



Citation: *FG v Canada Employment Insurance Commission*, 2022 SST 1523

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

Decision

Appellant: F. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (453436) dated February 4, 2022 (issued by Service Canada)

Tribunal member: Mark Leonard

Type of hearing: Videoconference

Hearing date: May 24, 2022

Hearing participants: Appellant

Decision date: May 27, 2022

File number: GE-22-858

Decision

[1] The appeal is dismissed.

[2] The Claimant (Appellant) has not shown that she had just cause to take a leave of absence from her employment when she did. This means she is not entitled to Employment Insurance (EI) benefits for the period from October 13, 2021, to November 30, 2021.

Overview

[3] The Claimant is a Personal Support Worker who works on a casual basis.

[4] The Commission says that the Claimant took a voluntary leave of absence from her employment. In order to qualify to receive EI benefits, claimants must have just cause for taking the leave and they must have no reasonable alternative to taking the leave when they did. The Commission says that the Claimant did not have just cause because she did not exhaust all reasonable options to remain employed before taking the leave. It disentitled the Claimant from receiving EI benefits.

[5] The Claimant says that she had serious concerns regarding her health during the Covid-19 pandemic. She wanted to access EI benefits and believed she needed a record of employment (RoE) to do so. She says that taking the leave of absence was not voluntary but the only option her employer gave her.

[6] She says she has just cause to take the leave because she feared contracting Covid-19 and transmitting it to her family. She asserts that remaining in the workplace during Covid-19 resulted in working conditions that constitute a danger to her health or safety.

Issue

[7] Did the Claimant have just cause to take the leave of absence when she did?

Analysis

[8] Claimants are disentitled from receiving EI benefits when they take a period of leave from their employment without just cause.¹ First, the Commission must prove that the Claimant voluntarily took the leave. Then the Claimant must establish that she has just cause for voluntarily taking the leave by showing that, given her circumstances, she had no reasonable alternative to leaving her employment when she did.²

Issue 1: Did the Claimant take a voluntary leave of absence?

[9] The Claimant and the Commission disagree on whether the Claimant's leave of absence was voluntary.

[10] To determine if the Claimant voluntarily took a leave of absence, I must determine if she had a choice to stay or leave. I find that the Claimant did have a choice to stay or leave her employment when she did.³

[11] A voluntary leave of absence must meet criteria. The Claimant must have asked for the leave. The employer must authorize the leave, and both the Claimant and the employer must agree to a date of return to employment.⁴

[12] The Claimant had serious concerns regarding her health and safety during the pandemic. She said that she wanted to minimize her risk of contracting the virus. She decided that she would significantly scale back her acceptance of shifts.

[13] She contacted Service Canada to seek EI benefits. The Commission required a record of employment (RoE). The Claimant's employer refused to provide her one because she had not been separated from her employment. Finally, it offers that if the Claimant accepted being put on "hold," it would issue the RoE. The Claimant agreed to be placed on hold effective October 13, 2021.

¹ See Section 32(1) of the *Employment Insurance Act*.

² See (*Canada (A.G.) v. White*, 2011 FCA 190)

³ See (*Canada A.G.) v. Peace*, 2004 FCA 56)

⁴ See Section 32(1)(a and b)

[14] The Claimant asserts that her decision to accept being placed on hold was not voluntary. She testified that she did not understand what this hold meant. She was unaware that it would be seen by the Commission as a voluntary leave of absence and that she would be unable to collect benefits. She suggests that she only accepted the hold because it was the only way to obtain the RoE.

[15] The Commission submits that the Claimant intentionally took the leave of absence in order to obtain a RoE in order to support making an initial claim for EI benefits.

[16] It says that the Claimant initially stated that she lost her employment due to a shortage of work, then she said she took a leave in order to establish an EI claim. Finally, she argues that her leave was due to fear of contracting Covid-19. The Commission submits that the Claimant's health and safety concerns are not credible because she changed her story.

[17] I am satisfied that the Claimant took a voluntary leave of absence. It is clear from the submissions and her testimony that she wanted to either stop working or significantly reduce her hours during the pandemic. The Employer offered her an option they call "hold" which essentially placed the Claimant on a leave of absence wherein she would no longer be called for shifts.

[18] The period of the hold (leave of absence) was from October 13, 2021, to November 30, 2021.

[19] I find that the leave meets the criteria in Section 32 of the Act because the period of leave was approved by the employer, and both the Claimant and the Employer agreed upon a return date.

[20] Further, the leave of absence was voluntary because the Claimant had the choice to stay or leave. It was her wish to be away from work to protect herself from Covid-19 exposure. She admitted she wanted to be off work and collect benefits. The option of a leave of absence offered by the Employer was not forced upon her, she accepted it. It was simply the mechanism available to give her what she requested. She

could have questioned the employer for greater understanding and spoken to the Commission to determine what effect it would have on her claim for benefits before accepting that option. The responsibility to understand the consequences of being on “hold” rested solely with the Claimant. Clearly, the Claimant had a choice to stay or leave.

[21] I am satisfied that the Claimant’s leave of absence was entirely voluntary.

Issue 2: Did the Claimant have just cause to take the leave?

[22] The Claimant did not have just cause to take a leave of absence when she did. She had reasonable alternatives to leaving when she did. She could have elected to stay and looked for other employment that would match her comfort level with Covid-19 exposure.

[23] The law says that you are disqualified from receiving benefits if you take a leave of absence and you did not have just cause. Having a good reason for taking leave is not enough to prove just cause. The test to determine if the Claimant has just cause to take leave is, considering all of the circumstances, that she had no reasonable alternatives to taking the leave when she did. It is up to the Claimant to prove this.

