



Citation: *KL v Canada Employment Insurance Commission*, 2022 SST 574

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

Decision

Appellant: K. L.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (451692) dated January 27, 2022
(issued by Service Canada)

Tribunal member: Linda Bell
Type of hearing: Videoconference
Hearing date: April 1, 2022
Hearing participant: Appellant (Claimant)
Decision date: April 6, 2022
File number: GE-22-622

Decision

[1] I am dismissing the appeal.

[2] The Claimant hasn't shown just cause (in other words, a reason the law accepts) for quitting her job when she did. This means she is disqualified from receiving Employment Insurance (EI) benefits, for this reason.

Overview

[3] On Friday, September 24, 2021, the Claimant became ill while at work. On September 29, 2021, she learned that she had tested positive for the COVID-19 virus.

[4] The following day, on September 30, 2021, the Claimant went into work to submit her hours. Shortly afterwards, the employer sent her a text message telling her not to go into work while she had COVID-19. During the text message exchanges, the Claimant told the employer she was, "not coming back" and "get someone else..."

[5] The Commission looked at the Claimant's reasons for leaving her job. It decided that she voluntarily left (or chose to quit) her job without just cause. So, it wasn't able to pay her benefits.

[6] The Claimant disagrees with the Commission. She appeals to the Social Security Tribunal. She says she quit due to COVID-19. She also says that after she sent the text message saying she was not coming back, she called the employer and told him she wasn't quitting.

Matter I have to consider first

[7] 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 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

¹ See the GD5-1 to GD5-4.

indicate the employer has a direct interest in the appeal, I have decided not to add it as a party to this appeal.

Issue

[8] Did the Claimant voluntarily leave her job?

[9] If so, did the Claimant have just cause for leaving?

Analysis

Voluntary Leaving

[10] I find that the Claimant voluntarily left her job. Here is what I considered.

[11] The law states that once an employer accepts the claimant's resignation, the claimant has voluntarily left their job. This includes cases where the claimant changed their mind and wanted to withdraw the resignation.²

[12] The Claimant agrees that on September 30, 2021, she sent a text message to N. (the employer) saying, "I'm not coming back get someone else you r so rude." The employer responded, "Please think about it before you decide." The Claimant continued to send text messages, which included her saying, "when I leave A. is coming with me."

[13] I find that the employer accepted the Claimant's resignation. This is because the employer immediately replied to the Claimant's text saying, "Sorry you feel that way, I will have S. do up your final cheque. I wish you well."³

[14] The Claimant says that later that day, she called the employer and told him that she wasn't quitting. She says he told her that he would tell S. not to issue her Record of Employment (ROE). She also says that she sent a text message to Sheila saying she wasn't quitting but Sheila said they don't want her back.

² CUB 1969 and 50894.

³ See page GD3-35.

[15] The Commission says that the Claimant admitted to quitting in the heat of the moment. It also says that the employer told them he didn't recall the Claimant asking for her job back. Instead, the Claimant had been very clear about her intentions to quit.⁴

[16] After consideration of the facts, as set out above, I find the Claimant voluntarily left her job. She is the one who initiated her separation from employment by sending the text message saying, "I'm not coming back get someone else telling the employer." She admits that she quit in the heat of the moment. The employer accepted her decision to quit based on his response that he would have her final cheque done up.

[17] So even if she may have tried to withdraw her resignation, the fact remains that the employer accepted the Claimant's resignation and proceeded to have her final cheque issued. So I find she voluntarily left.

[18] I will now determine whether the Claimant had just cause to voluntarily leave her job when she did.

Just Cause

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

[20] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁵ Having a good reason for leaving a job isn't enough to prove just cause.

[21] 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.⁶

⁴ See page GD4-3.

⁵ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁶ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

[22] It is up to the Claimant 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.⁷

[23] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed at the time she quit.⁸ Then the Claimant has to show that she had no reasonable alternative to leaving at that time.⁹

The circumstances that existed when the Claimant quit

[24] In her appeal documents, the Claimant says that she quit because she was sick with COVID-19. However, she also consistently says that she quit in the heat of the moment. She explained in detail how she felt the employer was being rude to her after learning she had gone into work to submit her hours on September 30, 2022, the day after she learned she had tested positive with COVID-19.

