



Citation: *SS v Canada Employment Insurance Commission*, 2021 SST 592

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: S. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (427886) dated August 10, 2021 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference

Hearing date: September 28, 2021

Hearing participant: Appellant

Decision date: September 29, 2021

File number: GE-21-1506

Decision

[1] S. S. is the Claimant. The Canada Employment Insurance Commission (Commission) decided that she didn't have just cause for leaving her job. She is appealing this decision to the Social Security Tribunal.

[2] I am allowing her appeal. Leaving her job was the only reasonable thing left for her to do, in her situation. I find that she had just cause for leaving her job. This means that she should get Employment Insurance (EI) benefits without a disqualification.

Overview

[3] The Claimant worked for a saw sharpening business. She stopped working and applied for EI sickness benefits. She didn't return to work and then asked for EI regular benefits. The Commission decided that she quit her job. The Commission refused to pay EI regular benefits because it decided that she didn't have just cause for leaving her job.

[4] The Claimant disagrees with the Commission. She says she had to quit her job. Her eyesight was deteriorating and she couldn't see well enough to do the job anymore. She said she was getting headaches and eye problems because of the job.

[5] The Commission says the Claimant doesn't have just cause because she had reasonable alternatives to leaving her job. The Commission says that she could have taken medical leave, asked for different duties, or found a new job.

Issue

[6] I have to decide whether the Claimant should be disqualified from receiving benefits for voluntarily leaving her job without just cause.

[7] To make my decision, first I have to decide if the Claimant stopped working because she quit, or if she stopped working for another reason. If the evidence shows that she quit her job, then I have to decide whether she had just cause for leaving.

Analysis

The Claimant and the Commission agree that the Claimant voluntarily left

[8] The Claimant has always said she stopped working because she quit her job. The Commission says she quit. On the Record of Employment, the employer said she quit. There isn't any evidence that says the Claimant stopped working for any other reason. She stopped working because she chose to leave her job.

[9] The law calls quitting "voluntary leaving." I find that the Claimant voluntarily left her job. This means that I have to decide if she had just cause for voluntarily leaving her job.

The Claimant and the Commission disagree about whether the Claimant had just cause

[10] The Claimant and the Commission disagree about whether the Claimant had just cause for leaving her job when she did.

[11] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ Having a good reason for leaving a job isn't enough to prove just cause.

[12] 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.²

[13] 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.³

¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

[14] 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.⁴

[15] 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.⁵

The circumstances that existed when the Claimant quit

[16] The Claimant says that she quit because of her health problems. She says she had trouble with her eyes and couldn't keep doing the same job.

[17] The law says that one of the circumstances I should consider is whether the workplace caused a danger to the Claimant's health or safety. So, I will decide whether she has proven that her job was causing health problems with her eyes.

[18] At the hearing, the Claimant described her job. She said she worked at a small company, sharpening saw blades. She said the job needed careful attention to detail and good eyesight. She had been in the job for nearly three years and started noticing problems with her eyesight within the first few months. It was worse in the fall and winter because there wasn't much natural light. She started wearing stronger and stronger reading glasses. It helped for a while, but eventually she had problems seeing the teeth of the saw blades even with the strongest reading glasses. The Claimant said she started to make mistakes because she couldn't see well enough.

[19] She needed surgery on her tear ducts. Her ophthalmologist told her that her vision and other eye problems would keep getting worse if she continued to strain her eyes. He didn't tell her to quit her job, but told her that it would be a good idea to try other work that didn't need such careful eyesight.

[20] The Claimant said the strong reading glasses gave her bad headaches. She took so much ibuprofen to deal with the headaches that it made her feel sick. By the end of a

⁴ See section 29(c) of the Act.

⁵ See section 29(c) of the Act.

work day, her eyes were so tired she had trouble seeing the road at night and driving safely.

[21] The Commission says the Claimant doesn't have a doctor's note. I agree; there isn't a doctor's note. But I have no reason to doubt the Claimant. She has always said she quit her job because of eyestrain and problems with her vision. At the hearing, she promised to tell the truth. She answered my questions thoroughly and gave me details about her eye problems. So, I believe her.

[22] I find that the Claimant's job needed keen eyesight. I find that her eyesight was deteriorating. I believe that she had headaches and eyestrain. This is the circumstance I will consider when I decide whether she had just cause for leaving her job.

The Claimant had no reasonable alternative

[23] To prove just cause, the Claimant has to show that she had no reasonable alternative but to leave her job when she did.

[24] The Claimant says she had no reasonable alternative. She says she gave her employer three months' notice to find a replacement, but she just couldn't stay in the job any longer. She says her headaches and eyestrain were so bad that it was dangerous and she was making mistakes.

[25] The Commission disagrees. The Commission says the Claimant hasn't proven that the job was so intolerable that she had to quit. The Commission says she could have taken a medical leave of absence, asked for different duties, or found a new job.

[26] I disagree with the Commission. I don't have to decide if the job was intolerable; I only have to decide whether the Claimant has proven that leaving her job was the only reasonable thing left for her to do, looking at her circumstances.⁶ I think she has proven this.

⁶ *Canada (Attorney General) v Laughland*, 2003 FCA 129, at paragraph 9. I am using plain language to explain the Federal Court of Appeal's phrase, "whether leaving the employment was the only reasonable course of action open to him, having regard to all the circumstances."

[27] The Claimant said she talked to her employer about her eye problems but they didn't take her seriously. She says it was a small company and there weren't other kinds of jobs. All the jobs needed good eyesight. She looked for other work, but it was hard to find something because of the Covid pandemic. Not many employers were hiring. She said she couldn't stay in the job until she found another job because it was too difficult. Some days she left work in tears because she couldn't see.

[28] I don't think it was reasonable for the Claimant to keep working at a job that caused headaches and eyestrain. It wasn't reasonable for her to keep making mistakes because she couldn't see well. So, I don't think staying in the job until she found a new job was a reasonable alternative for her.

[29] Taking a medical leave of absence wouldn't have fixed the root of the problem: she couldn't see well enough to do the job. So, taking a medical leave of absence wasn't a reasonable alternative for her.

[30] I believe her when she says there weren't other duties because it was a small company. Asking for other duties wasn't a reasonable alternative.

[31] She talked to the employer, but how could the employer solve the problem when the real issue was her deteriorating eyesight? So, talking to the employer to find a solution wasn't a reasonable alternative.

[32] I understand that the Commission wants a doctor's note saying that the doctor recommended she quit her job. But I don't think a doctor's note would add anything new. I already believe the Claimant.⁷ I believe that the Claimant had eyestrain, headaches, and vision problems. And all this in a job that needed keen eyesight. In her situation, what reasonable alternatives did the Claimant have? I believe that quitting was the only reasonable thing left for her to do. I find that the Claimant has proven that she had just cause for leaving her job.

⁷ *Brisebois v Canada (Attorney General)*, A-510-96.

Conclusion

[33] I am allowing the Claimant's appeal. I find that she has proven that she had just cause for leaving her job. So, the Commission shouldn't disqualify her from receiving EI benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section