



Citation: *SB v Canada Employment Insurance Commission*, 2023 SST 460

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

## Decision

**Appellant:** S. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (490802) dated June 28, 2022 (issued by Service Canada)

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**Tribunal member:** Kristen Thompson

**Type of hearing:** Teleconference

**Hearing date:** April 6, 2023

**Hearing participants:** Appellant  
Appellant's support person

**Decision date:** April 18, 2023

**File number:** GE-22-3071

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving her job when she did. The Appellant had just cause because she had no reasonable alternative to leaving. This means she isn't disqualified from receiving Employment Insurance (EI) benefits.

## Overview

[3] The Appellant left her job as a food demonstrator on November 23, 2021, to visit her elderly family abroad. As she wasn't rehired upon her return, she 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 have to decide whether the Appellant has proven that she had no reasonable alternative to leaving her job.

[5] The Commission says that, while the Appellant did seek a leave of absence from her employer, it was denied. It says that the Appellant quit, as suggested by her assistant manager. It says that the Appellant's leave of absence may have been allowed if she shortened the length of the trip or if she went at a different time.

[6] The Appellant disagrees and says that the employer tricked her into quitting. She says that she worked for the employer for 15 years. During that time, she says that she took a leave of absence to visit family abroad on multiple occasions and some of those trips were for an extended period of time.

## 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 agree that the Appellant voluntarily left**

[9] I accept that the Appellant voluntarily left her job. The Appellant agrees that she quit on November 23, 2021. I see no evidence to contradict this.

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

[10] The parties don't agree that the Appellant 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.<sup>1</sup> 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." 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>2</sup>

[13] It is up to the Appellant 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>3</sup>

[14] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I have to look at.<sup>4</sup>

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<sup>1</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>2</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>3</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

<sup>4</sup> See section 29(c) of the Act.

[15] After I decide which circumstances apply to the Appellant, she then has to show that she had no reasonable alternative to leaving at that time.<sup>5</sup>

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

[16] The Appellant says that one of the circumstances set out in the law applies, along with another reason. Specifically, she says that there was undue pressure by an employer for her to leave her employment.<sup>6</sup> She says that the employer tricked her into quitting. She says that she thought she would get her job back upon her return.

[17] The Appellant says that she worked for the employer for 15 years as a food demonstrator.

[18] The Appellant says that she wasn't able to visit family abroad, including her elderly parents, due to the COVID-19 pandemic. She says that her parents can't travel to Canada to see her, as they are elderly.

[19] The Appellant says that, due to the COVID-19 pandemic, previous flights abroad were cancelled. She says that on October 20, 2021, flights resumed.

[20] The Appellant gave a copy of her passport which showed multiple trips abroad, while working for the employer, as follows:

- February 6 to May 8, 2014
- April 24 to August 19, 2015
- October 27 to December 28, 2016
- July 7 to September 14, 2018
- October 4 to October 29, 2019<sup>7</sup>

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<sup>5</sup> See section 29(c) of the Act.

<sup>6</sup> See section 29(c)(xiii) of the Act.

<sup>7</sup> See GD2-32 to 37.

[21] The Appellant requested a leave of absence from her employer by letter dated October 25, 2021. She asked for a leave of absence from November 25, 2021 to January 4, 2022 to visit her family abroad.<sup>8</sup>

[22] The Appellant says that she gave the request for a leave of absence to the assistant manager. The assistant manager said she must resign. The assistant manager gave the Appellant a hand-written note for her to copy. It says:

*“Letter of Resignation, Due to the fact that I am leaving to go to India on November 25, 2021 and will be returning to Canada on January 4, 2022, I am resigning my position. My last day of work will be November 23, 2021. I will reapply after returning in January 2022.”*

[23] The Appellant says that she asked the assistant manager if she need to speak with anyone else about her request for a leave of absence. The assistant manager said “no” and to provide the resignation letter to her only.

