



Citation: *DR v Canada Employment Insurance Commission*, 2023 SST 1694

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

Decision

Appellant: D. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (596923) dated June 2, 2023 (issued by Service Canada)

Tribunal member: Ambrosia Varaschin

Type of hearing: Teleconference

Hearing date: August 10, 2023

Hearing participant: Appellant

Decision date: August 29, 2023

File number: GE-23-1560

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 as assistant manager of a local general store on December 6, 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 have to decide whether the Appellant has proven that she had no reasonable alternative to leaving her job.

[5] The Commission says that, instead of leaving when she did, the Appellant could have discussed her concerns with human resources or upper management, and should have found other employment before she quit.

[6] The Appellant disagrees and says that going over her manager's head could have resulted in she couldn't have found another job because there are no other suitable employers in her small town, and her family only has one vehicle, which her husband uses to go to work in a different town.

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 December 6, 2022. I see no evidence to contradict this.

What is just cause?

[10] 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*.²

[11] The law says that you have "just cause" if, considering all the circumstances, you had no reasonable choice but to quit your job when you did.³

[12] The Appellant has to prove that she had just cause.⁴ 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.⁵

[13] I have to look at all of the circumstances that existed when the Appellant quit to decide if she had just cause. The law sets out some of these circumstances.⁶ After I decide which circumstances apply to the Appellant, she then has to show that there was no reasonable alternative to leaving at that time.⁷

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

² See *Canada (Attorney General) v Imran*, 2008 FCA 17.

³ See *Canada (Attorney General) v White*, 2011 FCA 190; *Canada (Attorney General) v Macleod*, 2010 FCA 301; *Canada (Attorney General) v Imran*, 2008 FCA 17; and *Astronomo v Canada (Attorney General)*, A-141-97.

⁴ See *Green v Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v White*, 2011 FCA 190; *Canada (Attorney General) v Patel*, 2010 FCA 95.

⁵ See *Canada (Attorney General) v Laughland*, 2003 FCA 129.

⁶ See section 29(c) of the Act.

⁷ See section 29(c) of the Act.

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

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

[15] The Appellant says that two of the circumstances set out in the law applies. Specifically, she says that there were working conditions that constitute a danger to health or safety and employer practices that are contrary to law.

[16] The Appellant says that she contracted Hepatitis A from working with strawberries at the store. She told the Commission that public health informed her that she tested positive for Hepatitis A and her doctor told her it was from the strawberry outbreak that Health Canada was tracking. She testified that she told her employer, but nothing happened. Neither health and safety nor human resources contacted her, and no safety precautions were implemented at the store, such as wearing gloves. The Appellant testified that she decided to call all the staff into the back and told them about her diagnosis so that they were aware of the situation. She said that no one showed any concern about her, so she just kept on working.⁸

[17] The employer told the Commission that when the Appellant informed them of her positive Hepatitis A test, she said it was "not serious and not to worry about it," and that was why no action was taken.⁹

[18] The Commission argues that while the Appellant contracted an illness while working, she continued working for several months before quitting. It says that she has not demonstrated that there was a risk to her health at the time she quit.

[19] I find, on the balance of probabilities, that there were no working conditions that would create an immediate danger to health or safety at the time the Appellant quit. Public health was aware of her medical condition and didn't contact her employer or provide her with a list of precautions that needed to be taken, and the Appellant wasn't

⁸ This is consistent with the Appellant's statements in GD03-42.

⁹ See GD03-43.

so concerned about the situation that she reached out to human resources, senior management, or Occupational Health & Safety.

[20] The Appellant says that the culminating issue that led to her leaving her job was her employer requiring her to work in violation of Saskatchewan law. The Appellant testified that every person who sells, serves, or handles alcohol must have a valid Serve It Right Saskatchewan (SIRS) certificate under penalty of law. She says that she informed her manager at the beginning of November that her SIRS expires on November 20, 2023, and asked if she should take the training on her own and submit the expense. Her manager told her that she should take the training during work hours and scheduled the course and exam for November 18.

