



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. K. v Canada Employment Insurance Commission*, 2019 SST 1439

Tribunal File Number: GE-19-3451

BETWEEN:

**C. K.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Teresa Jaenen

HEARD ON: November 1, 2019

DATE OF DECISION: November 6, 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 EI benefits.

## **OVERVIEW**

[2] The Claimant quit her job at X and filed for employment insurance (EI) benefits. She says she quit because she was being treated like a slave and one of the owners yelled at her. The Commission considered the reasons the Claimant gave for leaving. They decided they were unable to pay her benefits because she did not have just cause.

[3] The Commission says the Claimant could have discussed her issues with the owners and try to resolve them. Yet, the Claimant made a hasty decision to quit. Furthermore, the Commission says that the working environment was, not so intolerable, that she had to quit when she did. She could have continued working until she secured other employment.

[4] The Claimant disagrees and says that she could no longer accept the way she was being treated. And being yelled at by one of the owners. She says that the owners were a husband and wife team. She says she tried to talk to the husband but nothing changed. She says she called S. from the office of X to see what she should do about the situation. But she was only told to speak to the husband. She says that she knew nothing was going to change and she felt she had no choice but to leave.

## **ISSUE**

[5] I must decide whether the Claimant 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

[6] I accept that the Claimant voluntarily left her job. The Claimant agrees that she quit.

[7] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>1</sup> Having a good reason for leaving a job is not enough to prove just cause.

[8] 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.<sup>2</sup> It is up to the Claimant to prove this.<sup>3</sup> 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.

[9] The Claimant has raised her reasons why she left the employment. As there are, reasons that provide just cause to voluntary leave.<sup>4</sup> I will address this now.

**Antagonism with a supervisor if the claimant is not primarily responsible for the antagonism.<sup>5</sup>**

[10] The Claimant says that she loved her job and things were good when she first started. She says in December things started to change. She says that her employers were a husband and wife team. She said the wife started treating her like a slave and she was always finding fault in what she was doing.

[11] The Claimant says in several instances she felt she was not treated the same as her co-workers. She says that she tried to do her best to go above and beyond. She says there was an instance where the wife called her in the back to clean up a mess in the garbage can. She said there was another instance where the employer accused her of breaking a photo frame. She did not break it.

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<sup>1</sup> This is set out at s 30 of the *Employment Insurance Act*.

<sup>2</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

<sup>3</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

<sup>4</sup> Paragraph 29(c) of the *Employment Insurance Act*.

<sup>5</sup> Paragraph 29(c)(x) of the *Employment Insurance Act*.

[12] The Claimant says they were getting ready for the anniversary sale. She was waiting for the husband to show her something when his wife yelled at her to come to the front. She says she told the wife she would be there in a minute. The wife yelled again "C. K. come here" but this time in a higher voice. She says she looked at the husband who rolled his eyes and told her to go. She says when she went up to the front, the wife hands her flyers and tells her to fold them. She says that the wife walked away and left her to fold the flyers. She said this was upsetting and she did not feel it was right for the wife to yell at her a couple of times to fold flyers.

[13] The Claimant says the following week the wife drove up and told her to take the cake into the building. She said she told the wife she was on her break but she told her to take in the cake; it would only take a couple of minutes. She says she took the cake in. After the anniversary was over the wife told her to take around to different businesses in town. She says she wanted to make sure what businesses, so she asked for clarification. She says the wife responded that she had seven children and should be able to do this task.

[14] The Claimant says the final incident occurred after her employer told her to do the inventory. The husband told her she would have to have done by Friday or Monday at the latest. She said she was trying to get the inventory done and the wife came and told her to reprice the lamps, a certain way. She said she asked the wife why she could not do it and the wife yelled that she pays her salary. She says she asked the wife about teamwork and she yelled at her again saying she pays her. She says the husband became upset with her and said she had signed a contract.

[15] The Claimant says for the last five months she tried to deal with how she was being treated but she no longer could. The Claimant says that she loved her job and she tried to stick it out because jobs in her community were hard to come by. She says that she tried to talk to the husband several times and he said he would talk to his wife, but nothing changed. She says she even called a woman at X to see what she could do about the situation. But she was only told to speak to the husband, which she had done and so she knew that nothing was going to change.

[16] The Claimant says she was a cashier but she felt she went above and beyond her duties and she did her best at her job. She says there was no way to fix the situation and what could she do when her employer was a husband and wife team.

[17] The Claimant says that she contacted the Manitoba Labour Board. They told her they could not help her with how she was being treated. They could only help her if the employer refused to pay her. The Claimant says that she never looked for work prior because she was not expecting to leave so suddenly. She really was hoping that things would get better.

[18] The Commission spoke to the husband (employer). He says that the Claimant's allegations surprised him and they never treated her like a slave. He says that his wife liked her and they did not have personal issues with her.

[19] The husband says that the Claimant was to do inventory. They never told her there was a certain time to complete it. He says the final incident occurred when they found a broken photo album frame. He says they spoke to the Claimant about the broken frame and they reminded her to check items for damages. Because they only have so much time to report damages. He says the Claimant responded that she does her work and she did check it. She told them she goes above and beyond her job duties. He says he asked her how she does and she is doing her job duties listed in her contract that she had signed. He agrees the Claimant did speak about teamwork.

[20] The Commission spoke to the wife of the final incident. She says she approached the Claimant to let her know about reprinting some labels. She says the Claimant immediately asked three questions. "Did you take the labels off; are you changing the prices and are you done?" She says she answered yes. She says the Claimant's questions puzzled her. She says she left and went to speak to her husband.

