



Citation: *ZM v Canada Employment Insurance Commission*, 2022 SST 616

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

Decision

Claimant: Z. M.

Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (444098) dated January 11, 2022 (issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Teleconference

Hearing date: March 15, 2022

Hearing participant: Claimant

Decision date: March 21, 2022

File number: GE-22-483

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Claimant worked as a before and after school teacher for school-aged children. The provincial government closed schools due to the pandemic in April 2021. The Claimant asked her employer if they had other work she could do. She wanted to work in the Emergency School Age Daycare. Her employer gave her work in a daycare with non-school-aged children. The Claimant says there wasn't enough work for her to do, so she stopped working there.

[4] The Claimant's employer issued a record of employment (ROE) saying that the Claimant took a leave of absence. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. They decided that she voluntarily took a leave of absence from her job without just cause, so they weren't able to pay her benefits.

[5] I have to decide whether the Claimant voluntarily took a leave of absence on May 28, 2021. If so, I have to decide whether she has proven that she had no reasonable alternative to taking the period of leave from her job.

[6] The Commission says that the Claimant could have continued to work as an early childhood educator even if she felt underworked.

[7] The Claimant disagrees and states that she didn't ask to take a leave of absence. She says all other before and after school teachers were laid off except her.

Matter I have to consider first

The Commission made a clerical error

[8] The Commission did not send the Claimant a letter notifying her of their November 8, 2021 initial decision. However, their notes show that they notified the Claimant of the decision verbally.

[9] Where an error does not cause prejudice or harm, it is not fatal to the decision under appeal.¹ Because the error didn't prevent the Claimant from asking the Commission to reconsider their initial decision and appealing the reconsideration decision, I don't find that the error causes the Claimant harm.

Issue

[10] Is the Claimant disentitled from receiving benefits because she voluntarily took a leave of absence from her job without just cause?

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

[12] The Commission must prove that the Claimant voluntarily took a leave of absence her job. Then, the Claimant must show just cause for voluntarily taking the leave of absence from her job. She must show that she had no reasonable alternative to taking the leave from her job.²

Analysis

– The parties don't agree that the Claimant voluntarily took a leave of absence

[13] To determine if the Claimant voluntarily took a voluntary period of leave from her job, I must ask if she had a choice to stay or leave.³

¹ *Desrosiers v. Canada (AG)*, A-128-89

² *Green v. Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v. White*, 2011 FCA 190.

³ *Canada (AG) v. Peace*, 2004 FCA 56.

[14] The Commission submits that the Claimant initiated her leave of absence. They say both the Claimant and her employer told them that she could have continued working at the daycare through the summer period.

[15] The Claimant says she did not voluntarily take a leave of absence. She says that her employer said that she could leave and return when school re-opened.

[16] The Claimant worked as a before and after school teacher for school-aged children. Due to the pandemic, schools were closed in 2020 and 2021. The Claimant testified that when schools closed in 2021, she asked her employer if she could work in the Emergency School Age Daycare. She explained that this is for the care of children whose parents had to work and couldn't be with their children at home while schools were closed.

[17] The Claimant testified that her employer told her she could come and see what happens. I asked her if she knew that she would be working in the daycare when she learned that she could return to work. She said she did. But she said working in the daycare, was not her usual role. She said that she thought she would work there for a week or so, and then schools would re-open.

[18] The Claimant testified that there were four or five teachers and seven children in the daycare when she returned to work. She wanted to be helpful in the daycare, but she didn't have anything to do. She said her supervisor asked her why she came back to work, and said that she should go off work like everyone else and return when schools re-open.

[19] The Commission spoke to the Claimant's employer. They said that the Claimant asked for leave without giving a reason. The Commission told the employer what the Claimant said about work in the daycare, that there was nothing for her to do. They said that the Claimant had contacted her supervisor asking the employer to change the reason for issuing the ROE. The employer re-confirmed that the Claimant was not laid off; rather, she was offered other work, but refused it.

[20] The Commission asked the Claimant's employer about a pay period on her ROE where the Claimant had no earnings. The Claimant's employer clarified that they did not formally lay-off the Claimant when schools were closed on April 12, 2021. They said this was because they thought schools would re-open. The employer said that the Claimant returned to work after that pay period in a different position.

