



Citation: *ML v Canada Employment Insurance Commission*, 2023 SST 1146

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

Decision

Appellant: M. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (542452) dated October 12, 2022 (issued by Service Canada)

Tribunal member: Susan Stapleton

Type of hearing: Teleconference

Hearing date: May 18, 2023

Hearing participant: Appellant

Decision date: May 30, 2023

File number: GE-22-3811

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving her job when she did. The Appellant didn't have just cause because she had a reasonable alternative to leaving. This means she is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant worked for the employer as a cleaner. N. C. is the owner of the company and was the Appellant's boss. B. C. is the manager of the company and is N. C.'s husband. The Appellant is B. C.'s aunt.

[4] The Appellant quit her job on June 10, 2022, and applied for EI benefits.

[5] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that she voluntarily left (or chose to quit) her job without just cause, so it wasn't able to pay her benefits.

[6] The Commission says that the Appellant could have looked for another job before quitting her job with the employer. It says she could have gotten medical treatment for any mental health issues or anxiety, or gotten advice from a medical professional. It says she could have approached an outside agency concerning any issues related to her pay.¹

[7] The Appellant disagrees and says that she quit her job due to personal conflict with B. C. and N. C., and verbal abuse by B. C. that occurred on June 10, 2022.² She says that she worked with N. C. day to day, and was doing most of the work. She says she approached B. C. on June 10, 2022 to ask for a raise, and he called her names and told her to get out of the truck.³ She says the employer wasn't paying her like he was

¹ See GD4-5.

² See GD3-11.

³ See GD2-3.

supposed to.⁴ She felt she was in a hostile work environment that was affecting her mental health and causing her to have anxiety on a daily basis.⁵

[8] The employer says it doesn't know why the Appellant quit her job. B. C. denied that he was rude to the Appellant or called her names. He said that he had very little contact with her and didn't work directly with her.⁶

Issue

[9] I must decide whether the Appellant is disqualified from receiving benefits because she voluntarily left her job without just cause.

[10] To answer this, I must first address whether the Appellant voluntarily left her job. If she did, I then have to decide whether she had just cause for leaving.

Analysis

The Appellant voluntarily left her job

[11] The parties agree that the Appellant quit her job on June 10, 2022. Nothing in the evidence makes me think the Appellant stopped working that day for any other reason.

[12] So, I agree that the Appellant quit her job. She had a choice to stay or leave, and she chose to leave her job. The law calls this "voluntary leaving."⁷

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

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

⁴ See GD3-26.

⁵ See GD3-33.

⁶ See GD3-36-37.

⁷ See *Canada (Attorney General) v Peace*, 2004 FCA 56.

[14] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁸ Having a good reason for leaving a job isn't enough to prove just cause.

[15] 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 of the circumstances.⁹

[16] It is up to the Appellant to prove that she had just cause.¹⁰ 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.

[17] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when she quit. The law sets out some of the circumstances I have to look at.¹¹ The Appellant says that two of the circumstances set out by law apply to her. Specifically, she says that there was antagonism with B. C. and N. C.¹² and that her work environment was negatively affecting her mental health.¹³

[18] After I decide which circumstances apply to the Appellant, she then has to show that she had no reasonable alternative to quitting when she did.¹⁴

The circumstances that existed when the Appellant quit

Antagonism with a supervisor

[19] The Appellant worked cleaning commercial buildings and homes. She says that she felt she was in a hostile work environment, because she was working with N. C. every day, and doing most of the work by herself. She asked B. C. for a raise, "it all

⁸ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁹ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

¹⁰ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

¹¹ See section 29(c) of the Act.

¹² See section 29(c)(x) of the Act.

¹³ See section 29(c)(iv) of the Act.

¹⁴ See section 29(c) of the Act.

blew up” and B. C. called her names and told her to get out of the work truck. That was when she quit.¹⁵

[20] The Appellant testified that she worked for the company for about 15 years. She said that many years earlier, she had worked on “clean-ups” with other employees and on a couple of occasions, B. C. showed up to the worksite. If he wasn’t happy with the work being done, he would “go off the handle” and yell. Sometimes, he would call the Appellant and yell at her if she had missed something when cleaning at a worksite. He did this to other employees as well, not just the Appellant. This hadn’t been happening around the time the Appellant quit her job, though. It happened many years earlier.

