



[TRANSLATION]

Citation: *GG v Canada Employment Insurance Commission*, 2023 SST 1043

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

Decision

Appellant: G. G.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (546076) dated November 8,
2022 (issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: Teleconference
Hearing date: April 20, 2023
Decision date: April 20, 2023
File number: GE-22-4090

Decision

[1] The appeal is allowed.

[2] The Appellant voluntarily took a leave of absence authorized by the employer. The Appellant and the employer agreed on the date she had to go back to work, and she had just cause for taking this leave when she did.

Overview

[3] The Appellant worked at the Royal Bank of Canada (RBC). She says that she was on sick leave from October 26, 2021, to January 6, 2022 (aside from returning to work for two weeks during that period). She was supposed to go back to work on January 7, 2022, but she contacted the employer to ask for a leave of absence. The Appellant was out of the country visiting family and could not go back to work because of her medical condition. The employer approved her leave of absence. On April 25, 2022, the Appellant applied for Employment Insurance benefits.

[4] The Canada Employment Insurance Commission (Commission) found that the Appellant took a voluntary leave of absence and that she didn't have just cause for taking it. It didn't pay her benefits.

[5] The Appellant disagrees with the Commission's decision. She admits that she contacted her employer on January 4, 2022, to ask for a leave of absence. But she says that her doctor asked her to limit contact because of her health condition and that her employer didn't allow her to work from home.

[6] I have to decide whether the Appellant voluntarily took a leave of absence and, if so, whether she had just cause.

Matter I have to consider first

[7] Both parties were absent from the teleconference hearing on April 20, 2023. The Appellant had asked for a question and answer hearing (in writing), but the Tribunal scheduled a teleconference hearing so she could explain the circumstances of her

leave of absence orally. But the Appellant didn't attend the hearing. Since I am satisfied that both parties received the notice of hearing, and since the Appellant had two phone calls from the hearing (on April 13, 2023, and on the day of the hearing), I proceeded in the parties' absence.

Issues

[8] Did the Appellant voluntarily take a leave of absence from January 7, 2022?

[9] If so, did the Appellant have no reasonable alternative to taking leave?

Analysis

Did the Appellant voluntarily take a leave of absence?

[10] An employee who voluntarily takes a period of leave from their job without just cause isn't entitled to benefits if the period of leave was authorized by the employer and the employee and employer agreed on the date the employee would go back to work.¹

[11] The Record of Employment the employer sent the Commission indicates that the last day paid was January 7, 2022, and that the Appellant stopped working because of a leave of absence.

[12] The Appellant says that she was on sick leave between October 26, 2021, and January 6, 2022, because she was recovering from surgery. She was supposed to go back to work on January 7, 2022, but she contacted her employer on January 4, 2022, to tell it that she was in Haiti and that she wanted to extend her leave. The employer authorized an unpaid leave of absence until the Appellant got back from Haiti on February 5, 2022.

[13] The Appellant didn't go back to work on February 6, 2022, because her health condition didn't allow it. She contacted the employer on February 2, 2022, to ask for a telework position, but the employer could not offer her that option.

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

[14] The Appellant met with her doctor on April 18, 2022. The medical certificate she sent the Commission says that, given her health condition, being exposed to the COVID-19 virus could lead to significant complications.

[15] On November 3, 2022, the Appellant told a Commission employee that she hadn't gone back to work at RBC on August 8, 2022, because she didn't want to go back to that job. She started looking for another job.

[16] She applied for regular benefits on April 25, 2022. On that date, the facts show that it is more likely than not that the Appellant was on an unpaid leave of absence authorized by the employer.

[17] This means that the employer initially approved her leave of absence until February 5, 2022, and the facts show that the Appellant and the employer had agreed on the date she was to go back to work.² As the Appellant indicated, she didn't want to go back to her job at RBC on August 8, 2022. It is more likely than not that the employer authorized an extended leave of absence and that the agreed-on return date was August 8, 2022.³

Was there no reasonable alternative to taking leave?

[18] The Commission says that the Appellant didn't have good cause for taking a leave of absence and that she had several alternatives to taking one. The Appellant could have provided a medical certificate for the entire period of leave—she had no justification between February 5, 2022, and April 18, 2022. She could have made efforts to find a job by working remotely or wearing a mask in an in-person job. She could have gotten vaccinated or been available for her employer.

[19] The Commission also says that it made a decision about the Appellant's disentanglement while she was outside Canada and about her availability for work. But those decisions weren't reconsidered.

² Section 32 of the Act.

³ GD3-30.

[20] I disagree with the Commission that the Appellant didn't have just cause for taking a leave of absence. The Appellant explored all possible solutions available to her.

[21] On February 2, 2022, since her medical condition didn't allow her to go back to her job, she contacted the employer to ask for a telework position. But the employer could not offer her that option. She then made an appointment with her doctor. Although she didn't get this appointment until April 18, 2022, the medical certificate indicates that the Appellant could develop medical complications given the progressive obstructive pneumonia that was diagnosed on the medical note dated January 18, 2022. So, the Appellant explored the solutions that were available to her.

[22] Now, as the Commission suggests, it is true that the Appellant is responsible for job search efforts during a period of unemployment to be able to receive regular benefits. On this point, she says that she was available for work. But this issue isn't before me because the Commission didn't make a reconsideration decision on it.

[23] The Appellant took a leave of absence authorized by the employer, and she had no reasonable alternative to taking it when she did.

Conclusion

[24] The appeal is allowed.

Josée Langlois

Member, General Division – Employment Insurance Section