



Citation: *DJ v Canada Employment Insurance Commission*, 2022 SST 163

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: D. J.
Representative/Witness: C. J.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (439186) dated November 22,
2021 (issued by Service Canada)

Tribunal member: Linda Bell
Type of hearing: Teleconference
Hearing date: February 10, 2022
Hearing participants: Appellant
Appellant's representative/witness
Decision date: February 11, 2022
File number: GE-21-2602

Decision

[1] I am allowing the appeal.

[2] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving her job when she did. This means she isn't disqualified from receiving **regular** Employment Insurance (EI) benefits, **for this reason**.

[3] The Appellant may wish to contact the Commission to discuss whether she is entitled to any more sickness benefits while she recovers from her medical conditions.

Overview

[4] The Appellant was working for X as a patient advocate. She assisted patients from her First Nation who were residing temporarily in another city while attending medical treatments.

[5] The Appellant quit her job with X on August 17, 2021. She applied for EI regular benefits on August 18, 2021.

[6] The Commission looked at the Appellant's reasons for leaving. It determined that the Appellant was disqualified from receiving regular EI benefits because she voluntarily left (or chose to quit) her job, without just cause.

[7] The Appellant disagrees and appeals to the Social Security Tribunal. She says she was harassed and bullied. This caused her to resign. She had planned to go on sick leave but had missed the telephone appointment with her doctor.

Matters I have to consider first

[8] The Tribunal identified the Claimant's employer as a potential added party to the appeal. It sent a letter to the employer asking if it wanted to be an added party.¹

¹ See the GD5-1 to GD5-4.

[9] To be an added party, the employer has to show it had a direct interest in the appeal. The employer did not respond to the Tribunal's letter. As there is nothing in the appeal file to indicate the employer has a direct interest in the appeal, I have decided not to add it as a party to this appeal.

Issue

[10] Did the Appellant voluntarily leave her job?

[11] If so, did she have just cause for leaving?

Analysis

Voluntary Leaving

The parties agree that the Appellant voluntarily left

[12] I accept that the Appellant voluntarily left her job. The Appellant agrees that she ended her employment when she resigned on August 17, 2021. I see no evidence to contradict this. So I will now determine whether the Appellant had just cause to voluntarily leave.

Just cause

[13] The parties don't agree that the Appellant had just cause for voluntarily leaving her job when she did.

[14] 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.

[15] 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 at the time that the claimant quit.³

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.

[16] It is up to the Appellant 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.⁴

[17] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I have to look at.⁵

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

– **The circumstances that existed when the Appellant quit**

[19] The Appellant says she quit her job because the work environment negatively affected her mental and physical health.⁷ The Appellant also says that she quit due to harassment and bullying at work.⁸

[20] When determining whether the Appellant was harassed, I am persuaded by a recent decision from the Tribunal's Appeal Decision (AD).⁹ In that decision, the AD Member set out some principles that the Tribunal can apply when determining whether a person has been harassed:

a) harassers can act alone or with others and do not have to be in supervisory or managerial positions;

b) harassment can take many forms, including actions, conduct, comments, intimidation, and threats;

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

⁵ See section 29(c) of the Act.

⁶ See section 29(c) of the Act.

⁷ Section 29(c)(iv) of the Act states that in cases where the working conditions constitute a danger to health or safety, a Appellant will have just cause to leave if they have no reasonable alternative but to leave.

⁸ Section 29(c)(i) of the Act provides that in cases of sexual or other harassment, a Appellant will have just cause to leave if they have no reasonable alternative but to leave.

⁹ *ND v Canada Employment Insurance Commission*, 2019 SST 1262 at para 34.

c) sometimes, a single incident will be enough to constitute harassment; and

d) there is a focus on the alleged harasser, and whether that person knew or should reasonably have known that their behaviour would cause offence, embarrassment, humiliation, or other psychological or physical injury to the other person.

[21] In this case, the Appellant says she took her job as the patient advocate very seriously. She raised patient complaints with her supervisor C.P, but her supervisor never took the complaints seriously. Instead, CP always believed what her co-worker K. M. said.

[22] The Appellant says that her issues with her co-worker, K. M. and her supervisor C. P., started a long time ago. The issues got worse when she returned to work in February 2021, after being off due to a back injury.

[23] The Appellant explained in detail how K. M. acted against her by bullying her and reporting false information to C. P. She says that C. P. never gave her an opportunity to explain her situation.

[24] For example, the Appellant says that on June 11, 2021, C. P. showed up without notice and gave her a written warning, which she called a verbal warning. This warning listed incidents reported to C. P. by K. M.. The Appellant says that C. P. never gave her an opportunity to respond to the false complaints made by K. M. or to defend her actions. Instead, C. P. simply took the word of K. M. and issued her the warning.

[25] The Appellant says that on August 11, 2021, C. P. showed up at her location with people from the HR department. Then they called her into a meeting after speaking with K. M. The Appellant says she wasn't given any notice about the meeting and no opportunity to prepare. She became upset during the meeting and left.

[26] At the hearing, the Appellant and her witness spoke about some of K. M.'s inappropriate actions. The Appellant explained in detail how it was her job to stand up for and assist the patients. She admits that she assisted some patients with writing up a

petition to get K. M. fired. She feels bad that the situation came to that point but she felt she had to assist the patients. She says no one else was speaking on the patients' behalf. When her complaints to C. P. went unanswered, she even tried speaking with Chief and Council but they did nothing.

