Citation: *CB v Canada Employment Insurance Commission*, 2023 SST 49

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	C. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (508240) dated July 27, 2022 (issued by Service Canada)

Tribunal member:	Glenn Betteridge
Type of hearing:	Teleconference
Hearing date:	November 29, 2022
Hearing participant:	Appellant
Decision date:	January 23, 2023
File number:	GE-22-2675

Decision

[1] I am dismissing C. B.'s appeal.

[2] She 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. This is what the Canada Employment Insurance Commission (Commission) decided.

Overview

[4] On March 11, 2022, the Claimant left her job with X. Then she applied for EI benefits.

[5] The 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 didn't pay her EI benefits.

[6] The Commission says that, instead of leaving when she did, she could have discussed the situation with her employer, looked into changing work schedules, requested a leave of absence, found another job before leaving, or spoken to her doctor if she could no longer do her job for health reasons.

[7] The Claimant disagrees. She says she had just cause of leaving based on two circumstances. Her employer refused her vacation request, so she didn't have anyone to take care of her kids for March break. She was stressed out and mentally exhausted by her work, in part because of excessive overtime. She also says that she worked in the automotive parts industry of 17 years, contributed to EI, and deserves benefits.

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

Issue

[9] Is the Claimant disqualified from receiving benefits because she voluntarily left her job without just cause?

[10] To answer this question I have to decide two things:

- whether the Claimant voluntarily left (quit) her job
- if she did, whether he had just cause for quitting when she did

Analysis

The Claimant voluntarily left (quit) her job

[11] I accept that the Claimant voluntarily left her job. The Claimant agrees that she quit. There is no evidence that says otherwise.

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

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

[13] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[1] Having a good reason for leaving a job isn't enough to prove just cause.

[14] 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 I have to consider all the circumstances that existed when you quit.[2]

[15] It's up to the Claimant to prove that she had just cause, 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.[3]

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[1] Section 30 of the *Employment Insurance Act* (EI Act) explains this.
[2] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[3] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

Circumstances that existed when the Claimant quit

[16] At the hearing the Claimant agreed that three circumstances from section 29(c) of the *Employment Insurance Act* (EI Act) existed at the time she quit.

Obligation to care for a child

[17] The law says that a claimant who has an obligation to care for a child has just cause for leaving if they had no reasonable alternative but to quit.[4]

[18] A claimant does not have just cause where they have not attempted to make alternative childcare arrangements, including trying to work out an accommodation with their employer.[5] And a claimant does not have just cause where they quit because their take-home pay was roughly the same as the cost of childcare.[6]

[19] The claimant and her spouse have children.

[20] The Claimant says she quit because he had no one to take care of her children over the March 2022 school break (March break).

[21] The Claimant says she applied to take vacation over March break, so she could take care of her children because her husband had to work. She applied late. Under the policy employees had to apply four weeks before the date they wanted to take vacation. She applied three weeks before. Her employer denied her vacation request.

[22] I accept that the Claimant had an obligation to take care of her kids during March break. Although she shared this obligation with her spouse, as a family they had to have childcare for their kids when they were not in school because they were too young to take care of themselves. And I accept that her employer denied her request for vacation over March break. I have no reason to doubt her evidence about this. She said the

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[4] See section 29(c)(v) of the EI Act. And see *Canada (Attorney General) v Yeo,* 2011 FCA 26.
[5] See *CUB 23484*.
[6] See *CUBs 26989*, *28825*, *33050*, and *48433*.

same thing to the Commission and at the hearing. And there was no evidence that went against what she said.

[23] Based on the evidence I have accepted, I find that this circumstance applies to the Claimant. Below I will consider whether she had a reasonable alternative to quitting to take care of her kids over March break.

Excessive overtime work

[24] The law says that a claimant who has to work excessive overtime (or doesn't get paid for overtime work) has just cause for leaving if they had no reasonable alternative but to quit.[7]

[25] The Claimant's employer didn't refuse to pay her for overtime.[8] So I don't have to consider that.

[26] The Claimant says she worked overtime. She testified that she didn't have to work overtime, but she felt pressured to. She managed a team and needed to be there to give structure and support for the people on her team who were working overtime to meet deadlines. She testified that 50-hour work weeks are expected in the auto parts industry. She said working overtime wasn't a problem for her in her 20s, but she didn't want to work those hours in her 40s.