[21] I accept that the Claimant felt that there wasn't enough work for her in the daycare where she was working. However, I don't find that her employer laid her off. Her employer told the Commission that they had funding for staff in the daycare. They said that they had work for the Claimant even if there seemed to be little work. The employer said that they were willing to employ the Claimant for the entire summer period.

[22] I asked the Claimant about her employer's statements to the Commission. She said that her supervisor told her that she could go until school re-opened. She said that she thought this sounded right and that things would continue as in years past, when she was laid off in the summer. The Claimant said that her employer didn't tell her that if she left, she wouldn't get EI benefits.

[23] I find that the Claimant may have misunderstood that her employer was laying her off. I find her statement in her notice of appeal that she assumed that she was being laid off supports this. For this reason, I give more to the Commission's evidence from the employer that there was work for the Claimant to do, and she could have continued to work in the daycare through the summer.

[24] The Commission's notes reflect that the Claimant said that she asked for leave because her employer had no room for her. The Claimant later told the Commission that she could have stayed in the daycare, but didn't want to be sitting around and chatting all day. Even though the Claimant said that she didn't ask for a leave of absence, I find that she decided not to continue working.

[25] I find that by deciding not to continue working because she felt there was not enough work for her to do in the daycare, the Claimant initiated the leave of absence.

Given the Commission's evidence from the employer, I find that the Claimant had a choice to stay at her job.

[26] I find that the Claimant voluntarily took a period of leave from her job on May 28, 2021.

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

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

[28] The law says that you are disentitled from receiving benefits if you voluntarily take a period of leave from your job voluntarily and you didn't have just cause.⁴ Having a good reason for leaving a job isn't enough to prove just cause.

[29] 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 take leave from your job when you did. It says that you have to consider all the circumstances.⁵

[30] It is up to the Claimant to prove that she had just cause.⁶ 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 take a leave of absence. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant took her leave of absence.

[31] The Claimant says that she left her job at the daycare because there wasn't enough work.

[32] The Commission says that the Claimant didn't have just cause, because she had reasonable alternatives to taking the period of leave when she did. Specifically, they say that the Claimant could have continued to work at the daycare, even though she felt that she was underworked.

⁴ Section 32 of the *Employment Insurance Act* (Act) explains this.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁶ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

[33] I find that the Claimant has not shown that she had no reasonable alternatives to taking the leave of absence for reasons that follow. The Claimant's first argument is that she didn't ask for a leave of absence. However, I've already found that she initiated the period of leave from her job.

[34] The Claimant said that she had asked to work in the Emergency School Age Daycare. She said that she asked to be able to do so, but her employer told her there was no space for her there. I don't doubt this. But again, the Claimant agreed to work in the regular daycare and could have continued to work there through the summer.

[35] Finally, the Claimant said that all teachers for school-aged children at her school were laid off except for her. But the Claimant testified that she wanted to continue working so she contacted her employer. She said that she returned to work hoping that they would give her a chance to work in the Emergency School Age Daycare, but they didn't. As I've already found, the evidence in the Claimant's case is that she had a job in the daycare that she could have continued through the summer.

[36] I asked the Claimant about the Commission's suggestion that she could have looked for another job before taking leave from her job. She said that she had looked for jobs on her employer's app. That's what caused her to call her supervisor. However, the Claimant didn't stay in the job they offered her.

[37] I agree with the Commission's submission that the Claimant could have stayed at the job at the daycare for non-school-aged children. I find that this was a reasonable alternative to taking a period of leave from her job when she did.

– **So, did the Claimant have just cause to take a voluntary leave of absence?**

[38] Based on my findings, I don't find that the Claimant has shown that she had no reasonable alternative to taking the leave of absence when she did. This means she did not have just cause to take the leave of absence.

[39] I sympathize with the Claimant given the overpayment of benefits. However, the purpose of the Act is to compensate claimants whose loss of employment is involuntary.⁷ While I sympathize with the Claimant's situation, I can't change the law.⁸

Conclusion

[40] The appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section

⁷ *Caron v. Canada (Employment and Immigration Commission)*, [1991] 1 S.C.R. 48.

⁸ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.