimant testified that she felt like she was in a corner and she just could not do it anymore. She was shaking when she had to go to work. She was going to the bathroom every 10 minutes. Her blood pressure went through the roof. She had developed sores on her head. She said her brain kept telling her to keep working because she needed a paycheque but her body told her she could not keep doing this, putting up with the belittling and harassment. She was

constantly walking on eggshells at work. The Claimant says that she did not even think about going to the doctor about these issues. She knew what the cause of her health problems were and she knew what she needed to do to make it stop. She said she knew the only way this was going to stop was if she did not have to go to this job anymore. The Claimant related that she did not think of a leave of absence. However, she said either a sick leave or a leave of absence would not have fixed her problem because she would have had to return to this environment.

[27] The Claimant explained that she gave two weeks' notice, as this was required in her contract. However, even though she gave two weeks' notice, she knew the employer would walk her out and she would not have to work the two weeks because they did not want her there. The Claimant says that is in fact what happened. She gave her notice on a Friday. The Monday was a holiday. On the Tuesday morning, she went in and did not even get to take her coat off. The controller gave her pay and told her that her services were no longer needed and gave her the final pay. She was then walked out. The Claimant said that she wished the controller luck in finding someone who could work with her. The controller said, "It was not me. It was you."

[28] The Claimant related that almost immediately after getting this job, she had started looking for another job. She went to a temporary agency and had a few interviews. However, she was unable to find work. The Claimant said she only stayed at the job as long as she did because she had to pay her bills but it got to the point where it was either her life or her bills. She thought if she did not have a life, she would not have any bills. She explained she felt like she was in a corner and being attacked with no way to escape. She just could not keep going back anymore.

[29] The Commission says that the Claimant did not have just cause, because she had reasonable alternatives to leaving when she did. Reasonable alternatives to leaving would have been for the Claimant to have requested a leave of absence, discussed the situation with the Health and Safety person, or discussed the situation with her supervisor or a medical professional. The Commission submits further that the Claimant has not been demonstrated that the situation was so intolerable that alternate employment could not have been secured prior to leaving employment. The Commission says that, while it is evident that the Claimant was going through a difficult situation, the two weeks' notice supports the fact that there was no urgent

need to leave her employment. The Commission also says that the controller's yelling was not directed to only one person in particular, as other employees also did not want to approach her.

Circumstance of Leaving

[30] I find that the circumstances in which the Claimant left her employment was that she was being harassed by the controller.

[31] "Harassment" is a circumstance which may amount to a Claimant having just cause for leaving employment, provided there is no reasonable alternative to leaving, having regard to all the circumstances.⁸

[32] There is no definition of "harassment" in the legislation. In a recent decision from the Appeal Division of this Tribunal, after considering definitions of "harassment" found in other contexts, the Appeal Division determined the following principles to be appropriate for consideration in deciding whether there is "harassment": a) harassers can act alone or with others and do not have to be in supervisory or managerial positions; b) harassment can take many forms, including actions, conduct, comments, intimidation, and threats; c) in some cases, a single incident will be enough to constitute harassment; and d) there is a focus on the alleged harasser, and whether that person knew or should reasonably have known that their behaviour would cause offence, embarrassment, humiliation, or other psychological or physical injury to the other person.⁹ I will adopt the same approach to determining whether the Claimant was being harassed.

[33] The Claimant's testimony was that the controller called her stupid at least once a week to once a week and a half. Sometimes these comments were made publically and sometimes in private. Despite the fact the Claimant told the controller she did not need to yell at her or call her stupid, the behaviour continued. The controller screamed at the Claimant on May 16, 2019. The controller also made it difficult for Claimant to do her job by either failing to provide work or failing to provide the information necessary to do the work or by redoing the work the Claimant

⁸ Paragraph 29(c)(i) of the *Employment Insurance Act*.

⁹ AD-19-285.

had done. Further, the controller regularly confronted the Claimant when leaving at her usual work time.

[34] The owner of the employer told the Commission there was a policy in place and a Health and Safety person that the Claimant could have approached. However, there is no other information from the owner either corroborating or denying that she was aware of the Claimant's concerns about her co-worker.

[35] I found the Claimant's testimony to be credible. She was forthright and answered questions openly. Her testimony on the essential facts was consistent with the information she provided to the Commission regarding her reasons for leaving her employment. I accept the Claimant's tested evidence given under oath concerning her interactions with the controller. Her evidence is uncontradicted by the employer. In that regard, there is no evidence from the employer specifically denying that these events took place. There is only a statement that the Claimant did not file a formal complaint with the employer or contact the health and safety person.

