



Citation: *DM v Canada Employment Insurance Commission*, 2021 SST 750

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

Decision

Appellant: D. M.
Representative: Philip Be'er
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision dated May 15, 2020 (issued by
Service Canada)

Tribunal member: Charlotte McQuade
Type of hearing: N/A
Decision date: December 6, 2021
File number: GE-21-1910

[1] On June 28, 2021 the Appellant filed an appeal of the Respondent's reconsideration decision. The issue before the Tribunal is whether the Appellant voluntarily left her employment on January 11, 2020 without just cause. The Appellant has the burden of proving that she had no reasonable alternative to leaving, having regard to all the circumstances.¹

[2] The Appellant submits that she had no reasonable alternative to leaving. She was placed in a lock-down ward where she had not worked before. When she entered the ward, the nurse on duty advised the Appellant of two other staff who had been reprimanded by the employer after being attacked by a patient. The Appellant was asked to keep a patient in his bed who had just returned from a hip operation at the hospital. The Appellant says the patient would not stay in the bed. He was acting irrationally and kept coming at her and trying to attack her. The employer had not provided the Appellant with training on how to deal with such a patient. The Appellant says she had experienced severe trauma in the past and this incident brought on a post traumatic stress reaction such that she had to leave right away as she feared for her safety. She told the nurse she was leaving and left.

[3] On December 6, 2021, the Respondent filed submissions in which they conceded the appeal stating that the Appellant was in a volatile situation with a patient, without any confidence that she would get any support from the employer if she complained about the situation. When she was attacked by the patient she felt that she had no other reasonable alternative but to leave. The Respondent submits that the situation was a danger to the Appellant's physical and mental health.² The Appellant had no reason to believe that any changes would have been made by the employer if she reported this incident, as she had been told by the nurse in the unit, shortly before entering the patient's room, that two care aides had been reprimanded after being attacked by a patient. The Respondent submits that the Operations Manager of the

¹ See subsection 29(c) of the *Employment Insurance Act* (Act).

² See paragraph 29(c)(iv) of the Act.

employer confirmed that the nurse had spoken to the Appellant about this prior to going into the patient's room.

[4] The Respondent says, having regard to all of the circumstances, the Appellant had no reasonable alternative to leaving. Therefore, she had just cause for voluntarily leaving.

[5] The Tribunal has reviewed the evidence and submissions in the file and agrees with the Respondent that the appeal should be allowed. The Appellant has shown that having regard to the circumstances in which she left, which were working conditions that constituted a danger to her health and safety, the Appellant had no reasonable alternative to leaving.

[6] Finally, the Tribunal relies on paragraph 3(1)(b) of the *Social Security Tribunal Regulations* (Regulations) to render this decision on the record. The Tribunal finds that the Respondent's failure to use section 18 of the Regulations to enter an agreement with the Appellant is a special circumstance which justifies varying the requirement to hold a hearing and ensures the appeal is dealt with as informally and quickly as the circumstances, fairness and natural justice permit.

[7] The appeal is allowed.

Charlotte McQuade
Member, General Division – Employment Insurance