[27] When she attended the August 11, 2021, meeting, she says C. P. and F. D. kept asking her to tell them the patients' names who asked her write the petition. She refused and told them it was patient confidentiality. She says that when she entered the meeting she felt like C. P. and F. D. had already sided with K. M. She became upset and left.

[28] The Appellant says that she didn't return to work after the August 11, 2021, meeting. Instead, she continued to help patients without going into work. She says she became more upset when her employer didn't call to check in on her to find out why she wasn't at work. So on August 17, 2021, she emailed her resignation.

[29] The Appellant says that before the August 11, 2021, meeting she was stressed. She was crying all the time. She wasn't sleeping well. She felt, "so little," but she knew she had to keep doing the work for the patients.

[30] The Appellant says that she had considered going on sick leave. She had made a telephone appointment with her doctor. She missed the doctor's call because she was helping a patient. Then she was "blind sided" when called into the August 11, 2021, meeting. She couldn't mentally or physically handle the stress anymore, so she quit on August 17, 2021.

[31] I have considered each written statement submitted by the Appellant. I accept that they provide a similar account of the work environment as explained by the Appellant. I recognize that the Appellant readily admits that her son and daughter each wrote one of the statements, because they both worked at X when she did. Her willingness to be forthright about the authors of these statements supports their credibility.

[32] I have also given full weight to the medical notes submitted by the Appellant. The Commission submitted a copy of her October 19, 2021, medical note. This note says that the Appellant has been unable to attend work from August 17, 2021, to present, due to her medical condition. It also says that the doctor concluded that there is objective evidence to confirm her condition, which would have required her to be off work during this time.¹⁰

[33] The Commission submits that the Appellant didn't leave work because she was sick. It says that the evidence obtained from the employer shows that she left her job abruptly because she didn't like her employer's response to her workplace concerns.

[34] However, the Commission also acknowledges that there is evidence of a conflict at the Appellant's workplace. It says that there is evidence that the work environment was difficult for the Appellant. But she contributed to it by participating in a petition to have another co-worker fired.

[35] The Commission says that it accepts that the Appellant considered taking leave from work for medical reasons but she didn't request that leave prior to quitting her job. Instead, the Commission says she "chose" to miss her doctor's appointment.

[36] I disagree with the Commission when it says that less weight is to be given to the medical note simply because the Appellant obtained it months after she quit her job. I disagree because the Appellant's doctor clearly states in his October 19, 2021, note that there is objective evidence to confirm her condition would have required her to be off work as of August 17, 2021.

[37] The Appellant submitted a second medical note in support of her appeal. This note dated February 8, 2022, states that she continues to experience an impact from her previous emotional and physical conditions. It also states that due to the Appellant's mental and physical health, she had to leave her job. These conditions continue to prevent her from being able to return to work.¹¹

¹⁰ See the medical note at page GD3-34.

¹¹ See page GD6-2.

[38] Based on the totality of the evidence, as set out above, I find that the Appellant has shown that she was harassed and her work environment and conditions negatively affected her mental and physical health.¹² I must now look at whether the Appellant had no reasonable alternative to leaving her job when she did.

– **Reasonable alternatives**

[39] I find that the Appellant had no reasonable alternative to leaving her job when she did.

[40] Appellants don't need to establish that their working conditions were so intolerable that they had no choice but to quit immediately.¹³ Instead, the question is whether, having regard to all the circumstances, they had no reasonable alternative to leaving their job when they did.

[41] The Commission says that a reasonable alternative to leaving would have been for the Appellant to participate in the mediation initiated by the employer. She also could have consulted with her doctor about her ability to continue working or request a period of leave for personal or medical reasons.

[42] I disagree with the Commission. Instead, I accept that the Appellant was no longer capable of handling the mental and physical stress of her work environment. So she wasn't capable of participating in the mediation.

[43] I find that the Appellant did attempt to speak with her doctor before quitting. Unfortunately, she accidentally missed his telephone call when she was assisting a patient. Medical conditions related to mental health conditions don't always present themselves in a manner that provides a claimant the capacity to seek medical guidance before quitting.

¹² See section 29(c) of the Act.

¹³ *Chaoui v Canada (Attorney General)*, 2005 FCA 66 at para 7; *SW v Canada Employment Insurance Commission*, 2017 SSTADEI 437, 2017 CanLII 97203 at paras 47–57.

[44] The Appellant provided credible evidence how the conditions in her work environment negatively affected her mental and physical health. That evidence includes medical notes, witness statements, and consistent testimony about her work environment.

[45] The Appellant tried to remedy the issues that were affecting herself and the patients for which she was advocating. She reported the ongoing issues to her supervisor C. P. When C. P. failed to take action, the Appellant spoke with C. P.'s supervisor F. D.. She also raised her concerns with Chief and Council. When the issues continued, she admits that she assisted some patients with writing up a petition.

[46] I agree with the Appellant when she says she had no reasonable alternative but to quit her job when she did. Despite her continued efforts to advocate for the patients, it became too much for her own mental and physical health to continue working in the environment at X.

[47] After considering the totality of the circumstances, I find the Appellant had no reasonable alternative but to quit when she did. This means the Appellant had just cause for leaving her job.

Conclusion

[48] The appeal is allowed.

[49] The Appellant has shown that she voluntarily left her job, with just cause.

Linda Bell

Member, General Division – Employment Insurance Section