[21] The Appellant told the Commission that B. C. started calling her names when she started working for the company in 2016. She said the name-calling happened once a month. She couldn’t provide any details about this.¹⁶ At the hearing, the Appellant testified that she hadn’t been experiencing verbal abuse at her job since 2016, and that she didn’t know why the Commission wrote that in her file.

[22] The Appellant told the Commission that B. C. was rude to her and would tell her “you are lucky you’re working, you are not doing me a favor, and I’m doing you a favor.”¹⁷ But she testified that she had only ever had one other conflict with B. C. besides the one on June 10, 2022, and that was many years earlier.

[23] During the reconsideration process, the Appellant told the Commission that B. C. had threatened on June 10, 2022, to “punch her in the face” if she didn’t get out of the work truck. When asked why she hadn’t mentioned this to the Commission earlier, she told the Commission that she didn’t want to get B. C., who is her nephew, in trouble.¹⁸ But she testified at the hearing that B. C. told her he would “punch her in the face” during the dispute she had with him many years earlier, not on June 10, 2022.

¹⁵ See GD2-3.

¹⁶ See GD3-28.

¹⁷ See GD3-26.

¹⁸ See GD3-34.

[24] There are discrepancies between what the Appellant told the Commission and her testimony at the hearing, as outlined above. I find that her sworn testimony calls into question the credibility of what she told the Commission. I prefer the Appellant's testimony over what she told the Commission, because she answered my questions about these discrepancies in a clear and consistent manner.

[25] The Appellant testified that her issue was more with N. C. than with B. C. She was frustrated because N. C. didn't help her clean the homes, and she was doing most of the work herself. She said that she didn't fight with N. C., or have any negative interactions with her.

[26] The Appellant testified that she felt that she should be given a raise, because she had to work harder due to N. C. not doing her share of the work. So, on June 10, 2022, she went to B. C.'s other business and asked for a raise. B. C. told her that she couldn't have a raise, swore at her, called her a name, and told her to get out of the work truck. She gave him the customers' keys and told him to find someone else to work for him.

[27] B. C. told the Commission that the Appellant went to his other business to talk to him, and when he went outside, she was screaming and yelling and threw her keys at him. So he told her to get out of the work truck, as the conversation was going nowhere. He said that he was never verbally abusive to the Appellant and never called her names.¹⁹

[28] The law says just cause for voluntarily leaving exists if the Appellant had no reasonable alternative to leaving her job when she did, having regard to all the circumstances. That can include antagonism with a supervisor if the Appellant isn't primarily responsible for the antagonism.²⁰

¹⁹ See GD3-36.

²⁰ See sections 29(c)(i) and 29(c)(x) of the Act.

[29] “Antagonism” is not defined in the *Act*. However, dictionary definitions suggest that antagonism includes an element of “hostility.”²¹

[30] I am not bound by previous Canadian Umpire Board (CUB) decisions. However, I am persuaded by CUB 36792. The Umpire in that decision defines “antagonism” as a form of hostility or attitude and states that antagonism cannot be detected or determined by what may have occurred in one incident or in one dispute.

[31] I accept the Appellant’s testimony and find that it is likely that B. C. yelled at her, and called her a name, when she approached him on June 10, 2022, to ask for a raise. I further find that it is likely that the Appellant was also yelling at B. C. when she approached him.

[32] However, I find that there wasn’t antagonism from B. C. towards the Appellant, or from N.C. towards the Appellant.

[33] There is no evidence of issues with N. C.’s or B. C.’s behaviour towards the Appellant, or that either of them had verbally abused the Appellant, leading up to the incident on June 10, 2022. The Appellant didn’t suggest that either N. C. or B. C. had been behaving in a hostile manner towards her. In fact, the Appellant testified that while she was frustrated with N. C. because she didn’t help with the work, she had never had any incident of conflict with N. C. She also testified that the only other time she had a conflict with B. C. was many years earlier. She said that incidents of B. C. yelling at her about problems with her work had occurred many years earlier.

