



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *JP v Canada Employment Insurance Commission*, 2019 SST 1755

Tribunal File Number: GE-19-1729

BETWEEN:

J. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: July 4, 2019

DATE OF DECISION: July 18, 2019

DECISION

[1] The appeal is dismissed. J. P. (“the Claimant”) has not demonstrated that she had just cause to voluntarily leave her employment because leaving her work was not the only reasonable alternative available to her in the circumstances.

OVERVIEW

[2] The Claimant moved from Saskatchewan to Ontario and started working as a cook at a retirement home called X. The retirement home was privately owned. The owner’s son managed the business and he was the Claimant’s manager. On her first day of work, the Claimant was trained by her manager. The Claimant felt uncomfortable in the kitchen whenever the manager left because her colleagues were unfriendly and made remarks. On her second day of work, her manager was not available to train her. The Claimant felt that her colleagues were unfriendly and bullied her because she was not able to communicate in French. This was having a bad effect on her health. The Claimant left the workplace on her second day of work about two hours after the start of her shift. She wrote to her manager and told him that she was quitting.

[3] The Claimant established a benefit period and received employment insurance benefits. Upon investigation, the Canada Employment Insurance Commission (“the Commission”) disqualified the Claimant from receiving benefits because she voluntarily left her employment with X without just cause. This resulted in an overpayment of benefits of \$14,806.00 for amounts paid to the Claimant between February 19, 2017 and October 14, 2017.

[4] The Claimant’s appeal was heard by the General Division of the Social Security Tribunal. The Claimant then appealed the file to the Appeal Division of the Tribunal. The matter is now before me for a new hearing.

ISSUES

Issue # 1: Did the Claimant voluntarily leave her employment with X?

Issue # 2: If so, did the Claimant have just cause to leave her employment because she was bullied and the work environment was causing her to be ill?

ANALYSIS

[5] Claimants are disqualified from receiving benefits if they voluntarily leave their employment without just cause.¹ A claimant can establish just cause for voluntarily leaving if she can prove that having regard to all of the circumstances, the claimant had no reasonable alternative to leaving her job.²

[6] The Commission has the burden to prove that the leaving was voluntary. Then, the burden shifts to the Claimant who must prove that she had just cause for leaving.³ The burden of proof for both the Claimant and the Commission is a balance of probabilities, which means that there is more evidence to support that the events occurred as described.

Issue #1: Did the Claimant voluntarily leave her employment with X?

[7] I find that the Claimant left her employment voluntarily.

[8] This issue is not in dispute. The Claimant acknowledged to the Commission and the Tribunal that she left her employment. She stated that she left the workplace during her second day of work after working about two hours. She sent her manager an email stating that she was quitting. The employer corroborated the Claimant's statement. The record of employment also states that the Claimant quit her job.

[9] Accordingly, I find that the Claimant had a choice to stay or leave her employment and decided to voluntarily leave her job.⁴

Issue #2: Did the Claimant have just cause to leave her employment because she was bullied and the work environment was causing her to be ill?

[10] I find that the Claimant did not have just cause to leave her job because there were reasonable alternatives to leaving. I find that it would have been reasonable for the Claimant to discuss her situation with a physician. I also find that it would have been reasonable for the

¹ Section 30 of the *Employment Insurance Act*.

² Paragraph 29 (c) of the *Act*.

³ *Green v Canada (Attorney General)*, 2012 FCA 313.

⁴ *Canada (Attorney General) v Peace*, 2004 FCA 56.

Claimant to have discussed the situation with her manager before she quit and tried to find a solution to address her feelings of being ostracized.

[11] The law sets out a list of circumstances that must be considered when deciding whether there is just cause.⁵ A claimant must prove just cause for voluntarily leaving by showing that having regard to all of the circumstances, she had no reasonable alternative to leaving.⁶

[12] The Claimant argued that she left her job because she felt that she was bullied by her colleagues and she felt that her colleagues were unfriendly towards her. The Claimant also argues that she left her employment because the stress of the work environment was making her feel ill.

Workplace Conflicts / Uncomfortable Work Environment

[13] The Claimant testified that that on the first day of work she was trained by her manager. When the manager was with her, the Claimant said that her colleagues were respectful. However, when the manager would leave her to deal with other issues, her colleagues would act differently. The Claimant testified about the following incidents that happened on the first day of training:

- Her colleagues were unfriendly and did not respond to her attempts to interact and exchange with them;
- The Claimant and her manager were discussing years of experience in the kitchen. She spoke of her age. Another colleague heard her comment and yelled across the kitchen to another employee that they were no longer the oldest people working there. The Claimant stated that everyone laughed and she felt mortified by the situation;
- Her colleagues would ignore her, speak French amongst themselves and then look at her as if they were speaking about her.
- She felt that the looks from her colleagues were demeaning and that her colleagues were staring at her. She considered that this was because she was from Western Canada;

⁵ Paragraph 29 (c) of the *Act*.

⁶ *Canada (Attorney General) v Patel*, 2010 FCA 95; *White v Canada (Attorney General)*, 2011 FCA 190.