[27] Her employer told the Commission overtime is based on business needs but isn't mandatory. And said that she could have let her team work overtime without working overtime herself.

[28] The Claimant quit her job in early March 2022. The law says I have to look at the circumstances that existed *at the time she quit*. From January to March 2022 her record of employment shows:

- two one-week pay periods (41.5 hours; 42 hours worked)

[7] See section 29(c)(viii) of the EI Act.
[8] She confirmed this at the hearing.

- four two-week pay periods (80.5 hours; 97 hours; 86 hours; 84 hours worked)

[29] I find that the Claimant wasn't forced to work overtime. She and her employer agree about this, and there is no evidence that goes against that.

[30] I find the Claimant didn't work excessive overtime. I have no reason to doubt her record of employment. It tells me she worked an average of 40 to 43 hours per week most weeks. This is a normal amount of overtime, even adding it up over many weeks. The Claimant herself said that 50-hour weeks were expected in the auto parts industry, and I have no reason to doubt her about this. There was only one two-week period where she averaged closed to 50 hour per week. So she didn't work excessive overtime based on one two-week period.

[31] Based on the evidence I have accepted, I find that the Claimant didn't work excessive overtime. However, I will take her overtime hours into account when I decide whether *in all of the circumstances,* she had a reasonable alternative to quitting when she did.

Working conditions that constitute a danger to health

[32] The law says that a claimant who experiences working conditions that constitute a danger to health or safety has just cause for leaving if they had no reasonable alternative but to quit.[9]

[33] Where a claimant says they quit their job because it was dangerous or created unsafe working conditions for their health, they have to: (a) give medical evidence[10]; (b) attempt to resolve the problem with the employer;[11]and (c) attempt to find other work prior to leaving.[12] And before leaving for health reasons, a claimant should tell their

[9] See section 29(c)(iv) of the EI Act.
[10] See *S A v CEIC*, 2017 SSTADEI 330; and *CUBs 11045, 16437, 24012, 21817, 27441*, and *39915*.
[11] See *CUBs 21817* and *58511*.
[12] See *CUBs 18965, 27787, 39915*, and *33709*. See also *CUBs 15309, 19187, 23802, 21638*, which say that the failure to discuss physical difficulties with an employer, and the failure to attempt to seek alternative employment prior to leaving, will lead to a finding that a claimant left without just cause despite the physical problems of the claimant.

employer or the Commission about the health problems responsible for their decision to leave.[13]

[34] The Claimant has the onus of establishing that their work caused negative health effects. Generally, a claimant has to show a specific health problem rather than a general stress-related condition.[14] The type of medical evidence will depend on the facts and circumstances of the case. Where the health problem is particularly obvious, I can find just cause even if there is no medical report or certificate.[15]

[35] The Claimant didn't send the Commission or the Tribunal any medical reports or other medical documents.

[36] In her EI application, her calls with the Commission, her appeal, and her testimony, the Claimant said that because of her work she:

- was highly stressed and anxious
- was exhausted all the time and burnt out
- was not sleeping well
- had a constant feeling of not doing a good job
- didn't have energy to parent
- had been talking to her doctor about these health issues for years but never started any treatment

[37] She testified that before she quit, she spoke with her doctor by phone. Her doctor told her they would support a one-week leave for health reasons. She refused because

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[13] See *CUB 56636*.
[14] See *AS v CEIC*, 2017 SSTADEI 378; and *CUBs 18965* and *57484*. But see *SM v CEIC*, 2019 SST 499.
[15] See *Brisebois v CEIC* A-510-96 (FCA), in which the court found it was an error to find 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.

one week was not enough and didn't go through with the paperwork. She said she needed three months off to recover from her job.

[38] I accept her evidence about her health at the time she quit her job. And I accept that her job had a negative effect on her health. Her evidence about this was consistent—from her EI application right through the hearing. And there is no evidence that goes against her evidence.

[39] I have no reason to doubt her testimony about her frustration, the unfairness she felt at the away her employer treated her and wanting to leave the industry at the time she quit. She made these points throughout her testimony.

