



Citation: *AY v Canada Employment Insurance Commission*, 2021 SST 947

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

Decision

Appellant: A. Y.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (434890) dated September 24, 2021 (issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference

Hearing date: November 10, 2021

Hearing participant: Appellant

Decision date: November 24, 2021

File number: GE-21-1977

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

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

Overview

[3] The Claimant left her job on August 9, 2021 to relocate to another province and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant'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 Claimant has proven that she had no reasonable alternative to leaving her job.

[5] The Commission says that the Claimant could have looked for work in the new province prior to leaving her job, chosen to relocate within the province where she was living, chosen to take a leave of absence until the COVID-19 pandemic situation improved, or requested a transfer to another location.

[6] The Claimant disagrees and states that none of the alternatives proposed by the Commission were reasonable. She says she had no alternative to leaving her job when she did. The area she was living in became a high crime area, she and her spouse could not afford a new residence that would allow for a reasonable commute, her child was not doing well with on-line schooling, and she was stressed in her workplace given the additional duties she experienced due to the COVID-19 pandemic. The Claimant and her spouse decided that the best decision for their family was to move to another province to resolve all the issues they were experiencing.

Issue

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

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

Analysis

The parties agree that the Claimant voluntarily left

[9] I accept that the Claimant voluntarily left her job. The Claimant agrees that she quit on August 9, 2021. I see no evidence to contradict this.

The parties don't agree that the Claimant had just cause

[10] The parties, that is the Claimant and the Commission, don't agree that the Claimant had just cause for voluntarily leaving her job when she did.

[11] 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.

[12] 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

[13] It is up to the Claimant 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 alternative was to quit. When I decide whether the

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

² See section 29(c) of the EI Act and See *Canada (Attorney General) v White*, 2011 FCA 190. This is how I refer to the court decisions that apply to this appeal.

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

Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

[14] The Claimant was employed managing a program delivered to school-aged children. The program was delivered in locations that were located within or next to a school and was available to children in the hours prior to and after school. The Claimant was present and working with the staff and children as part of her management duties. She supervised 25 employees over two school sites offering programs to 100 children.

[15] The Claimant explained that she would regularly work 8.5 hours a day. The facilities where she worked were closed due to the COVID-19 pandemic. Prior to the re-opening of the facilities, she was involved in many meetings to discuss how to keep the staff and children safe. The Claimant said she was provided with personal protective equipment from her employer when it re-opened.

[16] The Claimant said when the facility she worked in re-opened, there was more work to do in relation to the COVID-19 Pandemic protocols. The Claimant received regular updates from the health authority on protocols. She said that there was a high risk of her being exposed to COVID-19. The Claimant said that prior to her leaving her employment there was one child, two staff and the spouses of two staff who tested positive for COVID-19.

[17] She said that when a child showed symptoms of COVID-19 she would have to gown up and escort the child to an isolation room and remain with the child until parents arrived to collect the child. The Claimant explained that with each potential case of COVID-19 she had to notify the health authority. She then had to notify parents of the children in the program that there was a potential case and the program would not be offered the following day.

[18] The Claimant would also be contacted by the health authority when its contact tracing would indicate that a person connected with the facility may be exposed to

COVID-19. This meant that she had to notify all the parents and staff of the potential exposure and closure of the program the following day.

[19] The Claimant testified that her work day averaged 12 hours a day once the facility reopened and that she did not receive any additional pay for her additional work. She said her manager would say to take a day off or leave early but that never happened.

[20] The Claimant explained that she experienced medical issues related to her employment. She went to the emergency room in early April 2021 because she was lightheaded, dizzy and experiencing chest pains. She was examined and was told her symptoms were stress related. She was offered medication, which she refused. The doctor did not advise her to leave her job, it was suggested that she take time off work. The Claimant told the doctor she would take that into consideration.

[21] The Claimant testified that she and her spouse bought their residence about 15 years ago. She and her husband were commuting about 50 minutes a day to their work places. The Claimant said that her neighbourhood changed in the past few years. In 2016 her child's scooter was stolen from the front deck. In 2020 they had tools stolen from a shed in their backyard, her spouse had his wallet stolen from his vehicle and her vehicle was rifled with change stolen from it. The theft of the wallet was reported to the police. The Claimant said a young person was jumped in a park and there was body found in a near-by park. Her Hallowe'en pumpkins had been smashed. The Claimant became concerned that her child, although a minor but of age to be home alone, was home alone during the day while school was closed.

[22] The Claimant and her spouse started to look into relocating to a nearby area that would be a safer neighbourhood and allow them both to have a reasonable commute. The Claimant explained that the housing prices in the area had increased significantly and it was not feasible for her and her spouse to purchase a new home. They started to think in terms of where they could afford to purchase a home and settled on relocating to another province.

