Citation: *MI v Canada Employment Insurance Commission*, 2022 SST 1217

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	M. I.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (501973) dated August 16, 2022 (issued by Service Canada)

Tribunal member:	Glenn Betteridge
Type of hearing:	Videoconference
Hearing date:	October 19, 2022
Hearing participant:	Appellant
Decision date:	November 24, 2022
File number:	GE-22-2999

Decision

[1] The appeal is dismissed.

[2] The Claimant[1] (M. I.) hasn't shown just cause (in other words, a reason the law accepts) for leaving her job when she did. She had reasonable alternatives to leaving.

[3] This means she is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[4] The Claimant left her job at a child and family services agency (agency) on March 11, 2022. The agency serves Indigenous children, youth, and families. The Claimant is Indigenous and worked as a transitional age youth prevention worker.

[5] The Claimant applied for EI benefits.

[6] The Canada Employment Insurance Commission (Commission) looked into the Claimant's reasons for leaving. It decided that she voluntarily left (or chose to quit) her job without just cause. So it didn't pay her EI benefits.

[7] The Claimant and the Commission agree that she voluntarily left her job.

[8] But they disagree about whether she had just cause for leaving. A person has just case for leaving a job where they have no reasonable alternative but to leave when they did.

[9] The Claimant says that she had no reasonable alternative to leaving. She was under a great deal of stress at work and was recovering from COVID. Because of her poor health her job had become unbearable. Her manager was harassing her and the workplace environment was toxic. As an Indigenous person, her manager asked her to

[1] I refer to the Appellant in this appeal as the "Claimant". I am doing this because the Employment Insurance Act (EI Act) refers to a "claimant", meaning a person who has made a claim for EI benefits.

do things that were unethical, dangerous, and went against her Indigenous values, beliefs, and principles. She says this was discrimination.

[10] The Commission says she had reasonable alternatives. Instead of leaving when she did, the Claimant could have looked for other work, or consulted a doctor about taking a medical leave or quitting for medical reasons. She also had an obligation to try to resolve the issues she faced at work. She could have complained to management, requested a transfer, or asked her union for help.

[11] The Claimant says a transfer wasn't possible. She didn't want to make trouble, so she didn't make a complaint. She didn't know who to talk to at the union. And she didn't look for work because she hadn't planned on quitting when she did.

[12] I have to decide whether the Claimant voluntarily left her job without just cause.

Issue

[13] To decide whether the Claimant voluntarily left her job without just cause I have to decide two things.

[14] First, I have to decide if the Claimant voluntarily left her job. If I find she did, then I have to decide whether she had just cause for leaving when she did.

Analysis

The parties agree that the Claimant voluntarily left her job

[15] I find the Claimant voluntarily left her job.

[16] Her employer says she quit on March11, 2022. [2] The Claimant agrees.[3]

[17] There is no evidence in the appeal file that goes against this. And nothing she said at the hearing goes against this.

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[2] Her employer used Code E ("Quit") on her record of employment, at GD3-27.
[3] See her EI application at GD3-9 and GD3-10.

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

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

[19] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[4] Having a good cause for leaving a job isn't enough to prove just cause under the EI Act.[5]

[20] You have just cause to leave if you had no reasonable alternative to quitting your job when you did. 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.[6]

[21] The EI Act says I have to consider all the circumstances that existed at the time the Claimant left her job.[7] The EI Act lists some circumstances I have to consider.[8]

[22] Next I will decide which circumstances apply to the Claimant. Then I will decide whether she has shown she had no reasonable alternative to quitting when she did.

The circumstances that existed when the Claimant quit

Harassment

[23] The EI Act says a claimant has just cause for voluntarily leaving if the claimant had no reasonable alternative to leaving having regard to sexual or other harassment.[9]

[24] "Harassment" is not defined in the EI Act. But the concept of workplace harassment is usually seen as acts or verbal comments that could mentally hurt, embarrass or isolate a

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[4] Section 30 of the *Employment Insurance Act* (EI Act) explains this.
[5] See for examples *Canada (Attorney General) v Imran*, 2008 FCA 17; and *Canada (Attorney General) v Vairumuthu*, 2009 FCA 277.
[6] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[7] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the EI Act.
[8] See EI Act section 29(c).
[9] See EI Act section 29(c)(i).