[21] The wife admitted to the Commission she told the Claimant they were paying her to do the duties they hired her to do. And if she had to do the Claimant's job, why would they need her there? She says the Claimant walked out.

[22] The Commission says the Claimant had reasonable alternatives available to her. She could have spoken with the employers about the yelling and she was feeling like a slave.

[23] I find that the Claimant did exhaust this reasonable alternative. The Claimant did bring the issues to the husband's attention. She also sought advice from a person with X.

[24] I accept that the Claimant did make efforts to speak to the husband of the issues she was having with his wife. The Claimant told me that she did speak to the husband and he agreed to speak to his wife. Yet, the antagonism continued between the Claimant and the wife. I find on the balance of probabilities the husband never spoke to his wife or took the Claimant's concerns seriously. The husband admitted the Claimant's allegations surprised him. And his wife liked the Claimant, which is contradictory to the Claimant's testimony.

[25] I find the Claimant also reached out to S. from the X head office. The Claimant says X could not help her. She was only told to speak to the husband. Stores are independent and the owners deal with these issues.

[26] I find the Claimant to be credible; she was consistent in her testimony to what she had told the Commission. The Claimant provided detailed oral evidence. Her first-hand statements should have been given more weight.

[27] I find the employers (husband and wife) evidence lacks credibility. The husband first told the Commission that the Claimant's allegations surprised him. And there were no issues. Yet, later he tells the Commission, that there was an incident that led to the Claimant walking out. And the wife admitted that there was a conversation where she told the Claimant she was being paid to do her job. And if she did not then why would they need her.

[28] I find that where there is a direct contradiction ignoring of clear oral evidence in preference for hearsay written statements can amount to an erroneous finding of fact.

[29] I find on the balance of probabilities, the Claimant's version of events to be more accurate. She was trying to get the inventory done when she was blamed for the broken photo album. Then the wife was telling her to change the tags and she felt she could not do anything right. She asked about teamwork and the wife became angry and started yelling at her. The Claimant felt she had no choice but to leave.

[30] I find that more likely than not the conversation became heated and the wife was yelling at the Claimant. She admitted she told the Claimant she was being paid to do the job duties they hired her to perform. And, if she had to do the Claimant's job, why they would need her there.

[31] I find the Claimant version of the events to be credible. And the conversation about the broken photo album turned confrontational. This led the Claimant to be defensive and as stated by the employer she said she did her work and checked it. I find this would support the Claimant's statements that she felt she could no longer do anything right. The employer admitted further conversations took place. And the Claimant again was defending herself. He says she stated she felt she went above and beyond. I find the employer's response appears to be confrontational. He admitted he asked her how she goes above and beyond, and then stating she only is doing her job.

[32] I find the Commission failed to say why they found the employer (the husband and wife) more credible and why they relied on their hearsay evidence over the first-hand statements of the Claimant.

[33] I considered the Claimant's statements how could she have resolved the situation with the employer (wife) who was the one harassing her when, her other boss was the husband.

[34] I find the Claimant to be credible and that despite her concerns and her attempts to resolve the situation, her employer (husband) did not take her concerns seriously. Nor provide any type of solution to the problem. I am of the view from the statements the employers made to the Commission<sup>6</sup> it would support the Claimant's position that they would stick together and it would be their word against hers.

[35] I find that the Claimant did provide sufficient evidence to support that she had just cause to leave<sup>7</sup> and there was an antagonism with a supervisor, the Claimant was not primarily responsible for.

[36] I am persuaded by a decision<sup>8</sup> where the member for the Appeal Division stated:

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<sup>6</sup> GD3-35

<sup>7</sup> Paragraph 29(c)(x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism.

<sup>8</sup> A.E. v. Canada Employment Insurance Commission AD-18-818

*Furthermore, the General Division stated that a claimant has an obligation to try to reconcile differences with an antagonistic supervisor before leaving, but this is not correct. The Federal Court of Appeal has recognized that a claimant generally has a duty “to attempt to resolve workplace conflicts” with an employer before leaving.<sup>9</sup> However, that is not the same as requiring a claimant to attempt to reconcile differences with a supervisor found to be antagonistic. The nature or degree of the antagonism may be such as to preclude attempts to reconcile.*

[37] The Commission says that the working conditions were not intolerable and that the Claimant could have stayed working until she was able to secure other suitable employment.

[38] I do not agree. I am satisfied that the Claimant had endured the antagonism for five months. She brought her concerns to the husband. And as jobs in the remote area are hard to come by, she tried her best, to stay employed. I find from the Claimant’s testimony she could no longer accept the antagonism and she had no reasonable alternative to leaving. And remaining employed would not have changed the situation. Considering all the circumstances, the antagonism by the employer (wife) would more likely than not have continued.

[39] The Claimant’s representative provided CUB 76301 and CUB 75998 in support of the Claimant’s appeal. I am not bound by CUB’s; however, I can consider them.

[40] In CUB 76301, the allegation of harassment by the new owner, the husband of the owner were considered and because the testimony was equal, the benefit of the doubt was given to the Claimant. This case is similar to the one before me as the Claimant alleges that she was being harassed by the employer (wife) however her other employer was the husband. CUB 75998 is similar to the fact that the Claimant in that case was being harassed and things had culminated, to become very bad at work due to the yelling by the boss.

## **CONCLUSION**

[41] The appeal is allowed.

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<sup>9</sup> *Canada (Attorney General) v Hernandez* 2007 FCA 320



Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	November 1, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. K., Appellant Belinda Shand, Representative for the Appellant