



[TRANSLATION]

Citation: *IM v Canada Employment Insurance Commission*, 2023 SST 1026

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

## Decision

**Appellant:** I. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (551016) dated December 8, 2022 (issued by Service Canada)

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**Tribunal member:** Guillaume Brien

**Type of hearing:** Teleconference

**Hearing date:** May 2, 2023

**Hearing participant:** Appellant

**Decision date:** May 5, 2023

**File number:** GE-22-4299

## 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 when she did. This means that she is disqualified from receiving Employment Insurance (EI) benefits.

## Overview

[3] The Claimant left her job as a bookkeeper on May 25, 2022, and applied for EI benefits. While she confirms that she voluntarily left her job, she says that she had no reasonable alternative to leaving her job when she did.

[4] The Claimant says the employer had decided to rehire a former employee (P. B.) who was dismissed after attacking another company employee (M. M.). P. B. was supposed to be her immediate supervisor and start his job on May 24, 2022. She says that P. B.'s behaviour was unprofessional towards her at the time because he was telling her about his sex life. She says that P. B. had already brought a firearm to the office to impress their co-workers. She had to resign because she was afraid of him. So, she could not work for the employer under P. B.'s supervision.<sup>1</sup>

[5] The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. On September 7, 2022, it found that she had just cause for voluntarily leaving her job. As a result, the Commission allowed the claim without imposing a disqualification.<sup>2</sup>

[6] After receiving the notice of decision, the employer asked for a reconsideration on October 6, 2022. Regarding voluntary leaving, the employer says that the Claimant

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<sup>1</sup> GD3-6 to GD3-11.

<sup>2</sup> GD3-22 to GD3-23.

never discussed her fears of working again with P. B. before quitting. Yet, she had the opportunity to do so.<sup>3</sup>

[7] Upon reconsideration, the Commission contacted the employer.<sup>4</sup> The employer submitted several documents, which included the following details:

- It decided to rehire P. B., a former employee, as of May 24, 2022.
- The Claimant never told it that she had concerns working with P. B. again. She said nothing the week before P. B. arrived. She gave no indication that she intended to leave her job.
- The Claimant didn't go to work on May 24, 2022. She didn't notify anyone. She didn't respond to the employer's calls and messages.
- The Claimant was in no way involved in the incident between P. B. and M. M. 14 years ago. M. M. is still employed by the company today and gladly works with P. B.
- The Claimant never told the employer, either 14 years ago or recently, that she had any problems with P. B. She never had any.
- The employer denied that P. B. brought a firearm to work 14 years ago. There are no firearms at work. It would not have allowed this. It would never put employees at risk.
- The employer doesn't believe that the Claimant left because of P. B. She never saw him in 2022. She said nothing that week. She had no reason to be afraid of him.

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<sup>3</sup> GD3-24 to GD3-29.

<sup>4</sup> GD3-31 to GD3-40.

[8] Upon reconsideration, the Commission made several attempts to reach the Claimant, but was unsuccessful.<sup>5</sup>

[9] Based on the information gathered in the reconsideration request, the Commission reversed its decision. It found that the Claimant didn't have just cause for voluntarily leaving her job when she did.<sup>6</sup>

[10] The Claimant filed a notice of appeal with the Social Security Tribunal of Canada (Tribunal) on December 28, 2022.<sup>7</sup>

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

[12] The Commission says that instead of leaving her job when she did, the Claimant could have discussed her concerns with the employer before leaving. She could have continued her job until she found another one. The Claimant had ample time to tell the employer her concerns before leaving.<sup>8</sup>

[13] The Claimant disagrees. She says the Commission reconsidered its decision without speaking to her. She says that the Commission accepted the employer's version of events, but it isn't accurate. The employer refuses to recognize that P. B. is a dangerous person. The employer didn't offer her an alternative. The employer never discussed with her the possibility of P. B. being her co-worker again. She only learned of this through an email dated Wednesday, May 18, 2022.<sup>9</sup>

## **Issue**

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

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<sup>5</sup> GD3-41 to 44

<sup>6</sup> GD3-45 to GD3-47.

<sup>7</sup> GD2-1 to GD2-8.

<sup>8</sup> GD4-7 to GD4-8.

<sup>9</sup> The Claimant's testimony at the hearing and GD2-5.