person in the workplace. It often involves repeated incidents or a pattern of behavior intended to intimidate, offend, degrade, or humiliate a person or group of people.[10]

[25] The Tribunal's Appeal Division has set out "key principles" for considering whether there was workplace harassment:[11]

a) harassers can act alone or with others, and do not have to be in supervisory or managerial positions

b) harassment can take many forms, including actions, conduct, comments, intimidation, and threats

c) sometimes a single incident will be enough to constitute harassment

d) focus on whether the harasser knew or should reasonably have known their behaviour would cause the other person offence, embarrassment, humiliation, or other psychological or physical injury

[26] I can also consider whether the employer appeared to condone the harasser's conduct.[12] Finally, it isn't harassment where an employer or supervisor takes reasonable action to manage and direct workers or the workplace.[13]

[27] The Claimant says that her supervisor (C. W.) harassed her.[14] In her EI application she says she quit her job because of harassment by C. W., which occurred more than once. C. W. put additional stress on the Claimant during COVID. C. W. was micro-managing the entire staff. C. W. and other supervisors were constantly sending

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[10] See *CUBs 55611, 56604,* and *57338*. These factors are similar to the factors in the *Canada Labour Code* (Code), a federal workplace law. Section 122(1) of the Code defines "harassment and violence" as "any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment".
[11] See *ND v CEIC*, 2019 SST 1262, at paragraph 34.
[12] See *Bell v Canada (Attorney General)*, A-450-95 (FCA).
[13] Some provincial laws include this. See, for example, Ontario's *Occupational Health and Safety Act*, at section 1(4).
[14] See the Claimant's EI application at GD3-12 to GD3-15.

program staff emails with directives and new tasks. If she didn't get tasks done, C. W. sent her harassing texts. She says C. W. said her attendance was not good because she took time off when she had COVID.

[28] She says the final incident of harassment was when C. W. asked her to do something she felt was unethical. She says it didn't line up with her Indigenous values and culture. In her reconsideration request she sent in email messages sent among her, C. W., and the agency's lawyer. The lawyer's advice supported what C. W. was asking the Claimant to do, and explained why it was legally correct.

[29] She said essentially the same thing to the Commission about harassment.[15]

[30] At the hearing she testified the harassment was very "low key," "not always very apparent," and "difficult to prove". She said C. W. wasn't "very friendly or welcoming". C. W. was always direct, in a way that the Claimant said she wouldn't be with a co-worker.

[31] Sometimes she worked from home because of COVID restrictions. And other times she worked in communities. She said C. W. didn't trust her or other workers. She wanted to know what she was doing and was always keeping tabs. She said it was "constant". When I asked what she meant by that, she said C. W. would call or text her three times per week (on her work phone).

[32] The Claimant testified that C. W. and the management pressured the workers to do virtual programming during COVID. The agency's office and schools were sometimes closed because of COVID. She testified she was being pressured to deliver results but without resources. At her bi-weekly supervision meetings C. W. would ask why things weren't done. But the Claimant also testified these things were work tasks she had to do as part of her job.

[33] At the hearing she gave other, specific examples of harassment:

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[15] See the Commission's notes of its telephone calls with the Claimant at GD3-28 and GD3-43.

- When she was away from work sick with COVID, C. W. texted her repeatedly to ask when she was coming back to work.

- The Claimant had to travel by car to communities to do her work. This involved a lot of driving, in 40-below temperatures, and in bad weather including snow storms. C. W. had very little “empathy” about this.

- One time the Claimant had to dig out one of the agency cars to drive a client and her significant other to an appointment. It was early morning and 40-below. She says other employees should have been responsible for maintaining the vehicles.

[34] The Commission says occasional friction, animosity, or conflict is certainly not going to improve the work atmosphere. But these situations do not in themselves constitute just cause for leaving employment.[16]

[35] I accept the Claimant’s evidence about what happened to her at work, and about her interactions with her supervisor C. W.. Her evidence is consistent. She said basically the same thing in her written documents, to the Commission, and at the hearing. And there is no evidence that goes against what she said.

