



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *X v Canada Employment Insurance Commission and CE*, 2020 SST 1166

Tribunal File Number: GE-20-1776

BETWEEN:

X

Appellant

and

Canada Employment Insurance Commission

Respondent

and

C. E.

Claimant / Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: John Noonan

HEARD ON: August 25, 2020

DATE OF DECISION: September 2, 2020

DATE OF CORRIGENDUM: February 12, 2021

[1] The Appellant, X, was upon reconsideration by the Commission, notified that having examined C. E.'s claim, which became effective on March 1, 2020, they are to pay her Employment Insurance regular benefits because she voluntarily left her job with X on March 2, 2020 with just cause within the meaning of the Employment Insurance Act. The Commission is of the opinion that voluntarily leaving her job was her only reasonable alternative. The Appellant asserts that they do not agree that the Claimant left her position voluntarily with just cause. They state that the Claimant's assertions regarding bullying and working conditions are totally false. The Tribunal must decide if the Claimant should be denied benefits due to her having voluntarily left her employment without just cause as per section 29 of the Act.

DECISION

[2] The appeal by the employer is allowed as it has been determined the Claimant, C. E., did not have just cause for leaving her employment when she did.

ISSUES

[3] Issue # 1: Did the ~~Appellant~~**[Claimant]** voluntarily leave her employment with X on March 2, 2020?

Issue #2: If so, was there just cause?

ANALYSIS

[4] The relevant legislative provisions are reproduced at GD-4.

[5] A claimant is disqualified from receiving EI benefits if the claimant voluntarily left any employment without just cause (Employment Insurance Act (Act), subsection 30(1)). Just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances (**Act, paragraph 29(c)**).

[6] The Respondent has the burden to prove the leaving was voluntary and, once established, the burden shifts to the ~~Appellant~~**[Claimant]** to demonstrate he had just cause for leaving. To establish he had just cause, the ~~Appellant~~**[Claimant]** must demonstrate he had no reasonable

alternative to leaving, having regard to all of the circumstances (**Canada (Attorney General) v. White, 2011 FCA 190; Canada (Attorney General) v. Imran, 2008 FCA 17**). The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

[7] **Issue #1: Did the Appellant[Claimant] voluntarily leave his employment with X on March 2, 2020?**

[8] Yes

[9] For the leaving to be voluntary, it is the Appellant[Claimant] who must take the initiative in severing the employer-employee relationship.

[10] When determining whether the Appellant[Claimant] voluntarily left her employment, the question to be answered is: did the employee have a choice to stay or leave (**Canada (Attorney General) v. Peace, 2004 FCA 56**).

[11] Both parties here agree the Appellant[Claimant] voluntarily left this employment with X on March 2, 2020 with the Claimant asserting she was subject to constant harassment and bullying and the employer asserting she quit without just or any cause.

[12] Given that the circumstances at the time of her leaving do meet the definition of voluntary leave in that she was not dismissed, I find that C. E. voluntarily left her employment with X on March 2, 2020.

Issue #2: If so, was there just cause?

[13] No

[14] The Claimant / Added Party, C. E., submitted that she quit due to medical reasons brought on by her working conditions. She worked in a small office environment as the Administrative Services Manager where she interacted with other employees. It was her relationship with her employer that affected her health therefore she quit due to the stress her employer put her through. She often worked overtime without pay and was expected to work

weekends having received texts from her employer after hours and on weekends. She was being demeaned and bullied at work by her employer. She felt overworked and unable to focus due to her employer's harassment of her. She stated that many people had resigned from this employer for the same reasons.

[15] Initially her claim was denied by the Commission.

[16] Upon requesting reconsideration the Claimant stated that she resigned as there was no other reasonable choice but to leave and stated that she experienced a violation of her human rights, harassment, bullying and discrimination and had attempted to work it out and nothing changed. Claimant also stated that she experienced stress and anxiety from working at X and tried to see her doctor shortly after her resignation but due to Covid 19 could only see her virtually.

[17] Subsequently her claim was approved resulting in the employer appealing the decision to this Tribunal.

[18] The employer was contacted at which time she provided the following information to the Commission:

- a) stated that the claimant initially quit in February and decided to stay and finally quit in March
- b) stated the claimant quit before and asked not to tell anyone and did not beg or advise the claimant not to quit;
- c) stated the claimant did not provide a reason for quitting the 2 times she quit;
- d) informed the owner that the claimant quit due to the treatment from her;
- e) advised the claimant had provided a copy of her resignation letter;
- f) stated she does not remember if there was a resignation letter but believes so;
- g) stated she does not remember what was in the resignation letter;
- h) the resignation letter on file was read to the owner;
- i) stated the claimant complained about how her co-workers did not like her; informed that the letter states that she was difficult to work with and the claimant felt emotionally abused, stressed and belittled;

