[TRANSLATION]

Citation: *SG v Canada Employment Insurance Commission*, 2023 SST 1000

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	S. G.
Representative:	Jérémie Dhavernas
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (548382) dated November 17, 2022 (issued by Service Canada)

Tribunal member:	Guillaume Brien
Type of hearing:	Videoconference
Hearing date:	April 20, 2023
Hearing participants:	Appellant Representative
Decision date:	April 26, 2023
File number:	GE-22-4117

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 that the Claimant is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left her job on June 7, 2022, and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving her job. It decided that she voluntarily left (or chose to quit) her job without just cause, so it wasn't able to pay her benefits.

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

[5] The Commission says that instead of leaving when she did, the Claimant could have explored possibilities with the daycare. She could have made arrangements with her partner to avoid unemployment. Leaving her job because of a childcare problem was a personal choice, not just cause.[1]

[6] The Claimant disagrees and says that the decision is wrong in fact and law.[2] At the hearing, the lawyer argued that the Tribunal must consider the need to care for a child along with the significant change in duties.[3]

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[1] See GD4-6.
[2] See notice of appeal at GD2-5.
[3] Sections 29(c)(v) and 29(c)(ix) of the *Employment Insurance Act* (Act).

Issue

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

[8] To answer this, I must first address the Claimant's voluntary leaving. I then have to decide whether she had just cause for leaving.

Analysis

The parties agree that the Claimant voluntarily left

[9] I accept that the Claimant voluntarily left her job. The Claimant agrees that she left her job on June 7, 2022. I see no evidence to contradict this.

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

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

[11] 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 reason for leaving a job isn't enough to prove just cause.

[12] The law explains what it means by "just cause." It 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.[5]

[13] 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]

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[4] See section 30 of the Act.
[5] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[6] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

[14] 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 that I have to look at.[7]

[15] 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.[8]

The circumstances that existed when the Claimant quit

[16] The Claimant says that she has circumstances set out in the law that apply.

[17] She says that there was a significant change in her duties. She says that she needed to care for a child.

– Significant change in duties

[18] The Claimant says that because of the significant change in her duties, she had just cause for voluntarily leaving her job.

– Initial employment contract

[19] The evidence shows that the Claimant was hired in May 2018 as a quality agent, with a schedule from 9 a.m. to 5 p.m.:

- The employer says and confirms that the hours she was hired to work were from 9:00 a.m. to 5:00 p.m. and that they never changed.[9]
- The Claimant admits that she was aware of this schedule when she was hired.[10]

[7] See section 29(c) of the Act.
[8] See section 29(c) of the Act.
[9] See GD3-21.
[10] See GD3-22.

- The Claimant says that her supervisor told her that her new schedule would be the same as when she was hired, from 9:00 a.m. to 5:00 p.m.[11]

- The employer says that the Claimant was initially hired as a quality agent with a schedule from 9 a.m. to 5 p.m.[12]

[20] But, at the hearing, the Claimant testified that she didn't know whether she had an employment contract with a specific schedule, despite having worked for the employer for four years.

[21] When the Tribunal brought up this point, the Claimant adjusted her testimony, and said that, yes, she most likely had an employment contract, that she had signed a document that she didn't remember.

[22] After hearing from the Claimant about her employment contract, I find that her testimony on this issue isn't forthright. She seems to have wanted to hide the fact that she did sign an employment contract for a specific position and schedule when she was hired.

[23] The burden of proof was on the Claimant. She chose not to file her employment contract as evidence.

[24] So, the Tribunal prefers the evidence on file. This evidence is clear and contemporaneous. It shows that the Claimant was hired as a quality agent in May 2018 at a schedule of 9 a.m. to 5 p.m.

– **Maternity leave and employer's accommodations**

[25] The Claimant took about a year of maternity leave from April 2019 to May 2020.

[11] See GD3-33.
[12] See GD3-35.

[26] The evidence on file shows that, when she went back to work, the employer agreed to accommodate her as follows:

- The employer testified that, when she went back, the Claimant asked to have a different work schedule from 7:30 a.m. to 3:30 p.m. In this case, the employer offered her a document digitizing and archiving position.[13]

- The Claimant testified that, when she returned from maternity leave, she sought a schedule that was suitable for her.[14]

- The Claimant testified that when she returned from maternity leave two years ago, her duties changed. She was put on digitization with her schedule from 7:00 a.m. to 3:30 p.m. and that it was suitable for everyone.[15]

- The Claimant testified that when she returned from maternity leave she changed jobs to document archiving and worked from 7:30 a.m. to 3:30 p.m. at that time.[16]

[27] So, the undisputed evidence shows that the employer agreed to accommodate the Claimant when she returned from maternity leave with new duties and a new schedule.

[28] I also note that the Claimant's salary remained the same despite the fact that she was no longer doing the quality agent duties she had been hired for.

– **Abolishment of accommodating position and acceptance of new duties**

[29] As technology evolved, the employer adopted digital documents. The employer no longer has to scan documents. So, the digitizing and archiving position offered to the Claimant as an accommodation when she returned from maternity leave was no longer there. This isn't in dispute.

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[13] See GD3-35.
[14] See GD3-18.
[15] See GD3-22.
[16] See GD3-33.

[30] At meetings held on May 24 and 25, 2022, the employer (represented by the manager and the supervisor) introduced the new program to the employee and explained how the changes would impact her.

[31] She was then offered her former position as a quality agent, and a return to her schedule from 9 a.m. to 5 p.m. with a 25% salary increase.

[32] The Claimant **accepted** this offer immediately. This isn't disputed by the parties.