[36] However, I find C. W.’s behaviour towards the Claimant (and the incidents the Claimant described) isn't harassment. She used the word “harassment” often in her documents and conversations with the Commission. But her testimony at the hearing convinced me that C. W. actions towards her were not harassment.

[37] I find that C. W.’s conduct was reasonable to manage and direct the Claimant in her job, especially because of the way COVID changed her job. Assigning additional work, sending frequent emails, sending texts to a work phone, and focusing on incomplete work in supervision meetings are all reasonable things for a supervisor to do.

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[16] See GD4-3.

[38] I accept her evidence that her job was extremely stressful and full of pressure, especially given COVID. But she hasn't proven she was harassed by C. W., or anyone else at work. None of the Claimant's evidence showed me that C. W. intended to intimidate, offend, degrade, or humiliate the Claimant. Or that C. W. should have known her conduct would do so. And the Claimant never said she was offended, humiliated, embarrassed, or suffered psychological or physical injury because of specific things that C. W. did or said.

[39] The Claimant didn't agree with the way C. W. "micro-managed" her (or other front-line workers), didn't appreciate her "direct" manner, and didn't agree with things she was asked to do—but this doesn't make it harassment. I reviewed the emails among C. W., the Claimant, and the agency's lawyer about the "unethical" job task. I find C. W. took the Claimant's perspective seriously, got legal advice, and communicated clearly and respectfully with the Claimant in those emails.

Discrimination

[40] The EI Act says a claimant has just cause for voluntarily leaving if the claimant had no reasonable alternative to leaving having regard to discrimination on a prohibited ground under the *Canadian Human Rights Act*.[17]

[41] The test for discrimination under the Act has two steps. First, the Claimant has to show all three of the following were more likely than not:[18]

- she has a characteristic protected from discrimination under a human rights law
- she experienced a negative impact or loss
- the protected characteristic was a factor in, or somehow connected to, the negative impact or loss he suffered

[17] See EI Act section 29(c)(iii).
[18] This is the legal test for discrimination. The Supreme Court of Canada lays out this test in *Moore v British Columbia (Education),* 2012 SCC 61. And see also *Ottawa (City) v Todd*, 2022 FC 579, at paragraph 70, where the Federal Court used the test in a case under the *Canadian Human Rights Act*.

[42] A claimant who shows all three has proven **discrimination on the face of the case**. (In legal language, this is called *prima facie* discrimination.) The Claimant doesn't have to show that her employer (or supervisor) intended to discriminate against her.[19]

[43] Second, if the Claimant can show discrimination, the employer gets the chance to show why it's not illegal discrimination.[20] In other words, the employer gets a chance to legally defend or justify what it did (or what it failed to do). Under the Act, the employer has to show that because of a health risk, a safety risk, or an unbearable cost for the employer it had no reasonable alternative to discriminating against the Claimant.[21]

[44] The Claimant says her employer discriminated against her on the basis of her Indigenous culture, beliefs, and identity.[22]

[45] That Act prohibits discrimination in employment based on a number of grounds, including race and ethic origin.[23] Being Indigenous is protected under both those grounds. And I accept that the Claimant is Indigenous. I have no reason to doubt this. Here evidence was consistent and there was no evidence that went against what she said.

[46] The Claimant testified that the agency only serves Indigenous clients. C. W. isn't Indigenous and none of the other prevention supervisors are. C. W.'s manager is Indigenous, but wasn't really involved with programs on a daily basis. And although the

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[19] See *Ontario Human Rights Commission v Simpsons-Sears*, [1985] 2 SCR 536.
[20] See *Moore v. British Columbia (Education)* at paragraph 49, where the Supreme Court of Canada briefly summarizes its decisions about the second part of the discrimination test under human rights laws.
[21] See sections 15(1)(a) and 15(2) of the Act. Any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer based on a good faith occupational requirement. And to be considered a good faith occupational requirement, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.
[22] She wrote about the conflict with her Indigenous values in her EI Application at GD3-14, and in her reconsideration request at GD3-41. She said this in a telephone call with the Commission at GD-3-28.In her appeal notice she wrote that her rights as a First Nations person were being "impeded upon", at GD2-4.
[23] See sections 3(1) and 7 of the *Canadian Human Rights Act* (Act).

manager was copied on emails about the first reason (in the next paragraph), the manager didn't respond.

