



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RR v Canada Employment Insurance Commission*, 2020 SST 864

Tribunal File Number: GE-20-1415

BETWEEN:

R. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: August 19, 2020

DATE LAST DOCUMENTS FILED: August 26, 2020

DATE OF DECISION: September 3, 2020

DECISION

[1] The appeal is allowed. The Appellant (Claimant) is not disentitled from receiving benefits from August 21, 2019, to September 9, 2019.¹

OVERVIEW

[2] When a claimant quits a job *without just cause* within three weeks from when the job would have ended, the claimant is not entitled to employment insurance benefits during the period she could have been working.² To have just cause means you had no reasonable alternatives to quitting.³

[3] The Claimant was the head cook at a summer camp. She quit her job on August 20, even though it would have ended on September 9 anyway.

[4] The Canada Employment Insurance Commission (Commission) decided it couldn't pay her benefits between August 21, and September 9, because she didn't have just cause to quit her job.⁴

[5] The Claimant believes she had just cause to quit, so she appealed the Commission's decision to the Tribunal.

[6] I have to decide if the Claimant had just cause to quit her job.

DOCUMENTS FILED AFTER THE HEARING

[7] Both parties filed documents/submissions after the hearing. I accepted them into evidence. To allow the parties time to respond to the new documents and submissions, I waited a week after the last documents were filed to make my decision.

ISSUE

[8] To decide if she had just cause, I have to answer these questions:

¹ All dates mentioned are in the year 2019.

² This is because of a disentitlement under s 33 of the *Employment Insurance Act*.

³ S 29(c) of the *Employment Insurance Act*.

⁴ The disentitlement was under s 33 of the *Employment Insurance Act*.

- What were the circumstances when the Claimant quit?
- Did she have any reasonable alternatives to quitting?

ANALYSIS

The Claimant quit her job within three weeks of its end date.

[9] Everyone agrees the Claimant quit her job within three weeks of its end date. Since I see no evidence to the contrary, I accept this as fact.

What does the law say about just cause?

[10] The law says you are disentitled from receiving benefits if you left your job voluntarily within three weeks from its end, and you did not have just cause.⁵ Having a good reason for leaving a job is not enough to prove just cause. You have just cause to leave if, considering all the circumstances, you had no reasonable alternatives to quitting your job when you did.⁶ It is up to the Claimant to prove this.⁷

[11] 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.⁸

[12] The Claimant argued that if the evidence is equally balanced, I should give her the benefit of the doubt. She relies on s 49(2) of the *Employment Insurance Act*. However, this provision only applies to the Commission, not the Tribunal. To prove something before the Tribunal, it must be more likely than not. So, if the evidence is equally balanced, the person with the burden has not met it.

[13] I have to look at all the circumstances that existed when the Claimant quit. Some circumstances are set by law.⁹ After I decide which circumstances apply to the Claimant, she has to show that there was no reasonable alternative to leaving at that time.¹⁰

⁵ This is set out at s 30 of the *Employment Insurance Act*.

⁶ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

⁷ *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

⁸ *Canada (Attorney General) v White*, 2011 FCA 190, at para 4.

⁹ S 29(c) of the *Employment Insurance Act*.

¹⁰ S 29(c) of the *Employment Insurance Act*.

What was going on when she quit?

[14] The Claimant mentioned several circumstances that affected her decision to quit. One of those circumstances was a difficult relationship with a subordinate cook, B. The Commission says the Claimant quit because of B.¹¹ I find that B harassed the Claimant.¹² I explain why below.

What is harassment?

[15] Harassment is not defined in the *Employment Insurance Act*, and has not been interpreted by the courts. So, I have to decide what it means. Neither party suggested a definition. So, I considered what the Government of Canada says harassment is. It says it is improper conduct directed at another that the person knew or should have known would cause offence or harm. It can include acts, comments or displays that demean, belittle, humiliate, embarrass, intimidate or threaten another. It can be a series of incidents or one serious incident that has lasting impact on the person being harassed.¹³

[16] I also considered what the Appeal Division of the Social Security Tribunal had to say in a recent case.¹⁴ After considering two definitions of harassment, the Appeal Division noted some key principles. I note the ones that apply to the Claimant's circumstances:

- Harassers do not have to be in supervisory or managerial positions.
- Harassment can take many forms, including actions, conduct, comments, intimidation and threats.
- A focus is whether the alleged harasser knew or should reasonably have known that their behaviour would cause offence, embarrassment or humiliation.

B harassed the Claimant.

[17] I find the Claimant was harassed by B. From her first day of work, B refused to cooperate with the Claimant. When the Claimant spoke to her about not helping, being late, wearing her

¹¹ Page GD8-1.

¹² Harassment is one of the circumstances the law says I have to consider when deciding just cause.

