



Citation: *EV v Canada Employment Insurance Commission*, 2022 SST 133

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: E. V.
Representative: A. V.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (446190) dated January 11, 2022
(issued by Service Canada)

Tribunal member: Mark Leonard
Type of hearing: Teleconference
Hearing date: February 17, 2022
Hearing participants: Appellant's representative
Decision date: February 21, 2022
File number: GE-22-244

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving her job when she did. The Appellant didn't have just cause because she had reasonable alternatives to leaving. This means she is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant left her job and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that she voluntarily left (or chose to quit) her job without just cause, so it wasn't able to pay her benefits.

[4] I must decide whether the Appellant has proven that she had no reasonable alternative to leaving her job.

[5] The Appellant submits that she was not receiving sufficient hours of work to meet her expenses. She says that she contacted the Commission and an agent told her that she would receive benefits if she quit her job. She says that the only reason she elected to leave her employment was because an agent confirmed that she would be eligible for benefits.

[6] The Commission says that the Appellant could have remained in her job while she looked for other employment. It says that the Appellant has a reasonable alternative to leaving when she did and therefore cannot receive benefits.

Issue

[7] Is the Appellant disqualified from receiving benefits because she voluntarily left her job without just cause?

[8] To answer this, I must first address the Appellant's voluntary leaving. I then have to decide whether the Appellant had just cause for leaving.

Analysis

The parties agree that the Claimant voluntarily left

[9] The Appellant did not attend the hearing. Her representative did attend and summarized her case.

[10] The Appellant submitted as part of her appeal that she left her job on October 16, 2021. I note that in her claim for benefits that she showed a final working day of October 8, 2021, and her Employer noted on her Record of Employment (RoE) that her last day of work was October 12, 2021. There was no evidence in the file such as a resignation document and the Appellant was not present at the hearing to clarify the discrepancy in dates.

[11] However, the Appellant did confirm in her appeal that that she left her job but only after having consulted with a Commission representative. The Appellant's representative confirmed this fact and stated that Appellant does not contest the fact that she left her job voluntarily.

[12] I accept that the Appellant voluntarily left her job. I see no evidence to contradict this.

The parties don't agree that the Appellant had 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.¹ Having a good reason for leaving a job isn't enough to prove just cause.

¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

[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.²

[16] It is up to the Appellant to prove that she had just cause.³ 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 Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit.

[17] The Appellant submitted that she left her job because her hours of work were drastically reduced. She detailed that shifts were cancelled sometimes at the last minute. Because of fewer working hours, she was not making enough money to meet her financial obligations. She says that she contacted the Commission and a representative told her she could step down from her job and collect EI benefits.

[18] The EI Act details numerous circumstances⁴ that can constitute just cause for leaving an employment. The Appellant did not argue that her situation fit any of those circumstances noted in the Act. I examined the Appellant’s submission. She was hired into a job that did not have stable hours. She was aware that her work hours could vary from week to week and there was no guaranteed amount of work. She says that when her hours were drastically cut, she could not meet financial obligations needed to find something else more stable.

[19] The details of her situation do not fall within any noted circumstances within the Act that would constitute just cause for leaving an employment. She was aware when she took the job that hours may vary and so cannot rely upon having experienced a significant modification of her terms and conditions respecting wages or salary.

[20] Therefore, it leaves only the argument that she relied upon the advice of a representative of the Commission when she elected to leave her employment. The

² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

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

⁴ See Section 29(c) of the *Employment Insurance Act*.

Appellant submitted that the only reason she left her employment was because she had received confirmation from a representative that she could do so and still receive benefits. She says that she relied upon that information from the representative and should not suffer because she did so.

[21] The Appellant noted that she contacted the Commission on October 14, 2021, to discuss her situation. She detailed that the representative told her that she could step down from her employment and be eligible to collect benefits. After receiving this information, the Appellant stepped down from her position and made a renewal request for EI benefits. Her submissions detail that her online EI file had been reactivated but noted, *“Decision Required.”*

[22] She further contacted the Commission on November 22, 2022, wherein a representative told her she was likely to receive benefits soon. She added that on November 29, 2021, she received a call from the Commission wherein the representative informed her that she would not be eligible for benefits because she did not have just cause for leaving an employment.

[23] The Commission says that the Appellant didn't have just cause, because she had reasonable alternatives to leaving when she did. Specifically, it says that the Appellant could have stayed in her job while looking for other employment. Further, it submitted that the Appellant could have remained in the job and still applied for benefits if there was an interruption in earnings.

[24] The Commission submitted that it was unlikely that a representative would have told the Appellant she would be eligible for benefits if she quit her job. However, the Commission did not deny the call took place. Neither did it provide a recording of the alleged telephone call or a transcript. It did not offer any proof that the representative explained the option of remaining in the job and collecting EI benefits.

[25] The Appellant's submissions are clear that she spoke with a representative on October 14, 2021. She noted the time and phone number she called. The Appellant

says that she was told by the agent she could collect EI if she stepped down from her job.

[26] I am satisfied that the Appellant made the call to question her EI options. The Appellant did not attend the hearing so was not able to recount what transpired on the call in greater detail. I find the Appellant's recollection of the events to be credible to the extent that she believes she was given incorrect information.

[27] The Commission says it is unlikely a representative would make a mistake and inform a claimant that they could leave an employment and collect EI. Yet, in the Commission's submissions it notes that it made a mistake when it failed to issue its initial decision in writing to the Appellant. Clearly, it is possible that the Commission can make a mistake. Further, it informs claimants that it records interviews, but it did not offer a recording or transcript of this call in support of its submissions.

[28] The Appellant did not call out of the blue for general information where no case file actually existed in which to record some notes. She had a prior claim which was reactivated. There should be notes in her file regarding the conversation of October 14, 2021. I find the submissions of the Commission to be suspiciously lacking in regards to the October 14, 2021, call.

[29] I am unable to ascertain whether there was miscommunication or misunderstanding of the circumstances by either party. However, the courts have weighed in on the impact of erroneous information provided by the Commission.

Is erroneous information from the Commission just cause to leave an employment?

[30] The Appellant is adamant in her submissions that the representative told her she could quit her job and still be eligible to collect EI. She says that she relied upon that erroneous information when she made her decision to quit.

[31] It is well-established law, that even when the Commission provides erroneous information to a claimant, the issue always remains whether the claimant is entitled to benefits.⁵

[32] The Supreme Court held that erroneous information provided by the Commission did not grant relief from the legal requirements of the Act. What this means is that, even if the Commission provided incorrect information that the Appellant relied upon, it is not just cause for leaving an employment.

[33] So, regardless of whether the Appellant received incorrect information, the law demands that the Appellant still prove just cause to leave an employment. The test for just cause is not that there was a defined circumstance to leave a job, but, that the Appellant had no reasonable alternative to leaving when she did.

[34] I must find that the Appellant did not have just cause because she had a reasonable alternative to leaving when she did. It would have been reasonable to stay in her job and search for other employment while at the same time apply for EI because of her reduced earnings.

[35] I empathize with the Appellant. Whether misinformed or a misunderstanding on her part, the Appellant made a decision that has negatively affected her.

[36] However, as I have explained, there is no relief from the application of the Act because of misinformation.

Conclusion

[37] I find that the Appellant is disqualified from receiving benefits.

[38] This means that the appeal is dismissed.

Mark Leonard
Member, General Division – Employment Insurance Section

⁵ See (*Granger V. C.E.I.C., Dube*, F.C. A-684-85)