



Citation: *JN v Canada Employment Insurance Commission*, 2021 SST 989

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: J. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (437119) dated October 22, 2021 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Teleconference

Hearing date: December 13, 2021

Hearing participant: Appellant (Claimant)

Decision date: December 28, 2021

File number: GE-21-2167

Decision

[1] I am dismissing the appeal.

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

Overview

[3] On February 1, 2021, the Claimant handed in a written resignation letter to quit her job at X.¹ Her last day worked was February 14, 2021. She submitted an application for EI benefits on March 24, 2021. The Commission started her claim for benefits effective March 21, 2021.

[4] While on claim, the Claimant reported she had started working for X as of April 5, 2021.² She quit this job for medical reasons on May 28, 2021.

[5] On May 29, 2021, the Claimant submitted an application to reactivate (renew) her claim for benefits. She requested sickness benefits. The Commission renewed her claim effective May 30, 2021.

[6] The Claimant collected 8 weeks of sickness benefits. Then she asked to change her claim to regular benefits. The Commission looked at the Claimant's reasons for leaving her job with X. It decided that she voluntarily left (or chose to quit) this job with just cause. The Commission started paying the Claimant regular benefits on July 25, 2021.

[7] Several weeks later, the Commission conducted a review. On October 8, 2021, it determined that the Claimant voluntarily quit her job with X, without just cause. It imposed a retroactive disqualification effective May 23, 2021. This decision results in a

¹ This employer, also known as X, issued the Claimant the Record of Employment (ROE) shown on page GD3-17.

² See the ROE at page GD3-32.

\$4,000.00 overpayment of EI benefits. The Commission maintains this decision upon reconsideration.

[8] The Claimant disagrees. She appeals to the Social Security Tribunal. She says she is no longer working for X because of antagonism from a supervisor and for health reasons. She also says that she entered into an agreement with the manager to withdraw her resignation and stay working. But twelve days later, the manager denied entering into that agreement and she was no longer put on the scheduled to work.

Issue

[9] Did the Claimant voluntarily leave her job?

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

[11] Did the Commission impose the retroactive disqualification within the required time limit?

Analysis

The parties don't agree that the Claimant voluntarily left

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

[13] 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.³

[14] The Claimant agrees that on February 1, 2021, she left a hand-written resignation note in the manager's office.⁴ This note states that the Claimant was putting in her 2-week notice on February 1, 2021.

³ CUB 1969 and 50894.

⁴ See the copy of the note at page GD3-48.

[15] The Commission submits that the employer said the manager and owner met with the Claimant on February 1, 2021. During that meeting, they asked the Claimant to change her mind and stay working but she refused. The Claimant doesn't dispute this.

[16] The Claimant says that later that day, the manager asked if there was anything they could do to keep her. She says that a female supervisor was present during this conversation. The Claimant says she agreed to stay if she trained the new Baker. The Claimant says the manager agreed to let her train the new Baker.

[17] The Commission says the manager denied ever agreeing to revoke the Claimant's resignation. The manager said the Claimant resigned abruptly over small issues, they tried to talk to her and said she could stay. But the Claimant didn't want to and quit.⁵

[18] The Claimant disputes the Commission's submissions. She says that maybe the manager didn't tell the owner she had agreed to let her stay and that is why she told the Commission that she didn't agree to revoke her resignation.

[19] The Claimant says she was angry when she learned that someone else was training the new Baker. Then two days before her last shift, the manager approached her and said she had heard the Claimant was not going to work her last two shifts. The Claimant denied saying this. She says the manager was angry over what she had heard and told her that Sunday would be her last day. The Claimant says she thought this meant the manager was dismissing her because she thought they agreed she would stay working.

[20] 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 handing in her resignation letter. She admits that when the manager and owner asked her to stay she refused. Even if she may have tried to withdraw her resignation, the fact remains that the employer accepted her resignation.⁶ So I find she voluntarily left.

⁵ See pages GD4-3 and GD3-52.

⁶ CUB 1969 and 50894.

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

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

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

[23] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁷ Having a good reason for leaving a job isn't enough to prove just cause.

[24] 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.⁸

[25] 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.⁹

[26] 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. The law sets out some of the circumstances I have to look at.¹⁰

[27] After I decide which circumstances apply to the Claimant, she then has to show that she had no reasonable alternative to leaving at that time.¹¹

⁷ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁸ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁹ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

¹⁰ See section 29(c) of the Act.

¹¹ See section 29(c) of the Act.

The circumstances that existed when the Claimant quit

[28] First, the Claimant says she felt that another employee (P.) was doing things on purpose to upset her. She says P. was one of two supervisors that worked at her location. She feels his actions were antagonistic.¹²

[29] The Commission documented that during their October 22, 2021, telephone conversation it asked the employer who P. was. The employer said that P. was a “co-worker.” The employer also said that the Claimant had a conflict with P. The employer makes no mention that P. was a supervisor. Instead, the employer says I. was the manager at that time.¹³

[30] The Claimant says that she worked with P. during her orientation. They both worked as bakers. As soon as her orientation ended, she started having problems with him. She says she always had difficulties working her shift the day after he worked because he didn’t set up properly. He kept making her low on products and wrecking the system she had set up.

