



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *LF v Canada Employment Insurance Commission*, 2021 SST 334

Tribunal File Number: GE-21-225

BETWEEN:

L. F.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: March 1, 2021

DATE OF DECISION: March 8, 2021

Decision

[1] L. F. is the Appellant in this appeal. I will call her the Claimant. The Canada Employment Insurance Commission is the Respondent. I will call it the Commission.

[2] I am allowing the Claimant's appeal. The Commission did not meet its burden of proving the Claimant voluntarily left her employment. This means the Claimant is not disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant worked 12-hour night shifts in a long term care facility. She was required to remain at the facility during her meal breaks and was paid for doing so. The Claimant made an arrangement with her employer to leave the work site during her meal break to attend to matters at her home. At the start of her last shift, the Claimant found out the facility was short-staffed and asked the manager what she should do. There was a confrontation between the Claimant and the supervisor. The manager asked the Claimant for her resignation. Another staff member was called in to work which allowed the Claimant to leave the work site for the hour. The Claimant returned to the work site, provided the letter of resignation and completed her shift. The employer notified the Claimant before her next shift that she was no longer required.

[4] The Commission looked at the Claimant's reasons for leaving her job and first decided that she did have just cause for leaving her job. The Commission told the Claimant's former employer that it was allowing her claim for EI benefits. The employer asked the Commission to reconsider its decision. The Commission reconsidered and decided that the Claimant did not have just cause for leaving her job. The Claimant disagrees; she says that she had an arrangement with her employer to leave for an hour, and that she was pressured into resigning. She also says that she was planning to leave work in any event because she injured herself at work.

[5] I must decide if the Claimant had just cause for leaving her job when she did.

Preliminary Matter – I did not add the employer as a party to the appeal

[6] The Tribunal staff sent a letter to the Claimant’s former employer asking if it wanted to be an added party to this appeal. To be an added party to an appeal a party must show that it has a “direct interest.” This means the party must show that its legal rights are directly affected, legal obligations are imposed on it, or it is prejudicially affected in some way.¹

[7] The employer replied that it believes it has a direct interest in this appeal because it thinks the information it provided with regard to the Claimant leaving her employment would not entitle her to receive EI benefits. This tells me that the employer is concerned about the reasons (evidence) the Claimant will provide for leaving and / or the outcome of the appeal. There is no evidence that my decision on the appeal – whether favourable or unfavourable to the Claimant – will impose a legal obligation on the employer, that it will be bound by the decision or, that it will otherwise be prejudicially affected in a direct way. In the absence of such evidence, the employer has not proven that it has a direct interest in the Claimant’s appeal. Because of this, I refused the employer’s request to be an added party to this appeal.

Issue

[8] I have to decide if, under the *Employment Insurance Act*, the Claimant had just cause to voluntarily leave her employment. This decision takes two steps. First, I have to see if she chose to leave her job. Second, I have to see if she had just cause for leaving.

Analysis

[9] The law says that if you quit your job without just cause, you cannot receive EI benefits.²

The Claimant did not voluntarily leave her employment

[10] To decide if the Claimant voluntarily left her employment, the question to be asked is whether she had a choice to stay in or leave that employment.³

¹ *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2013 FCA 236. This is how I refer to the courts’ decisions that I must apply to this appeal.

² *Employment Insurance Act*, section 30(1). This is how I refer to the law that applies to this appeal.

³ *Canada (Attorney General) v. Peace*, 2004 FCA 56.

[11] The Claimant testified that when she and her former partner were together they purchased eleven dogs. When she and her former partner broke up several years ago, they agreed that both would continue to be responsible for the care of the dogs. This agreement stayed in effect until the end of the first week in October 2020. The Claimant's dogs are penned while she is at work. She works 12-hour night shifts and could not leave the dogs unattended for that length of time. She is also required to remain at the work site for her meal breaks during her shifts. The Claimant asked the manager if she could leave work site during her meal break to care for her dogs. In exchange, the Claimant would remain at work for an additional hour at the end of her scheduled shift, which would be in the morning, the busiest time with residents. The manager agreed to the arrangement, provided it ended by October 31, 2020.

[12] The Claimant provides care to the residents of a long term care facility. The manager told the Commission that it is required to maintain certain staffing levels at the facility. The manager told the Commission that the requirements for staffing have been more difficult to maintain with the restrictions under the COVID-19 pandemic.

[13] The Claimant explained there is a "short shift" employee who works for a shorter shift each evening. The Claimant testified that when she went to work for the night of October 22, 2020, she found out that the short shift employee was not coming in to work that evening. At approximately 6:30 p.m., the Claimant texted the manager asking "what am I going to do?" The manager responded "Not sure [Claimant name]. Is your friend all trained up to check on them yet? I can't come back tonight I'm not even left yet." The Claimant texted back "Well I'm sorry I refuse to leave my dogs for 13.5 hours pinned up and if nobody is here at 9:30 I apologize but I won't be back. Call me if you have time."

[14] The Claimant testified that the last text was incorrect. She did not mean to type "I won't be back." She meant to type that "I will be back."

[15] The Claimant said that the manager called her to come to the office. She said the manager yelled at her and would not let the Claimant explain the mistake in the text. The manager broke down crying and told the Claimant that she, the manager, was not appreciated and overworked. The Claimant testified that the manager asked the Claimant for her resignation as part of this meeting. The manager later arranged for a staff member to come to work to cover

the Claimant's absence. The Claimant testified that she was aware another employee was called in to work, she left the workplace at 9:30 p.m. for one hour and she returned at 10:30 p.m. She wrote her letter of resignation and placed it on the counter in the kitchen when she came back to work. The Claimant was on the phone to a local hospital when she saw the manager pick up the resignation letter from the counter at approximately 11:00 p.m. The Claimant completed her shift and went home the morning of October 23, 2020.