- j) stated the claimant only complained about co-worker trying to help her with work;
- k) stated she was a small business and no HR and the claimant was suppose to be the HR person;
- l) stated she never emotionally abuse, harass or belittle the claimant;
- m) confirmed she received a copy of the resignation letter and did not take any action to resolve the situation because the claimant submitted the resignation and walked out;
- n) confirmed claimant had brought up her concerns the first time she quit and requested a meeting and then changed her mind at the meeting and asked not to tell anyone;
- o) stated that she corrected the claimant's grammar on paper and not verbally and the claimant was not doing 3 people's work and the workload was not too much;
- p) stated the claimant's duties were general admin, filing, paying bills, preparing invoices and organizing payables;
- q) stated the claimant was slow at catching up and had trouble taking criticism and always got offended when corrected;
- r) stated she made constrictive criticism suggestions and took them as an insult.

[19] The Claimant replied that she was abused by the employer and the employer's statements were untrue.

[20] At the hearing, M. R., the employer, testified that the Claimant's employment gave the hours of work as 9 AM to 5:30 PM. The nature of the work imposed deadlines. The Claimant did work diligently in learning new things when she was hired. She, the employer, works from home mostly and when an issue arises she sends a text or email to the employee responsible, not to be addressed immediately as they do not have access to the files at home, but as a prompt to address issue when next in the office. She did this so as not to forget the particular issue involved.

[21] The Claimant was authorized by the employer to post a position that would allow for another person to be hired to assist in the workload, she never did this.

[22] During an interview in February, the Claimant expressed her enjoyment regarding working conditions, however it was not the same for other employees who reported the Claimant was difficult to work with and they would rather deal with another individual.

[23] The Claimant had complained of the noise from the photocopy machine being a major distraction but when offered space away from the machine she declined saying she was happy with her placement in the office.

[24] The Claimant, having started with this employer on October 2, 2019, was a relatively new employee but still requested a raise in pay as well as additional vacation time. She was given an extra week of annual vacation.

[25] Regarding correcting the Claimant, the employer testified that hers is a company that deals regularly with lawyers and the courts where spelling and grammar errors could be fatal to a case. When errors were pointed out to the Claimant she took personal offense when she should have taken it to be, as it was intended, constructive criticism.

[26] The Claimant testified she was informed by other employees when she was hired that this employer was difficult to work for. She had owned her own business for a number of years and was now returning to the workforce. The employer was intimidating which she feels was emotional abuse. In the workplace the employer was demanding and she, the Claimant, did not have the support she needed. If she was incompetent the employer could have fired her.

[27] While the employer was on vacation she, the Claimant, requested a raise and increased vacation time. She was overwhelmed at work and decided to resign effective February 7, 2020 but changed her mind and asked her employer to keep her resignation confidential.

[28] She took it upon herself to issue an unauthorized directive regarding wearing scents in the workplace.

[29] She was told by her employer, when catering for a business function was sub-standard, not to order from that supplier again.

[30] She "believed" the employer was partial to Caucasians and did not harass them or the men in her employ.

[31] The employer then testified that she is a professional and attention to detail is a must for her business. Yes, she could have fired the Claimant but she recognized the Claimant's strengths and attempted to accommodate her wish to be better placed in the office space available. It was not appropriate to request additional vacation time and a raise after only three months on the job.

[32] Regarding the catering, the Employer had directed the Claimant to order from a known caterer that had provided good service in the past. The Claimant did not follow this request and ordered from another supplier. When the product was deemed by the employer to be sub-standard for her clients and staff, she directed the Claimant not to order from them in the future.

[33] The Employer asserted that she hires based on qualifications, not by skin colour, religion or any other identifier. She and other members of her staff have recently been invited to present at a diversity program which reinforced her stance on this issue.

[34] Regarding issues relating to contacting the Claimant at home after hours and on weekends, I find this to be considered as a "to do" list of items to be address upon return to the office. The employer was well aware these things could not be addressed immediately. The Claimant, in a managerial position, should expect her employer to contact her on important issues which involved her.

[35] Regarding the Claimant's assertion that she was unable to see a physician due to the Covid-19 situation in Ontario, this is not valid as there were no restrictions imposed in Ontario that would close medical offices before at least March 16. The Claimant quit on March 2, 2020 without seeking medical advice to do so. The relevant medical notes on file were from June, five months after the quit and while agreeing with the Claimant's decision there is no evidence to show that she was advised to leave her employment when she did.

[36] The Claimant's resignation letter of January 27, 2020 outlining her reasons for leaving can only be construed as an exaggeration as she withdrew her resignation and continued to work showing the situation in the workplace could not have been dire to the degree she needed to leave.