[14] When the Claimant reported for her second day of work, she learned that her manager would not be there to train her. The Claimant explained that the manager had asked a young man who worked in the kitchen to train her. However, the young man was reluctant to show her how to prepare the food and had already done many steps of the food preparation for the morning service. She said that the servers would give her the orders that needed to be prepared. These orders were written in French. When the Claimant told the servers that she did not understand what they had written, they rolled their eyes. The Claimant explained that she was relegated to preparing toast. She was having difficulty understanding what type of bread to toast. About 30 minutes into the breakfast service, a young female colleague asked the Claimant why she did not know what she was doing yet. The Claimant testified that she felt overwhelmed by the situation and left her workstation so that she could cry in the washroom. When she returned to her workstation, the Claimant explained that it was silent in the kitchen and some of her colleagues were gawking at her. One of her colleagues asked her why she left and she explained that she had to step out. Shortly after, she told her trainer that she would be quitting and confirmed this to her manager through an email message.

[15] I acknowledged that she felt uncomfortable as the new person in the kitchen and was having trouble fitting in, particularly because many of her colleagues spoke French. However, I do not find that the conduct described by the Claimant supports her position that she was bullied in the workplace. The comments and conduct of her colleagues, although lacking in sensitivity do not amount to bullying. Moreover, I accept the employer's statement that the staff was bilingual and that two of the cooks who worked with the Claimant only spoke English. Therefore, the fact that the Claimant did not speak French was not an impediment to her engaging and working with her colleagues.

[16] In her written documents, the Claimant stated that she felt the workplace was hostile. During her testimony she stated that hostile was perhaps not the right word and she felt uncomfortable. Within a working environment where multiple personalities are in play, an adjustment period may be required before a new employee feels at ease with her colleagues. The Claimant acknowledged this herself during the hearing when she described the adjustment period required when a new employee joins as kitchen staff. As such, a certain level of discomfort and

unease may even be expected for a new employee. Therefore, I do not find that the Claimant was bullied because she was not French speaking nor that the work environment was hostile.

Working Conditions That Constitute a Danger to the Claimant's Health

[17] The Claimant testified that she felt overwhelmed and that she needed to quit her job. She felt unwelcome in the workplace. The Claimant testified that she had worked in other francophone environments since she moved to X. In those environments, she felt welcome but felt uncomfortable with the attitude and behaviour of her colleagues at X. The Claimant testified that the stress of the situation was causing her to feel unwell. She testified that she already suffered from chronic migraine headaches, issues with her blood pressure, shingles and depression.

[18] When an employee relies upon health reasons as the basis for leaving their employment, they must provide medical evidence to show that the job is injurious to their health (unless it is particularly obvious). The Claimant testified that she knew her limits and felt that she would have a breakdown if she continued to work. However, without medical information to confirm the feelings expressed by the Claimant, I cannot conclude that she had to quit her job because it was affecting her health. I acknowledge that the Claimant did not have a doctor in Ontario and that seeing a doctor required her to go to a walk-in clinic. However, without medical information to support her position, I cannot find that working conditions were a danger to her health.

Reasonable Alternatives

[19] Having considered all of the circumstances, I find that leaving her job was not the only reasonable alternative in the circumstances.

[20] The Commission argued that the Claimant did not have just cause to leave her employment because she should have explored the following alternatives before quitting:

- speak to her doctor about emotional and physical health concerns;
- secure more suitable employment prior to leaving;

- attempt to resolve her workplace issues before leaving;

[21] The Claimant argues that she could no longer remain in the workplace and that her only alternative was to leave.

[22] I acknowledge that the Claimant was going through a difficult personal time when she moved to Ontario. She testified that she had left her husband, was living for the first time away from her children and had learned that her mother had lung cancer. She also spoke on her ongoing personal health struggles with high blood pressure and depression. I find that consulting a doctor would have been a reasonable alternative in her circumstances. I acknowledge the Claimant's argument that she did not have a GP in Ontario and did not want a doctor from a walk-in clinic to adjust her medication since they would not know of her medical history. Without having the doctor adjust her medication, I still find that it was a reasonable alternative for the Claimant to have consulted a doctor to understand if the job was having an impact of her health and to seek a recommendation on whether she should remain in the job or not.

[23] I also find that a reasonable alternative in the circumstances was for the Claimant to discuss the situation with her manager and to try to find a solution. I find that she could have explained in detail what was making her feel uncomfortable, describe the impact of the work environment on her, explain how the work environment was different from other kitchens where she had worked and describe what specifically would make her feel more at ease with her colleagues.

[24] I find that the Claimant had not communicated her genuine concerns to the manager and therefore there were no attempts to resolve the situation before the Claimant left the workplace. The Claimant confirmed during her testimony that she did not speak with her manager about her experience in the kitchen before she left. She stated that, "perhaps she had jumped the gun on that".

[25] I find that the Claimant's failure to take steps to try to address the situation before quitting means that she failed to exhaust this reasonable alternative.

[26] There is no doubt that the Claimant’s testimony was sincere and heartfelt. The Claimant expressed a genuine level of discomfort with the work environment. I acknowledged that the Claimant felt that she had good reasons for leaving the job. However, there is a distinction between the concepts of “good reasons” and “just cause” for voluntarily leaving. The words “just cause” under the law are not synonymous with “reason” or “motive”.⁷ Therefore, it is not enough for the Claimant to demonstrate that she acted for a good reason when she left the workplace. She must demonstrate that, after considering all of the circumstances, she had no reasonable alternative to leaving her employment. The Claimant has not been able to demonstrate that leaving was the only reasonable alternative in the circumstances.

[27] Consequently, I find that the Claimant did not have just cause to voluntarily leave her employment.

CONCLUSION

[28] The appeal is dismissed.

Christianna Scott
Member, General Division - Employment Insurance Section

HEARD ON:	July 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. P., Appellant

⁷ *Tanguay v Canada (Unemployment Insurance Commission)*, A- 1458-84.