¹³ This is not part of the law. It is a definition offered by the Government of Canada in an article called *Is it Harassment? A Tool to Guide Employees*. <https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/harassment-conflict-resolution/harassment-tool-employees.html#c2>

¹⁴ The name of the case is *N.D. v Canada Employment Insurance Commission*, 2019 SST 1262.

bathrobe in the camp kitchen, and taking too many days off, B became hostile to the Claimant. She threatened to quit and made allegations against the Claimant. B undermined the Claimant's authority by talking about her to other staff. She talked about the Claimant on her cellphone in the dining area so that others, including the Claimant, could hear her. She said the Claimant was making the workplace toxic, and that she planned to take legal action against her.

[18] The Claimant's testimony about B's conduct toward her is supported by the many text messages she sent to the Employer asking for his help with B. I acknowledge the Employer told the Commission he didn't know about a conflict between the Claimant and a co-worker.¹⁵ Given the Claimant's numerous text messages to the Employer about B, I find his statement to the Commission unreliable.

[19] I find B's conduct was meant to belittle and embarrass the Claimant. I find that B ought to have known that her outright defiance and insubordination would offend and embarrass the Claimant. Her threats to quit and sue the Claimant made it impossible for the Claimant to continue supervising her. She feared B would retaliate against her instructions by following through on her threats.

The Claimant had shoulder pain.

[20] I find the Claimant had shoulder pain before she quit. The Claimant says she had a significant flare of shoulder pain. She believes it was triggered by the repetitive arm movements, long work hours, and thin mattress. Her pain made it difficult to sleep. She provided medical evidence that shows she sought medical treatment for her shoulder pain shortly after she quit.

[21] The evidence is unclear about what (if anything), she said to her Employer about her pain. Even if she didn't mention it to the Employer, I still find it likely she had pain before she quit because of the medical help she sought for it.

Were there any reasonable alternatives to quitting?

[22] No. I find the Claimant exhausted all reasonable alternatives to leaving before she quit.

¹⁵ GD3-18.

[23] The Claimant says she could not continue working as everything just came to a head; she had to leave.

[24] The Commission disagrees. It says that the Claimant could have waited until B was dismissed or quit, or could have sought medical treatment for her shoulder. I don't agree.

[25] First, I find it is unreasonable for someone being harassed to continue in employment in hopes that the harasser is dismissed or quits.

[26] Secondly, I find B's threat to quit may have been to further embarrass or humiliate the Claimant by trying to force the Employer to choose between them.

[27] Lastly, I find it likely the Employer had no real intention to dismiss B. This is because B was still working when the Claimant quit, and the Employer denied knowing of a conflict between B and the Claimant.¹⁶

[28] In an attempt to deal with the harassment, the Claimant tried different work schedules for B and asked the Employer to talk to her. However, the harassment did not end. I see nothing else she could have done to improve the situation.

[29] Also, I find it likely the Claimant's ability to deal with B's harassment was less than it otherwise might have been because of her physical pain and poor sleep.

[30] Given the ongoing harassment, her reduced ability to cope with the mental stress of being harassed, and her attempts to improve the situation, I find she exhausted all reasonable alternatives to quitting.

[31] To show just cause, the Claimant doesn't have to show she exhausted every possible alternative, nor does she have to show her working conditions were so intolerable she had no choice but to quit immediately.¹⁷ What she needs to show is that, in the circumstances at the time, she had no reasonable alternative.

¹⁶ GD3-18.

¹⁷ *Chaoui v Canada (Attorney General)*, 2005 FCA 66, para 7; *S. W. v. Canada Employment Insurance Commission*, 2017 SSTADEI 437, and *N. D. v Canada Employment Insurance Commission*, 2019 SST 1262

[32] Considering all circumstances, I find the Claimant had no reasonable alternative to leaving when she did. This means she is not disentitled from receiving benefits for leaving her job.

The Claimant says there were other relevant circumstances.

[33] The Claimant mentioned some other circumstances, including the difficulty in finding a job while working away from home, issues with the facilities, and pay matters. Having considered all circumstances, I find my decision that the Claimant had just cause to leave her job would not be affected by these things.

COMPLAINTS ABOUT THE COMMISSION

[34] The Claimant raised some concerns about Service Canada and the Commission, which the Commission denies. I don't have authority to consider such matters. My jurisdiction is limited to the matter reconsidered by the Commission (which is, whether she was disentitled from receiving benefits under section 33 of the *Employment Insurance Act*).¹⁸

CONCLUSION

[35] I find that the Claimant is not disentitled from receiving benefits from August 21, 2019, to September 9, 2019. This means her appeal is allowed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

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

¹⁸ Jurisdiction is another way to say my power or authority to decide matters. S 113 of the *Employment Insurance Act* limits my jurisdiction to deciding matters that the Commission has already decided under s 112 of the *Employment Insurance Act*.