[24] When I decide that question, I have to look at all of the circumstances that existed when the Claimant took the leave. The circumstances I have to look at include some set by law. After I decide which circumstances apply to the Claimant, then I must consider whether the Claimant had no reasonable alternative to taking leave when she did.

[25] The Employment Insurance Act (Act) lays out 14 circumstances that can support just cause for leaving an employment or taking a leave of absence.

[26] The Claimant suggests through her submissions and testimony that the following circumstances specifically apply to her situation.

a) working conditions that constitute a danger to health or safety⁵

[27] She explained that she has worked for the same employer for 21 years and likes her job. The Claimant is a Personal Support Worker providing care to the Employer's clients either in the Employer's facilities or in clients' homes. Her work can be characterized as part-time or casual because she has the option to accept or refuse offered shifts. In essence, she can work as much, or as little as she wishes, contingent on work being available for her.

[28] The Claimant says that the real reason that she took a leave of absence was because she wanted to obtain a RoE in order to qualify for benefits. She wanted to do this because she was fearful of contracting Covid-19. She submitted that it is common knowledge that Covid-19 disproportionately affects older individuals. She felt that she was putting her health at risk if she continued to work. She offered that she is 65 and her husband is 67. She has children and grandchildren. She did not want to bring the virus to her family.

[29] She says that working as a personal support worker during a global pandemic constituted a danger to her health or safety. She relies upon the Act, citing working conditions that constitute a danger to health or safety as supporting her reason for taking leave when she did. She submitted that she paid into the EI program and feels she should be entitled to the benefits it offers.

[30] The Commission submits that the Claimant's statement that she wished to leave her employment because of health or safety concerns is not credible. They say that the Claimant first told them she took leave because of a shortage of work. Then it was to generate a record of employment so she could claim benefits.

[31] I disagree with the Commission when it says that the Claimant's statements are not credible. I believe her when she says that her real concern was for her health during the pandemic. She wanted to minimize exposure and she felt reducing her time at work

⁵ See Section 29 (c)(iv) of the *Employment Insurance Act*.

would accomplish this. However, she also wanted to collect benefits to maintain an income while away from the workplace.

[32] When any claimant suggests that their health is at risk, and rely on that risk as just cause to take a leave, the claimant must prove the risk through supporting medical evidence. Then they must attempt to resolve the issue with the employer. Lastly, they must attempt to find other employment before leaving unless the conditions are so intolerable that leaving immediately is the only option.

[33] The Claimant did not seek any medical diagnosis that would support her decision to leave when she did. She admitted that she did not address her health or safety concerns with the employer. She did not make submissions or testify that the employer had in some way failed to institute or maintain safety protocols that may have made remaining at her work intolerable. The decision of the Claimant seems entirely predicated on her personal evaluation of the risk to her health.

[34] I accept that contracting Covid-19 poses a risk to health, but the Claimant testified that she has worked in personal health care for 21 years. Risk of exposure to illness is a working condition that one accepts when working in this profession. I could only entertain the Claimant's argument if she could show that her Employer was negligent in providing as safe a working environment as possible, or the Claimant had some medical evidence that would support her being out of that environment. The Claimant did not provide any medical evidence that she was in particular danger from exposure. The Claimant has not shown that her working conditions were such that they increased her risk of contracting Covid-19 or that the working conditions were so intolerable that she had no choice but to leave immediately.

[35] The Claimant has not shown that her working conditions posed a significant risk to her health or safety greater than that which would ordinarily be accepted considering her chosen profession.

No reasonable alternatives?

[36] I find that the Claimant had reasonable alternatives to taking a leave of absence from her work when she did.

[37] The Commission says that the Claimant could have remained working and not sought to leave or decrease her hours. The Employer says that there was plenty of work and the Claimant could have worked full-time. The Commission says that she could have at least spoken to her Employer to determine if there was any way to mitigate her risk. Lastly, the Commission suggests that the Claimant could have remained working while looking for other employment.

[38] The Claimant suggests that she needed to remove herself from the workplace to minimize her exposure to and likelihood of contracting Covid-19.

[39] I am satisfied that the Claimant had reasonable alternatives to taking the leave when she did.

[40] The Claimant did not seek a medical opinion to present to her Employer that she should not work in the environment. Nor did she address her concerns with the Employer and specifically seek an accommodation. Even if no other working options existed, the Claimant had an obligation to at least approach her Employer with her concerns and seek a possible resolution.

[41] Lastly, the Claimant could have sought other employment that minimized her risk of exposure. I note that the Claimant worked over one year during the pandemic without concerns being raised earlier. Therefore, I am satisfied that the working conditions faced by the Claimant in her chosen profession were not so intolerable that she could not have remained working, or at least remained working while seeking other employment.

[42] The Claimant's concerns over contracting and transmitting Covid-19 may have been a good cause for her to leave a workplace. But they are not just cause to take a leave of absence given that she had reasonable alternatives to leaving when she did.

Doing so place the burden on her decision on other participants of the EI program, many of whom had to continue working throughout the pandemic.

[43] The Claimant suggests that she should be entitled to EI benefits because she paid into the program and was in need. Having simply participated in the EI program does not invoke a right to benefits. The program does not operate that way. Claimants must be eligible to receive benefits.

Conclusion

[44] The Claimant has not shown just cause for taking a leave of absence from her employment when she did. This means the Claimant is disqualified from receiving EI benefits for the period of absence from October 13, 2021, to November 30, 2021.

[45] The appeal is dismissed.

Mark Leonard
Member, General Division – Employment Insurance Section