[15] 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**

[16] I accept that the Claimant voluntarily left her job. The Claimant agrees that she left her job on May 24, 2022.

[17] So, this is found as a fact.

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

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

[19] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>10</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[20] 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.<sup>11</sup>

[21] 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.<sup>12</sup>

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<sup>10</sup> See section 30 of the *Employment Insurance Act* (Act).

<sup>11</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>12</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

[22] 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.<sup>13</sup>

[23] 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.<sup>14</sup>

### **The circumstances that existed when the Claimant quit**

[24] The Claimant says that one of the circumstances set out in the law applies. Specifically, she says that the employer rehiring P. B. made her working conditions a danger to her health or safety.<sup>15</sup>

#### **– Violent incident between P. B. and M. M.**

[25] At the hearing, I asked the Claimant to tell me about the event that made her afraid of P. B. She said the following:

- The event allegedly happened in 2006, when the Claimant had just started working a few months earlier.
- While she was storing documents in a cabinet, M. M. told P. B. about an amount of money he needed to pay a supplier. At that point, P. B. jumped on M. M. and tried to strangle her. Two co-workers intervened and managed to separate them. The employer sent P. B. home right away.
- The Claimant witnessed the scene as it was all happening in a common space. She wasn't injured during this event. The event had nothing to do with her.

[26] I asked the Claimant if she had spoken with her employer about this incident. She told me that her boss had come to apologize to her, and told her that she was never going to witness anything like that again.

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<sup>13</sup> See section 29(c) of the Act.

<sup>14</sup> See section 29(c) of the Act.

<sup>15</sup> Section 29(c)(iv) of the Act.

[27] I asked the Claimant if she contacted labour standards after this event. She told me no, she had just arrived in Canada, it was her first job, and she didn't even know labour standards existed. She tells me the employer didn't call the police either.

[28] The employer, on the other hand, testified that the Claimant wasn't involved in the incident between P. B. and M. M. The employee M. M. still works at the company and is happy working with P. B. The Claimant never had any problems with P. B. The Claimant has never talked about having a problem with P. B. in all these years.<sup>16</sup>

[29] After reviewing the record, I find the following:

- The violent incident between P. B. and M. M. did take place in 2006. The Claimant and the employer agree on this.
- The Claimant was only a witness to this event. Again, the Claimant and the employer agree on this point.
- As confirmed by the employer, the Claimant never discussed this event with the employer after that. P. B. was sent home. The employer apologized to the Claimant. Neither labour standards nor the police were contacted. So, the matter was closed for 16 years.

– **Firearm at work**

[30] The Claimant wrote in her notice of appeal that P. B. had previously attended work with firearms.<sup>17</sup>

[31] At the hearing, I asked the Claimant to explain this allegation to me in more detail. She told me the following:

- She has never witnessed this. Other colleagues told her that story.

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<sup>16</sup> GD3-32.

<sup>17</sup> GD2-5.

- This event happened before the Claimant started working for the employer.
- After the violent incident in 2006, co-workers told her that [translation] “it’s normal because P. B. is a bit crazy.” They told her the story where P. B. said he had a gun. He allegedly took his weapon out to show it to colleagues at the office.

[32] The employer, on the other hand, says the following:

- It isn’t the type of business that accepts employees bringing firearms to work. It would never put employees at risk.
- The employer denies that this happened.<sup>18</sup>

[33] After reviewing the file, I find that the Claimant has failed to prove, on a balance of probabilities, that this event happened. She didn’t witness this event. She wasn’t working for the company at the time of this alleged event. She hasn’t provided any testimony from co-workers or any evidence that would support this story. The employer denies that this happened. So, I give more weight to the testimony of the employer, which, on a balance of probabilities, should know better than the Claimant what was going on at its business and with its employees at that time.

[34] I find that the Claimant has failed to prove that this circumstance exists. So, for the purposes of my analysis, P. B. never brought firearms to work.

– **No new circumstances in 16 years**

[35] The Claimant says that P. B. is a dangerous person because of the violent incident in 2006. She says that P. B. had previously gone to work with firearms. She has no new circumstances to mention since the one in 2006.<sup>19</sup>

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<sup>18</sup> GD3-32.

<sup>19</sup> GD2-5.



