



[TRANSLATION]

Citation: *GQ v Canada Employment Insurance Commission*, 2023 SST 1878

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: G. Q.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (570027) dated March 13, 2023 (issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: In person

Hearing date: August 15, 2023

Hearing participant: Appellant

Decision date: August 21, 2023

File number: GE-23-839

Decision

[1] The appeal is allowed.

[2] I find that the Appellant didn't voluntarily leave her job at X.

Overview

[3] The Appellant stopped working on September 30, 2021. On that day, she gave her employer a medical note indicating that she would be off work from September 30, 2021, to October 31, 2021.

[4] On March 13, 2023, the Canada Employment Insurance Commission (Commission) told the Appellant that it could not pay her Employment Insurance (EI) benefits because she voluntarily left her job and she had reasonable alternatives to leaving when she did.

[5] The Appellant disagrees with the Commission's decision. She argues that she didn't leave her job, but that the employer let her go. She explains that, when she gave the employer a medical note indicating that she would be off work, it asked her to give it a letter of resignation.

[6] I have to decide whether the Appellant voluntarily left her job. If so, I will have to decide whether she had just cause for leaving when she did.

Issues

[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 she had just cause for leaving her job.

Analysis

Did the Appellant voluntarily leave her job?

[9] To determine whether the Appellant voluntarily left her job, I must answer the following question: Did the Appellant have a choice to stay or leave her job?¹

[10] The Appellant explained that she worked in a seniors' residence. In September 2021, she agreed to care for a blind resident who needed full-time care. The Appellant agreed to provide care at her home starting October 22, 2021.

[11] However, she says that she injured herself and that, on September 30, 2021, she gave the employer a medical note informing it that she was unable to work until October 31, 2021.

[12] On October 21, 2021, the Appellant told a Commission employee that she had voluntarily left her job for medical reasons. She indicated that her condition wasn't temporary.

[13] On May 25, 2022, the Appellant told the Commission that she had no choice but to leave her job because she had decided to care for a sick person at her home and she was no longer available for work.

[14] However, at the time of reconsideration, the Appellant argued that the employer indicated voluntary leaving to comply with the residence code of ethics because she didn't actually leave her job. It was the employer who allegedly dismissed her.

[15] On March 3, 2023, the Appellant explained to a Commission employee that she had been let go. She says that the employer wasn't happy about her taking care of a resident of X at her home and, when she gave it a medical note indicating a leave from work, it gave her a Record of Employment with the words "voluntary leaving."

¹ *Peace* 2004 FCA 56.

[16] The Appellant explains that she went to the residence to get details, but the manager allegedly told her not to come back again.

[17] At the hearing, she explained that she wasn't lying and that she wanted to be heard in person to explain herself better. The Appellant explains that the employer disagreed with her taking a resident of X home with her and told her that this behaviour went against the code of ethics. She admits that she signed a letter of resignation, but only because the employer allegedly coerced her. The employer allegedly yelled and asked her to write a resignation letter, and the Appellant explains that she felt pushed.

[18] The Appellant argues that she liked her job and that she returned a few months later to go back to her job, but the employer told her that it didn't have work for her.

[19] On March 10, 2023, the employer told the Commission that the Appellant had given it a resignation letter saying that she was leaving her job to care for a sick person.² When asked by a Commission employee, the employer reportedly said that it was willing to help the Appellant but that it could not be dishonest either. It explains that there is no medical certificate on file and that the Appellant left her job because she was caring for sick people at her home.

[20] The Commission says that the Appellant voluntarily left her job and that the resignation letter she gave her employer shows that she took this initiative to care for a sick person at her home.

[21] In addition, the Commission argues that the medical certificate she provided doesn't indicate an inability to work, but rather that she was off work for medical reasons.

[22] The Commission also says that the Appellant contradicts herself, that her argument that the employer forced her to sign a resignation letter isn't credible, and that

² GD3-27.

she hasn't shown, as she says, that the manager made a mistake when completing her Record of Employment.

[23] While I agree in part with the Commission when it says that the Appellant seems to contradict herself in her explanations, I find that the Appellant's statements have to be put in context and that she didn't voluntarily leave her job for the following reasons.

[24] A medical note, dated September 30, 2021, indicates a medical leave of absence from September 30, 2021, to October 31, 2021. Despite the Commission's arguments on this point, the medical note shows that the Appellant's doctor prescribed a leave of absence for this period. So, on September 30, 2021, because of her health condition, the Appellant was unable to work.

[25] At the hearing, the Appellant explained that she had health problems and that she could not properly use her right arm, a consequence of the treatments she received for cancer.

[26] It is true that the Appellant told the Commission that she had quit her job. Given that the employer had asked her to sign a letter of resignation and that it had given her a Record of Employment mentioning voluntary leaving, she interpreted that she had to provide this information. She initially told the Commission that she had left her job because of her health condition and that this condition was permanent. It is true that we could interpret that the Appellant's different versions show that she is trying to harmonize the facts to get benefits.

[27] However, I understand the Appellant's reasons for indicating that her medical condition was permanent. At the hearing, the Appellant explained that her arm's lack of mobility wasn't temporary because it had affected a nerve.

[28] In addition, I am of the view that it is more likely than not that the Appellant didn't voluntarily leave her job and that her employer asked her to sign a letter of resignation. The Appellant gave plausible explanations at the hearing, and I understand from her explanations that the employer disagreed with the fact that she had decided to take one

of these residents of X home with her. Also, the Appellant's September 30, 2021, resignation letter says that she doesn't understand what she did wrong, and she thanks the employer for hiring her.

[29] The facts also show that the Appellant returned to the employer a few months later to go back to her job, but the employer admits that it didn't rehire her because of some concerns it had about her.

[30] Even though the Commission is correct that the fact that the employer didn't agree to rehire the Appellant a few months later doesn't affect the separation from employment on September 30, 2021, I find that these facts are very telling of the Appellant's efforts.

[31] While the Appellant's statements do seem contradictory, I am of the view that she is trying to explain her situation as best she can. If the Appellant doesn't understand why the employer has ethical reservations about her behaviour, my role isn't to determine whether the employer acted properly. However, it seems more likely than not that, given this potentially embarrassing situation, it wanted the Appellant to leave her job if she decided to take one of the residents of X home with her.

[32] In the circumstances set out above, I am of the view that the Appellant didn't have a choice to keep her job on September 30, 2021.

[33] On September 30, 2021, the Appellant gave the employer a medical certificate indicating that she could not work for the next month. Of course, the fact that the Appellant wasn't available for work because she was caring for a sick person could limit her chances of going back to work. But the Commission didn't make a decision about the Appellant's availability, and I will limit myself to determining whether she actually left her job.

[34] Because of this, I am satisfied that the Appellant wanted to keep her job, and I find it more likely than not that she didn't voluntarily leave her job.

[35] I find that the Appellant didn't voluntarily leave her job. Instead, the facts show that, on September 30, 2021, the Appellant didn't have a choice to stay in her job.

[36] Since the Appellant didn't voluntarily leave her job on September 30, 2021, she doesn't have to show just cause for leaving.

Conclusion

[37] The appeal is allowed.

Josée Langlois
Member, General Division – Employment Insurance Section