[37] Regarding the catering incident, it is totally within the employer's right to dictate suppliers to her business. If the Claimant wilfully disregards a directive from her employer

regarding same she can expect to be “spoken to” and reprimanded. The Claimant refers to non professional behaviour on the part of the employer, this is a blatant example of such behaviour on her part.

[38] Referring to a workplace and / or an employer as racist is very serious. Given the area where this employer does business, the multi-cultural GTA, such an accusation could be devastating to continued business. However, there is no evidence before me, other than the Claimant’s accusations, of discrimination in the workplace based on race or any other factor. I find these accusations by the Claimant to be baseless. In fact, the employer has by her testimony and submissions shown herself to be recognized by the community as a leader in the area of diversity understanding and training.

[39] More credibility is given to the initial statements because the Claimant provided information more candidly than the subsequent statements which were provided with the intent of overturning a previous unfavourable decision. In the Claimant’s application for benefits there is no mention of racism being a factor in her decision to quit.

[40] Now I must address the Claimant’s assertion that a co-worker, Khaled, had left his employment with X for the same reasons she did. This assertion has been proven to be patently false. This gentleman was facing some personal issues which required him to be off work for a period of time. The employer, when she became aware of his situation, granted him the time off and when he was ready to return to work his position would be there for him. The circumstances around his departure were personal and were not shared with anyone. This shows M. R. to be a compassionate employer.

[41] The Claimant attempted to use, what her version of these events seemed to be, another’s personal problems to further her own case thus bringing into question as to what lengths she would go to make this employer out to be such an ogre in the workplace. The only result being her own credibility is questionable. If, in her position as Administration Services Manager, she garnered any information regarding this gentleman’s leave, disclosing it for any purpose is highly unprofessional.

[42] I am giving more weight to the employer's version of events than to the other submissions regarding the Claimant's leaving her employment. The Employer has submitted documentation showing Khaled was on approved leave and has since returned to the workplace contrary to the Claimant's version.

[43] That being said, the onus is on the Appellant[**Claimant**], not the employer, to initiate any attempt to mitigate, with the employer, any situation by seeking reasonable alternatives before placing herself in an unemployed situation needing the support of the EI program.

[44] Everyone has the right to leave / quit an employment but that decision does not automatically qualify one to receive EI benefits. It is inevitable that a person who has the right to receive benefits will be called upon to come forward and prove that he or she satisfies the conditions of the Act.

[45] In this case the Claimant sought out a meeting with her employer to mitigate her issues with the employer and had this meeting where she tendered her resignation then withdrew it. There is no evidence before me other than the Claimant was generously given an additional week of annual leave that any conditions of her employment had changed. I find the workplace situation was not dire to the point it would cause her to quit as she withdrew her resignation and continued in her position.

[46] I find, contrary to the Commission, that the Appellant[**Claimant**] had reasonable alternatives available to her other than leave her employment with X when she did. She could not have continued this employment and sought out other employment prior to quitting. She could have, prior to quitting, sought out medical advice regarding her stress issues as these events and her quit came before there were any Covid-19 restrictions in place in Ontario. Her leaving when she did does not meet any of the allowable reasons outlined in section 29 (c) of the Act.

[47] The Commission opined the employer had an interest in concealing certain situations so as to prevent criticism etc. I found the employer to be very forthcoming and credible in her testimony and submissions. I cannot say the same for the Claimant especially when she attempted to use the unfortunate personal issues of a co-worker to falsely bolster her case.

[48] If there was any semblance of an uncondusive or hostile environment it was probably as a result of the Claimant's refusal to assist co-workers, her unreasonable demands for a pay increase after only three months work, her issuing directives without authorization, her direct ignoring of a request by her employer to engage a particular caterer and her taking offence to being corrected regarding spelling and grammar mistakes that could impact the employer's professional status.

[49] I note that the gentleman's return to work and the issues surrounding his leave were unknown to the Commission. If they had known that the Claimant was totally unaware of his personal circumstances, as she should have been, her assertion that others had left this employer under the same circumstances as herself would have been given no weight.

CONCLUSION

[50] Having given careful consideration to all the circumstances, I find that the Appellant[Claimant] has not proven on a balance of probabilities that she had no reasonable alternative to leaving her job when she did. The question is not whether it was reasonable for the Appellant[Claimant] to leave her employment, but rather whether leaving the employment was the only reasonable course of action open to her (**Canada (Attorney General) v. Laughland, 2003 FCA 129**). Given the Appellant[Claimant] did voluntarily leave her employment, having regard to all the circumstances, I find she had reasonable alternatives to leaving when she did and thus does not meet the test for having just cause pursuant section 29 or the provisions outlined in section 30 of the Act. The appeal by the employer is allowed.

John Noonan
Member, General Division - Employment Insurance Section

HEARD ON:	August 25, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. R., Appellant C. E., Claimant/Added Party/ Claimant