



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RB v Canada Employment Insurance Commission*, 2020 SST 1179

Tribunal File Number: GE-20-1304

BETWEEN:

R. B.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: May 19, 2020

DATE OF DECISION: May 22, 2020

Decision

[1] I am allowing the appeal. The Claimant has proven that she had just cause to voluntarily leave her employment.

Overview

[2] The Claimant was employed as an educational assistant at a school near her home. Shortly after she began working, the employer told her she was assigned to another school across the city. The Claimant was unable to commute to the other school due to her medical restrictions. She took several weeks of sick leave and then left her job when the employer was unwilling to accommodate her medical condition.

[3] The Claimant applied for sickness employment insurance (EI) benefits and then asked for her claim to be converted to regular benefits once her sickness benefits ended. The Commission decided the Claimant did not have just cause for voluntarily leaving her job, so it was unable to pay her regular benefits. The Claimant disagrees and says that she felt she had to leave because the employer was pressuring her to work at the other school when she was medically incapable of doing so.

What I must decide

[4] I must decide whether the Claimant is disqualified from being paid benefits because she voluntarily left her employment without just cause. To do this, I must first address the Claimant's voluntary leaving. I then have to see if the Claimant had just cause to leave her job.

Reasons for my decision

There is no dispute that the Claimant voluntarily left her job

[5] I accept that the Claimant voluntarily left her job. The Claimant agrees that she resigned (in other words, voluntarily left the job) as of October 9, 2019. I see no evidence to contradict this.

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

[6] The parties do not agree that the Claimant had just cause for voluntarily leaving her job when she did. I find the Claimant had just cause because she had no reasonable alternatives to leaving her job.

[7] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.¹ You have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.² It is up to the Claimant to prove this.³

[8] Having a good reason for leaving a job is not enough to prove just cause. 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.

The circumstances that existed when the Claimant quit

[9] The Claimant was employed as an educational assistant with a school district. At the hearing, she said that she had worked for this school district for the past six years at different schools. She interviewed for and obtained a position at a school near her home, which I will refer to as School A.⁴

[10] The Claimant started work at School A on August 29, 2019. For the first two weeks, she worked in different classrooms assisting students and building relationships. In the week starting September 9, 2019, she testified that the school principal returned from leave and informed her that she was not supposed to work out of that school. Rather, she was assigned to work out of a school across the city. I will refer to this school as School B.⁵

¹ This is set out at section 30 of the *Employment Insurance Act*.

² This is set out at paragraph 3 of *Canada (Attorney General) v White*, 2011 FCA 190, and section 29(c) of the *Employment Insurance Act*.

³ The burden of proof is on a balance of probabilities. This means it is more likely than not that the events occurred as described.

⁴ For privacy reasons, the name of the employer and the schools are omitted from this decision.

⁵ School B is identified by the Claimant in

[11] The Claimant said that she immediately informed the principal that she is unable to commute to work across the city due to her medical conditions. She said the principal insisted that there was no position for her at School A and that she would have to report to work at School B. The Claimant testified that she attempted to attend School B for work and the commute put her in a state of severe mental distress. By the time she arrived at the school, she was too emotional and traumatized to work. The staff at the school told her to go home because she was not able to work in her condition.

[12] The Claimant said that she, once again, told the principal that she could not work at the other school location because she could not drive across the city. The principal held a meeting with the Claimant and her union representative. She said that her union representative told the employer at that meeting that the Claimant would get a doctor's note to support her request for accommodations.

[13] The Claimant provided numerous medical notes to the Commission and the Tribunal. I have summarized this evidence below:

- A doctor's note dated September 18, 2019. This note states that the Claimant is not fit for work from September 18 to September 25, 2019. It also states that the Claimant is required to work within a ten-kilometre radius of her home and that she cannot drive across the city for medical reasons.
- A doctor's note dated September 25, 2019. This note states that she is not fit for work from September 25 to October 4, 2019. It reiterates that she is required to work within a ten-kilometre radius of her home and cannot drive across the city for medical reasons. It also advises that she may need additional time off from work, per her psychologist.
- A doctor's note dated October 3, 2019. This note states that the Claimant is not fit for work from October 3 to November 3, 2019. It states that she requires one to two months off from work, per her psychologist.
- A doctor's note dated November 28, 2019. This note states that she is unfit for work from October 9, 2019, until further notice. Her doctor is reviewing her condition monthly.

