



Citation: *KC v Canada Employment Insurance Commission*, 2022 SST 1645

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

Decision

Appellant:	K. C.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (466365) dated May 2, 2022 (issued by Service Canada)
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Tribunal member:	Linda Bell
Type of hearing:	Teleconference
Hearing date:	October 3, 2022
Hearing participant:	Appellant
Decision date:	October 11, 2022
File number:	GE-22-1780

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 permanent job when she did. This means she is disqualified from receiving regular Employment Insurance (EI) benefits, for this reason.

[3] The Claimant is responsible (liable) to repay the overpayment of benefits. This means I am not reducing or writing off the overpayment.

Overview

[4] The Claimant established a claim for regular EI benefits effective June 27, 2021. She worked in a permanent full-time, 10-month position, as an education assistant.

[5] The Claimant contacted the Commission on September 21, 2021, to discuss the reason for separation as listed on her Record of Employment (ROE). She told the Commission she had retired from her permanent full-time job on June 30, 2021, and became a casual employee.

[6] The Commission conducted a review of the Claimant's claims. It determined the Claimant didn't qualify for benefits because she had voluntarily left her permanent full-time job, without just cause. The Commission imposed a retroactive disqualification effective June 27, 2021. This resulted in a \$4,202.00 overpayment of benefits. The Commission maintained this decision upon reconsideration.

[7] The Claimant disagrees with the Commission. She appealed to the Social Security Tribunal (Tribunal) because she doesn't want to have to pay the \$4,202.00 overpayment. She says she has asthma and suffers from anxiety. She says she didn't want to get the COVID-19 virus so she decided to retire. She went on the casual list where she restricted her availability to work at three schools that had low COVID-19 cases. She says she should be entitled to the EI benefits she received because she paid into EI for many years.

Issues

- [8] Did the Claimant voluntarily leave her job?
- [9] If so, has she shown just cause for leaving her job?
- [10] If not, did the Commission review the claims properly (judicially)?
- [11] Can I reduce or write off the overpayment?

Analysis

Voluntary Leaving

[12] The law states that when determining whether a claimant has voluntarily left their job, the question to ask is, “did the claimant have the choice to stay or to leave.”¹

[13] I find that the Claimant voluntarily left her job because she had the choice to continue working full-time in her permanent education assistant position. Here is what I considered.

[14] At the hearing, the Claimant said she chose to retire from her permanent full-time position. She held the permanent full-time position for approximately nine years. She admits that she could have continued working in her full-time position but she chose to retire so she could work casually on call to limit her exposure to the COVID-19 virus. As a casual employee, she restricted her availability to work at three schools. The school where she had worked permanently full-time for the past two years was one of three schools where she chose to work casually on-call.

[15] The Claimant doesn't dispute she made the personal choice to leave her permanent full-time job to retire and become a casual employee. So, I find she voluntarily left her full-time job.

¹ See *Canada (Attorney General) v Peace*, 2004 FCA 56.

Just cause

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

[17] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.² Having a good reason for leaving a job isn't enough to prove just cause.

[18] The law explains what it means by "just cause." The law says you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says you have to consider all the circumstances that existed at the time you quit.³

[19] It is up to the Claimant to prove she had just cause. She has to prove this on a balance of probabilities. This means she has to show it is more likely than not, her only reasonable option was to quit.⁴

– Circumstances that existed when the Claimant quit

[20] The law sets out some of the circumstances I have to look at.⁵ 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.⁶

[21] At the hearing, the Claimant explained her circumstances in detail. I have summarized those circumstances below.

- She suffers from asthma and anxiety.
- Shortly after the onset of the COVID-19 pandemic, she went off work on sick leave from May 25, 2020, to June 30, 2020.

² Section 30 of the *Employment Insurance Act* (Act) explains this.

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

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

⁵ See section 29(c) of the Act.

⁶ See section 29(c) of the Act.

- She returned to work full-time, in her permanent job for ten months, from September 8, 2020, to June 30, 2021.
- She made the personal choice to retire as of June 30, 2021. She chose a lump sum pension payment, which she received October 8, 2021.
- She chose to be on the casual list to work on-call as an education assistant. She restricted her availability to work at three schools where there were fewer outbreaks of COVID-19. One of the schools where she chose to work casually was the school she worked full-time at the time she retired.
- She says she decided to retire because her anxiety made her feel anxious about going into school during the COVID-19 pandemic.

[22] The Act provides a circumstance where the working conditions constitute a danger to health. The health problem relied upon must be specific rather than a general stress-related condition, and must be supported by medical evidence.⁷

[23] Although the Claimant may suffer from asthma and anxiety, she admits that, after her approved period of sick leave, she was able to return to work full-time, for the entire 10-month period from September 8, 2020 to June 30, 2021.

[24] There is no medical evidence on file to support the Claimant had to retire or stop work as of June 2021, due to health reasons. The law says, even if she had shown that teaching in a school posed a risk to her health, the Claimant still has to show she had no reasonable alternative but to leave her permanent job when she did.

