



[TRANSLATION]

Citation: *PD v Canada Employment Insurance Commission*, 2022 SST 451

**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 (450826) dated January 27, 2022 (issued by Service Canada)

Tribunal member: Manon Sauvé
Type of hearing: Teleconference
Hearing date: March 15, 2022
Hearing participant: Appellant
Decision date: March 25, 2022
File number: GE-22-526

Decision

[1] The appeal is dismissed. The Claimant voluntarily left her job. She hasn't shown just cause for leaving her job. She had reasonable alternatives to leaving. This means she is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[2] For several years, the Claimant worked as a coordinator for a non-profit organization. She reported to the board members.

[3] She had difficulties with her employee. She felt that he wasn't competent to do his job. She recommended that the board members dismiss him. After several weeks and some discussion, the members refused to follow her recommendation.

[4] She resigned. She applied for EI benefits. The Commission denied her benefits because she had voluntarily left her job and she had reasonable alternatives to leaving when she did.

[5] The Claimant disagrees with the Commission. She had no choice but to leave her job, since the board members didn't trust her anymore.

Issue

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

Analysis

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

Voluntary leaving

[8] At this first stage, it is up to the Commission to prove that the Claimant left her job voluntarily.¹

[9] To determine whether the Appellant left her job voluntarily, “The question to be asked is as follows: did the employee have a choice to stay or to leave?”²

[10] I understand that the Claimant’s job started on December 1, 2017. She served as a coordinator for management. She reported to the board members. They met three to four times a year.

[11] On August 3, 2021, she handed in her resignation letter to the board members. She said that the relationship of trust was broken. She had been disrespected, and the way the members handled critical issues was wholly inconsistent with her management philosophy or her values as a coordinator.

[12] According to the information the Commission obtained, the board members had no plans to cut her position or dismiss her.

[13] The members decided to reinstate an employee even though the Claimant had recommended otherwise.

[14] In my view, the Claimant could have stayed in her job. She had a choice to stay or to leave following the decision of the board members, who didn’t follow her recommendation.

[15] In the circumstances, the Commission has shown that the Claimant had a choice to stay in her job. Because of this, I find that the Claimant voluntarily left her job.

¹ *Green v Canada (Attorney General)*, 2012 FCA 313.

² *Canada (Attorney General) v Peace*, 2004 FCA 56.

Just cause

[16] Having found that the Claimant voluntarily left her job, I have to decide whether she had no reasonable alternative to leaving considering all of the circumstances.

[17] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.³ Having a good reason for leaving a job isn't enough to prove just cause.

[18] 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.⁴

[19] It is up to the Claimant to prove that she had just cause.⁵ 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.

[20] As noted above, the Claimant started working for the organization on December 1, 2017. She served as a coordinator for management. She reported to the board members. They met three to four times a year.

[21] In early November 2019, an employee was hired to work at the landfill. The Claimant experienced problems with the employee. After trying to address the problems, she gave him a written warning. The situation didn't change. The Claimant told the employee that he needed to prepare for dismissal. She called a meeting to tell the board that she was going to dismiss the employee.

[22] On May 22, 2021, the employee was injured at work. The Claimant gave him the day off. On June 1, 2021, the employee was injured during personal activities. He was

³ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

off work until June 3, 2021. On June 7, 2021, having not heard from the employee, the Claimant went to his home to ask him what he was doing and asked for his time sheet. She reminded him that he had crossed the line.

[23] On June 9, 2021, the Claimant laid out to the board members her action plan, her final decision to dismiss the employee, and the recruitment process for the position. But a board member was against dismissing the employee. He believed that this was a personal conflict between the coordinator and the employee. The members decided to put the dismissal on hold and asked for more information.

[24] While awaiting the board members' decision, the Claimant tried to reach out by email and by phone. She submitted a legal opinion on the potential consequences of a dismissal.

[25] I note from the evidence on file that the Claimant had discussions with the board members about the employee. Emails were exchanged in July 2021. Additionally, there were summer vacations during that period.

[26] On July 26, 2021, a board member told the Claimant that the employee would be reinstated. The members had also decided that a mediation process should be set up to work something out between the employee and the Claimant. He also asked the Claimant to keep documenting the employee's work. If he didn't perform his duties properly, there would be warnings that could lead to dismissal.⁶

[27] On July 27, 2021, a board member told the board and the Claimant that this wasn't a labour relations issue; the question was whether the employee could perform his duties.

[28] On August 3, 2021, the Claimant submitted a report on the employee's work. On August 3, 2021, she resigned and gave 47 days' notice. She wrote to the board

⁶ GD3-77.

members saying that the relationship of trust was now broken. Decisions had been made without consulting her and without considering her opinion or expertise.

[29] A board member told the Commission that there had been no plans to dismiss the Claimant. The coordinator position wasn't filled after she left.

[30] The Claimant says that the board members decided against her recommendation and didn't give her any explanation for weeks. In doing so, they broke the relationship of trust, since they didn't recognize her expertise. She was forced to deal with an incompetent employee. The board members' actions were disrespectful to her, unethical, and illogical.

[31] The Commission, on the other hand, says that the Claimant hasn't shown that she had no reasonable alternative to voluntarily leaving her job. The situation wasn't so unbearable that she had to resign. The board members didn't question the quality of her work or their trust. She hasn't shown that she wanted to dissociate herself from the board's decision concerning the management of the landfill. She didn't say that the situation might affect her health before the notice of appeal.

[32] The Commission also says that, in some cases, a person may be subject to a constructive dismissal. The Claimant hasn't shown that her situation was so unbearable that she had to resign. She didn't file a complaint after she left.

[33] An employer is entitled to establish rules concerning the employment relationship and has a right to manage its employees. The fact is that the board members didn't disagree with the Claimant. They wanted job performance to be monitored more closely.

[34] I find that the Claimant hasn't shown just cause for voluntarily leaving her job. She had reasonable alternatives to leaving.

[35] The fact is that the Claimant didn't face undue pressure from the employer to voluntarily leave her employment.⁷ She wasn't in a situation where she had no choice but to leave her job.⁸

[36] I understand that she communicated with certain board members during the summer. Solutions to the problems with the employee were suggested to her. It isn't true that the members didn't act on her recommendations. Maybe she wanted things to be done differently, but they still suggested mediation and monitoring the employee more closely. They didn't have to follow her recommendation if they felt that the process wasn't fair to the employee. They also didn't close the door on potentially dismissing the employee.

[37] I find that the Claimant focused her energy on showing that the employee was incompetent and that she was right to want to dismiss him. At the hearing, she also said that she should have dismissed him sooner. That isn't the point.

[38] The Claimant needed to show that she had no reasonable alternative to leaving when she did. She has failed to do so. She could have stayed in her job and proven that the employee was incompetent and needed to be dismissed. The board members gave her the opportunity to do so. She preferred to leave her job: It was a personal choice. She is entitled to disagree with the board members and leave her job. But she can't make all insureds take responsibility for her choice.

[39] A reasonable alternative would have been to stay in her job and monitor the employee more closely. She also could have looked for another job before leaving the one she had if she felt that she didn't agree with the organization's philosophy anymore. She hasn't shown that the situation was so unbearable that she had to leave her job.

[40] In the circumstances, I find that the Claimant didn't have just cause for voluntarily leaving her job.

⁷ Section 29(c)(xiii) of the Act.

⁸ *Canada (Attorney General) v Peace*, 2004 FCA 56.

Conclusion

[41] I find that the Claimant is disqualified from receiving benefits.

[42] This means that the appeal is dismissed.

Manon Sauvé

Member, General Division – Employment Insurance Section