[40] However, I find she hasn't proven that she had to quit her job because it was a danger to her health. She gave no medical evidence, no diagnosis, wasn't taking any treatment, and refused her doctor's offer of a one-week medical leave. So she hasn't proven she had a specific health problem brought on by her work, and she needed to quit because of it.

[41] I find that it is more likely than not she had a general stress-related condition. She was frustrated and dissatisfied with her employer, and years working in the auto parts industry. She believed her employer treated her unfairly by refusing her request for vacation at Christmas 2020 and March break. She felt the company owner was angry with her, but he held that emotion in check. She also said she had been looking for work outside of the industry for six years, without success.

The Claimant had reasonable alternatives

[42] Now I have to look at whether the Claimant had a reasonable alternative to quitting her job when she did. If she had a reasonable alternative, she didn't have just cause for quitting, and she is disqualified from getting EI benefits.

[43] The Commission says she had these reasonable alternatives:

- talk to her employer about the situation and try to resolve things

- look into changing work schedules to better accommodate childcare
- ask for a transfer to a less stressful position
- request a leave of absence from work
- secure other employment before leaving
- if she wasn't able to continue her job for health reasons, she could have made an appointment with her doctor and requested a medical leave of absence

[44] The Claimant testified she had no reasonable alternative to quitting because:

- She had no one to take care of her kids during March break. She had no other option but to quit. She refused to bring her kids to work. She looked for a daycare, but they were all full. She lives in the middle of nowhere. It would have cost more than she made at her job to get a private babysitter, and she didn't know anyone, so she didn't look into this option.
- After her employer denied her vacation for March break, she didn't think it was up to her to try to work it out with them. She felt it was her employer's obligation, they should have known the procedures they needed to take because they knew her circumstances.
- She felt intimidated by the company owner. And he was away on the road or unavailable. So she could not speak with him.
- There was no position transfer to, it was a small company.[16] And the company was busy, so it wouldn't have accommodated her for childcare reasons.

[16] The employer told the Commission there were 20 employees. See GD3-35.

- She had been looking for work outside her industry for six years without success because all her experience was in that industry.

[45] I accept the Claimant's testimony on this issue. I have no reason to doubt it. She testified in forthright way and answered my questions directly and in detail.

[46] Based on her testimony, I find that the following alternatives were not reasonable: changing work schedules or requesting a transfer. I also find she made efforts to find alternative employment before quitting and consulted her doctor about taking leave for health reasons.

[47] However, considering all the circumstances that existed at the time she quit, I find she had two reasonable alternatives.

- She could have explored the possibility of getting a private babysitter for March break. She said she didn't look into this option because she didn't know anyone and because of cost. It makes no difference that it would have cost more than her pay for the week. It was for one week. And her husband was employed at that time. They share financial responsibility for their children. So I find this was a reasonable alternative to quitting her job when she did.

- She could have discussed her childcare situation with her employer, to try to figure out something for March break. She said she didn't do this because she felt it was her employer's obligation to do something. She testified she quit without giving her employer a reason, because "it was not their business, they had already crossed a line, I was not about to explain myself to them".[17] Her employer says it didn't know she didn't have childcare for March break. And I accept that evidence because it fits with what the Claimant said. Under the EI Act, she has to prove that there was no reasonable alternative to quitting, and she has an obligation to try to resolve issues that arise with her

[17] She sent her employer a two-line email, without a reason for resigning. See GD3-37.

employer before quitting. She didn't do that. So I find this was a reasonable alternative to quitting her job when she did.

[48] I have considered these alternatives keeping in mind the effect of her job on her health at the time she quit (burnt out, anxious, not sleeping well, exhausted) and the long hours she worked.[18] Despite these circumstances, I find the two alternatives were reasonable alternatives to quitting when she did.

Conclusion

[49] Considering all the circumstances that existed when the Claimant quit (individually and together), I find she had reasonable alternatives to quitting when she did.

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

[51] So she is disqualified from receiving benefits under the EI Act.

[52] This is what the Commission decided. So I am dismissing her appeal.

Glenn Betteridge
Member, General Division – Employment Insurance Section

[18] In other words, I have considered the cumulative effect of her circumstances when deciding whether she had no reasonable alternative to quitting her job when she did.