



Citation: *SB v Canada Employment Insurance Commission*, 2023 SST 697

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

Decision

Appellant: S. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (538355) dated September 29, 2022 (issued by Service Canada)

Tribunal member: Elizabeth Usprich

Type of hearing: Videoconference

Hearing date: February 3, 2023

Hearing participant: Appellant

Decision date: February 9, 2023

File number: GE-22-3361

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. This means she is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left her job December 30, 2021 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant'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 Claimant has proven that she had no reasonable alternative to leaving her job.

[5] The Commission says that the Claimant made a personal decision to quit because after she and her husband moved, she found the commute excessive. The Commission says, instead of leaving when she did, the Claimant could have reduced her hours at work; she could have requested a leave of absence to accommodate going on interviews, or she could have secured other employment before she quit.

[6] The Claimant disagrees and says that her commute was excessive after she moved. She says her hours were agreed upon by contract and she did not have a medical reason to reduce her hours. She says that, because she was training someone, she did not think her employer would allow her any time off (a leave of absence) to look for work or attend interviews. The Claimant says that her only reasonable alternative was to quit her position.

Matter I have to consider first

I will accept the documents sent in after the hearing

[7] The Claimant sent in a document that she read at the hearing. I will accept the document. It has been coded as GD7.

Issue

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

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

Analysis

The parties agree that the Claimant voluntarily left

[10] I accept that the Claimant voluntarily left her job. The Claimant agrees that she quit on December 30, 2021. I see no evidence to contradict this.

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

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

[12] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ Having a good reason for leaving a job isn't enough to prove just cause.

[13] 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.²

¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

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

[14] 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.³

[15] 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.⁴

[16] 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.⁵

The circumstances that existed when the Claimant quit

[17] The Claimant says that one of the circumstances set out in the law applies to her. Specifically, she says that she had an obligation to accompany her spouse to another residence.⁶

[18] The Claimant says that there were no issues with her job or her employer. The Claimant and her husband had lived in downtown Toronto. After the Claimant's husband got a new job, they decided to move to Mississauga to reduce his travel time.

[19] After the move, the Claimant's commute time increased. The Claimant says that the reason she left her job was because she felt that the commute was adding too much time to her day. She testified that it increased her travel time by at least 45 minutes.

– Background

[20] The Claimant started working for her employer as a dental office receptionist in May 2021. Later, in August 2021, she was promoted to office manager. The contract she signed says that she is paid an hourly rate. The contract also says "[employer] is a service oriented organization, and as such changes to work schedules and scope, with

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

⁴ See section 29(c) of the Act.

⁵ See section 29(c) of the Act.

⁶ See section 29(c)(ii) of the Act.

reasonable notice, may occur and may include days, evenings and weekends, varying to accommodate the company's operational needs".⁷

[21] After accepting her new role in August 2021, the Claimant says that she was working a lot of hours. She would typically start at 8:00 a.m. and could finish anywhere from 4:00 p.m. to as late as 8:00 p.m. The Claimant says her hours varied based on how busy the employer was. If it was busy, she would have to stay late. If someone did not show up for their shift, she would also have to stay late. The Claimant testified that if a morning was not that busy, she might be able to start a little later in the morning.

[22] The Claimant says that she started training someone near the end of September 2021 or the start of October 2021. She says that made her job more hectic. She says that she was required to stay later and longer because she was training. The Claimant testified that her employer had made it clear, when she accepted the promotion, it meant that she would have to train others.

[23] The Claimant says that it typically could take about 3 months to train someone. It could vary because it depended on the person and how quickly they were picking things up.

[24] In June 2021, the Claimant's husband got a new job. His new employment required more travel and most of it was to the east of Toronto. The Claimant testified that in July 2021, she and her husband made the decision to move. The move was to accommodate her husband and all of the travelling he was going to have to do. They signed a lease in September 2021 for a new place. They moved on November 4, 2021.