- A doctor's note dated December 16, 2019. This note states that she is unfit for work until further notice. She continues to be reviewed on a monthly basis by her doctor.
- A doctor's note dated January 20, 2020. It states that she is off work for medical reasons until March 1, 2020.
- A doctor's note dated February 24, 2020. This note states that she has attended appointments for psychiatry and with a behavioural health consultant on January 2, January 29 and February 24, 2020.
- A medical certificate for EI sickness benefits dated March 21, 2020. The doctor who signed this note writes that the Claimant has anxiety, possible TSD (traumatic stress disorder) and is on medications.

[14] The Claimant stated that she provided the notes dated September 18, September 25, and October 3, 2019, to her employer. The Claimant said she was hoping the employer would accommodate her restriction by assigning her to a school within a ten-kilometre radius of her home. She spoke to the Employee Health Services Advisor for the employer, who told her that her job duties did not include driving so her inability to drive was not a medical restriction on her duties. The Claimant testified that she was told to take her sick leave if she was unable to work at School B.

[15] The employer gave the Claimant a form dated September 30, 2019, addressed to the Claimant's doctor. This form states that the employer has received the doctor's note that the Claimant is restricted from driving across the city due to medical reasons. It goes on to state, "Driving is not a requirement of [the Claimant's] position" and says that the job duties of someone with an educational assistant position require them to "attend specialized programming with the student(s) they are assigned to." The form then asks the doctor to state what the Claimant's medical restrictions are that prohibit her from performing the job duties of an educational assistant. At the bottom of the form, it states, "Please be aware that upon [the Claimant's] return to work, she is expected to report to... [School B] with her student." The Claimant testified that she gave that note to her doctor, who submitted it to the employer the same day.

[16] The Claimant testified that she is diagnosed with an anxiety disorder, Post-Traumatic Stress Disorder (PTSD) and Attention-Deficit Hyperactivity Disorder (ADHD). She was receiving medical treatment from a psychologist for these conditions, but her psychologist had gone on vacation shortly before these events occurred. The Claimant's psychologist had told her not to make any decisions during the psychologist's vacation. However, the Claimant testified that she felt she was being pressured to make a decision by the employer.

[17] The Claimant said the Employee Health Services Advisor would call her regularly and tell her that she had to go to work at School B. She felt the advisor was pressuring her to make a decision immediately. They kept insisting that she work at School B, despite her medical notes, but she knew that she was not medically able to commute to that school for her job.

[18] The Claimant said she felt that she had no support. She contacted her union representative, but they told her that all she could do was be put at the bottom of a waitlist for another position within the school district.

[19] The Claimant e-mailed the employer on October 9, 2019, resigning from her position. She said that she felt she had no choice but to do so. The Employee Health Services Advisor was continually pressuring her to make a decision, which caused her anxiety to increase. Her psychologist was on vacation and could not assist her with dealing with the mental pressure she was experiencing. She could not return to work, so she resigned because she could not see any other alternative.

[20] In overview, the circumstances that existed at the time the Claimant quit are that she was assigned to work at School B, which required her to travel across the city. She has ongoing medical conditions that restricted her to working within ten-kilometres of her home. She met with the employer and her union representative to request accommodation for her medical conditions, but the employer was not willing to accommodate her medical restrictions. She also lacked support for her medical conditions, as her psychologist was on vacation during this time.

Reasonable alternatives

[21] The Commission says the Claimant did not have just cause to leave her job because she had reasonable alternatives to leaving when she did. Namely, it says she could have extended her

leave of absence from work, first by exhausting her paid sick leave and then taking unpaid leave until she was eligible to receive disability benefits. It also says that she could have notified her employer of her restrictions that prohibited her from performing her duties and sought the involvement of her union in order to maintain her employment. Lastly, the Commission says the Claimant could have looked for other work before leaving her job.⁶

[22] The Claimant says leaving her job was her only reasonable alternative because she was medically unable to commute to work at School B. She requested accommodation from the employer, but the employer was not willing to accommodate her restrictions. She also felt that she could not think clearly at this time due to the pressure that she felt from the employer to make a decision and her lack of support because her psychologist was on vacation at the time.