[31] At the hearing, the Claimant explained in detail how it took her about one month to “get it figured out.” She says she found a good system for ordering products and setting up specific quantities. The manager and supervisor approved what she had written out. She says that P. constantly missed items or set up the wrong number of trays. She says she spoke to the manager about this but the issues continued.

[32] The Claimant said that about a week before she quit she had a conversation with P. She says he was angry and blaming her for things. She says she told him she wasn’t going to fight with him. Then P. blamed her for messing up something he did so she handed in her resignation.

¹² Section 29(c)(x) of the Act provides that a claimant may have good cause to quit their job if there was antagonism with a supervisor if the claimant is not primarily responsible for the antagonism, but only if they show they had no reasonable alternative to quitting.

¹³ See page GD3-49.

[33] I recognize that during the hearing, the Claimant provided inconsistent testimony when referencing P. At the outset, she insisted on clarifying that P. was a supervisor. However, as she continued her testimony she referred to P. as a co-worker.

[34] I have considered the fact that the employer refers to P. as a co-worker, along with the inconsistencies during the Claimant's testimony. I am not convinced that P. was the Claimant's supervisor. That said, even if P. was a supervisor, the Claimant would still have to show that she had no reasonable alternative but to quit her job when she did. I will consider this below.

[35] The Claimant provided a second reason why she quit her job at X. She says that she couldn't continue working because the stress worsened her fibromyalgia. Specifically, she says the stress made her pain worse. She was sleeping less and the job wasn't worth damaging her health.¹⁴

[36] The Claimant admits that she didn't quit her job at X on the advice of her doctor. She says she has had this condition since 2018 or 2019 so she knows how to manage it. She says she didn't need to see her doctor about her increased symptoms while working at X.

[37] At the hearing the Claimant said she was mad when she learned that P. was training the new Baker. She says she just needed to get away from this job to lessen her mental stress and anger.

[38] The Commission submitted a copy of a medical letter dated July 12, 2021. This is five months after the Claimant quit her job at X. This letter states that the Claimant has fibromyalgia. It also states that she is best suited to an office-based job due to her medical condition.¹⁵

¹⁴ Section 29(c)(iv) of the Act provides that a claimant may have good cause to quit their job if the working conditions constitute a danger to their health or safety, but only if they show they had no reasonable alternative to quitting.

¹⁵ See page GD3-34.

[39] The Claimant says that she submitted that medical note to support why she quit the job she got after X. She says that she secured a labour job with X. Her job duties were mostly labour work where she cut the grass on a ride on mower, delivering parts, painting, doing odd jobs, and spotting workers overhead.

Reasonable alternatives

[40] 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 leaving her job when she did.

[41] In cases involving difficult working conditions, a person wanting to establish just cause must normally show that they took reasonable steps to improve their situation by discussing their concerns with their employer.¹⁶

[42] I recognize that the Claimant says she discussed the issues with the manager, I. However, I agree with the Commission that the Claimant had reasonable alternatives to quitting her job. She could have waited until I. arrived at work that day to discuss her concerns. She also could have accepted the owner's offer to stay employed, at least until she secured another job. Instead, she got angry and quit, creating her own unemployment.

[43] Another alternative is that the Claimant could have discussed her concerns about her medical condition with her doctor, as she did when she felt it necessary to quit her job with X. She also could have asked her employer for a leave of absence until she had recovered enough to return to work and manage the situation better. Then if she still wanted to quit, she could have continued working until she secured another job.

[44] I am not convinced that quitting was the Claimant's only alternative, even though she has an ongoing medical condition. Rather, I find that when considering all the circumstances that existed at the time the Claimant quit, even cumulatively, she had

¹⁶ *Canada (Attorney General) v Hernandez*, 2007 FCA 320 at para 5.

reasonable alternatives to leaving when she did. This means the Claimant didn't have just cause for leaving her job.

[45] The Commission determined that the disqualification was effective February 14, 2021. The Commission refused to pay the Claimant benefits as of May 23, 2021, as this is the date she reactivated (renewed) her claim.

Retroactive Disqualification

[46] The law states that the Commission can reconsider a claim for EI benefits up to 36 months (3 years) after the benefits were paid.¹⁷ If the Commission is of the opinion that the claimant made a false or misleading statement or representation then they may reconsider a claim within 72 months (6 years).¹⁸

[47] It is understandable that the Claimant wishes that the Commission had reviewed the reasons why her employment ended with X much sooner. If it had, the overpayment amount would be less. However, this is not evidence that the Commission erred in their review.

[48] In this case, the Claimant collected 8 weeks of regular EI benefits starting from May 23, 2021. Based on the documents on file, the Commission began their review on October 8, 2021. The Commission notified the Claimant of the retroactive disqualification on October 8, 2021, which is within the allowable 36-month period of processing the Claimant's biweekly claims.¹⁹ Therefore, I find the Commission did not err in the review of her claims.

[49] I sympathize with the Claimant's circumstances as explained during the hearing. However, my decision is based on the facts before me and the application of the Act. There are no exceptions and no room for discretion. I cannot interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.²⁰

¹⁷ See subsection 52(1) of the Act.

¹⁸ See subsection 52(5) of the Act.

¹⁹ See page GD3-40.

²⁰ *Canada (Attorney General) v Knee*, 2011 FCA 301.

Conclusion

[50] The appeal is dismissed.

[51] 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