



Citation: *MD v Canada Employment Insurance Commission*, 2021 SST 732

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: M. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (432874) dated September 10, 2021 (issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Videoconference

Hearing date: November 2, 2021

Hearing participants: Appellant

Decision date: November 9, 2021

File number: GE-21-1909

Decision

[1] I am allowing the Claimant's appeal.

[2] I find that the Claimant had just cause for voluntarily leaving her employment when she left to help care for a seriously ill immediate family member. This means that the disqualification from receiving Employment Insurance (EI) benefits does not apply.

Overview

[3] The Claimant worked as a pharmacy assistant. After her father-in-law in India was diagnosed with stage-4 pancreatic cancer, she asked for a leave of absence to go help with his care. Her employer said she must quit and reapply on her return. She quit.

[4] The Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily left her job (chose to quit) without just cause. It disqualified her from receiving EI regular benefits and calculated an overpayment.

[5] The Commission says the Claimant is not an immediate family member. It argues that she was not needed to help with her father-in-law's care because her husband was already going for that reason. It says going with him was a personal choice.

[6] The Claimant disagrees. She says her father-in-law was like a father to her. She argues that she was part of his 24-hour rotation of care and this level of care was not available in India. She says she tried to get a leave of absence but her employer refused her request.

[7] The matter before me is whether the Claimant had just cause for quitting her job. If she did not show just cause, a disqualification from receiving benefits applies. That means she would need to work enough new insurable hours to qualify for benefits on future claims.

The issues I must decide

[8] I will first consider whether the Claimant voluntarily left her job. If she left voluntarily, I must decide whether she had just cause for leaving.

Analysis

[9] The law says you are disqualified from receiving benefits if you left your job voluntarily and did not have just cause.¹ Having a good reason for leaving or quitting as a personal choice do not show just cause.

[10] The law explains what it means by “just cause.” You have just cause if you had no reasonable alternative to quitting your job when you did.

[11] You have to prove, on a balance of probabilities, that you had just cause. This means you have to show it is more likely than not that your only reasonable alternative was to quit given the circumstances on the day you left.²

[12] When I decide whether the Claimant had just cause, I have to look at all the circumstances that existed when she quit.³ The law sets out some of them.⁴ Leaving your job to take care of a child or an immediate family member is one example.⁵

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

Did the Claimant voluntarily leave her job?

[14] I find that the Claimant voluntarily left her job when she quit to go to India to help care for her father-in-law. That point is not in dispute. She now has to show that she had no reasonable alternative to leaving given her circumstances at the time.

Did the Claimant have just cause for voluntarily leaving her job?

The circumstances that existed when the Claimant quit

[15] The Claimant says one of the circumstances listed in the law applies to her situation. She says her father-in-law in India was diagnosed with stage 4 pancreatic

¹ S 30 of the *Employment Insurance Act* (EI Act).

² *Canada (Attorney General) v White*, 2011 FCA 190.

³ *White*, above, at para 3; and s 29(c) of the EI Act.

⁴ See s 29(c) of the EI Act.

⁵ Leaving a job to care for a child or an immediate family member is listed under s 29(c)(v) of the EI Act.

⁶ S 29(c) of the EI Act.

cancer and needed intensive round-the-clock care. As an immediate family member, she had to go to help take care of him. She says she was part of a 24-hour rotation shared with her husband and mother-in-law since such care is not available in India.

[16] The Claimant says she also wanted to support her husband emotionally at this devastating time for the family after losing her own father to the same type of cancer.

[17] The Commission does not dispute that the Claimant's father-in-law was seriously ill or that he needed intensive care. But it says she is not his immediate family member. It argues that her presence was unnecessary since her husband was already going and she was not the primary caregiver. It says going with him was a cultural obligation, which does not count as just cause under the law.

[18] I find that the Claimant's father-in-law was her immediate family member. Elsewhere, the Commission appears to agree. It advises people in the Claimant's situation to see how "immediate family member" is defined in the *Employment Insurance Regulations* (EI Regulations).⁷

[19] That definition says an immediate family member includes "the spouse or common-law partner of the father or mother of the claimant or of the claimant's spouse or common-law partner."⁸ Under that definition, the Claimant is an immediate family member with an obligation to care for her father-in-law for the purpose of showing just cause for leaving her job.⁹

[20] The law does not state that the person needing care must live near the claimant seeking benefits, or elsewhere in Canada. That means going overseas to provide such care is not excluded from the just cause provisions. As well, the law does not state that providing care to an immediate family member is limited to one primary caregiver.

⁷ See the Commission's *Digest of Benefit Entitlement Principles* (Digest) s 6.5.6. I am not bound by the Digest, which provides guidelines for claimants. The Digest refers them to s 55(2) of the *Employment Insurance Regulations* (EI Regulations) if they want to show just cause as an immediate family member under s 29(c)(v) of the EI Act.

⁸ See s 55(2)(b) of the EI Regulations. S 55 lists exceptions to the rule that claimants outside Canada cannot get benefits. That is not the issue in the Claimant's appeal.

⁹ See s 29(c)(v) of the EI Act.

[21] I accept the Claimant's evidence that more than one family member was needed to care for her father-in-law on a 24-hour basis. The evidence about his medical condition supports that argument.

[22] So, the circumstances at the time the Claimant quit were that she left her job to help take care of her father-in-law in India who was seriously ill.

Did the Claimant have reasonable alternatives to quitting her job?

[23] I must now look at whether the Claimant had any reasonable alternative to leaving her job when she did.

[24] The Commission acknowledges that the Claimant tried to get a leave of absence before quitting to travel overseas to help look after her father-in-law. But it says she did not have to go because she was not the primary caregiver. The Commission did not suggest any other reasonable alternative to quitting her job.

[25] The Claimant says staying on at her job was not a reasonable alternative because her father-in-law was like a father to her and she needed to help with his care.

[26] I agree with the Claimant that it was not a reasonable alternative to stay home when her help as an immediate family member was required overseas. She had spoken to her employer, as she was required to do, to ask for a leave of absence.¹⁰ The employer denied her request. If her father-in-law had lived nearby, she could have helped him outside her work hours but this was not a reasonable alternative in her circumstances.

[27] Based on the above factors, I find that the Claimant had no reasonable alternative to quitting her job when she did. This means she had just cause for leaving.

[28] The Claimant is asking for benefits for at least the months of June, July and August 2021. This includes weeks when a travel ban meant she could not get back from

¹⁰ *Canada (Attorney General) v Hernandez*, 2007 FCA 320.

a second trip to India for her father-in-law's funeral and she had to quarantine on her return. I make no findings on those issues since they are not before me.

[29] The Claimant also asks that overpayment of benefits be waived but I have no power to waive any overpayment that may remain after this decision.

Conclusion

[30] Since the Claimant showed just cause for quitting her job, she is not disqualified from receiving EI benefits. This means that I am allowing her appeal on the issue of voluntary leaving.

Lilian Klein
Member, General Division – Employment Insurance Section