



Citation: *AR v Canada Employment Insurance Commission*, 2023 SST 930

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

## Decision

**Appellant:** A. R.  
**Representative:** S. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (569491) dated February 15, 2023  
(issued by Service Canada)

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**Tribunal member:** Lilian Klein

**Type of hearing:** Teleconference  
**Hearing date:** May 11, 2023  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** July 6, 2023  
**File number:** GE-23-652

## Decision

[1] I'm **allowing** the Claimant's appeal. This decision explains why.

[2] The Claimant has shown **just cause** for voluntarily leaving her job, since the law says the obligation to care for a child is one of the circumstances that may show just cause. She's also shown that she had no reasonable alternative to leaving when she did.

[3] This means that the Claimant is **not disqualified** from receiving Employment Insurance (EI) benefits.

## Overview

[4] The Claimant, A. R., left her job at X as a shift manager to accept work at X since the schedule at the new job allowed her to spend more time with her special-needs child. When the job at X ended earlier than she'd expected, she applied for EI regular benefits.

[5] The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving her job. It says she left voluntarily (chose to quit) to accept seasonal work, which doesn't show just cause. So, it wouldn't pay her benefits.

[6] I must decide whether the Claimant has proved that she had just cause for leaving her job at X (in other words, a reason for quitting that the law accepts). She must show that she had no reasonable alternative to leaving that job when she did.

[7] The Commission says the Claimant shouldn't have left her job at X to take a seasonal job at X. It says instead of quitting, she should have asked for a leave of absence, waited to find a permanent day job, or got her husband to help with the child.

[8] The Claimant says she had just cause for quitting her job at X since she was getting home too late to give her special-needs child the attention that she needs. The job at X was better paid and had better hours. She says she hadn't understood that the job was only seasonal. She believed she'd been promised a position that would advance her career. Instead, the employer let her go.

## Post-hearing documents

[9] The Claimant submitted the following documents after the hearing: her child's assessment and diagnosis, the school's request that she spend more time with her child and her email to X asking for a schedule that would allow her to do this. I accepted this evidence as relevant and shared it with the Commission, but it didn't respond.

## The issue I must consider

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

[11] To answer this question, I must first look at whether the Claimant left voluntarily. I must then decide whether she had just cause for leaving.

## Analysis

### The parties agree that the Claimant voluntarily left her job

[12] I accept that the Claimant voluntarily left her job at X since both the Commission and the Claimant agree on this point and there's no evidence to show otherwise.

### The parties disagree on whether the Claimant had just cause

[13] The Commission says the Claimant didn't have just cause for voluntarily leaving her job at X. The Claimant disagrees.

[14] The law says you're disqualified from receiving benefits if you left your job voluntarily and didn't have just cause.<sup>1</sup> A good reason isn't enough to show just cause.

[15] The law explains what it means by **just cause**. The law says you have just cause if you had no **reasonable alternative** to quitting your job when you did.

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

[16] It's up to you to prove that you have just cause. You must prove this on a balance of probabilities.<sup>2</sup> This means you must show it's more likely than not that you had **no reasonable alternative** to quitting your job.<sup>3</sup>

[17] When I decide whether the Claimant had just cause, I must look at all the circumstances at the time she quit.<sup>4</sup> The law sets out some of them.<sup>5</sup> After I decide if any of the situations listed in the law apply to her, she still has to show that she had no reasonable alternative to leaving when she did.<sup>6</sup>

### **The parties don't agree on the circumstances when the Claimant quit**

[18] The parties disagree on the circumstances that applied when the Claimant quit her job. The Commission says this case is about whether she had reasonable assurance of another employment in the immediate future when she quit her permanent job with X for a seasonal position at X.<sup>7</sup>

[19] The Claimant says this case is about her obligation to look after her special-needs child.<sup>8</sup> But she isn't invoking that reason to stop working completely. She says she waited until she'd found a job where she could both work and deal with her child's complex needs.

[20] The Claimant says the school told her that she must spend more time with her five-year-old daughter as part of addressing the child's developmental delays and autism. But her job at X often required her to stay well past midnight to close the store. So, she couldn't even do bedtime with her child, who wouldn't go to sleep without her mother there.

[21] After the hearing, the Claimant submitted proof of her daughter's diagnosis and the school's advice that she must spend more time with her child and get her to sleep more. So, the Claimant has met her obligation to provide evidence that was missing before.

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

<sup>3</sup> See *White*, above.

<sup>4</sup> See *White*, above.

<sup>5</sup> The complete list of circumstances that may show just cause is in section 29(c) of the EI Act.

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

<sup>7</sup> Section 29(c)(vi) of the EI Act lists reasonable assurance of another employment in the immediate future.

<sup>8</sup> Section 20(c)(v) of the EI Act list the obligation to care for a child or a member of the immediate family.

[22] When I offered the Commission the chance to comment on this new evidence, it didn't respond. It didn't raise any doubts about the reliability or relevance of these documents.

[23] So, **the circumstances at the time when the Claimant quit her job** were that her work hours didn't allow her to give her special-needs child the attention she needs. The Claimant's employer (X) wouldn't accommodate her request for daytime hours, so she found other work that would allow her to spend more time with her child.

[24] The Claimant says before she quit, she found another job with better pay, better hours and assurances of career advancement. She says she didn't realize it was seasonal when she applied through X's careers portal and the hiring documents didn't mention it.<sup>9</sup>

[25] I find that the Claimant's reason for quitting her job to better care for her child is included in the list of circumstances that may show just cause.<sup>10</sup> She doesn't **also** need to show just cause by having reasonable assurance of another employment.