– **Commute time**

[25] The Claimant testified that she found it very stressful, after she moved, to get to work. She says that the commute took much longer than before and it was making her day even longer. The Claimant testified that she took public transportation both before and after she moved.

⁷ See GD2-2.

[26] The Claimant first testified that it only took 20 minutes to get from her old home to work. When I asked if she was estimating, or if she had looked that up, she said she estimated it. She then looked it up during the hearing and reported that Google Maps said it would take approximately 40 minutes to get from her old residence to her work. The Claimant then agreed that Google Maps was probably accurate.

[27] The Claimant testified that from her new home it would take an hour and 45 minutes to get to her work. I asked the Claimant about the Commission's documentation where they found that the commute time from her new place to work, was only just over an hour.⁸ The Claimant then looked it up herself and did not dispute the amount of time. However, she argued that the time did not include if a bus or something else was late and she had to wait for another bus. I accept the Claimant's testimony that it is possible that the trip could, at times, take longer than just over an hour.

[28] The Claimant testified that after doing the commute for about a week from her new home location to her work she felt it was not sustainable. She says that she talked to her employer about the situation at that time. The Claimant asked if there was another location she could transfer to. The employer said there was not. The Claimant then gave her notice to quit. The Claimant's resignation letter says the reason for quitting was due to the travel time to get to work.⁹

– **Giving notice**

[29] The Claimant says that she had no issues with her job or her employer. The Claimant says that her contract required her to give 30 days notice before resigning. She gave notice on November 30, 2021.¹⁰ The Claimant said her last working day would be December 30, 2021.

[30] The Claimant says that she started looking for another job before she gave notice to quit. She says that if a new employer was interested in interviewing her that, in her industry, an interview could take any length of time from a half day to a full day. I

⁸ See GD3-25 to GD3-28.

⁹ See GD7-2.

¹⁰ See GD7.

have no reason not to believe what the Claimant said. I accept that, in her line of work, new employers typically ask for extended interviews.

[31] The Claimant says that the problem with the extended interviews is that she would have needed to take time away from her current employment to attend. She says that before she put in her notice, she was training someone else. She says that taking that kind of time away would have been difficult. She says that she never asked her employer, but she feels that the time off would have been denied. I asked if the Claimant could have used a vacation day. The Claimant says that it would have been difficult because she would have had to tell her employer why she was using the vacation day.

[32] The Claimant says that after she gave her notice to her employer on November 30, 2021, that it would have been even harder, if not impossible, to get time away for interviews. The Claimant says that after November 30, 2021, she was training her replacement. She says that after she gave her notice, and started training her replacement, her schedule became even more hectic at work. She says that her hours increased during this time.

Obligation to accompany spouse to another residence

[33] The Commission denied the Claimant benefits because she made a personal decision to quit. The Commission says that the relocation was from downtown Toronto to Mississauga. The Commission says that it is not uncommon for people in Mississauga to commute to Toronto, and that it would take over an hour.¹¹

[34] The Claimant says that she looked up her situation on the Employment Insurance website. She says that it did not say the change in location had to be a completely different area.¹²

¹¹ See GD3-30.

¹² See GD3-30.

[35] When looking at whether there is just cause, one must look at all the circumstances that exist. Therefore, it is not as simple as stating that the community has changed due to a spouse's employment.

[36] When examining the case law on this subject it is common that when spouses are accompanying one another it is often to completely different cities or provinces. Although Mississauga is a different city than Toronto, it is still part of the Greater Toronto Area (GTA). There is public transportation that runs frequently to connect the areas. This means that one does not have to live in Toronto to work there, or vice versa.

[37] In this particular case, the Claimant agreed that there was an increase to her commute time when she and her husband made the personal decision to move. The decision that the Claimant and her husband made to move was not a requirement. Rather, it was a choice that the two of them made. They made that decision because it was going to be easier on the Claimant's husband to get to the locations he needed to travel to for work.

[38] The Claimant's own testimony was that moving with her husband added an additional 45 minutes on to her daily commute one way. I accept that delays could result in a longer commute on some days. I accept that the schedules the Commission found¹³ would not necessarily include delays that could increase the Claimant's waiting time.

