



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. S. v Canada Employment Insurance Commission*, 2019 SST 1433

Tribunal File Number: GE-19-3507

BETWEEN:

**J. S.**

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: Christianna Scott

HEARD ON: November 13, 2019

DATE OF DECISION: November 18, 2019

## **DECISION**

[1] The appeal is allowed. The Canada Employment Insurance Commission (the Commission) has not proven that J. S. (the Claimant) voluntarily left her employment. Therefore, she is not disqualified from receiving benefits because she did not quit her job.

## **OVERVIEW**

[2] The Claimant worked as a housekeeper in a hotel. While cleaning a room, the Claimant punctured herself in two places with a hypodermic needle. She left the workplace and was paid a few weeks of workers' compensation benefits. She returned to work for one day but left due to a panic attack. The Claimant was receiving medical treatment for her panic attacks. She gave medical notes to her employer to explain her absence from work. The employer considered that since the Claimant was no longer receiving workers' compensation benefits, she should return to work. The employer sent several letters saying that if she did not return to work, the employer would consider that she had abandoned her position. The employer also asked the Claimant to return a completed Functional Abilities Form (FAF). The Claimant did not return to work and did not have her doctor complete the FAF.

[3] The Claimant applied for sickness benefits and then for regular employment insurance benefits. She was disqualified from receiving regular employment insurance benefits. The Commission decided that the Claimant had voluntarily left her job without just cause because leaving her job was not the only reasonable alternative. The Commission decided that the Claimant could have asked for a leave of absence or she could have returned the FAF to explain her absence from work. The Claimant says that she did not voluntarily leave her job.

## **PRELIMINARY MATTERS**

[4] During the hearing, the Claimant referred to a text message exchange she had with her employer. She sent a copy of the messages to the Tribunal. I considered this evidence as it is relevant to the appeal.

## ISSUES

[5] I must decide whether the Claimant is disqualified from being paid regular employment insurance benefits because she voluntarily left her job without just cause. First, I must decide if the Claimant voluntarily left her job. If the Commission proves that the Claimant quit her job, I must decide if the Claimant had just cause to quit when she did.

## ANALYSIS

### **Issue 1: Did the Claimant voluntarily leave her employment as a housekeeper?**

[6] I find that the Claimant did not voluntarily leave her job as a housekeeper.

[7] The Claimant says that she had worked at the hotel as a housekeeper for close to five years when she had an incident with a hypodermic needle. On December 9, 2018, the Claimant was punctured in two places with a needle while doing her housekeeping duties. She immediately told her supervisor about the incident and she went to the hospital for medical treatment. The Claimant says that the workers' compensation insurance approved her absence from the workplace and paid her between December 9, 2019, and January 15, 2019.

[8] The Claimant says that she tried to return to work on January 16, 2019. Once at the hotel she had a panic attack due to severe anxiety and left work. The Claimant said that she was having trouble getting a medical appointment. On February 12, 2019, the employer sent a letter telling the Claimant that she needed to come back to work the next day or the employer would consider that she had abandoned her job. The employer offered the Claimant an accommodated position in the kitchen. On February 14, 2019, the Claimant gave her employer a medical note saying that she would be away from work and that she would be reassessed in a week. A week later, on February 21, 2019, the Claimant gave her employer another medical note saying that she would be away from work for an additional two weeks and would be reassessed after. On March 8, 2019, the employer sent another return to work notice to the Claimant and said that if she did not return to work by March 11, 2019, they would consider that she abandoned her job.

On March 13, 2019, the Claimant gave her employer a third medical note saying that she would be absent for an unknown period. Later, the employer sent another notice and told the Claimant that she had to complete a FAF by May 1, 2019. The Claimant did not ask her doctor to complete the FAF. Thereafter, the employer considered that the Claimant had abandoned her position.

[9] The Claimant argues that she did not voluntarily leave her job. She gave her employer medical notes to justify her absence from work.

[10] The Commission says that the Claimant abandoned her job because she did not return to work when her employer asked her, she did not accept an accommodation position offered by the employer and she did not complete the FAF, which means that she abandoned her position.

[11] I find that the Claimant did not initiate the end of the employment relationship and did not have the choice to stay or leave her employment.<sup>1</sup> I have come to this decision based on three key factors:

- (a) The Claimant did not tell her employer, either verbally or in writing that she wished to end the employment relation;
- (b) The Claimant gave medical notes to justify her absence from work;
- (c) The Claimant was not clearly told that her failure to return a completed FAF would cause the employer to consider her to have abandoned her position.

