



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KC v Canada Employment Insurance Commission*, 2021 SST 606

Tribunal File Number: GE-21-19

BETWEEN:

K. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: January 19, 2021

DATE OF DECISION: January 25, 2021

DECISION

[1] K. C. is the Claimant. The Canada Employment Insurance Commission (Commission) decided that she did not have just cause for quitting her job. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. She has not shown that she had just cause for leaving her job. This is because she had reasonable alternatives to leaving her job when she did. She is disqualified from receiving benefits.

OVERVIEW

[3] The Claimant worked as a teacher on a reserve in a northern community. During a school break, she travelled outside of the community for a medical appointment. She returned to work immediately after her return to the community. Other teachers criticized her decision to return to work without first self-isolating. They accused her of breaking the community's health guidelines. They also accused her of putting the community at risk of a Covid-19 outbreak. The Claimant quit her job and applied for Employment Insurance benefits. The Commission looked at the Claimant's reasons for leaving her job. The Commission decided that she voluntarily left her job without just cause and disqualified her from receiving benefits.

[4] The Claimant says that she had to leave her job. She says that her co-workers were harassing her. She says that she had health conditions that would have become worse if she had to work in a stressful environment.

[5] The Commission disagrees. The Commission says that the Claimant's co-workers were not harassing her. The Commission also says that it would have been reasonable for the Claimant to speak to her employer about the situation before she quit.

ISSUE

[6] I must decide whether the Claimant is disqualified from being paid benefits because she voluntarily left her job without just cause. To do this, I must first address the Claimant's voluntary leaving. Then, I have to decide whether the Claimant had just cause for leaving.

ANALYSIS

There is no dispute that the Claimant voluntarily left her job

[7] I accept that the Claimant quit her job. The Claimant agrees that she quit her job. I see no evidence to contradict this. When you quit a job, the law calls this voluntary leaving.

The parties dispute that the Claimant had just cause for voluntarily leaving

[8] The parties do not agree that the Claimant had just cause for voluntarily leaving the job when she did.

[9] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.¹ Having a good reason for leaving a job is not enough to prove just cause. You have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.² It is up to the Claimant to prove this.³ The Claimant has to show that it is more likely than not that she had no reasonable alternatives but to leave when she did.⁴

[10] When I decide that question, I have to look at all of the circumstances that existed when the Claimant quit. The circumstances I have to look at include some set by law.⁵ After I decide which circumstances apply to the Claimant, she then has to show that there was no reasonable alternative to leaving at that time.⁶

The circumstances that existed when the Claimant quit

[11] The Claimant says that several of the circumstances described in the law apply to her situation. She says that her co-workers were harassing her. She also says that she has health problems, and that stress at work would affect her health.

¹ This is set out at s 30 of the *Employment Insurance Act*.

² *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

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

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

⁵ Paragraph 29(c) of the *Employment Insurance Act*.

⁶ Paragraph 29(c) of the *Employment Insurance Act*.

[12] The Claimant says that her co-workers were harassing her. She says that one co-worker, MB “set her up” by encouraging her to travel out of town. She told MB that she was thinking of travelling during the school break. MB said that she would not tell anyone about the Claimant’s travel. However, MB told other co-workers about the Claimant’s travel plans before the break. When the Claimant returned to work, MB sent her Facebook messages about the travel.

[13] The Claimant included copies of the Facebook messages with MB. In the messages, MB tells the Claimant that she is not comfortable with the fact that the Claimant is not self-isolating after travelling out of the area. She tells the Claimant that the band administration could ask the Claimant to leave or fine her if they learned about her travel. She tells the Claimant to talk to the principal.

[14] At the hearing, the Claimant said that she did not have a good relationship with MB. She said that MB had given her a hard time when they were at university together. She said that MB would make things hard for her at the school and in the community if she stayed at the job.

[15] The Claimant also said that another co-worker sent her a harassing message after she had already resigned. She said AB sent a sarcastic message blaming the Claimant because the entire school had to self-isolate because the Claimant came to school without self-isolating. There is a copy of this text message in the appeal file. The Claimant said that the employer did not respect her right to confidentiality.

[16] The Commission disagrees that the co-workers’ behaviour was harassment. The Commission argues that the Claimant’s co-workers were raising legitimate concerns about how the Claimant’s actions put their health at risk.