[39] The Claimant says that the additional commute of 45 minutes each way was affecting her health. The Claimant said that she felt that her hours at work were a lot. Yet, she knew the hours, from having worked there, before she accepted the promotion in August 2021.

[40] The Claimant testified that she went to see her doctor about her health concern. The Claimant says that the doctor did not give her a diagnosis. The doctor did not give the Claimant any kind of medical note for any kind of restrictions that she could have given to her employer.

¹³ See GD3-25 to GD3-28.

[41] So, the circumstances that existed when the Claimant quit were:

- the Claimant's husband had a new job that required him to travel;
- the Claimant and her husband decided to move to Mississauga to make the husband's travel easier for him to manage;
- once the Claimant moved, she found that there was too much of an increase in her commuting time; and
- the Claimant's promotion/new role required her to work longer hours which she found was okay until she moved.

The Claimant had reasonable alternatives

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

[43] The Commission says that the Claimant could have asked for a reduction of hours at work; she could have requested a leave of absence to accommodate potential interviews; or she could have secured other employment before quitting.

[44] The Claimant says that she had no reasonable alternative because the hours that she worked were according to the contract she signed in August 2021. The Claimant testified that she does not believe that her employer would have granted her a leave of absence in order to go to other interviews. The Claimant admits she never asked her employer about a leave of absence.

[45] I empathize with the Claimant. She moved to support her husband's desire for a shorter and easier commute. I find that the Claimant could have researched the new residence location and could have decided whether the new residence location and its extra commute would work for her. The decision to move was made together as a couple. If the Claimant thought the commute would be okay and then realized that it was not, she still had other options before deciding to quit her job.

– **Reduction in hours**

[46] The Claimant testified that because she had agreed to the hours as an office manager when she took the promotion in August 2021, she could not ask for any reduction in those hours. The Claimant says that when she was a receptionist for her employer, she had set hours. But when she became the office manager, she knew that this role would mean that she would work more and longer hours.

[47] The Claimant also testified that she spoke with her doctor about how she was feeling. But her doctor did not write her any kind of medical note or give her any kind of diagnosis. The Claimant says that there was not a basis to ask her employer for any kind of accommodation.

[48] I agree with the Claimant on these points. I accept that simply asking her employer for a reduction in hours was not a likely solution given that there was no medical reason and the Claimant knew what the hours of her job were.

[49] I do not find that, given the circumstances, it would have been a reasonable alternative to reduce her hours.

– **Transfer to another location**

[50] The Claimant says that she spoke to her employer to find out if it would be possible to transfer to another company location. Her employer told her it was not possible as there were no openings at other locations that would have been closer to her new residence. I accept that this was not a reasonable alternative.

– **Keeping both residences**

[51] The Claimant says that she and her husband also considered keeping both residences. However, financially this was not a solution. The Claimant says that she did not make enough on her own to reside in the old residence. I accept that keeping two residences was not a reasonable alternative.

– **Leave of absence**

[52] The Claimant testified that although she started to look for some jobs before she gave her notice, but she quickly stopped doing that. She says that, in her industry, if you are called for an interview, it is expected that you could be at the interview for anywhere from 4 hours to the whole day. She said that it would have been difficult to ask her employer to take that much time away from her job.

[53] I asked the Claimant if she could have used a vacation day to attend an interview. She says that she did not know if she had any other vacation days saved up. She said that her employer would have asked her why she needed the time away. The Claimant did not think that her employer would allow her time away to go to an interview. The Claimant also testified that she was training someone new, so it would have been harder to have time away from the office.

[54] After moving in November, the Claimant continued training the new employee. She felt that because she was training someone this meant her employer would deny any of her requests to have time off for interviews. The Claimant testified that because she would not be able to go to interviews, she felt that the next best alternative was to put in her resignation.