[47] The Claimant says that she faced discrimination at work because she was Indigenous, for five reasons.

- First, she disagreed with a direction from C. W.. C. W. told her that she should not contact the band council before contacting a client who wanted to participate in the prevention (voluntary) program. The Claimant says according to a protocol agreed to with the band council, the agency had to contact the band council before contacting the client. C. W. checked with the agency's lawyer, who agreed with C. W.'s direction. The lawyer says contacting the band without first getting the client's consent would violate the client's privacy rights.

- Second, the Claimant says her agency pressured her to get the band council to work with the agency, because she was a member of the band. She said the band didn't want to work with the agency. There were issues and tensions between the band and the agency were high. She says it was "above her pay grade" and not her job to contact the band and figure out issues.

- Third, the agency would not pay for food for group meetings with clients, which goes against Indigenous ways. Management said there was no money in the budget for this.

- Fourth, she says if she did what her supervisor and agency asked, the band council would "black list" her. So she wouldn't have access to band jobs and band funding for school.

- Fifth, she says C. W. and the agency would not respect her opinion about how to work with Indigenous clients. She believed it was culturally inappropriate and potentially dangerous for clients if she went to their homes

> unannounced. She explained that many clients didn't have phones, and many families were engaged with child protection as well as her program (which was a voluntary prevention program for youth). She believed that a client (and their family) could be traumatizing if she showed up at their door unannounced. She said this was like spying. So it would be difficult to establish a relationship of trust with the client.

[48] I accept the Claimant's evidence about what happened to her at work, and about her interactions with her supervisor C. W.. Her evidence is consistent. She said the same thing in her written documents, to the Commission, and at the hearing. And there is no evidence that goes against what she said.

[49] I don't doubt the Claimant was in an extremely difficult personal and professional position at work. She fundamentally disagreed with some of the decisions and actions (or inaction) of her employer. She didn't believe her employer was working respectfully with its Indigenous clients and the band. She was a member of the Indigenous band that her employer had a legal responsibility to work with. This caused stress and tension for the Claimant. She had to balance her job duties as directed by her employer, her beliefs about the most appropriate way to do her job, her relationship with her band, and the potential she might be "blacklisted" and not have access to rights and entitlements through the band.

[50] However, I find the Claimant's employer didn't discriminate against her on the basis of her Indigenous culture, beliefs, and identity. There are three reasons why I find this.

[51] First, she didn't experience a negative impact or loss, which is part of what she has to show to prove discrimination. She testified that she *might* be blacklisted by her band if she followed her employer's direction about how to do her job. But she didn't give any evidence that she had experienced a negative impact or loss. Even if she did, it would be the band's actions that would cause the loss, not her employer's actions. And she wouldn't have experienced that loss in the job she.

[52] Second, her testimony suggested to me that her clients and their families (in other words, members of the band) were negatively impacted by her employer's decisions about programming and procedures. In other words, her agency's clients and potential clients might be losing out, not her. Her employer didn't agree to do things the way she, as an Indigenous person, thought they should be done. But she didn't experience a negative impact or loss in her job as a result.

[53] Third, the Claimant focused her discrimination argument on a dispute with her employer about the first reason she says she faced discrimination (see above). Although she believed it was unethical and against her Indigenous beliefs, the agency's lawyer said it was the legally correct thing to do when working with agency clients. I am not prepared to find that a management direction to protect the privacy rights of an Indigenous young person discriminates against the Claimant in her role as a youth protection worker.