[24] The Appellant says that she was told by the assistant manager that these are the new rules. The Appellant says that she thought it was a new rule due to the COVID-19 pandemic. Despite resigning, she says that she thought she would get her job back.

[25] The Appellant says that she thought she would be able to return to her job after her trip. She says that, upon her return, she spoke with the assistant manager and was told that the employer isn’t hiring. She says that she contacted the employer monthly, asking to return to work.

[26] The Appellant says that her manager was on an extended medical leave. Previously, she would ask her manager for a leave of absence in writing. She says that her requests were granted.

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<sup>8</sup> See GD2-13.

[27] The Appellant says that, previously, her district manager would also be aware of her request to take a leave of absence. She says that, due to the pandemic, her district manager no longer visited her workplace.

[28] The employer's human resources representative told the Commission that it will not approve a leave of absence of more than two weeks. The representative said that employees are told that they can resign and apply for a job after. The representative said that there is no guarantee of work.<sup>9</sup>

[29] The Appellant says that the employer's human resources representative isn't known to her. She says that she didn't speak with the human resources department because she hasn't had contact with this department since she was first hired in 2006.

[30] The Appellant says that she would previously report back to her employer once she was back from a leave of absence to tell it when she was available to work. Due to her previous experience, she thought she would be rehired upon her reporting back to her employer.

[31] The Appellant says that she attended at a national hiring event for the employer in July 2022. She says that there were 14 online positions available for the employer in her community. She says that she was contacted by the employer's human resources representative to attend an interview on July 20, 2022. She says that, five minutes before the interview was to take place, she was told by the representative that the assistant manager said that the employer was no longer hiring.

[32] I find that there was undue pressure by the Appellant's employer for her to leave her employment. I rely on the Appellant's testimony, which was credible and consistent with the appeal file. The Appellant had a long history of taking time off work to visit family abroad, for extended period of time, and returning to her job upon her return.

[33] I'm persuaded by another decision where the employer's inducement of the appellant to sign her resignation constituted undue pressure to leave her employment

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<sup>9</sup> See GD3-31.

within the meaning of the Act.<sup>10</sup> I find that the Appellant was induced to quit by the assistant manager.

[34] I find that the employer acted in bad faith or, in the Appellant's words "tricked her into quitting", when it didn't provide her with a full understanding of the chances of getting her job back. The Appellant testified that she thought she would get her job back upon her return. She was denied the opportunity to speak with upper management (or human resources) when she requested it from the assistant manager. And her interview to be rehired with the employer was cancelled.

[35] The circumstances that existed when the Appellant quit were that there was undue pressure by an employer for the Appellant to leave her employment and the employer acted in bad faith.

### **The Appellant had no reasonable alternative**

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

[37] The Commission disagrees and says that the leave of absence may have been allowed if Appellant shortened the length of the trip or went at different time.

[38] The Appellant says that she had no reasonable alternative because, in her past experiences, she returned to her job after taking extended leaves of absence. She says that she asked her assistant manager if she need to speak with anyone else about her request for a leave of absence and was told that she didn't.

[39] I find that the Appellant didn't have the opportunity to pursue the Commission's suggestions to ask the employer to allow a leave of absence if she shortened the length of the trip or went at a different time. The assistant manager told her she didn't need to speak with anyone else (such as upper management or human resources), and her manager and district manager weren't present. She had a history of taking leaves of

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<sup>10</sup> See CUB 68091.

absence for extended periods of time, and some of these trips were at the same time of the year.

[40] Considering the circumstances that existed when the Appellant quit, the Appellant had no reasonable alternative to leaving when she did, for the reasons set out above.

[41] This means the Appellant had just cause for leaving her job.

## **Conclusion**

[42] I find that the Appellant isn't disqualified from receiving benefits.

[43] This means that the appeal is allowed.

Kristen Thompson  
Member, General Division – Employment Insurance Section