[36] The employer's version is consistent with the Claimant's on this issue. No new circumstances have arisen since the violent episode from 2006.

[37] So, I find as a fact that nothing has happened between the Claimant and P. B. since the incident from 2006, 16 years ago.

– **The circumstances that existed when the Claimant quit her job**

[38] After analyzing the file, I find that the circumstances that existed when the Claimant left her job were the following:

- The violent incident between P. B. and M. M. **did occur in 2006.**
- The Claimant was **only a witness** to this event.
- The Claimant **never discussed** this event with the employer after or before leaving her job.
- This violent matter was closed for **16 years.**
- P. B. **never brought firearms to work.**
- There were **no new events** between P. B. and the Claimant until she left her job on May 24, 2022.

[39] Given all of the above, I find that the Claimant failed to prove that P. B. was a danger to her when she decided to leave her job.

[40] This means that the employer's decision to rehire P. B. wasn't a working condition that was dangerous to the Claimant's health or safety.

**The Claimant had reasonable alternatives**

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

– **Reasonable alternative #1: Find a new job before leaving**

[42] After reviewing the file, I find that a reasonable alternative would have been for the Claimant to find a new job before quitting.

[43] It wasn't urgent for her to leave her job when she did. P. B. didn't pose an objective danger to the Claimant. The violent incident happened 16 years ago. This incident had nothing to do with the Claimant. Nothing happened during all this time that would justify the Claimant suddenly leaving her job in 2022.

[44] The Claimant was in no imminent danger from continuing her job as a bookkeeper until she could find a new job.

– **Reasonable alternative #2: Discuss concerns with the employer before leaving**

[45] The record shows that the Claimant never discussed her concerns with the employer before leaving.

[46] During the hearing, the Claimant said it wasn't until the afternoon of Wednesday, May 18, 2022, that she had learned by email that P. B. was being rehired. She says her boss promised to have a meeting to discuss it on Thursday or Friday, but that meeting never happened. She says that the employer is lying when it says that it held a team meeting about this on May 16, 2022.<sup>20</sup>

[47] I asked the Claimant what she did after she received the May 18, 2022, email.<sup>21</sup> She said she never tried to talk to her employer about this. She was in shock. After that, when she learned that she was going to have a meeting on Thursday or Friday, she waited to have that meeting to say something. In the end, the meeting never took place. She didn't have time to talk to the employer before leaving, since P. B. was supposed to start working on Tuesday, May 24, 2022, since Monday, May 23, 2022, was a statutory holiday.

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<sup>20</sup> GD3-31.

<sup>21</sup> See email at GD3-34 on file.

[48] After analyzing the file, I find that a reasonable alternative would have been for the Claimant to discuss her concerns with her employer before leaving. This is because of the following:

- The Claimant had 16 years of seniority and knew her bosses well.
- She took the time to take back her car tires from the company warehouse on Friday before leaving. She said she wasn't sure if she would quit then but was already thinking about it. Retrieving car tires is much less important than talking to your employer about a fear of an imminent danger to your health or safety at work. The Claimant had time to discuss her concerns with her employer between Wednesday afternoon and Friday evening, whether there was a meeting or not. She should have been proactive in dealing with this situation.
- The Claimant said at the hearing that she intended to go to the office early in the morning on Tuesday, May 24, 2022, to talk with her employer without P. B. being present. She woke up early that morning to be sure she would arrive before him. When she arrived at the employee parking lot, she said she saw a new car and realized that P. B. was already there. But, she wasn't sure that the new car was actually owned by P. B. She was unable to get out of her car. She left the parking lot and parked a little further away. She then sent the resignation email to her employer. So, she never had a conversation with the employer before leaving.

[49] The facts show that the Claimant never told her employer about her concerns before quitting.

[50] The employer can't read the Claimant's mind. It was unaware of the problem. It is normal that it didn't offer her alternatives.

[51] I find that the Claimant could have discussed her concerns with her employer before leaving. It wasn't urgent for her to leave when she did.

### **Reasonable alternatives existed**

[52] Given the circumstances that existed when the Claimant quit, the Claimant had reasonable alternatives to leaving when she did.

[53] This means the Claimant didn't have just cause for leaving her job.

### **Conclusion**

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

[55] This means that the appeal is dismissed.

Guillaume Brien  
Member, General Division – Employment Insurance Section