



Citation: *KM v Canada Employment Insurance Commission*, 2022 SST 1578

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

Decision

Appellant: K. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (464254) dated May 5, 2022 (issued by Service Canada)

Tribunal member: Susan Stapleton

Type of hearing: Teleconference

Hearing date: November 8, 2022

Hearing participant: Appellant

Decision date: November 14, 2022

File number: GE-22-2019

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

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

Overview

[3] The Claimant worked as a Sales Associate, from November 24, 2020 until December 24, 2020. She was then off work due to a Covid-19 (Covid) related shutdown that began on December 26, 2020. She was recalled to her job on February 8, 2021, but did not return. She applied for EI benefits.

[4] She says that she didn't return to her job because she felt that her job put her at risk for exposure to Covid. Her grandmother was ill and in hospital and she visited her on weekends. She didn't want to expose her grandmother to Covid.

[5] The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. 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 Commission says that the Claimant could have discussed her concerns with her employer, as there may have been some extra safety measures available to accommodate her. She could have requested a temporary leave of absence instead of quitting. She could have looked for another job before quitting.

[7] The Claimant disagrees and says that she didn't feel safe working in an enclosed and crowded environment. Her employer was not taking safety precautions to protect employees from being exposed to Covid. She didn't want to be exposed to Covid, because her grandmother was ill in hospital, and she visited her on weekends. She didn't want to expose her grandmother to Covid.

[8] I must decide whether the Claimant has proven that she had no reasonable alternative to leaving her job.

Issue

[9] I must decide whether the Claimant is disqualified from receiving benefits because she voluntarily left her job without just cause.

[10] To answer this, I must first address whether the Claimant voluntarily left her job. If she did, I then have to decide whether she had just cause for leaving.

Analysis

The Claimant voluntarily left her job

[11] The Commission must prove that it is more likely than not that the Claimant voluntarily left her job.¹ The legal test is whether the Claimant had the choice to stay or to leave.² If she had the choice to stay and didn't, then she voluntarily left her job.

[12] I find that the Claimant voluntarily left her job. The Claimant agrees that she quit on February 8, 2021, when she didn't return to work when recalled. She sent in her resignation letter on February 9, 2021. I see no evidence to contradict this.

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

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

[14] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.³ Having a good reason for leaving a job isn't enough to prove just cause.

¹ *Green v Canada (Attorney General)*, 2012 FCA 313.

² *Canada (Attorney General) v Peace*, 2004 FCA 56.

³ Section 30 of the *Employment Insurance Act* (Act) explains this.

[15] 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.⁴

[16] It is up to the Claimant to prove that she had just cause.⁵ 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.

[17] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit. The law sets out some of the circumstances I have to look at.⁶

[18] After I decide which circumstances apply to the Claimant, she then has to show that she had no reasonable alternative to quitting when she did.⁷

[19] The Claimant says she had just cause because she didn’t feel safe working in an enclosed and crowded space with inadequate safety measures in place to protect her from being exposed to Covid. She says that she had no reasonable alternative to quitting when she did, because her grandmother was ill and she didn’t want to expose her to Covid .

The circumstances that existed when the Claimant quit

[20] The Claimant says one of the circumstances set out in the law apply. She says that her working conditions constituted a danger to health or safety.⁸

[21] The Claimant worked at a clothing store in a mall. The mall was shut down due to Covid on December 26, 2020. The Claimant said at the hearing that she received EI benefits from January, 2021 until May, 2021.

⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

⁶ See section 29(c) of the Act.

⁷ See section 29(c) of the Act.

⁸ See section 29(c)(iv).

[22] She testified that she was glad when the shutdown occurred, because she didn't feel safe in the workplace. She thought at the time of the shutdown, that she probably wouldn't return to her job.

[23] She was recalled to her job on February 8, 2021, but did not return. The Commission found that she was disqualified from receiving benefits effective February 7, 2021. This resulted in an overpayment to the Claimant.

[24] The Claimant says she didn't feel safe returning to her job in the mall when she was recalled to work on February 8, 2021. Covid vaccines weren't available yet, her workplace was enclosed and crowded, and her employer wasn't taking safety precautions to protect employees from being exposed to Covid.

[25] She testified that the only safety measures in place in the store, were the installation of plexiglass barriers and the requirement that employees wear masks. Customers were entering the store without masks. There was no hand sanitizer in the store. Employees weren't wiping down surfaces and change rooms weren't being sanitized between customers. Half the time, there were no sanitization materials available for employees to use in the store.

[26] The Claimant testified that she didn't raise her concerns about the lack of safety precautions in the workplace with her employer. She said her boss told her on one occasion that someone might be coming to the store to do a check of Covid safety measures. Her boss told her to say that they were following all protocols, even though they're weren't.

[27] The Claimant testified that when she was recalled to work, she didn't ask her employer what safety precautions would be taken in the store to protect employees from being exposed to Covid. She assumed that the employer wouldn't have improved its safety measures and feared that her risk of being exposed would increase as the pandemic continued on.

[28] So, the circumstances that existed when the Claimant quit her job were that her workplace was enclosed and crowded, and safety precautions were not being taken to

reduce the risk of exposure to Covid. Her grandmother was ill and she didn't want to risk exposing her to Covid.

Reasonable alternatives

[29] I must now look at whether the Claimant has proven that it is more likely than not that she had no reasonable alternative to leaving her job when she did.

[30] The Claimant says that she didn't have any reasonable alternatives to quitting when she did, because her workplace was enclosed and crowded, and her employer wasn't taking safety precautions to reduce the risk of exposure to Covid in the workplace. Her grandmother was ill and she didn't want to risk exposing her to Covid.

[31] The Commission disagrees and says that the Claimant could have :

- discussed her concerns with her employer, as there may have been some extra safety precautions and/or measures available to accommodate her;
- asked her employer for a temporary leave of absence instead of quitting; and/or
- found another job prior to quitting.

[32] I find that the Claimant had reasonable alternatives to leaving her job when she did.

[33] First, although the Claimant testified that the employer wasn't taking safety precautions in the workplace to reduce the risk of employees being exposed to Covid, she admitted that she didn't raise her concerns with her employer. Her boss told her to say protocols were being followed, even though they weren't. She assumed that nothing would change. However, she could have spoken to someone other than her immediate boss, such as a Health and Safety Representative or an employee in the employer's Human Resources department, about her concerns. She could have raised her concerns when she was recalled, and asked about options for increasing safety measures in the workplace. Raising her concerns about safety in the workplace with her employer was a reasonable alternative to quitting her job when she did.

[34] The Claimant said that there had been problems with health and safety in relation to Covid since she started working for the employer in November, 2020. If she had concerns about the conditions at her workplace from the time she started working there, she could have looked for alternate employment. Finding another job before quitting was a reasonable alternative to leaving her job when she did.

[35] I understand that the Claimant didn't want to return to a job where she felt that she was at increased risk of being exposed to Covid and, in turn, exposing her grandmother to Covid. However, the Employment Insurance scheme is in place to support those who become unemployed through no fault of their own. In this case, I find that the Claimant chose to leave her job and become unemployed, although other alternatives were available to her.

[36] Considering all of the circumstances that existed at the time that the Claimant quit, I find that she has not proven on a balance of probabilities that she had no reasonable alternative to quitting her job when she did. As a result, the Claimant didn't have just cause for leaving her job when she did.

Conclusion

[37] The Claimant has not shown just cause for leaving her job when she did, because she had reasonable alternatives to leaving her job. She is therefore disqualified from receiving benefits.

[38] This means the appeal is dismissed.

Susan Stapleton

Member, General Division – Employment Insurance Section