[33] But, after agreeing to go back to her duties as a quality agent, a position she had been hired for in May 2018—with her initial schedule from when she was hired and a salary increase of 25%—the Claimant discussed it with her husband. Her husband didn't agree with it. She then asked her employer, at least twice, to work from 8 a.m. to 4 p.m. The employer refused, explaining that she had to be in-person for the three-month training. Many employees have children and they adapt to the situation.

[34] Given the employer's refusal to accommodate her schedule requests, the Claimant decided to leave on June 7, 2022, without giving the required legal notice.

– **Conclusions on the alleged significant change in duties**

[35] After analyzing the file, I find that the Claimant **agreed** to return to the duties of a quality agent after her accommodating position was eliminated. This position was the **same one** that she was initially hired for in May 2018.

[36] By accepting the employer's offer, the Claimant contractually committed herself to doing the work the employer required. So, the Claimant could not, after speaking with her husband, unilaterally go back on the contract and force the employer to accept a schedule dictated by the employee and her partner.

[37] The right to manage belongs to the employer and not to the employee.

[38] Based on the above, I find that there were **no** significant changes to work duties.

– **Necessity to care for a child**

[39] The Claimant alleges that she had no choice but to leave her job when she did, since she had to care for her child.

– **The child has no medical issues**

[40] The fact that the child doesn't have a medical issue isn't in dispute.

[41] There are no special circumstances that would require the Claimant to provide special care for the child.

– **Taking the child to and from daycare**

[42] The child was three years old at the time. So, he went to daycare and not to school. This is clearly a childcare problem, as daycare isn't mandatory in Quebec.

[43] The work schedule, as contractually accepted by the Claimant, was from 9 a.m. to 5 p.m. (sometimes it could go up to 5:30 p.m.).

[44] At the hearing, it was determined that when the child would arrive at daycare was **not** the issue. She had enough time to bring her child in the morning because the daycare was next to her home on foot, and she didn't start until 9 a.m.

[45] The Claimant says that the issue was when she would have to pick up her child from daycare. She says it is because of when the daycare closes that she had to voluntarily leave her job.

[46] The Claimant lives in La Prairie, 60 to 90 minutes away by public transit from her job. This isn't in dispute.

[47] At the hearing, the Claimant explained that her daycare closed at 5 p.m. She said that she can't pick up her child later than 5 p.m. because it is a subsidized daycare.

[48] The circumstance that existed when the Claimant left her job was that the daycare for her three-year-old child closed at 5 p.m., and someone had to pick up the child when it closed.

The Claimant had a reasonable alternative

[49] I must now consider whether the Claimant had no reasonable alternative to leaving her job when she did.

[50] The Claimant says this was the case because she had to pick up her child at 5 p.m. every day of the week. She says that her husband could not help her. She says that her in-laws, who live in the same building as her, could not help either.

[51] The Commission disagrees and says that the Claimant could have explored the possibilities with her current daycare. She could have made arrangements with her partner to avoid unemployment.

– Reasonable alternative: find another job before leaving

[52] I asked the Claimant if she had looked for work before quitting.

[53] She says that she did. She says that the fact she had an interview in July 2022 proves this. But, she didn't get the job because her English isn't good enough. She hasn't provided any evidence of a job search on file even though the burden of proof is on her.

[54] I asked her to specify the date of that job search. The Claimant told me this was **after** she quit. She says that she didn't look for work on June 6 and 7 because she didn't have time.

[55] I asked the Claimant when she knew that her work of digitizing and archiving would end. She told me that it was **a few months** before the job ended.

[56] After hearing the Claimant, I find that she had ample time to look for and find a new job between the day she knew her accommodating position was going to end and the day she quit.

[57] I find that the Claimant has failed to prove that she made any job search efforts before quitting, even though the burden of proof is on her.

[58] I asked the Claimant how **urgent** it was to quit on June 7, 2022. She told me: I wasn't going to abandon my child...

[59] The evidence on file shows the following:

- The Claimant testified that she never thought of taking a look at how her family is organized. She says that her husband helped her for two years and that he has done enough.[17]

- The Claimant testified that her husband is self-employed and that he makes his own schedule. He agreed that he goes in the morning with the child and she goes in the evening.[18]

- The Claimant says that her husband has appointments and he doesn't know at what time he finishes the evening, so he can't pick up the child at the end of the day and she is the one who goes.[19]

[60] When asked by her lawyer at the hearing, the Claimant said that she tried to adjust and worked two days with the new schedule, on June 6 and 7, 2022. She resigned on June 7, 2022, by email.

[61] Asked by her lawyer what she did with her child during those two days, the Claimant testified: [translation] "Well, my husband is the one who took him to daycare .... He didn't work …. He didn't work much …. He didn't work all day."[20]

[62] The Claimant then confirmed her lawyer's suggestion that her husband had to cut his hours during those two days.

[63] After hearing the Claimant and reviewing the file, I find that the Claimant could have continued at her new position while she looked for work.

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[17] See GD3-17.
[18] See GD3-17.
[19] See GD3-17.
[20] Recording of hearing, 20 minutes and 3 seconds in the electronic file.

[64] It is reasonable for her husband to cut his hours to pick up the child from daycare if that is how the Claimant wants her family organized.

[65] Canadian taxpayers don’t have to pay for a personal choice made by the Claimant and her partner as to how they want their family organized.

[66] Given the circumstances that existed when the Claimant quit her job, the Claimant had a reasonable alternative to leaving her job.

[67] I also note that the Claimant could also have looked for another position with her employer, but she testified that she never asked for one. She could have looked for another daycare, hired a babysitter, and taken an unpaid leave of absence.

[68] This means that the Claimant didn’t have just cause for leaving her job.

Conclusion

[69] I find that the Claimant is disqualified from receiving benefits.

[70] This means that the appeal is dismissed.

Guillaume Brien
Member, General Division – Employment Insurance Section