Working conditions that are a danger to health and safety

[54] The EI Act says a claimant has just cause for voluntarily leaving if the claimant had no reasonable alternative to leaving having regard to working conditions that constitute a danger to health or safety.[24]

[55] Where a claimant says they quit their job because dangerous or unsafe working conditions caused health problems, they have to: (a) give medical evidence[25], (b) attempt to resolve the issue with the employer;[26]and (c) attempt to find other work prior to leaving.[27] And before leaving for health reasons, a claimant should tell their employer or the Commission about the health problems responsible for their decision to leave.[28]

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[24] See EI Act section 29(c)(iv).
[25] See *SA v CEIC*, 2017 SSTADEI 330; and *CUBs 11045, 16437, 24012, 21817, 27441*, and *39915*.
[26] See *CUBs 21817* and *58511*.
[27] See *CUBs 18965, 27787, 33709*, and *39915*. See also *CUBs 15309, 19187, 23802*, and *21638*, which say that even where a claimant is experiencing physical problems they have an obligation failure to discuss these with an employer, and to attempt to seek alternative employment prior to leaving. If they do not, the Tribunal can find that a claimant left without just cause despite their physical problems.
[28] See *CUB 56636*.

[56] The type of medical evidence a claimant needs to bring forward to show just cause will depend on the facts and circumstances of their case. Generally, a claimant has to show a specific health problem rather than a general stress-related condition.[29] But where the health problem is particularly obvious, I can find just cause even if there is no medical report or certificate.[30]

[57] The Claimant says her working conditions were dangerous to her health and safety in two ways. First, her employer put her at risk of getting COVID. Second, she says her job conditions were causing pressure and stress, which she couldn't take any more so she had to quit. I will deal with each, one after the other.

COVID risks

[58] The Claimant says that her employer asked her to do home visits during COVID. She says this went against health and safety rules about COVID. It put her health and clients' health in danger. The Claimant also said her employer gave agency staff personal protective equipment. But it didn't make sure staff followed COVID prevention measures at the office.

[59] In her testimony the Claimant didn't refer to any specific health and safety rules that she says her employer violated. And she didn't send any rules, laws, policies, or guidelines to the Commission or the Tribunal. The Claimant also testified that she was "very paranoid" about getting sick because she was very prone to colds and viruses. She said she was "kind of cautious about COVID, more than a lot of other people".

[60] The Commission says the occasional presence of circumstances which present an immediate danger to a person's health or safety may authorize the person to leave the workplace immediately.[31] However, it does not constitute just cause for resigning from the job as soon as the person feels the working conditions are dangerous to their

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[29] See *AS v CEIC*, 2017 SSTADEI 378; and *CUBs 18965* and *57484*. But see *SM v CEIC*, 2019 SST 499.
[30] In *Brisebois v CEIC* A-510-96 (FCA), the court decided the umpire made an error when it found the claimant should have produced a medical certificate. The claimant was not relying on an illness when she asserted that standing all day was too physically demanding. See also *RV v. CEIC*, 2017 SSTADEI 31; and *DS v CEIC*, SST GE-21-2561.
[31] See GD4-4.

health or safety. And there is no evidence on file to suggest the employer was not abiding by COVID-19 health mandates.

[61] I accept the Claimant's evidence about what her employer asked her to do (home visits), that she was given PPE and that precautions were not great in her office. I also accept how she thought and felt about COVID. She gave detailed answers to my questions. Her evidence was consistent on these points. And there is no evidence that goes against what she says.

[62] However, I find that she hasn't shown that it is more likely than not her working conditions constitute a danger to her health or safety. Her employer gave her PPE to use. She hasn't shown that any COVID prevention rule or guidance prohibited home visits to clients. And she hasn't shown that her health and safety were put in danger when she was at the office. I find that it's more likely than not she over-estimated the health and safety risk her work posed to her on account of COVID.

Working conditions caused stress and pressure

[63] The Claimant testified that at the time she quit she just couldn't handle her job any more. Her decision to quit was "hasty" but at the time she was under so much stress and pressure.

[64] She said she had been sick with COVID twice. She had long-term effects like memory problems, she was easily stressed out, could not think properly when stressed, and had a cough that would not go away. She was very cautious and "paranoid" about getting infected again. This mentally stressed her out more. She was also scared she might infect clients. This stressed her out too.

[65] She testified she didn't seek medical help before she quit. She didn't have a family doctor because she had moved to take the job. And because of COVID she didn't think going to hospital emergency was an option. A couple months after she quit, she saw a family doctor during a trip to Toronto. She sent the Tribunal a copy of the doctor's

notes from that visit. [32] The notes say she had COVID three times and still had a productive (mucous) cough.