[26] Even though the obligation to care for her child was the reason the Claimant quit, she must still show that she had no reasonable alternative to leaving when she did.

[27] It's not whether it was reasonable for the Claimant to quit given her difficult situation, but whether quitting was her **only reasonable alternative**.<sup>11</sup> I'll now consider that issue.

### **The Claimant had no reasonable alternative to leaving**

[28] I find that the Claimant had no reasonable alternative to voluntarily leaving her job at X to attend to her child's special needs.

### **What does the Commission say?**

[29] **The Commission says the Claimant had the following reasonable alternatives to quitting her job:**

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<sup>9</sup> These documents are in the Claimant's post-hearing submissions in the GD7 file.

<sup>10</sup> The obligation to care for a child listed in section 29(c)(v) of the EI Act may show just cause for quitting.

<sup>11</sup> See *Canada (Attorney General) v. Laughland*, 2003 FCA 129.

- She could have asked for a leave of absence so she could “sort out her daughter`s situation” and return to X after her seasonal job at X ended.
- She could have continued working at X until she found a permanent daytime position.
- Her spouse could “cater for her daughter” in the evenings.<sup>12</sup>

[30] The Commission says the Claimant risked unemployment when she left her guaranteed job at X. EI claimants mustn't take that risk.<sup>13</sup> The Commission questions whether she tried to get daytime hours at X before quitting to take a seasonal job. It says there's no evidence “why the claimant has the urgency to leave the job when she did.”<sup>14</sup>

### **What does the Claimant say?**

[31] **The Claimant says she had no reasonable alternative** to quitting since her work hours prevented her from giving her child the attention she needs in the evenings. She says her daughter requires extra attention due to developmental delays and autism. She argues that the school told her she must spend more time with her child, particularly at bedtime.

[32] The Claimant says she asked the regional manager at X for a 40-hour workweek so she could be home with her daughter earlier in the evenings. She says she often had to close the store at night and would get home well after midnight.

[33] In her post-hearing submissions, the Claimant has provided proof that she made this request. She says X refused to accommodate her unless she'd accept a demotion from management to a regular staff position.

[34] The Claimant says she looked for many different jobs before she quit to ensure that she wouldn't be without employment. She says X offered her a full-time position with better pay, daytime hours and the promise of career advancement.

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<sup>12</sup> See the Commission's submissions on page GD4-4.

<sup>13</sup> See *Tanguay v Canada (Unemployment Insurance Commission)*, [1985] F.C.J. no. 910; and CUB 77456.

<sup>14</sup> See the Commission's submissions on page GD4-4.

## My findings

[35] Considering the circumstances when the Claimant quit and the evidence she's provided, **I find that she had no reasonable alternative to quitting when she did.**

[36] I accept the Claimant's evidence as relevant and reliable. It matches her sworn testimony, which was consistent throughout the hearing. So, I accept it as credible.

[37] **The Claimant's evidence shows that she emailed X's regional manager** to ask for a change to daytime hours, with a cap of 40 hours a week. I give more weight to this evidence than to the contradictory responses that the Commission got from X.

[38] The contradiction arises because the Commission didn't speak to the manager that the Claimant dealt with. It spoke to someone in payroll. All that person could report was that the Claimant "quit her job for other employment. No further details on file."<sup>15</sup>

[39] The Commission relied as well on a conversation with the Claimant's store manager (B.) who said she hadn't requested a schedule change from him.<sup>16</sup> But he said he'd been away on leave and only returned two weeks before she left. He also said requests for schedule changes had to go to a higher management level, not to him.

[40] That's why I give more weight to the Claimant's evidence than to what B. told the Commission. There was no reason for her to ask B. when her request had already been refused and he wasn't even the right person to ask. I find his input unreliable, including his speculation that B. **might** have accommodated a schedule change.

[41] So, the Claimant's evidence shows that she **met her obligation under the law to seek accommodation from her employer** before she quit.

[42] I also find that the Claimant **met her obligation to try to find other work before quitting her job at X** as a reasonable alternative to leaving. She's shown this by her efforts to get a job at X, even if she misunderstood the limitations of that job.

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<sup>15</sup> See the Commission's conversation with HR and payroll manager on page GD3-19.

<sup>16</sup> See the Commission's conversation with B. on page GD3-31.

[43] Given the unusual nature of the Claimant's obligations to her child and the evidence now available, I don't agree with the Commission's suggestions for reasonable alternatives to quitting.

[44] First, it wasn't a reasonable alternative to request a leave of absence from X since the special needs of the Claimant's child weren't time limited. They were ongoing. Taking a leave of absence wouldn't have changed that.

[45] Second, the Claimant's evidence shows that there was an urgency to her need to quit since her child's welfare was at risk. So, she couldn't stay employed at X, waiting for a perfect job to come up. But she waited to quit until she found work at X.

[46] Third, the suggestion that the Claimant's husband could fill in for the Claimant to "cater" to their child minimizes the challenges parents of special-needs children face. The evidence shows that having a mother who was always absent was bad for this child.

[47] I don't think accepting a demotion at X was a reasonable alternative to quitting either since it would have come with a significant change to her duties and lower wages.

[48] So, since the Claimant had **no reasonable alternative** to quitting her job at X, she's shown **just cause** for voluntarily leaving her employment when she did.

## Conclusion

[49] The Claimant is **not disqualified** from receiving benefits since she had no reasonable alternative to quitting her job at X.

[50] This explains why **I'm allowing the Claimant's appeal**.

Lilian Klein

Member, General Division – Employment Insurance Section