– **Reasonable alternatives**

[25] When considering all of the evidence, I find the Claimant had reasonable alternatives to leaving her permanent full-time job when she did. So she hasn't shown just cause for leaving. Here is what I considered.

⁷ See section 29 of the Act and CUB 18965.

[26] Upon review of the Commission's submissions, the Claimant agrees that she could have requested a leave of absence or medical accommodations from her employer, instead of retiring.

[27] I agree with the Commission when it states another alternative was for the Claimant to obtain a medical note before retiring if she truly felt as though she couldn't continue working full-time for medical reasons. The Claimant admits, if she had to do it again, she would have gotten a note from her doctor.

[28] The evidence contradicts the Claimant's statement that she didn't feel safe working in her full-time job because of COVID-19. Specifically, after being off on sick leave from May 2020, to the end of June 2020, she returned to work full-time for the following school year. She worked from September 8, 2020, to June 30, 2021, which is a period when the COVID-19 pandemic was still very active. Then, as of September 2021, she continued working casually, at the same school where she held her permanent full-time position. So if she truly didn't feel safe working why would she continue working casually at the same school.

[29] So even when I consider the totality of the evidence, as set out above, I find the Claimant made a personal choice to retire. She chose to leave her full-time job and work on-call as a casual employee. Although a personal choice may constitute good cause, it doesn't prove just cause for leaving permanent full-time employment.⁸

Did the Commission review the claims properly (judicially)?

[30] Yes. The Commission conducted its review properly.

[31] The law states the Commission has 36 months after paying EI benefits, to reconsider a claim for benefits.⁹ This period is extended to 72 months in cases where, if

⁸ See *Canada (Attorney General) v White*, 2011 FCA 190; *Tanguay v Canada (Unemployment Insurance Commission)*, A-1458-84.

⁹ Section 52 of the Act.

in the opinion of the Commission, a false or misleading statement or representation has been made in connection to a claim.¹⁰

[32] The Federal Court of Appeal recognizes the Commission can't review changes to claims at the exact time they happen. It is precisely for that reason that the Act allows the Commission time to rescind or amend any decision given in any particular claim for EI benefits.¹¹

[33] The Claimant says there needs to be some exceptions for her circumstances. She argues she paid into the EI fund for many years. She also pointed to some clerical errors on her application form, the ROE, and in the Commission's document where it listed an incorrect telephone number.

[34] As explained during the hearing, EI benefits are not a pension fund or a needs-based program that she can withdraw at will. Although entitlement to benefits requires contributions to the EI fund, you must meet the qualifying conditions and be compliant with the requirements set out in the Act to be entitled to benefits.

[35] Further, I find the clerical errors didn't cause her any prejudice because the Claimant was able to appeal the Commission's decision. Appeals before the Tribunal are *de novo*. This means the adjudication of her claim begins anew allowing the Claimant to present all relevant evidence.

[36] I recognize the Claimant argues she may have qualified for the regular benefits she received if she retired in September rather than in June 2021. But as I explained during the hearing, I must determine the appeal based on the facts and not on what may have occurred if she made different choices.

[37] This is truly an unfortunate situation. The Claimant was honest and called the Commission in September to disclose she had retired in June 2021. So had the ROE listed "G" for retirement instead of "A" for layoff, the overpayment may not have been as large as this may have caused the Commission to review the reason for separation

¹⁰ See subsection 52(5) of the Act.

¹¹ See *Canada (Attorney General) v Landry*, A-532-98.

sooner. This said the Commission conducted its assessment in accordance with the law so the overpayment is valid.

Repayment of an overpayment?

[38] The law states that a claimant is responsible (liable) to repay EI benefits that they are not entitled to receive.¹²

[39] I don't have any authority to reduce or waive the overpayment.¹³ That authority rests with the Commission. I also don't have any authority to order the Commission to waive an overpayment.

[40] I sympathize with the circumstances presented by the Claimant. She believes she shouldn't have to repay the EI benefits because of her circumstances. However, Employment Insurance is not a needs based program. Claimants must prove they qualify to receive benefits. Unfortunately, the Claimant hasn't proven that she qualifies for regular EI benefits as of June 27, 2021.

[41] This leaves the Claimant with two options. She can ask the Commission to consider writing off the overpayment because of undue hardship.¹⁴ If the Commission refuses to do so, she can appeal to the Federal Court of Canada.

[42] The Claimant can also contact the Debt Management Call Centre at CRA at 1-866-864-5823 about a repayment schedule or for other debt relief.¹⁵

¹² See section 43 of the Act.

¹³ See sections 112.1 and 113 of the Act.

¹⁴ Section 56 of the *Employment Insurance Regulations* gives the Commission broad powers to write off an overpayment when it would cause undue hardship for a claimant to repay it.

¹⁵ The telephone number is found on the Notice of Debt and account statements sent to the Claimant for the overpayment.

Conclusion

[43] The appeal is dismissed. The Claimant voluntarily left her job without just cause, as defined by the Act.

Linda Bell
Member, General Division – Employment Insurance Section