[21] On the day of the exam, the store was short staffed, so the manager cancelled the Appellant's SIRS training. The Appellant testified that when she pointed out that this meant she could no longer handle alcohol (which included ordering, stocking shelves, operating the cash register, and assisting customers in the liquor section), the manager turned red in the face and left. The Appellant worked from November 22 through 26 and 28 through December 1 without a valid SIRS certificate, and her manager didn't want to reschedule the training until the store was fully staffed again.

[22] The Appellant testified that working with alcohol illegally wasn't aligned with her morals and, after taking a few days off and discussing the issue with her spouse, she decided that she couldn't continue to work without her SIRS certificate.

[23] The employer told the Commission that it knew the Appellant's certificate was expired, and that it knew of the legal obligations it had to renew it. The employer confirmed that it cancelled her course because of staffing issues. It said the Appellant quit before a new date could be scheduled.¹⁰

[24] I find that the Appellant has shown that her employer had practices that were contrary to law. The employer knew that she was required to have a valid SIRS

¹⁰ See GD03-43.

certificate to legally complete her daily tasks, and knowingly caused her to work without one.

[25] The other circumstances that existed when the Appellant quit included frustration and dissatisfaction with a co-worker's job performance, as well as similar feelings about her manager's chronic conflict avoidance and inaction about her concerns. The Appellant testified that her manager lacked the skills to manage people, and this created a hostile working environment where employees who worked hard suffered burnout and felt unappreciated. Meanwhile the problem employee was allowed to spend her shifts socializing without reproach.

[26] The Appellant testified that she lives in a very small town with very few employment opportunities for someone with a high school education, and whose previous job experience was as the safety manager for a mid-sized oilfield company.

The Appellant had reasonable alternatives

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

[28] The Appellant testified that she decided to quit her job after taking a few days off around her birthday. She didn't discuss why she was quitting or give her manager the opportunity to address her concerns.

[29] The Commission says that instead of quitting when she did, the Appellant could have asked for a leave of absence, transferred to another store, discussed her issues with human resources or senior management, or waited until she found a different job. The employer told the Commission there were transfer opportunities and leaves the Appellant could have applied for.

[30] The Appellant says that she couldn't transfer to another store or find another job in a different town because her family only had one car, and her husband needed it to commute to his job. However, on her request for reconsideration, the Appellant states that the reason she couldn't transfer was because she has a "gas guzzler vehicle" and

that she can't afford the gas to commute the 30 minutes to the next store. The Appellant testified that since she wasn't the problem, she shouldn't have to be the one who transfers. She said that the problem employee had administration experience and could have transferred to work at head office in Tisdale.

[31] The Appellant testified that she didn't escalate her concerns to senior management or human resources because every time she raised a problem, her manager said she would deal with it. When nothing changed, she didn't want to "go over her manager's head" because she was concerned that it would result in her manager "having it in" for her.

[32] The Appellant testified that she should have asked for a leave of absence but didn't think about it at the time. She also testified that she was willing to do the SIRS training on her own time, and offered to do so, but her manager didn't tell her the process to have her costs covered.

[33] I find that the Appellant had multiple reasonable options other than leaving her job when she did. She could have:

- Discussed how serious her concerns were with her manager, given her a timeframe to resolve the issues, and then escalated the outstanding matters to human resources and/or senior management.
- Refused to do any work that involved alcohol until her SIRS certificate was renewed, even if that meant being unable to do most or all of her tasks.
- Reported her employer's non-compliance with the liquor laws to the Saskatchewan Liquor and Gaming Authority.
- Completed the SIRS training on her own time and submitted the expenses to her manager.
- Requested a leave of absence or stress leave.

[34] Considering the all of the circumstances that existed when the Appellant quit, the Appellant had reasonable alternatives to leaving when she did, for the reasons set out above.

[35] This means the Appellant didn't have just cause for leaving her job.

Conclusion

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

[37] This means that the appeal is dismissed.

Ambrosia Varaschin
Member, General Division – Employment Insurance Section