



Citation: *DK v Canada Employment Insurance Commission*, 2023 SST 1406

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

# Decision

**Appellant:** D. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (558930) dated November 28, 2022 (issued by Service Canada)

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**Tribunal member:** Sylvie Charron

**Type of hearing:** Teleconference

**Hearing date:** May 24, 2023

**Hearing participant:** Appellant

**Decision date:** July 12, 2023

**File number:** GE-22-4123

## 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 on September 23, 2022 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 discussed with her employer the possibility of a leave of absence to deal with the anxiety caused by the office moving further away from her home or obtain strong support from her doctor to manage her anxiety or found other employment closer to home.

[6] The Appellant disagrees and states that she did try to find other employment without success. She states that she cannot deal with the traffic because of anxiety since having a vehicular accident some years ago. She is not willing to carpool because of her anxiety. She does not want to be medicated for her anxiety, because such medication means she can't perform. In the end, she says that she had no alternative but to quit.

## 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 September 23, 2022. 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.<sup>3</sup> 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.

[14] The Appellant says that she left her job because the office moved to a very congested area of town. She tried to drive there but could not do it because she suffers

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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 3.

from anxiety in traffic, and it can cause a panic attack. She has lived with this anxiety for at least the last 30 years, and she knows how to manage it.

[15] The Appellant admits that she had been driving to the current office location for the past 7 years, but she can't handle the move to a further location. She says that although the Commission says it is only 6 or 8 more minutes to drive to the new location, it is more than that, especially in heavy morning and late afternoon traffic.

[16] The Appellant testified that she does not want to take medication for her anxiety. She has tried that and found that she could not function while medicated, and she surely couldn't drive or do her job. She would get fired from her job if she can't function.

[17] She admits that the employer offered to "put her in an Uber" or organize carpooling for her. She refused. She is not putting her life in the hands of an unknown driver or imposing additional insurance costs on someone else to carpool.

[18] The Appellant testified that she attributes her anxiety to having been rear-ended when in her twenties. It is just not possible for her to report to work at the new location given her anxiety.

[19] When asked about public transportation, the Appellant says it would be a 40-minute one-way bus ride, and she did not even consider it. She has a vehicle and prefers to use it.

[20] The Appellant says that she had no reasonable alternative to leaving at that time because the employer refused to let her work from home, and she did not ask for a leave of absence.

[21] The Appellant did obtain a medical note that confirms that she suffers from anxiety and that she is not medicated.<sup>4</sup>

[22] In the end, the Appellant says that she is a 62-year-old single woman, and she can't be forced to take medication. She insists that the new office location is at least 20

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<sup>4</sup> See GD3-35

to 30 minutes further away in heavy traffic, and she can't face that. She stresses the fact that she has paid into the EI fund and now she is denied at a time when she needs the money. She feels discriminated against; she's convinced she's been singled out for harsh treatment.

[23] 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 found another job before leaving or taken a leave of absence and obtain proper medical treatment for her anxiety.

[24] The Commission further says that even though the Appellant has provided a medical note, the doctor does not say that she can't work or commute to work. The note simply says that she has anxiety disorder, and she copes with it.

[25] I find that given all the circumstances outlined above, the Appellant did not have *just cause* for leaving her job when she did.

[26] The Appellant left because her office moved a short distance away from where it was for the last 7 years. The Appellant was capable of driving to that location. It appears from the evidence that the Appellant does not want to drive further away. While I understand that her anxiety might flare up because a longer drive is a new circumstance, it is not as if she were asked to drive an extra 100 km to get to work.

[27] I also find that the Appellant could have attempted to use public transit. She could also have asked for new possibilities of treatment from her doctor that do not involve medication. The Appellant simply decided that she could not get to work and so she quit.

[28] Considering all the circumstances in this case, I find that the Appellant did not consider all reasonable alternatives before leaving when she did.

## **Conclusion**

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

[30] This means that the appeal is dismissed.

Sylvie Charron

Member, General Division – Employment Insurance Section