[17] I disagree with the Commission. I agree that the messages alone do not really seem like harassment. However, I think the Claimant’s statements at the hearing about the context are important. She said that MB had given her a “hard time” in the past, and so with that context, I agree that MB’s messages approached harassment. I also think that AB’s message seems like bullying. I understand that AB sent the message after the Claimant had already quit. However, I think that the message is unkind and bullying, and it adds weight to the Claimant’s argument that her co-workers were harassing her.

[18] I believe the Claimant. I believe that her co-workers were gossiping about her travel before and after the school break. I find that her co-workers sent messages to her that could be seen as bullying or harassment. I find that the Claimant has proven that there was harassment at the time she quit her job.

[19] The Claimant also says that she had health conditions. She said that workplace stress would have made her health conditions worse.

[20] The Claimant said that she travelled out of the region to get medical treatment for a shoulder condition. She said that her doctor diagnosed her with depression and prescribed medication after she left her job. At the hearing, she said that she had a history of stroke and aneurysms and so staying in the job would have put her health at risk.

[21] At the hearing, the Claimant said that she did not ask her doctor's advice before she quit. She said that her doctor did not advise her to leave the job for health reasons.

[22] The Claimant did not provide doctors' notes describing her health conditions, but I have no reason to doubt her statements about her health. I believe that the Claimant has several health conditions. However, she says that she did not ask her doctor for advice before she quit. She has not shown that her doctor told her that the job was affecting her health.

[23] The Claimant has proven that there was harassment and bullying in her workplace at the time she quit. She has proven that she had health conditions, but she has not shown that her doctor advised her to leave her job for health reasons. These are the circumstances I will consider as I decide whether the Claimant had reasonable alternatives to leaving her job.

Reasonable alternatives

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

[25] The Claimant says that she had to quit because her co-workers would have made things difficult for her. She says that the stress from the workplace would have affected her health.

[26] The Commission disagrees. The Commission says that the Claimant had reasonable alternatives to leaving her job. The Commission says that she could have spoken to her employer to explain her reasons for travelling or to report her concerns with bullying and harassment.

[27] I find that the Claimant had reasonable alternatives to leaving her job. She has not shown that leaving was her only reasonable course of action at the time she quit.

[28] At the hearing, the Claimant said that her contract prohibited bullying and harassment. She said that this kind of behaviour was not supposed to be in her workplace. However, she said that she did not know the details of her workplace's bullying and harassment policy.

[29] I think it is likely that the Claimant's workplace or collective agreement did prohibit bullying and harassment. The Claimant included copies of her emails with her union representative. The union representative says that the Claimant might be able to file a complaint about the employer's failure to provide a workplace free from harassment. This suggests that the employer probably did have a policy about bullying and harassment.

[30] The union representative tells the Claimant that her decision to quit before speaking to the union has limited her options. The union representative says this several times, in several different ways. He tells the Claimant that the fact that she resigned already "certainly does limit our options."⁷ He says that "part of the problem" is that they did not give the employer "an opportunity to resolve the matter prior to resignation." He says that the Claimant's decision to resign "reduced the number of avenues" they had to follow.⁸ He says that the Claimant's decision to resign "takes some things off the table" and that he was not sure that the employer had a chance to address the issue with the other teacher before the Claimant resigned.⁹

[31] I give the union representative's statements a lot of weight. His statements show that the union could have helped the Claimant before she quit. They could have spoken to the employer or helped address the Claimant's conflict with the other teachers. The union representative tells the Claimant that she quit before the union could help her.

⁷ GD3-45.

⁸ GD3-48.

⁹ GD3-49.

[32] I accept that there was bullying and harassment in the Claimant's workplace. Even so, it would have been reasonable for the Claimant to ask the union for help before she quit. The union representative clearly says that the union would have helped her if she had come to them before she quit.

[33] I believe that the Claimant had health problems. However, I do not think that she has shown that quitting her job was her only reasonable course of action, even with her health problems. The Claimant could have asked her doctor for advice before she quit. She could have spoken to her employer about taking medical leave. She could have asked the union for help with arranging medical leave.

[34] The Claimant has to prove that leaving her job was her only reasonable alternative, in her circumstances. Even though I believe that there was harassment and that she had health conditions, I do not think that the Claimant has proven that leaving her job was the only reasonable thing left for her to do. She has not proven that she had just cause for leaving her job.

CONCLUSION

[35] I am dismissing the Claimant's appeal. This means that she is disqualified from receiving benefits.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

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| HEARD ON: | January 19, 2021 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | K. C., Appellant |