[12] First, I find that the Claimant did not provide her employer with any notice that she was severing the employment relationship. The Claimant stated that she did not give the employer a letter of resignation and did not tell the employer that she was leaving her job. I accept the Claimant's testimony on this point. She was unequivocal that she had not intended on leaving her job.

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<sup>1</sup> *White v Canada (Attorney General)*, 2011 FCA 190.

[13] Second, the Commission relies on the employer's statement to argue that the Claimant voluntarily left her position because the Claimant had "stopped showing up at work without notice and any communication". The Commission says that the Claimant abandoned her position because she did not return to work despite the employer's offer of workplace accommodation.

[14] I find that the evidence does not support the Commission's position. I find that the evidence supports the Claimant's position that she had substantiated her absence with medical notes. The Claimant explained that she was on an authorized absence from work between December 9, 2018, and January 15, 2019. The Claimant acknowledged that between January 16, 2019, and February 14, 2019, she did not have a medical note. She explained that her medical practitioner was not available for an appointment. The Claimant explained that besides the delay in getting her first medical note, she gave her employer medical notes to justify her absence. The Claimant argues that despite providing her employer with a medical note, which excused her from work, the employer considered that she had abandoned her job.

[15] I accept the Claimant's testimony that she was on an approved workers' compensation leave between December 9, 2018, and January 14, 2019. Although the employer initially said that the Claimant did not get workers' compensation benefits, the employer changed its statement during reconsideration. The medical notes on file also confirm the Claimant's testimony that she had medical notes to support her absence, exception for the period between January 16, 2019, and February 14, 2019. The employer does not dispute that these medical notes were provided. In the return to work letters the employer sent to the Claimant, the employer referred to the medical notes and even acknowledged that the Claimant was unable to return to work due to medical reasons.

[16] Given the medical notes, which explained the Claimant's absence from work, I do not believe that the Claimant voluntarily left her job. I also do not find that her decision to refuse the accommodation position could be considered to be a work abandonment since she was not considered by her medical practitioner to be fit for a return to work.

[17] Third, the Commission says that the Claimant abandoned her position because she did not return to her employer a FAF completed by her doctor. I do not believe that the Claimant's

failure to return a completed FAF meant that she had abandoned her position because the employer did not provide the Claimant with clear information that she would be considered to have abandoned her position if she did not return the form. The evidence shows that the employer sent several letters asking the Claimant to report to work failing which they would assume that she had abandoned her job. In the final letter before the Claimant was deemed to have abandoned her position, the employer asked the Claimant to have her doctor complete a FAF by May 1, 2019. Although in the previous letters, the employer says that they will consider the Claimant to have abandoned her position if the Claimant does not comply, the employer does say that they will consider her to have abandoned her job if the Claimant did not return the FAF by the deadline. In the circumstances, I find that the employer had to give the Claimant a clear final statement that non-adherence to their request for the FAF would lead to the employer concluding that she had quit her job. This clear final statement was necessary, particularly since the employer had said in past letters that they would consider her to have abandoned her position but then continued to maintain the employment relationship. I find that the Claimant could not have known that her failure to provide the FAF would lead to the employer considering that she had voluntarily left.

[18] Moreover, the Claimant says that she only learned in the course of this appeal that the employer questioned the validity of her medical notes because the notes were completed by Claimant's nurse practitioner and not by a doctor. I accept the Claimant's statement. She was open and forthright during the hearing. Moreover, I note that none of the return to work letters sent by the employer said that the employer did not accept the medical opinion of the Claimant's nurse practitioner. If the employer had underlying reasons to question the truthfulness of the medical notes, the employer had to inform the Claimant of this before it deemed her to have abandoned her job due to her failure to return to work.

[19] Consequently, I find that the Commission has not proven on the balance of probabilities that the Claimant voluntarily left her job.

**Issue 2: Did the Claimant have just cause for voluntarily leaving her employment because she had no reasonable alternative to leaving?**

[20] Given my findings that the Commission has not demonstrated that the Claimant voluntarily left her employment, it is not necessary to consider this issue.

**CONCLUSION**

[21] The appeal is allowed.

Christianna Scott  
Member, General Division - Employment Insurance Section

HEARD ON:	November 13, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. S., Appellant