[16] The Claimant's letter of resignation, dated October 22, 2020, reads:

I [Claimant name] hereby resign my position at [employer name] effective today, October 22, 2020.

I will respectfully give the home two weeks notice at which time I will complete my last shift on Nov 5th, 2020, providing that I am able to be excused during all of my remaining shifts for 1 hour.

[17] The Claimant testified that her next scheduled shift was for 7:00 p.m. on Monday, October 26, 2020. She said that at noon on that day, the manager left a voice mail message on the Claimant's phone. The manager said that the Claimant did not need to work her weeks' notice and that her employment was done with [employer name].

[18] The Claimant submits that it was not fair for the employer to renege on its agreement to let her leave the work site for an hour. She said the manager agreed to keep the arrangement in place until October 31, 2020. She said that it was not fair for the manager to go back on her word. She noted that the manager told the Commission that it had to keep certain staffing levels. She said, if that was the case then the manager should never have agreed to the Claimant leaving for an hour during each shift. The Claimant said that she felt pressured into resigning. The manager would not let her speak to explain the mistake in the text and demanded that she put in her resignation. She did so. The Claimant said she was thinking about leaving the workplace anyway because she had injured her back and her doctor said she would continue to do so if she kept working at the same job.

[19] As noted above, I must first decide if the Claimant had a choice to stay in or leave her job. The evidence tells me that the employer agreed to a temporary arrangement that allowed the

Claimant to meet her needs at home. The arrangement “worked” as long as the required number of staff were present in the long term care facility. The Claimant testified that when she found out that the short shift employee was not at work she texted the manager to ask what should she do. The manager responded with a text asking the Claimant if she had trained her friend up to take care of the dogs and saying that she, the manager, could not come back that night. The Claimant replied, by text, that she was sorry she refused to leave her dogs penned up for 13.5 hours and “if nobody is here at 9:30 I apologize but I won’t be back.” The Claimant testified that she did not mean to text she would not be back she meant to text she would be back.

[20] The Claimant testified she was called to the office where she says the manager yelled at her and would not give her a chance to explain. The Claimant says the manager broke down and was crying. She says it was the manager who asked her for the letter of resignation in that meeting. The manager arranged for another employee to cover the Claimant’s absence, the Claimant went home for the hour, returned to work and submitted her resignation. The Claimant finished her shift and went home.

[21] The Commission interviewed the manager. The manager told the Commission that the Claimant texted her at 6:30 and said that if someone did not come in to cover for her she was going to leave at 9:30 p.m. regardless. The manager told the Commission that she was able to find someone to go in to prevent the Claimant from quitting that night. She said the Claimant was warned that night they could not keep accommodating her request to go home for lunch break and she would need to find someone to help take care of her dogs. The manager told the Commission that the following day the Claimant came to work and brought in a letter of resignation with two weeks’ notice. The manager told the Commission that the Claimant was told the employer could not guarantee they would have someone every day to accommodate her and she needed to get her help in place. The Commission record then says: The employee ended up quitting that day and did not return.

[22] The Commission submitted that the Claimant made a personal decision to leave her job. It says that the Claimant took the initiative in the separation from employment because the employer refused to accommodate the Claimant’s request to leave for an hour during her shift to attend to her animals. The Commission said the Claimant gave her employer an ultimatum, if

the employer did not allow her to leave for an hour, she was leaving anyway, after being told they could not allow it.

[23] In this case, I find that it was the manager who initiated the separation from employment when she asked the Claimant for her resignation at the meeting of October 22, 2020. The manager told the Commission that the Claimant threatened to quit on the night of October 22, 2002, and returned to next day with the letter of resignation. However, there is no evidence to support that the Claimant returned to the workplace the next day to submit her resignation. Rather, I find the evidence supports that the Claimant resigned because her manager asked her to do so. The Record of Employment (ROE) states that the Claimant's last day for which paid was October 22, 2020. The Claimant's letter of resignation is dated October 22, 2020. The Claimant testified that she wrote the letter of resignation because she was asked to do so by the manager on the evening of October 22, 2020. She was asked to submit the letter of resignation prior to knowing whether she could leave the work site during the meal break and also before she knew a staff member had been called in to work. The Claimant wrote the letter after she had left the work site for her hour meal break on October 22, 2020. She put the letter on the kitchen counter when she came back from her lunch break on the night of October 22, 2020. She testified that she saw the manager pick up the letter around 11:00 p.m. that night. The Claimant's statement in the resignation letter that she would work the notice period provided her one-hour absence was accommodated is not determinative of the matter. The test is whether the Claimant had the choice to remain in or leave her employment.⁴ The manager's demand that the Claimant submit a letter of resignation tells me that the manager initiated the Claimant's separation from her employment. Once that demand was made, the Claimant had no choice to remain in her job, because she was told to resign from it. As a result, I find the Commission has not met its burden of proving the Claimant voluntarily left her employment.

No need to determine if the Claimant had just cause

[24] Having determined that the Claimant did not voluntarily leave her employment, I do not need to address whether the Claimant had just cause to do so.

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

Conclusion

[25] The appeal is allowed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	March 1, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. F., Appellant