



Citation: *JL v Canada Employment Insurance Commission*, 2021 SST 377

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: J. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (424758) dated June 3, 2021
(issued by Service Canada)

Tribunal member: Charlotte McQuade

Type of hearing: Teleconference

Hearing date: July 12, 2021

Hearing participants: Appellant

Decision date: July 24, 2021

File number: GE-21-1037

Decision

[1] The appeal is allowed. The Tribunal agrees with J. L. (Claimant).

[2] The Claimant has shown just cause (in other words, a reason the law accepts) for leaving her job when she did. The Claimant did have just cause because she had no reasonable alternative to leaving. This means she isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant was in receipt of regular EI benefits. While in receipt of benefits, she started a job at a cleaning company on April 6, 2021. The Claimant quit the job on April 10, 2021. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that she voluntarily left (or chose to quit) her job without just cause, so it wasn't able to pay her benefits from April 4, 2021.

[4] I have to decide whether the Claimant has proven that she had no reasonable alternative to leaving her job.

[5] The Claimant says her employer breached its agreement to provide her transportation to and from the worksite, which was a condition of her accepting employment. She also says the employer was not following the pandemic related public health masking laws, which put the health of her and her family at risk. The Claimant says she had no reasonable alternative to leaving because she did not want to take public transportation due to the health risk, and she could not afford to pay for alternative transportation, given she was only earning \$16.00 per hour. She also says she had no reasonable alternative to leaving, given the health risk from the employer's breaches of the masking laws.

[6] The Commission says the Claimant quit after four days and did not attempt to resolve all the issues with her employer, nor did she explore the existing reasonable alternatives. The Commission says the Claimant could have discussed her safety concerns with the employer. As well, the Claimant agrees that her manager told her he was looking into getting the Claimant home from work. The Commission says there

was no urgent need for the Claimant to quit due to transportation issues so she could have explored this reasonable alternative.

Issue

[7] Is the Claimant disqualified from receiving benefits because she voluntarily left her job without just cause?

[8] To answer this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

Matter I have to consider first

Potential added party

[9] The Tribunal identified the Claimant's employer as a potential added party to the appeal. A letter was sent to the employer asking if the employer wanted to be an added party. To be an added party, the employer has to show it had a direct interest in the decision.¹The employer did not respond to the Tribunal's letter. As there is nothing in the appeal file to indicate the employer has a direct interest in the decision, I have decided not to add the employer as a party.

Analysis

The parties agree that the Claimant voluntarily left

[10] I accept that the Claimant voluntarily left her job. The Claimant agrees that she quit on April 10, 2021. I see no evidence to contradict this.

The parties don't agree that the Claimant had just cause

[11] The parties don't agree that the Claimant had just cause for voluntarily leaving her job when she did.

¹ See subsection 10(1) of the *Social Security Tribunal Regulations*.

[12] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.² Having a good reason for leaving a job isn't enough to prove just cause.

[13] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.³

[14] It is up to the Claimant to prove that she had just cause. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that her only reasonable option was to quit.⁴

[15] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit. The law sets out some of the circumstances I have to look at.⁵

[16] After I decide which circumstances apply to the Claimant, she then has to show that she had no reasonable alternative to leaving at that time.⁶

The circumstances that existed when the Claimant quit

[17] The Claimant says that she left because the employer breached the terms of their agreement to provide her with transportation to and from the worksite. She also says two of the circumstances set out in the law apply. Specifically, she says that her employer engaged in practices contrary to public health laws⁷ and the working conditions constituted a danger to her health and safety.⁸ She says this was because the employer was not following the pandemic related public health laws regarding masking.

² Section 30 of the *Employment Insurance Act* (Act) explains this.

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

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

⁵ See section 29(c) of the Act.

⁶ See section 29(c) of the Act.

⁷ See paragraph 29(c)(xi) of the Act.

⁸ See paragraph 29(c)(iv) of the Act.