[23] The Claimant explained that another advantage to relocating to another province would be that her child would be able to attend school in person. He had been attending school virtually, but his grades were being negatively affected. He was depressed being home all the time. The child is not a minor, and the Claimant testified her child does not require help with the activities of daily living. The child can remain in the home alone. The Claimant said she was aware that the other province's schools had reopened and she wanted to move prior to the start of the new school year.

[24] The Claimant said that it was not one issue that led to her and her spouse deciding to leave their jobs and relocate to another province. The stress of the COVID-19 pandemic, the additional duties she was performing at work, the longer hours she was taking to do those duties, her child's performance in school, the increased crime rate in her neighbourhood and the inability to find a new home at a price they could afford all combined to make moving to another province the best decision for her and her family.

[25] The Claimant testified that her home was sold in April 2021 with a possession date for the first week of July 2021. She gave her employer notice and stopped working on June 18, 2021. She was paid vacation until August 9, 2021. The Claimant, her spouse and their child moved to the other province on June 29, 2021.

[26] A person can have more than one reason for leaving a job.

[27] The law says that when deciding if a claimant has just cause to leave her job a circumstance to be considered is a claimant's "obligation to accompany a spouse, common-law partner or dependent child to another residence".⁴

[28] I do not think that this circumstance applies in this case. The Claimant and her spouse initially discussed moving to a new area within their province that would allow them to commute to their workplaces. When they found that it was not financially possible for them to make a move to nearby area they decided to look at housing in other provinces. The obligation to follow a spouse or child to another residence

⁴ EI Act, section 29(c)(ii)

requires that the move of those individuals is caused by an action other than the Claimant's. In this case, the Claimant and her spouse jointly decided to move to the new province, this means that she did not have the obligation imposed on her by another person. As a result, the Claimant cannot take advantage of this circumstance to establish just cause.

[29] The law says another circumstance I can consider as just cause for the Claimant leaving her job is "working conditions that constitute a danger to health and safety".⁵

[30] The Claimant testified that prior to re-opening the facility there were many meetings with her supervisors to discuss protocols. She regularly received updates on policies from the health authority. She was responsible for notifying parents and staff when a child or staff member got COVID-19 or a potential exposure existed. The Claimant said that she experienced medical issues due to the increased stress of working during the COVID-19 pandemic. She was offered medication, which she refused and it was suggested she take time off work, but she did not.

[31] The provincial governments have created guidelines for individuals and businesses to follow to reduce the risk of spreading and contracting COVID-19. These guidelines are created with medical advice. COVID-19 is a risk to everyone as there is no place that has been shown to be exempt from it. The Claimant participated in discussions about safely re-opening the facilities. The employer provided the Claimant with personal protective equipment. She was kept informed of the health authority's policies. The facility where she worked would be closed when a potential or actual exposure had occurred.

[32] I accept the Claimant's evidence that she experienced medical issues due to the stress of working during the COVID-19 Pandemic and the additional duties imposed on her. I note that she refused the medication and the suggestion to take time away from work. But, I think that to rely on this circumstance the Claimant would need to show that her employer was not complying with the guidelines to reduce the risks associated with

⁵ EI Act, section 29(c)(iv)

the COVID-19 pandemic. That has not been shown in this instance and as a result, I find the Claimant cannot rely upon this circumstance to establish just cause for leaving her job.

[33] The law says another circumstance I can consider as just cause for the Claimant leaving her job is “significant changes in work duties”.⁶

[34] The Claimant was employed as a manager with 25 staff reporting to her. The Claimant said that she was responsible for notifying staff and parents when a potential or confirmed case of COVID-19 occurred at a facility. The notices from the health authority that resulted in contact tracing also caused additional work. She said this work would take a lot of time to complete. She considered this work to be a significant change in her work duties.

[35] I do not agree that the additional work associated with the notifying staff and parents about potential and confirmed COVID-19 cases is a significant change in work duties. As found below, the work involved in providing these notices resulted in excessive overtime for the Claimant. But, I do not think that providing notices of closures, although more frequent with COVID-19, is a significant change in duties for the Claimant. The Claimant testified that she would be the last person to leave the facility when it was closed due to weather issues. It is fair to say that parents had to be notified in those circumstances when a closure occurred. That the frequency of the notices and the underlying reason for the closure is different during the COVID-19 pandemic does not amount to significant change to the duty of providing a notice of closure. As a result, I find that the Claimant cannot rely on this circumstance as a just cause for leaving her job.

[36] The law says another circumstance I can consider as just cause for the Claimant leaving her job is “excessive overtime work or refusal to pay overtime work”.⁷

⁶ EI Act, section 29(c)(ix)

⁷ EI Act, section 29(c)(viii)

[37] The Claimant testified that she was a salaried manager who regularly worked 8.5 hours a day. When the facility re-opened, she found herself regularly working 12 hours a day consistently for a couple of days each week. She was responsible for contacting the staff and parents when the facility would be closed because of a potential or confirmed case of COVID-19 in a child or staff member. It could take her until 11:00 p.m. on some days to make all the contacts. The Claimant testified that she would get contact tracing notices from the health authority on a Sunday and have to start contacting staff and parents.

