



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *HA v Canada Employment Insurance Commission*, 2021 SST 173

Tribunal File Number: GE-20-2419

BETWEEN:

H. A.

Claimant

and

Canada Employment Insurance Commission

Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: January 29, 2021

DATE OF DECISION: February 4, 2021

DECISION

[1] The appeal is dismissed. The Claimant voluntarily took a period of leave from August 28, 2020 without just cause.

OVERVIEW

[2] The Claimant took a leave of absence from her job. She did so to look after her mother who was ill. Unfortunately, her mother passed away. The Claimant did not return to her job immediately. She later applied for regular employment insurance (EI) benefits. The Commission denied her application for EI benefits. They did so because they determined she voluntarily left her job without just cause. The Claimant argued that the Commission was wrong to conclude that she did not intend to return to work.

ISSUES

[3] Did the Claimant voluntarily leave or take a period of leave from her job?

[4] If so, did the Claimant have just cause to leave her job or take a period of leave voluntarily?

ANALYSIS

[5] Claimants cannot receive EI benefits if they voluntarily leave or voluntarily take a period of leave from any job without just cause.¹ The Commission must prove that the Claimant voluntarily left or took a period of leave from her job. Then, the Claimant must show just cause for voluntarily leaving or taking a period of leave from her job. She must show that she had no reasonable alternative to doing so.²

Issue 1: Did the Claimant voluntarily leave or take a period of leave from her job?

[6] I find that the Claimant did not voluntarily leave her job. However, I find that she voluntarily took a period of leave from her job.

¹ Subsection 30(1) of the *Employment Insurance Act*.

² *Green v. Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v. White*, 2011 FCA 190.

[7] The Claimant took a leave of absence from her job in October 2019 to look after her ill mother. She testified that she was her mother's only living relative. She said she needed to look after her mother full-time. The Claimant stated that she spoke to her supervisor to ask for a leave of absence for an indefinite period. The employer approved the leave of absence. They confirmed to the Commission that the Claimant was an excellent employee and that they had held her position at the company.

[8] I found the Claimant's testimony to be clear, straightforward and generally consistent with previous statements. Because of this, I have no reason to disbelieve that she continued to be on an approved leave of absence after her mother passed away.

[9] I find that the employer's statement to the Commission supports this. They commented on her quality as an employee. They said that they had held her position without back filling it. The record of employment they issued indicates that the Claimant was off work for "Compassionate care/Family caregiver", and would not be returning to work. However, the Claimant testified that they called her to return to work. The Claimant returned and now works four days a week.

[10] In spite of the fact that she did not return to work after her mother passed away, I do not find that the Claimant voluntarily left her job. Given the consistency between her statements and those of her employer concerning the leave of absence, and because she has returned to that job, I find that the Claimant voluntarily took a period of leave from her job.

Issue 2: Did the Claimant have just cause to take a period of leave from her job voluntarily?

[11] I find that the Claimant had just cause to take a voluntary period of leave from her job up to August 27, 2020. However, I do not find that she has shown that she had just cause to continue the period of leave after that date.

[12] A claimant has just cause for voluntarily taking a period of leave from a job if they had no reasonable alternative to doing so.³ This includes the obligation to care for a member of the

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

immediate family.⁴ But a claimant is not entitled to benefits if they take a period of leave without just cause if the employer authorizes the leave and the claimant and employer agreed to a date on which the claimant would resume employment.⁵

[13] As noted above, the Claimant took a leave of absence to look after her ill mother. She did so as her mother's only relative. The Commission submits that they paid the Claimant family caregiver benefits from November 3, 2019 to February 20, 2020. The Claimant's mother passed away on August 27, 2020. From this evidence, I find that the Claimant had just cause to take a leave of absence to August 27, 2020, because of the need to care for her mother.

[14] The Claimant testified that she has now returned to work, four days a week. She said that her employer called her to return to work after they had spoken to the Commission in November 2020. She stated that she believes the call was on a Thursday, and they agreed that she would return to work on the Saturday of that week. Again, I have no reason to doubt the Claimant's testimony. As a result, I find that the Claimant's employer authorized her leave of absence. I also find that after the Claimant started the leave, she and her employer agreed to a date for her return to work.

[15] The Claimant told the Commission that she did not contact her employer about returning to work after her mother passed away. She confirmed this at the hearing, stating that she spoke to ex-colleagues. She added that because the Commission called her employer, they called her back to work.

[16] The Claimant initially told the Commission that she did not return to work after her mother passed away because she was looking for another job. She clarified at the hearing that the work at the company was very precarious. She said that the company was under threat of closing since 2015, so she had been looking for work from long before the leave of absence.

[17] In a response to a question from the Commission, the Claimant said that she did not intend to return to her job, but was looking for other work. I asked the Claimant about this at the hearing. She testified that she was uncertain about returning to her job. She acknowledged that

⁴ Subparagraph 29(c)(v) of the *Employment Insurance Act*.

⁵ Subsection 32(1) of the *Employment Insurance Act*.

she was always looking for work. She added that she knew that she would apply for EI benefits while looking after her mother's affairs.

[18] The Claimant testified that when looking for work, she had gone to the library and submitted job applications by email. I understand the Claimant's desire to look for another job, given her belief that her job was not secure. However, I do not find that the Claimant could not have done her job search activity even while working a full-time job. I find that a reasonable alternative to continuing her leave of absence would have been to return to work and continue to look for work.

[19] After the Commission denied the Claimant's application for benefits, she added that the reason she did not return to work is that she was looking after her mother's estate matters. She testified that she continues to deal with her mother's will and estate as her power of attorney.

[20] I asked the Claimant if she could not have taken care of her mother's estate matters even while working. The Claimant said that she could have, but added that she has to have some days off to deal with these matters. She stated that she works four days a week where she used to work 40 hours a week.

[21] Based on the Claimant's testimony, I do not find that the need to take care of estate matters prevented her from returning to work. Based on her testimony, I find that the Claimant could have returned to work, and asked her employer for days off, as necessary, just as she is doing now.

[22] I sympathize with the Claimant given the passing of her mother. However, I do not find that she has not shown that she had just cause to take the period of leave from her job starting on August 28, 2020. Because of this, she is disentitled from receiving EI benefits from August 28, 2020, after her mother passed away.

CONCLUSION

[23] The appeal is dismissed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	January 29, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	H. A., Claimant