[18] The Claimant testified that she had an interview with the manager of the employer at the cleaning company's office on April 2, 2021. The manager wanted to hire her on the spot as she had had cleaning experience. The Claimant says she did not have a car and did not want to take public transportation due to the pandemic. The Claimant says she would have had to take two busses to get to the employer's office. She was concerned about catching Covid-19 on the public transportation. The Claimant says she was honest with the manager about this. She told him that she did not have a car and the only way she could accept the job was if the employer provided her transportation back and forth from her home. The Claimant says the manager was anxious to hire her and he told her "absolutely" he would agree to that. He told her that usually the employees meet at the office but he would make arrangements for the person driving the company car to pick her up at home and drop her off. He said it was not a problem.

[19] The Claimant explained that the manager was not wearing a mask at the time of the interview, which was being held in a small office. She pointed out that this was during the lockdown period and masks were required to be worn then. The Claimant said she was excited to be hired, however, and did not really think about the missing mask until she got home.

[20] The Claimant testified further that she started work on April 6, 2021. The supervisor came to her home to pick her up in the morning. There were two other workers in the car. They worked the shift and afterwards, the supervisor drove them to the employer's office. The Claimant completed paperwork with the manager at the end of the shift and again he was not wearing his mask. The Claimant recalls that her employment agreement said either "PPE" supplied or required. The Claimant cannot recall if there was any discussion about Covid-19 protocols. There was no safety training.

[21] The Claimant says she was not given a copy of the employment agreement but it did not say anything about the manager's verbal agreement to provide her with transportation to and from her home. After completing the paperwork, the manager

asked her how she was getting home. She looked him awkwardly and said she guessed she would have to get an "Uber" He directed her to the main road. The Claimant said it cost her \$20.00 to get home. She thought maybe it was a one-time thing.

[22] The Claimant said the following morning, she was picked up at her house in the morning but again was not driven home after work. A co-worker saw her walking to the main road from the office and dropped her at home. This co-worker offered to pick her up and drive her home for \$55.00 to \$60.00 per week. The Claimant asked her if she would consider taking \$40.00. However, the co-worker declined. The Claimant said that she could not afford \$50.00 to 60.00 per week because, even though the wage was \$16.00 per hour. She explained her pay only started from when they are inside the house they were cleaning and went until they were finished. One day she says she did not start until 1 p.m.

[23] The Claimant said on the second day, after the employer had not arranged transportation for her, she sent the manager a text which said something like, "I have not been getting dropped off home- it is kind of awkward since we get there and everyone goes there separate ways – we had an agreement that I picked up and would be dropped off at home". The Claimant said the manager responded to her that the supervisor would talk to her tomorrow about it. However, the Claimant testified that no one spoke to her the next day about the transportation. A co-worker, however, dropped her off again the next day and on the following day, because she agreed to work late on the condition she be taken home after, the supervisor dropped her off at home.

[24] The Claimant said on Saturday, April 10, she messaged the manager and said it was not working out, as she was not getting dropped off. He responded to her that he was sorry to hear that and that he would like to keep her on the team. He said the owner thought she was excellent at cleaning. He asked if there was something they could do better on their end and they could look into dropping her off. The Claimant said that she did not believe him at that point, as he had not kept his promise. He had had time to arrange her transportation and did not. He had promised to deal with this

previously but took no action. She said she had been clear with him from the beginning that she was only taking that job on the condition she would be picked up and dropped off.

[25] The Claimant said, in addition to the transportation issue, she also had concerns about the risk to the health of her and her family as the employer was not following the pandemic related public health masking rules. She related that she and her husband visit their father-in-law, who is a senior with health issues and lives alone. She did not want to put herself or her family at risk by working at this job. The Claimant said the manager had not worn a mask when she was in the office with him on two occasions. She testified that when she was being driven to the different cleaning sites, the supervisor wore her mask but the other two co-workers would take their masks on and off. The supervisor did not say anything. As well, they were eating in the car with their masks off. On one occasion when she was driven from one cleaning location to another by the owner of the cleaning company, the owner was not wearing a mask and said mask wearing was "optional". The Claimant related that at one of the job sites she had to attend, another crew from the same cleaning company were there and some of them were not wearing their masks. The Claimant says she never brought the masks up with the employer as she thought they would be aware of it, as it was required by public health rules and she is not a confrontational person. The Claimant related that the employer's masking violations put her health and that of her family at risk.