[55] It is possible that after the Claimant finished training the person that her employer may have been agreeable to a leave of absence. The Claimant never asked her employer about this. So, it is not possible to know whether a leave of absence would have been approved. The Claimant's employer told the Commission that they do allow leaves of absence, and that they are decided on a case-by-case basis.¹⁴

[56] The Claimant could have taken time to look for a job while she was not training someone. This may have allowed her to take time off to go to the lengthy interviews.

[57] I find that the Claimant could have asked her employer about a leave of absence. Without asking it is impossible to know if the employer would have given the Claimant a

¹⁴ See GD3-18.

leave of absence. As well, a leave of absence may have also been short in nature. For example, the Claimant could have asked for a day off in order to interview. This would have been a reasonable alternative to quitting her job when she did.

– **Looking for another job before quitting**

[58] I asked the Claimant if she considered looking for employment outside of the dental office field since those interviews would have been difficult to attend. The Claimant was previously a receptionist and had been an office manager and those skills are highly transferable. The Claimant says that she has only been in the dental office setting and has a lot of knowledge in this area. She says she did not expand her search for this reason. Looking for jobs outside of the dental office field was a reasonable alternative to the Claimant quitting her job when she did.

[59] The Claimant says that once she handed in her letter of resignation, she was then responsible for training her replacement. The Claimant says that this meant that she was working even longer days. The Claimant says she did not look for other jobs during this time.

[60] I find that despite the longer commute, staying in her job, while looking for another job closer to her new home, was a reasonable alternative to the Claimant quitting when she did.

[61] The Federal Court of Appeal has said that even if a Claimant does not think they will have success looking for a job, the *Employment Insurance Act* is designed so that only those who are genuinely unemployed and actively seeking work will receive EI benefits.¹⁵

[62] 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.¹⁶ I

¹⁵ *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93.

¹⁶ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 5.

cannot ignore this obligation, or the fact that the Claimant voluntarily put herself into a position of unemployment, without first trying to find another job.

[63] A Claimant leaving her job for “good reason” does not necessarily mean that the reason is sufficient to establish “just cause”, within the meaning of paragraph 29(c) of the Act.¹⁷

[64] The Claimant believed that she could quit her job to move with her husband to a new community, and collect EI.¹⁸ But, she could still get to her existing workplace from her new home by taking public transportation. The Claimant could have continued to work while looking for a new job closer to her new home. I recognize that her concern was about the length of her commute time to work from her new home. However, I find that the increase in the length of her commute time was not excessive.

[65] Even with the additional 45 minutes that the Claimant had to commute, this is not reason, by itself, to find that she had just cause for quitting her job when she did. There are several Canadian Umpire Benefit (CUB) decisions that are instructive, although I acknowledge that they are not binding on me. I find the reasoning in these decisions to be helpful. The decisions repeatedly say that a long commute does not amount to just cause for leaving your employment.¹⁹ Specifically, in one of those cases it was found that “the jurisprudence is clear that commuting the distance to one's job, even one hour's commuting time, is not a reason to quit a job”.²⁰

[66] I must reiterate that the law says that having a good reason for leaving a job does not mean there is just cause for leaving. Similarly, if a claimant acted reasonably in deciding to leave, that does not mean that the claimant will have just cause for leaving the job. The law also consistently finds that a person should not leave employment unless they have secured a new job.²¹

¹⁷ *Canada (Attorney General) v. Imran*, 2008 FCA 17.

¹⁸ See GD3-30.

¹⁹ See, for example: CUB 23968; CUB 79313; CUB 63115; CUB 41453.

²⁰ See CUB 41453 second paragraph.

²¹ *Tanguay et al. v. Unemployment Insurance Commission*, A-1458-84. Paragraphs unnumbered.

[67] Considering all of the circumstances that existed when the Claimant quit, the Claimant had reasonable alternatives to leaving when she did, for the reasons set out above. This means the Claimant didn't have just cause for leaving her job.

Conclusion

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

[69] This means that the appeal is dismissed.

Elizabeth Usprich
Member, General Division – Employment Insurance Section