[38] The Claimant said that she did not receive any compensation for the extra time that she was working. Her employer said to take a day off or to leave early if she liked, but that was never arranged.

[39] I find that the Claimant has established that she was working excessive overtime prior to leaving her job. Her employer's statement to take a day off or to leave work early demonstrates that it was aware that she was working overtime. In my opinion, the employer's suggestion that the Claimant take a day off or leave early is not compensation for the overtime and amounts to a refusal to pay for that overtime. As a result, I find that the Claimant can rely on this circumstance to establish just cause for leaving her job.

The Claimant had reasonable alternatives

[40] It is not enough for a claimant to demonstrate that she meets one of the circumstances set out in section 29 of the EI Act. To establish she had just cause for leaving her employment, the Claimant must also demonstrate that she had no reasonable alternatives to leaving her employment when she did.⁸

[41] The Commission says that the Claimant didn't have just cause, because she had reasonable alternatives to leaving when she did. Specifically, it says the Claimant could have chosen to take a leave of absence until the COVID-19 pandemic situation improved, could have chosen to relocate within the province where she was living,

⁸ *Canada (Attorney General) v White*, 2011 FCA 190; *Canada (Attorney General) v. Imran*, 2008 FCA 17

requested transfer to another location, or that the Claimant could have looked for work in the new province prior to leaving her job

[42] I do not agree that taking a leave of absence would be a reasonable alternative for the Claimant. There is no evidence to suggest that the employer would have been able to grant her request for a leave of absence. As a result, I find that this alternative was not available to the Claimant. Accordingly, requesting a leave of absence was not a reasonable alternative.

[43] The Claimant said it would not be reasonable for her to relocate within the province where she was living. Housing costs had increased significantly in the region and she and her spouse would not be able to afford a new house and did not want to start a lengthy mortgage. In support of its position that purchasing housing nearby was a reasonable alternative, the Commission included several real estate listings in the reconsideration file.

[44] I do not think that purchasing a house in a nearby area is a reasonable alternative because to evaluate whether the alternative is reasonable would require an examination of the Claimant's and her spouse's financial circumstances to determine if they could in fact have made such a purchase. This means that the ability to avail of this reasonable alternative would partly rest on a party other than the Claimant. As such, I find that purchasing housing nearby is not a reasonable alternative for this Claimant.

[45] I find that requesting a transfer to another location would have been a reasonable alternative for the Claimant. The Claimant did reach out to a member of the national organization that she was working for in the new province to see if she could transfer. This evidence tells me that a transfer in the province where she was working was a possibility. She did not ask for a transfer in the province where she was working. That nothing came of the transfer request she did make is not determinative of the matter. As a result, I find that the Claimant failed to exhaust this reasonable alternative.

[46] A claimant has an obligation, in most cases, to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job.⁹

[47] The Claimant said that it would not be reasonable for her to look for work prior to leaving her job. She was looking for work in her field of work and needed to be present in the new province to obtain some credentials. The Claimant also said she could not look for work prior to quitting because she did not know where she would be living in the new province.

[48] I recognize that not knowing the location of her new home caused uncertainty with regard to the geographic area where the Claimant would be able to work. However, the Claimant testified that she and her spouse decided to move to a certain area of the new province. They initially spent two weeks in quarantine in that area and quickly secured a new house. This evidence tells me that the uncertainty of where they would be living was not so great as to prevent the Claimant from looking for work in the new province prior to leaving her job.

[49] I also recognize that the Claimant wanted to continue to work in her field. The Claimant testified that she spoke to a relative about job opportunities in the new province. She tried to register on an employer's website prior to leaving her job but required certain documents that she could only obtain once she arrived in the new province. She did ask for a transfer from an employer linked to the national organization that also employed her. However, I find that it would have been reasonable for the Claimant to make efforts to look for work beyond the two employers she identified and to expand her job search for work that was outside her field. Accordingly, I find that the Claimant failed to exhaust this reasonable alternative.

⁹ *Canada (Attorney General) v White*, 2011 FCA 190

Conclusion

[50] I find that, having regards to all the circumstances, the Claimant has not proven she had no reasonable alternatives to leaving her employment when she did. It would have been reasonable for the Claimant to request a transfer from her employer within the province she was working in prior to leaving her job. It also would have been reasonable for the Claimant to expand her job search beyond the two employers she contacted prior to leaving her job. Accordingly, I find the Claimant's decision to leave her employment does not meet the test of just cause to voluntarily leave employment as required by the EI Act and case law described above.

[51] I am sympathetic to the Claimant's financial circumstances. However, I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.¹⁰ I must follow the law and render decisions based on the relevant legislation, and precedents set by the courts.

[52] This means that the appeal is dismissed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section

¹⁰ *Canada (Attorney General) v. Knee*, 2011 FCA 301.