[66] I find that the Claimant's work conditions were a danger to her health at the time she quit. I accept her testimony about this. Her testimony about the stress and pressure caused by her job was consistent. It was what she said from the time she applied for EI right through her hearing. At the hearing she answered my questions in detail and was forthright. She explained in detail how the ongoing effects of COVID infection increased the stress and pressured she experienced at work.

[67] I make this finding even though she didn't have any medical reports or other medical evidence about her health at the time she quit. She gave a believable and logical explanation about why she didn't medical evidence to support what she said.

Toxic workplace

[68] The EI Act doesn't list "toxic" or "poisoned" workplace or environment as a circumstance. The courts have said that unsatisfactory working conditions will be just cause for leaving employment if they are so manifestly intolerable that the claimant had no reasonable alternative but to leave.[33] And there is a high obligation on a claimant to seek solutions to intolerable conditions before leaving.[34]

[69] The Claimant says that her workplace was "toxic". But she wasn't clear about why the environment was "toxic". She testified that there were many issues that were "deeply engrained in the whole agency", so it was "toxic from the top down". And she felt that she was one person and she couldn't change things.

[70] Based on her testimony, three factors seemed to make her work environment "toxic" for her:

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[32] See the doctor's chart notes at GD6-2 and GD6-3. The notes are dated May 7, 2022 and are mostly about her health on that date.
[33] See *CUBs 11890, 12767, 16473, 16704, 17143, 17108, 11738, 20434,* and *20926*. And see recent Tribunal cases *ME v CEIC*, 2015 SSTGDEI 112, and *IO v CEIC*, 2019 SST 1483.
[34] See *RC v. CEIC*, 2016 SSTADEI 160, and *Green v Canada (Attorney General)*, 2020 FCA 102.

- COVID and the difficulty of working with youth during COVID
- agency management wouldn't listen to the front-line workers' opinions and input about programs, and kept assigning them more work to deliver programs during the COVID pandemic
- harassment and discrimination

[71] She also testified that she may have made a hasty decision to quit her job when she did. She was under so much pressure at the time, including pressure from COVID. She left because she just couldn't take it any more. Up until that point she hadn't thought about leaving because she was hoping to finish the one year contract and then get hired full-time permanent. It definitely wasn't in her plan to quit. Although there were times when she had though about quitting, she wasn't going to act on it because there were only so many opportunities in her small town.

[72] The Commission says occasional friction, animosity or conflict is certainly not going to improve the work atmosphere, but these situations do not in themselves constitute just cause for leaving employment[35]. If each person makes a reasonable effort to accommodate differences and find a common ground, the situation should not degenerate into constant or irresolvable conflict.

[73] I decided above that the Claimant was not harassed or discriminated against by her employer. So I find these two circumstances could not have contributed to a toxic or manifestly intolerable workplace.

[74] I accept the Claimant's evidence that she was stressed and under pressure because of her job. I also accept that she believed the agency was not managed well, and had some fundamental problems. And that she could not make the changes she though were needed. I have no reason to doubt how she felt and what she believed.

[35] See GD4-3.

[75] But I find that the Claimant hasn't shown that her workplace was so manifestly intolerable that she had no reasonable alternative but to leave. She didn't give enough concrete, detailed evidence to show how, if she wasn't being harassed or discriminated against, her workplace was manifestly intolerable. And up until the time she quit, she had hoped to finish her contract and get a full-time position. It doesn't make sense that she would want a full-time job in a "toxic" and manifestly intolerable workplace. Mostly, she disagreed with the way the agency was managed and the way decisions were made about programming.

My findings—circumstances that existed when the Claimant quit

[76] The Claimant has shown that it is more likely than not the following circumstances existed at the time she quit:

- her working conditions where a danger to her health

The Claimant had reasonable alternatives

[77] I must now consider whether the Claimant has shown she had no reasonable alternative leaving her job when she did, taking into account her circumstances that existed at that time.

[78] I found only one circumstance existed at the time the Claimant quit. But I will consider all of the circumstances that she raised. I am doing this in case I made an error by rejecting one or more of those circumstances.