[23] The Claimant has been clear that her reason for leaving her employment was that she was assigned to work out of a school that required her to commute across the city. She was not able to make that commute due to her medical restrictions. I accept the Claimant's testimony that she attempted to come to an agreement with the employer to accommodate her health concerns. I also find that the Claimant's testimony and documentation support that the employer was not willing to accommodate the Claimant's restriction of working within ten-kilometres of her home.

[24] The Commission submitted that the employer's request to the Claimant's doctor for information on her medical restrictions indicates that the Claimant did not request accommodation of her medical conditions. I disagree with this interpretation of the form. First, I find the Claimant provided open and credible testimony regarding her efforts to receive an accommodation for her medical restrictions. She stated that she spoke about her medical restrictions with the school principal, the Employee Health Services Advisor, and her union representative, but they refused to provide her with any accommodation. Second, I find the employer's request to the Claimant's doctor indicates that accommodation would not be made during that school year. The form acknowledges that the employer received the Claimant's medical notes stating that she is restricted from driving more than ten-kilometres to attend work

⁶ In most cases, a claimant has an obligation to seek other work before making the decision to leave their employment, per *Canada (Attorney General) v White*, 2011 FCA 190.

and then states that driving is not a requirement of the Claimant's position. The form also states that the Claimant is expected to report to School B on her return to work.

[25] It is immaterial that the Claimant's medical restrictions did not impact her work within the school. Her medical conditions prevented her from commuting to work at School B. This restriction is clear from the doctor's notes dated September 18 and September 25, 2019, which the employer acknowledges that they received. In my view, the employer's request for further evidence of how the Claimant's medical conditions limited her ability to work with students supports that the employer did not consider the Claimant's limitations on the distance she could commute to work as a restriction that affected her job. The statement that the Claimant is expected to report to work at School B on her return to work further supports that the employer was not willing to accommodate the Claimant's medical restriction that she could not commute more than ten-kilometres to work.

[26] As the employer was unwilling to provide an accommodation for the Claimant's medical restrictions, I find that extending her period of leave from work was not a reasonable alternative. The employer expressed their continued expectation for the Claimant to attend work at School B. A leave of absence would not resolve the Claimant's inability to attend work at that school, as it was outside of the range she was medically able to commute. Taking leave from work until she was eligible for disability benefits was not a reasonable option as the Claimant was capable of working within her medical restrictions.

[27] I also find the Claimant did not have the reasonable alternative to stay employed while seeking other work. The Claimant testified that she is diagnosed with an anxiety disorder, PTSD and ADHD. The Claimant said that the circumstances surrounding her assignment to School B, and the pressure she felt from the Employee Health Services Advisor to return to work increased her anxiety and made it difficult for her to cope. Her psychologist was on vacation during this time and she was not able to access the mental health support that she needed. At the hearing, she said that she felt her judgment was impaired as a result of her medical conditions. When she felt pressured by the Employee Health Services Advisor to make a decision, she made the decision to resign because she could not medically return to work.

[28] I accept the Claimant's testimony and medical documentation that supports she has these medical conditions and find it credible that the circumstances she was experiencing had a negative impact on her mental health. For that reason, I find that staying employed while searching for another job was not a reasonable option for the Claimant because of the affect her continued employment was having on her mental health conditions.

[29] At the time the Claimant resigned from her position, she was unable to commute to work at School B for medical reasons. Therefore, staying at work was not an option for her. Taking an extended period of leave was not a reasonable option, as it would not resolve the issue of her inability to work at School B. The Claimant tried to discuss her health restrictions with her employer, but the employer did not offer any accommodation. She did not have her normal mental health supports, as her psychologist was on vacation, and felt that she was being pressured to make a decision by the Employee Health Services Advisor.

[30] Considering all the circumstances that existed at the time the Claimant voluntarily left her job, I find it is more likely than not that the Claimant had no reasonable alternative but to leave her job when she did. This means she is not disqualified from receiving benefits.

Conclusion

[31] The appeal is allowed. The Claimant had just cause to voluntarily leave her employment because she had no reasonable alternatives to leaving when she did.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	May 19, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. B., Appellant

	J. S., Representative for the Appellant
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