[34] Although I accept that B. C. was rude and even yelled at the Appellant and called her a name when she approached him about a raise on June 10, 2022, I find that this one incident does not amount to antagonism.

[35] I therefore find that this circumstance doesn’t apply.

²¹ *Merriam-Webster online dictionary* defines “antagonism” as “actively expressed opposition or hostility.” *Collins online dictionary* defines “antagonism” between people as “hatred or dislike between them.”

Working conditions that constitute a danger to health or safety

[36] The Appellant says that her work conditions were negatively affecting her mental health and causing her to have anxiety on a daily basis. She was stressed and sometimes cried at work when she had to work with N. C., because she knew she would be doing most of the work.

[37] The law says that a claimant has just cause where working conditions constitute a danger to health and safety and the claimant has no reasonable alternative to leaving her employment.²²

[38] Where the detrimental effect on a claimant's health is being proffered²³ as just cause, the claimant must usually: (a) provide medical evidence;²⁴ (b) attempt to resolve the problem with the employer;²⁵ **and** (c) attempt to find other work prior to leaving.²⁶

[39] The Appellant testified that she doesn't have a family doctor. She said she didn't go to a walk-in clinic or seek any other kind of medical attention for the stress and anxiety she was experiencing. She said that "the best way to deal with it was to quit and not put up with them anymore."

[40] I accept the Appellant's testimony that she was feeling stressed and anxious at the time that she quit. I understand that she was frustrated because when she worked with N.C., she had to do most of the work by herself. But she didn't provide a doctor's note or any other medical evidence to support that her job was endangering her health and/or that she needed to leave her job for medical reasons.

[41] I therefore find that this circumstance doesn't apply.

²² See section 29(c)(iv) of the Act.

²³ See *CUB 11045*.

²⁴ See section 29(c)(iv) of the Act.

²⁵ See *Hernandez 2007 FCA 320* and *CUB 21817*.

²⁶ See *Murugaiah 2008 FCA 10* and *CUBs 18965* and *27787*.

Issues with pay

[42] The Appellant told the Commission that she quit her job because the employer wasn't paying her like he was supposed to. She said that after the Covid pandemic, the employer was short-staffed, so she was doing cleaning jobs that were normally done by two or three people. She says that she was doing most of the work, and so she should have been paid more.²⁷

[43] The Appellant testified that she was paid an hourly wage. One of the employer's workers quit, and that left only the Appellant and N. C. to clean homes. She was working the same hours, but she had to work harder because she was doing most of the work. The employer didn't want to pay her more, even though she was doing the work of two people.

[44] She said that B. C. was supposed to pay her for three hours when she was scheduled for three hours, even when it only took her two hours to clean at a jobsite. But he wouldn't pay her for three hours. If she got called in for an employee who was off sick, and she worked two hours, she would only get paid for two hours, even though B.C. told her she would be paid for three. She would sometimes clean carpets, which was not part of her regular job duties, but the employer wouldn't pay her extra.²⁸

[45] She testified that she felt she should be paid more when she had to do a "heavy clean." But she didn't have a written agreement with the employer about how she was to be paid.

[46] B. C. told the Commission that the Appellant's job was to clean commercial buildings and homes. He said that this included cleaning carpet if needed.²⁹ He said that he told the Appellant that if she was scheduled to work three hours for a customer, she should stay on the jobsite and find work to do for those three hours.³⁰ He said that if the

²⁷ See GD3-26.

²⁸ See GD3-26.

²⁹ See GD3-27.

³⁰ See GD3-36.

Appellant was on the job site for three hours and it only took her two hours to complete her tasks, she was paid for three hours.³¹

[47] B. C. told the Commission that the company had a contract with a customer for three hours of cleaning per day, five days per week. He said that the employer's payroll company automatically paid the Appellant for 15 hours every week, for cleaning that customer's premises. He said that unless the Appellant called out sick or was on vacation, she was automatically paid for 30 hours bi-weekly.³² The Appellant testified that she doesn't know what B. C. meant by that.