[26] The manager of the employer told the Commission that they were well aware of the protocols for health and safety while working during COVID-19. The manager said the Claimant spoke to him on April 11, 2021 and told him her reason for leaving was due to transportation issues. She told him that her partner used their car for work and they could not afford to buy another one. The manager told the Commission that the Claimant had previously expressed concern about getting home after her shifts. He said the employer has a company vehicle that takes the employees to the work sites. The employees meet at the employer's location. At the end of the shift the vehicle picks up the employees and takes them to the employer's location. The manager said the Claimant made arrangements with a co-worker to pick her up and drive her home

before and after shifts but the co-worker wanted \$50.00 per week to drive the Claimant. The Claimant did not want to pay that so she quit. The manager said that as the Claimant had expressed concern about getting home at the end of her shifts, he offered to look into dropping her off after the shifts but she said she would not be returning.

Transportation issue

[27] I find a circumstance of leaving was that the employer breached the agreement to provide transportation to the Claimant to and from the workplace.

[28] Although the employer acknowledges that the Claimant expressed concern about transportation, the employer does not acknowledge any agreement to provide transportation. However, I found the Claimant's evidence that there was such an agreement to be credible. Her evidence was under oath. She was direct and answered questions openly. Further, the Claimant's evidence was consistent with information she told the Commission. I prefer her evidence, therefore, over the unsworn, untested evidence of the employer.

Practices of employer contrary to law⁹ and working conditions a danger to Claimant's health¹⁰

[29] I also find that a circumstance of leaving was that the employer was breaching the law by not following public health masking rules. A further circumstance of leaving was the Claimant's health was in danger as a result of the employer's failure to follow those rules.

[30] The manager told the Commission that he was well aware of the protocols for health and safety. However, there is no evidence that he was asked by the Commission or gave any information to the Commission specifically about whether employees were wearing their masks, where required by law. The fact the manager was aware of the safety protocols doesn't mean he was following them. The Claimant's direct evidence was that the manager did not wear a mask on two occasions in a closed environment,

⁹ See paragraph 29(c)(xi) of the Act.

¹⁰ See paragraph 29(c)(iv) of the Act

she was required to be in a car with other employees taking their masks on and off and eat in the car with masks off. As well, the owner was not wearing a mask on one occasion when driving her to a different job site, and said masks were “optional”. Further, the Claimant attended another job site where she observed other employees of the employer not wearing masks. None of this direct evidence has been specifically contradicted by the employer’s evidence. As above, I found the Claimant’s evidence to be credible and I accept it.

[31] The Claimant has not provided a copy of the actual public health laws that the employer is said to have breached. However, it is a matter of public knowledge that masking laws have been in effect in Ontario for some time. The Claimant is unrepresented and I do not expect her to be able to cite the actual sections of the law in question. I can infer she is referring to Ontario’s public health regulations relating to masking.¹¹ While masks were required indoors in Ontario, where the Claimant was employed, at the time of her employment, there are exceptions. For example, masks are not required when working in areas that allow a physical distance of at least two meters.¹²

[32] I am not satisfied that the law was broken during the Claimant’s interview or when she was signing papers as the Claimant provided no evidence concerning how far apart she was from her manager at that time. I am satisfied, however, that the law was broken during the car trip with the owner when the owner was not wearing her mask and also in the situations when the Claimant was in the car with her co-workers and they removed their masks. The car environment is one where physical distancing would not have been possible.¹³

¹¹ See Schedule 1 of O. Reg. 364/20 made under *Reopening Ontario (A Flexible Response to Covid-19) Act, 2020*, S.O. 2020, c.17 (version in force from March 29, 2021 to April 22, 2021).

¹² See subsections 2(4) and 2(5) of Schedule 1 of O. Reg. 364/20 made under *Reopening Ontario (A Flexible Response to Covid-19) Act, 2020*, S.O. 2020, c.17 (version in force from March 29, 2021 to April 22, 2021).

¹³ See subsection 2(4) of Schedule 1 of O. Reg. 364/20 made under *Reopening Ontario (A Flexible Response to Covid-19) Act, 2020*, S.O. 2020, c.17 (version in force from March 29, 2021 to April 22, 2021) which requires masking in a vehicle.

[33] I also find that the Claimant's working conditions posed a danger to the Claimant's health due to the employer's failure to follow the masking law. The masking law was put in place for reasons of protecting the public's health so I can infer that a breach of that law would pose a danger to the Claimant's health.

