



Citation: *PD v Canada Employment Insurance Commission*, 2021 SST 891

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

Decision

Appellant: P. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (429142) dated October 30, 2021
(issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference

Hearing date: December 16, 2021

Hearing participant: Appellant

Decision date: December 23, 2021

File number: GE-21-2144

Decision

[1] P. D. is the Claimant. The Canada Employment Insurance Commission (Commission) has refused to pay Employment Insurance (EI) benefits. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. I find that she hasn't proven that she had just cause for leaving her job when she did. She had reasonable alternatives to leaving her job. So, she is disqualified from receiving EI benefits.

Overview

[3] The Claimant was collecting EI benefits. She was also attending school. She started a night shift job at Walmart, but quit her job about five months later. The Commission decided that she didn't have just cause for leaving her job and disqualified her from receiving EI benefits.

[4] The Claimant says she had to leave her job because she couldn't balance work and school. She said the night shift job meant that she wasn't getting enough rest and it was making her sick. She says she couldn't change her shift and so she had no choice but to quit her job.

[5] The Commission says that the Claimant doesn't have just cause because she left her job for school. The Commission says she had reasonable alternatives to leaving her job but she made a personal decision to focus on her studies.

Matter I have to consider first

I don't have the authority to make any decisions about the Claimant's availability for work

[6] The Commission made two initial decisions – the Commission decided that the Claimant didn't have just cause for leaving her job and the Commission also decided that the Claimant wasn't available for work.

[7] When the Claimant asked for a reconsideration, the Commission agent spoke to her about her reasons for leaving her job. The Commission agent didn't ask questions about the Claimant's availability for work.

[8] I asked the Commission if it had reconsidered its decision about the Claimant's availability for work. The Commission says it hasn't reconsidered this decision and argues that the Tribunal doesn't have the authority to make any decisions about this issue.

[9] At the hearing, the Claimant said she told the Commission about her availability for work during the reconsideration process, but she didn't say that she had another reconsideration decision letter about availability for work.

[10] I believe that the Claimant spoke about her availability for work during the reconsideration process, but I also find it likely that the Commission didn't complete a reconsideration of its decision about the Claimant's availability. There isn't a reconsideration decision letter on this issue. The Commission says it didn't reconsider this issue.

[11] I can't skip the reconsideration step. I don't have the authority to make a decision about any issue before the Commission makes a reconsideration decision. I would be exceeding my jurisdiction and making an error if I tried to make a decision on any issue before the Commission reconsiders that decision.¹

[12] So, I will not make any decisions about the Claimant's availability for work. The Claimant can ask the Commission to reconsider its decision about her availability for work if she disagrees with the Commission's decision on this issue.

Issue

[13] Does the Claimant have just cause for voluntarily leaving her job?

¹ See section 113 of the *Employment Insurance Act*.

Analysis

The Claimant and the Commission agree that the Claimant voluntarily left her job

[14] The Claimant has always said she stopped working because she quit her job. The Commission agrees that the Claimant stopped working because she quit. So, both parties agree that the Claimant quit (or voluntarily left) her job. There is nothing in the appeal file that makes me think the Claimant stopped working for any other reason.

[15] So, I accept that the Claimant voluntarily left her job. This means I have to decide if she has proven that she has just cause for leaving her job.

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

[16] 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.

[17] 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

[18] It is up to the Claimant to prove that she had just cause.⁴ 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. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

[19] The Claimant says that she left her job because she couldn't balance her school responsibilities with a night shift job. She says that she tried to change her schedule but the employer couldn't give her a different shift. The Claimant says she had no

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 3.

reasonable alternative to leaving her job because she wanted to finish school and working the night shift was making her sick.

[20] The Commission says the Claimant doesn't have just cause for leaving. The Commission says the Claimant could have stayed in her job and changed her school schedule. The Commission says that case law says that leaving a job to go to school isn't just cause.

[21] At the hearing, the Claimant explained the circumstances that made her feel like she had to leave her job. She said that she started a one-year study program to become an educational assistant. She attends classes online Monday through Friday from 9:30 a.m. to 1:30 p.m. She has to attend scheduled classes and she also spends time after school studying and working on assignments. She took a night shift job at Walmart and worked from 11 p.m. to 7 a.m. She said that trying to balance work, school, and her family responsibilities was difficult. She started to get severe headaches and vomiting and she couldn't concentrate.

[22] She said she didn't talk to her doctor because she knows her body. She said she knew the problem was from stress and lack of sleep.

[23] Even though the Claimant doesn't have a doctor's note, I have no reason to doubt her statements. I believe that she had headaches, nausea, and concentration problems. I believe that she found it hard to balance work and school.

[24] Though I believe that the Claimant had health problems, I still have to decide whether leaving her job was her only reasonable course of action.

[25] At the hearing, the Claimant talked about the alternatives she considered before she quit. She said that she asked her employer to give her a different shift. But they told her that they couldn't change her shift or reduce her hours. They told the Claimant she could try applying for a different position. The Claimant provided evidence showing that she applied for a different position with the same employer in July 2021, about two months after she quit.

[26] At the hearing, the Claimant said she looked online for job opportunities but she didn't apply for any new jobs before she quit her job.

[27] The Claimant also said that her old employer, a restaurant, wanted her to come back to work. She said they called and asked her to return to work in the middle of August 2021. She started work with them on August 27, 2021.

[28] So I find that the Claimant didn't secure a new job before she quit her job at Walmart. Her evidence shows that she applied for a different shift after she already quit. At the hearing, she agreed that her old employer invited her back to work after she had already quit.

[29] The Claimant said she couldn't change her school schedule to make it work better with her work schedule. She told the Commission that her priority was to finish school.

[30] I believe the Claimant. I believe that she considered some alternatives before she quit her job. But case law is clear: if you leave work to focus on school without a referral to study, you don't have just cause for leaving your job.⁵ There is no evidence that the Claimant had a referral to her course.

[31] The Claimant hasn't proven that leaving her job was her only reasonable course of action. It would have been reasonable for her to remain in her job and take a break from her studies. I understand that the Claimant's priority was to finish school, but having a good reason for quitting doesn't mean that she has just cause for leaving her job.

⁵ See, for example, *Canada (Attorney General) v Beaulieu*, 2008 FCA 133, at paragraphs 13 and 14.

Conclusion

[32] I must dismiss the Claimant's appeal. I find that she hasn't proven that she had just cause for leaving her job. This means that she is disqualified from receiving EI benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section