[48] During the reconsideration process, the Appellant told the Commission that she never signed an employment contract, and wasn't given a written job description. She said she cleaned whatever needed to be cleaned in the buildings and homes.³³

[49] I find that the Appellant was paid an hourly wage, and that she was paid for the hours that she worked. I accept that if the Appellant only took two hours to finish a cleaning job, if she was on the jobsite for three hours, she was paid for three hours. She didn't provide any evidence of an agreement with the employer that she would be paid other than by an hourly wage.

[50] I understand that because she had to do most of the work when she worked with N. C., the Appellant felt that she should be paid more. However, as the Appellant acknowledged in her testimony, she was paid an hourly wage for the work that she did. She wasn't paid according to what work she did.

[51] So, the circumstances that existed when the Appellant quit her job were that she was frustrated that she had to do most of the work when she worked with N. C., and felt that she deserved a raise, but the employer wouldn't give her one. She approached B. C. about this on June 10, 2022, and a dispute ensued. She was angry and felt that

³¹ See GD3-27.

³² See GD3-36.

³³ See GD3-33.

the best thing to do was to quit her job. Because of this, she believes that she had just cause for leaving her job.

Reasonable alternatives

[52] I must now look at whether the Appellant has proven that it is more likely than not that she had no reasonable alternative to leaving her job when she did.

[53] The Appellant testified that she quit her job because she was doing most of the work, she should have been paid more, and because of the conflict she had with B. C. on June 10, 2022. She says she had no reasonable alternatives to quitting her job when she did.

[54] The Commission disagrees and says that the Appellant had reasonable alternatives to quitting her job when she did. It says she could have seen a doctor about her concerns related to her mental health, before spontaneously quitting her job. It says she could have looked for and secured alternate employment before quitting.³⁴

[55] I find that the Appellant had a reasonable alternative to quitting her job when she did. I find that staying in her job and looking for another one was a reasonable alternative to quitting her job when she did.

[56] The Appellant testified that she could have stayed in her job if she could have worked with someone other than N. C. She said that she asked if she could work with someone else, but the employer couldn't find any other employees. So working with someone besides N. C. wasn't an option. I accept that the Appellant asked the employer to work with someone other than N. C., and that there were no other employees for her to work with during the last couple of months before she quit. I have no reason to doubt what she said about this. So, I find that she exhausted this option.

[57] The Appellant testified that she asked the employer for a raise on a couple of occasions, but the employer refused her request. I accept her testimony in that regard.

³⁴ See GD4-5.

This is because she gave her evidence under affirmation directly to me, and was straightforward and consistent about having asked for a raise on a couple of occasions, and her requests being denied. So, I find that she exhausted the option of talking to the employer about a raise.

[58] The Appellant testified that she didn't plan to quit on the day she did, so she didn't look for another job before quitting her job with the employer. She went to see B. C. at his other business, and talked to him outside of the business. She said she was so angry on that day that she just quit. She said that she felt that quitting was the best thing to do.

[59] I disagree. The Appellant testified that she had been unhappy and stressed out about working with N. C. for a couple of months before she quit. She had asked for a raise on a couple of occasions, and her request was denied. But she hadn't looked for another job.

[60] There are many cases from the court imposing an obligation on EI claimants to seek alternative employment, before making a unilateral decision to quit a job.³⁵ I cannot ignore this obligation, or the fact that the Appellant voluntarily put herself into a position of unemployment, without first making efforts to find another job. I find that staying in her job, while she made efforts to look for another one, was a reasonable alternative to the Appellant quitting when she did.

[61] Considering all of the circumstances that existed at the time that the Appellant quit, I find that she has not proven on a balance of probabilities that she had no reasonable alternative to quitting her job when she did. As a result, the Appellant didn't have just cause for leaving her job when she did.

³⁵ Consider the analysis in *White, supra*.

Conclusion

[62] The Appellant has not shown that she had just cause for leaving her job when she did, because she had a reasonable alternative to leaving her job. She is therefore disqualified from receiving benefits.

[63] This means the appeal is dismissed.

Susan Stapleton

Member, General Division – Employment Insurance Section