[79] The courts have said in most cases the claimant must attempt to resolve workplace conflicts with an employer, or demonstrate efforts to seek alternative employment, before deciding to quit a job.[36]

[80] The Commission says the Claimant had these reasonable alternatives:[37]

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[36] See, for examples, *Canada (Attorney General) v White*, 2011 FCA 190; *Canada (Attorney General) v Murugaiah*, 2008 FCA 10; *Canada (Attorney General) v Hernandez*, 2007 FCA 320; and *Canada (Attorney General) v Campeau*, 2006 FCA 376.
[37] See GD4-3.

- speak to management with higher authority
- ask for a transfer
- speak to her union
- look for and find another job before quitting
- speak to her doctor about her medical concerns

[81] The Claimant disagrees. She says:

- C. W.'s manager was copied on emails, so she knew what was going on, but the Claimant felt management was giving the directives to supervisors so management wouldn't do anything if she complained
- because she was on a one-year contract, she didn't want to make waves by complaining because it might hurt her chances of getting a permanent job
- because she was on a one year contract for a specific job, she wouldn't have been able to transfer jobs
- she didn't have a family doctor and didn't feel that going to the emergency department was an option because she didn't want to look bad going on sick leave while on a one-year contract
- she had gone on sick leave at her last job and didn't think she would get it again
- she made a hasty decision to quit, so she didn't have a chance to look for work before she quit
- she said she never heard from the union and didn't know who her union rep was, but also said maybe she could have tried harder to contact the union but she couldn't deal with the stress that involved due to her mental state

[82] I find that the Claimant hasn't proven she had no reasonable alternative to leaving her job when she did. I am sympathetic to the client's circumstances and the difficult situation she was in. And although she had a good reasons for leaving her job, that isn't enough to establish "just case" under the EI Act.[38]

[83] I find making a complaint, or at least speaking with C. W.'s manager about the challenges she was facing, was a reasonable alternative for the Claimant. The Claimant said she didn't think this would make a difference. But she hasn't shown with evidence that that this alternative was unreasonable. So she had an obligation to try to resolve the issues, despite what she thought.

[84] I find that seeing a doctor was a reasonable alternative for the Claimant. I accept the Claimant's evidence that she had no family doctor. And above I accepted that at the time she quite her job was dangerous to her health. But if her health was so bad that it was no longer safe for her to do her job, it was reasonable for her to go to the emergency department. A doctor might have told her to quit her job for health reasons. Or might have advised her to take a break from work and she could have applied for the EI sickness benefit. Or might have prescribed treatment so she could continue to work without putting her health in danger.

[85] I accept that the Claimant's evidence that she didn't want to complain or go on medical leave because she thought it *might* hurt her chances of getting hired on permanently. But it makes no sense to quit instead of doing those things. Logically, quitting her job hurt her chances of getting a permanent job at the agency much more than trying to resolve the issues and stay on. And she had an obligation to try take steps to resolve the issues before she decided to quit.

[86] I find that looking for other work before quitting was not a reasonable alternative for the Claimant. I accepted above that she was unable to cope with the demands of her job. So it wasn't reasonable to expect her to do her job and look for work at the same time.

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[38] *Canada (Attorney General)* v *Imran*, 2008 FCA 17.

[87] I find that consulting the union was not a reasonable alternative for the Claimant in her circumstances. At the time she left her job, she says she wasn't able to handle the stress of finding out about the union and how it might help her. I accept this. She didn't overstate her case on this point, and gave detailed testimony about how she wasn't able to think properly in stressful situations.

[88] Finally, I find that asking for a transfer was not a reasonable alternative. I accept her testimony that it was not possible to transfer because she was on a one year contract for the job. This makes sense. Organizations often hire contract workers for a specific job, for a specific period of time, to fill a specific need. And there was no evidence to show that a transfer was possible.

My conclusion about reasonable alternatives and just cause

[89] After reviewing all of the documents and testimony, I find in all the circumstances the Claimant had reasonable alternatives to leaving when she did.

[90] This means she didn't have just cause for leaving her job.

Conclusion

[91] I find that the Claimant voluntarily left her job without just cause. This means that she is disqualified from receiving benefits.

[92] So I am dismissing her appeal.

Glenn Betteridge

Member, General Division – Employment Insurance Section