



Citation: *RW v Canada Employment Insurance Commission*, 2023 SST 1760

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: R. W.
Representative: L. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (559045) dated December 13,
2022 (issued by Service Canada)

Tribunal member: Greg Skelly

Type of hearing: In person

Hearing date: June 1, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: June 5, 2023

File number: GE-23-137

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 reasonable alternatives to leaving. This means she is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant left her job at Tim Horton's in X, Manitoba on March 13, 2020, and applied for EI benefits. 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.

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

[5] The Commission says that the Appellant could have returned from a leave of absence that had been granted earlier. And she should have kept working until she found and accepted another job.¹

[6] The Appellant disagrees and says that she feels she was laid off due to a lack of work. She also says she no longer lived in X and had moved to Winnipeg. This made it impractical to continue working a minimum wage job with travel expenses and winter driving conditions.²

¹ See GD4-3.

² See GD2-3

Issue

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

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

Analysis

The parties don't agree that the Appellant voluntarily left

[9] I find that the Appellant voluntarily left her job.

[10] The Appellant said in testimony that she felt that she was laid off due to a lack of hours as a result of COVID restrictions. She said that she understood that available hours were prioritized for full time staff, and she would get less hours as she was part time.

[11] The Appellant said at the hearing that she was never notified by the employer that she was to return to work. She said that she tried twice to contact her employer but no one got back to her.

[12] In testimony, the Appellant also said that she had moved to Winnipeg from X in September 2020 and travelling back and forth for minimum wage work was not worthwhile.

[13] At the hearing, the Appellant said that she never submitted a letter of resignation or told anyone that she quit.

[14] Her Record of Employment indicates that she quit.³ The Appellant said in testimony that she did not review the Record of Employment and did not know it said that she quit.

³ See GD3-18.

[15] In discussions with the Commission, her employer said that they considered her to have quit when she did not return from a leave of absence.⁴ The employer said that the Appellant did ask them for a voluntary leave of absence due to COVID concerns.⁵

[16] The employer also said that all staff were recalled in June 2020 and that the Appellant did not return at that time and that the employer did not hear anything from the Appellant.⁶

[17] I find that the Appellant did voluntarily leave her employment. While there was a period of time when hours were reduced due to COVID, at the time that the employer had work for the Appellant in June 2020, she didn't make sufficient efforts to reconnect with her job.

[18] It is clear from the employer's discussions with the Commission that there were hours for the Appellant to work.

[19] The Appellant said at the hearing that the employer did not contact her however she only called her employer a couple of times. If she wanted to continue working for this employer, she should have made more of an effort to call them or personally visit her place of employment.

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

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

[21] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁷ Having a good reason for leaving a job isn't enough to prove just cause.

⁴ See GD3-24.

⁵ See GD3-22.

⁶ See GD3-25.

⁷ Section 30 of the *Employment Insurance Act* (Act) explains this.

[22] 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.⁸

[23] It is up to the Appellant to prove that she had just cause.⁹ 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. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit.

[24] The Appellant started working at Tim Horton’s in X on December 1, 2018, and took a leave of absence on March 12, 2020.¹⁰ The Appellant said she took the leave of absence because there was no hours for part time staff at the time.

[25] The Appellant said in testimony that she moved to Winnipeg in September 2019 because she had planned on attending school in January 2020. Her employer said that she was recalled to work in June 2020 and chose not to return.¹¹

[26] Her employer said that after the notified her of the recall in June 2020 they did not hear from the Appellant.¹²

[27] The Appellant said in testimony that she left her job because they did not have hours for her. She also says it was impractical to commute from Winnipeg to X. She said that the three-hour commute was not economic and didn’t make enough money to cover her living expenses plus gas and other vehicle costs.¹³

[28] The Appellant also said that she was concerned about the winter driving conditions.¹⁴ And that she was unable to carpool due to COVID restrictions.¹⁵

⁸ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁹ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

¹⁰ See GD3-16 Record of Employment.

¹¹ See GD3-25.

¹² See GD3-25.

¹³ See GD3-32 and GD3-37.

¹⁴ See GD2-5.

¹⁵ See GD3-37.

[29] The Appellant says that she had no reasonable alternative to leaving at that time because she no longer lived in X and had moved to Winnipeg. She said she left her job to go to school and to seek employment in Winnipeg.

[30] The Appellant also said at the hearing that her costs as well as driving conditions made it impractical to continue working a minimum wage job with a three-hour commute.¹⁶ The Appellant in testimony clarified that it was a one and a half hour drive each way from her home in Winnipeg to her work in X.

[31] She said that she expected to find work in Winnipeg but could not due to COVID restrictions.¹⁷

[32] The Commission says that the Appellant didn't have just cause, because she had reasonable alternatives to leaving when she did. Specifically, it says that the Appellant could have returned to work in June 2020 and kept working until she found and accepted another job in Winnipeg.¹⁸

[33] I find that the Appellant hasn't shown that she had no reasonable alternative to voluntarily leaving her job.

[34] She made a personal choice to move away from the community where she worked and into another community. She said that it was an hour and a half commute each way but she is aware that others in Winnipeg or X make the commute on a daily basis.

[35] She said that the distance and cost was not worth it for a minimum wage job. She was also concerned about the winter driving conditions.

[36] The Appellant said at the hearing that she contacted her employer to see if there were more hours for her but was unsure when she made that call. Clearly it would have been before March 2020 when she commenced her voluntary leave of absence.

¹⁶ See GD2-5.

¹⁷ See GD3-37.

¹⁸ See GD4-3.

[37] While I can empathize with the Appellant that she did not wish to commute each day, clearly she had the transportation available to do so.

[38] The courts have told us that sincerity and inadequate income do not constitute just cause for leaving employment and that the employment insurance system should not bear the cost of supporting this.¹⁹

[39] The courts have also said that insufficient wages and the view that employment is not sufficiently well paid does not justify a burden on the unemployment system.²⁰

[40] I do not place any weight on the position that winter driving conditions were a factor in the Appellant's decision as her date of recall was in June 2020, well after any winter driving in Manitoba.

[41] I find that the Appellant had reasonable alternatives to leaving her employment. She could have:

- Discussed with her employer if she could carpool with appropriate personal protective equipment (masks).
- Requested longer hours of work to make the commute more economic.
- Talked to her employer about a transfer or referral to a Winnipeg location.
- Kept working until she found and accepted another job.

[42] So, I find that the Appellant didn't have just cause for voluntarily leaving her employment as she had reasonable alternatives to quitting.

¹⁹ See *Canada (Attorney General) v Campeau*, 2006 FCA 376.

²⁰ See *Canada (Attorney General) v Tremblay*, A-50-94.

[43] I am sympathetic to the Appellant's financial circumstances that have resulted from the need to pay back funds to the Commission. However, I must follow the law and render decisions based on the relevant Act, Regulations and precedents set by the courts.

Conclusion

[44] I find that the Appellant is disqualified from receiving benefits.

[45] This means that the appeal is dismissed.

Greg Skelly

Member, General Division – Employment Insurance Section