



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. D. v Canada Employment Insurance Commission*, 2019 SST 1422

Tribunal File Number: GE-19-3344

BETWEEN:

R. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Suzanne Graves

HEARD ON: October 24, 2019

DATE OF DECISION: November 5, 2019

DECISION

[1] The appeal is dismissed. The Claimant has not shown just cause because she had reasonable alternatives to leaving her job when she did. This means she is disqualified from receiving benefits.

OVERVIEW

[2] The Claimant worked as a Personal Support Worker for a home care agency. She left her job on November 26, 2018, and applied for employment insurance (EI) benefits. 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 has proven that she had no reasonable alternatives to leaving her job. The Commission argues that the Claimant's work situation was not intolerable and she could have found another job before quitting. It says that a scheduled disciplinary meeting, although stressful, was not just cause for leaving. She could also have seen her doctor before resigning to get advice about the stress she experienced.

[4] The Claimant disagrees and says that she sent in a medical note proving that she had no alternative to leaving. The Claimant has appealed the Commission's decision to the Social Security Tribunal.

THE CLAIMANT DID NOT ATTEND THE HEARING

[5] The Claimant did not attend the hearing. A hearing is allowed to go ahead without the Claimant if the Claimant was given notice of the hearing.¹ I think that the Claimant received the notice of hearing because the courier reported that it delivered the notice to her on October 11, 2019. The Tribunal Registry Officer (RO) also left a voicemail message for the Claimant on October 18, 2019, reminding her of the hearing date and time. So, the hearing proceeded on the date that was scheduled, but without the Claimant.

¹ Section 12 of the *Social Security Tribunal Regulations*

[6] On October 25, 2019, the Claimant called the Tribunal to say that she missed the hearing because she mistook the date. The RO called the Claimant on October 31, 2019, to ask whether she wished to request an adjournment. The Claimant told the RO she did not want a new hearing date. So, I have proceeded to make a decision based on the information on the record.

ISSUE

[7] 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 address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

ANALYSIS

There is no dispute that the Claimant voluntarily left her job

[8] I accept that the Claimant voluntarily left her job. The Claimant agrees that she quit on November 26, 2018. I see no evidence to contradict this.

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

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

[10] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.² Having a good reason for leaving a job is not enough to prove just cause.

[11] 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.³ It is up to the Claimant to prove this.⁴ 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.

² This is set out at s 30 of the *Employment Insurance Act*. (EI Act).

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

⁴ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

[12] You may have just cause to leave your employment voluntarily if you are harassed⁵ or experience antagonism with a supervisor if you are not primarily responsible for the antagonism.⁶ Claimants are obliged, in most cases, to attempt to resolve workplace conflicts with an employer, or to show efforts to seek alternative employment before deciding to quit a job.⁷

[13] The Claimant says she left her job because her employer harassed her. Her supervisor called her on November 26, 2018, to say that she must punch in and out for work assignments in order to get paid. She says her employer was overcharging clients and not paying her. Her employer did not pay her travel time for almost a year.⁸ She had to “beg” for travel time and hours worked.⁹ She stated on her claim that she did not discuss the situation with anyone in higher authority than her boss, or with outside agencies.¹⁰ She was constantly searching for new employment before leaving.¹¹

[14] The Claimant told the Commission she tried to address the employer’s overbilling issues, but her employer told her that it was not her business. In her reconsideration request, she stated that she started medication due to the strain her employer put her through. The final incident was when her supervisor was rude to her in a phone call. When the Claimant complained about the supervisor’s behaviour, a human resources (HR) adviser harassed her. The HR representative asked the Claimant to attend a meeting to discuss her behaviour. She said that she declined the meeting and quit her job.

[15] The Claimant told the Commission that her mental health suffered in that work environment. Although her doctor did not tell her to resign, she “couldn’t take it anymore.”¹² She sent in a medical note dated July 26, 2019. The doctor recommended that the Claimant “change careers to one more suitable for her.”¹³ She says that the medical note shows that she had no reasonable alternative to leaving.

⁵ S 29(c)(i) of the EI Act.

⁶ S29(c)(x) of the EI Act.

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

⁸ GD3-13.

⁹ GD3-14.

¹⁰ GD3-13.

¹¹ GD3-14.

¹² GD3-31.

¹³ The Claimant’s medical note is at GD3-35.

[16] The Commission argues that the Claimant did not have just cause, because she had reasonable alternatives to leaving when she did. Specifically, it says that the Claimant could have chosen to stay in her position until she found a new job. Although a disciplinary meeting may be stressful, any antagonism with her supervisor was a direct result of the Claimant's actions. It therefore does not provide just cause for leaving. The Commission notes that the Claimant said that her doctor did not tell her to resign. The medical note was issued eight months after the Claimant quit, and only suggests that she change careers to one more suitable.

[17] I find that the Claimant had reasonable alternatives to quitting her job. If the workplace was stressful, she could have seen her doctor and asked for advice on whether to resign. The Claimant told the Commission she did not consult her doctor before deciding to quit. The Claimant's medical note, issued eight months after she left, does not prove that she had no alternative to quitting due to stress. It does not address her work situation at the time she quit, or advise her to immediately quit her position.

[18] I agree with the Commission's submission that an employee may feel stressed about attending a discipline meeting. However, an employer is entitled to ask its employee to a meeting to discuss performance issues. I find that the employer's behaviour, as described by the Claimant, does not rise to the level of harassment or antagonism. She could have attended the performance meeting and raised any concerns with the HR representative. Instead, she chose to quit her job before the scheduled meeting.

[19] If the Claimant felt her employer was not properly paying for her time, she could have contacted the Ministry of Labour for investigation and resolution. She could have tried to resolve workplace conflicts by speaking to management above the level of her supervisor. If she believed her employer was overbilling clients, she could also have brought this to the attention of management.

[20] Considering all of the circumstances, I find that the Claimant has not proved that she had no reasonable alternatives to leaving her job due to stress caused by workplace conditions, harassment, or antagonism with her supervisor.

[21] The Claimant has unfortunately not shown, on the balance of probabilities, that she had just cause for leaving her job.

CONCLUSION

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

Suzanne Graves
Member, General Division - Employment Insurance Section

HEARD ON:	October 24, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Neither party appeared at the hearing.