[25] The Claimant says that she had had symptoms for a few days before testing positive for COVID-19. She continued to work at that time because she thought her symptoms were a result of her other medical conditions. Then when she learned she had COVID-19, she understood that her isolation period was over because of her previous symptoms. So she didn't think she did anything wrong when she went into work to submit her hours. This is why she became upset when the employer texted her and told her not to go into work.

[26] The Claimant explained that she told the employer she quit to get a reaction out of him. She says she thought the employer would ask how they could replace her and discuss her returning to work, but that didn't happen.

[27] The Claimant says that the employer agreed she could return to work. He told her that he would ask Sheila not to issue her ROE. She sent a text message to S.

⁷ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

⁸ See section 29(c) of the Act.

⁹ See section 29(c) of the Act.

stating she wasn't quitting, but S. replied that they don't want her back. The Claimant says she doesn't have any record of these telephone calls or text messages.

[28] The Commission documented that during the January 26, 2022, telephone conversation with the employer, he explained how the Claimant called him and his wife after she quit. He says the Claimant started swearing at them. He recalls her being angry, swearing, and saying she was quitting. He doesn't recall her asking to come back to work.

[29] The Claimant says she feels like the employer, S., and O. were taking sides against her. She didn't mean for her text message to be a permanent thing. She had a dispute with her employer and she quit. She argued that the employer gave her a couple of days to think about it and the same day she called him and said she wanted to return to work.

Reasonable alternatives

[30] In my view, the circumstances presented by the Claimant, whether considered individually or cumulatively, do not amount to just cause within the meaning of the Act. This is because the Claimant had reasonable alternatives to quitting when she did.

[31] I find that the Claimant's consistent statements that she quit in the heat of the moment to be credible. This is because it is probable given the circumstances presented.

[32] I recognize that the Claimant provided contradictory statements about why she quit. She says she didn't mean to quit. She also says she felt like the employer was picking on her so she quit in the heat of the moment. She "wanted to get a reaction out of him," so she told him she wasn't coming back. However, in her appeal documents she says the reason she quit was that she was sick with COVID-19.

[33] At the hearing, the Claimant continued to contradict herself. Initially she said that when she went into work to submit her hours on September 30, 2020, she didn't have any symptoms and her isolation period was over. However, she also said that she quit

that same day because she was “really sick” with COVID-19 and dealing with her other medical conditions.

[34] I agree with the Commission that the Claimant had reasonable alternatives to quitting her job. She could have simply agreed to follow the employer’s directions and not return to work while she was sick with COVID-19. If she had any doubt about her isolation period, she could have discussed this with her employer. The Claimant could have also agreed with the employer’s text message to think about quitting before continuing to send confrontational text messages and calling the employer.¹⁰

[35] As stated above, once an employer accepts a claimant’s resignation, the claimant has quit their job. This includes cases where the claimant changed their mind and wanted to withdraw the resignation.¹¹ An employer doesn’t have to withdraw a resignation or rehire an employee once they have accepted the resignation.

[36] I find that when considering all the circumstances that existed at the time the Claimant quit, even cumulatively, she had reasonable alternatives to leaving when she did, as set out above. Namely, she could have agreed to step back and take time to think about quitting, as suggested by the employer, instead of continuing to be confrontational. This means the Claimant didn’t have just cause for leaving her job.

[37] I sympathize with the Claimant’s circumstances as she explained during the hearing. However, my decision is based on the facts before me and the application of the law. There are no exceptions and no room for discretion. I can’t interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.¹²

¹⁰ See pages GD3-34 to GD3-36.

¹¹ CUB 1969 and 50894.

¹² *Canada (Attorney General) v Knee*, 2011 FCA 301.

Conclusion

[38] The appeal is dismissed.

[39] The Claimant voluntarily left her job without just cause. This means she is disqualified from receiving regular EI benefits for this reason.

Linda Bell

Member, General Division – Employment Insurance Section