[34] I must now look at whether the Claimant had no reasonable alternative to leaving her job when she did.

No reasonable alternatives

[35] The Commission says the law requires that the Claimant address her safety concerns with the employer but she did do so. The Claimant stated she is not a confrontational person and also she thought they would know better and therefore did not discuss it. The Commission points out that a discussion does not need to be a confrontation. The Claimant had stated she had texted her employer regarding her transportation concerns so it would be reasonable that she also could have texted him regarding her COVID safety concerns.

[36] The Commission also says that the Claimant agrees that the manager told the Claimant he was looking into getting the Claimant home from work. The Commission says there was no urgent need for the Claimant to quit due to transportation issues so she could have explored this reasonable alternative.

[37] The Claimant says that she had no reasonable alternative because the employer was not following the mandated public health law requiring masking. She says it was not a reasonable alternative to continue working with an employer who was breaking the law and putting her health and the health of her family at risk. The Claimant says she did not say anything to the employer about the masks because it was a pandemic and she assumed the company would be aware of the public health rules.

[38] The Claimant says she had no reasonable alternative with respect to the transportation as she did not want to take public transportation due to safety concerns. The Claimant says now that she is fully vaccinated she can take public transportation

but then she did not feel safe doing so. The Claimant says she could not afford to pay for an Uber every day when her pay was only \$16.00 per hour and her hours varied. The Claimant says she tried to find a solution. She tried to negotiate with the co-worker to accept less than \$55.00 per week but she would not. The Claimant says while it is true the manager offered to try to arrange transportation for her after receiving her text about quitting, she did not believe him as he had breached the initial agreement to provide transportation. As well, after her text on the second day of work that she was not being provided with transportation as agreed, he said the supervisor would talk to her about it, but that did not happen, and transportation was not arranged.

[39] Had the only issue been the transportation, I would have agreed with the Commission that the Claimant had reasonable alternatives to quitting. It is true the employer did not follow through on his initial agreement or the Claimant's first text reminding of the agreement. However, in response to the Claimant's text in which she indicated she was quitting, the manager asked if there was something they could do better on their end and they could look into dropping her off. Although the Claimant did not trust her manager's promise on that point, she had only worked four days. I find it would have been a reasonable alternative to at least give this employment a chance for a while longer to see if the manager did find a solution to the transportation issue.

[40] However, the transportation was not the only circumstance of leaving. The circumstances of leaving also concerned the employer's breach of the public health laws concerning masking and the danger to the Claimant's health.

[41] I agree with the Commission that the law says that the onus is on the Claimant to discuss working conditions with the employer to explore the possibility that the nature or conditions of employment could be changed in response to concerns.¹⁴ The Claimant did not do that. However, the circumstances in which the Claimant left involved more than just working conditions that posed a risk to her safety. The employer was also breaching the public health law. The manager of the employer told the Commission they were well aware of Covid-19 protocols. So, I find the fact the Claimant did not

¹⁴ See *Canada (AG) v. Hernandez*, 2007 FCA 20.

raise this issue with the employer to be of no significance, given the employer says they were already aware of the rules.

[42] In any event, I do not find it to have been a reasonable alternative to the Claimant to have raised this issue with the employer, given the owner's view that the public health law regarding masking was "optional". It is clear that the employer was not enforcing masking rules. The supervisor that was driving the Claimant and the two other co-workers said nothing when the masks were taken off. The Claimant saw another job site where individuals were working without masks. This is not a situation where the employer was unaware of the rules. The manager says they were well aware of the Covid-19 protocols. This is rather a situation where the employer chose not to follow the rules. Had the Claimant raised her concerns with the owner, the owner is unlikely to have begun requiring the employees to abide by the mask law, when she herself was not wearing a mask in the car and thought that such a law was "optional". It is not reasonable for the Claimant to have continued working in such an environment, where her safety was at risk and the employer was knowingly breaching public health laws.

[43] Considering the circumstances that existed when the Claimant quit, the Claimant had no reasonable alternatives to leaving when she did, for the reasons set out above.

[44] This means the Claimant had just cause for leaving her job.

Conclusion

[45] I find that the Claimant isn't disqualified from receiving benefits.

[46] This means that the appeal is allowed.

Charlotte McQuade
Member, General Division – Employment Insurance Section