[36] I find the controller's behaviour to amount to harassment of the Claimant. Even though the controller was not the Claimant's direct supervisor, the Claimant was required to interact with this employee on a daily basis and to a large extent this individual was in charge of her workload. The controller called the Claimant "stupid" routinely and sometimes publically. She also confronted her when going home to the extent the Claimant had to find opportunities when the controller was not in her office to avoid confrontation. The controller also yelled at the Claimant on other occasions, sometimes publicly as with the incident witnessed by the Human Resources person. I find the controller should reasonably have known that this behaviour would cause offence, embarrassment and humiliation, particularly when the Claimant told the controller that she did not need to yell at her or call her "stupid". I also find the controller's knowing interference with the Claimant's ability to do her job, amounts to harassing behaviour. In that regard, the controller interfered with the Claimant's job by withholding work, withholding instructions needed to do the work, by directly doing the Claimant's work and then redoing the Claimant's work if she had done it. The controller should reasonably should have known this

would cause offence, and humiliation to the Claimant, the implication being the Claimant's work was not of value.

[37] I do not agree with the Commission that the fact the controller's behaviour also occurred with other employees is relevant. Whether or not other employees faced the same situation, the facts are clear that the Claimant was a direct recipient of the controller's harassing behaviour.

[38] Even though I have found that the Claimant was being harassed, I still have to determine, whether having regard to all the circumstances, the Claimant has proven she had no reasonable alternative to leaving her employment.

Reasonable Alternatives

[39] I find that the Claimant had just cause for leaving her employment because, she has proven, having regard to all the circumstances, she had no reasonable alternative to leaving.

[40] The Claimant has an obligation to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job.¹⁰

[41] I find the Claimant satisfied this duty. She attempted to resolve this conflict directly with the controller in March or April 2019 when the Claimant told her that she did not need to yell at her or call her stupid. The Claimant also approached the Human Resources representative on three occasions about the controller. None of these attempts to resolve the matter was successful. The Claimant also had been seeking work soon after she began the job, registering with a temporary agency and even attending interviews.

[42] The Commission says it was a reasonable alternative for the Claimant to have spoken to the Health and Safety representative and filed a complaint. The Claimant says she had reported her concerns three times to the Human Resources representative and the Human Resources representative witnessed one incident but nothing was done. The Claimant was not advised by the Human Resources representative to file a complaint. She was aware of the Health and Safety officer but not of a formal complaint process. The Claimant says that a formal complaint would

¹⁰ *Canada (AG) v. White*, 2011 FCA 190.

not have fixed the situation and would have made it worse as there was no one impartial at this company. The Human Resources person was married to the Health and Safety representative and the owner had been friends with the controller for years. Most of the people in the company were related or friends with each other. I find that, given the Claimant's three attempts at resolution had failed, and given the owner was friends with the controller, the filing of a formal complaint was unlikely to have resulted in any resolution and more likely would have made things worse. For that reason, it was not a reasonable alternative for the Claimant.

[43] The Commission says a reasonable alternative available to the Claimant would have been to address her complaints with the owner. The Commission says the owner had tried to resolve the workload situation with the controller when the Claimant had come to her about that. The Claimant says the owner was friends with the controller for many years so this would not have resolved the problem. She says she thought the owner would have paid lip service only. The Claimant explained that the owner had told her in the past that she was willing to lie without feeling bad and the owner had given the Claimant a negative performance review without being able to substantiate the reasons, I find in this context that a complaint to the owner about the controller was unlikely to result in any resolution. For that reason, it was not a reasonable alternative.

[44] The Commission says that a reasonable alternative would have been for the Claimant to have discussed the situation with a medical professional or requested a leave of absence. The Claimant testified that she was shaking when going to work. She had developed sores on her head and her blood pressure was high. The Claimant says that she did not think about going to the doctor about these issues, as she knew what the cause was and she knew what she needed to do to make it stop. She explained that, in any event, going to the doctor and seeking a sick leave or leave of absence would not have solved the problem because she would have had to return to this environment, which she knew she could not do. While I agree that, in most cases, seeking medical help for health issues would be a reasonable alternative before leaving, in this particular case, I find it was not. A medically authorized leave would only have offered the Claimant

temporary relief. It was not a reasonable alternative for the Claimant, as it would have meant the Claimant having to return after the leave to the same harassing environment.

[45] The Commission says the Claimant had the reasonable alternative available of securing alternative work before quitting. The Commission say the fact the Claimant gave two weeks' notice supports the fact that there was no urgent need to leave her employment. The Claimant explained in her testimony that she gave two weeks notice knowing the employer would ask her to leave before the two weeks was up. With respect, the question is not whether there was an "urgent" need to leave employment but rather whether the Claimant had any reasonable alternative to leaving. I find it was not a reasonable alternative for the Claimant to have had to tolerate ongoing harassment for an indefinite period of time until she found new employment.

[46] The Claimant has shown she had just cause for leaving her employment. I find she has shown, having regard to all the circumstances, she had no reasonable alternative to leaving.

CONCLUSION

[47] The appeal is allowed.

Charlotte McQuade

Member, General Division - Employment Insurance Section

HEARD ON:	October 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	T. R., Appellant