



Citation: *X v Canada Employment Insurance Commission*, 2023 SST 1989

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

Decision

Appellant: X

Respondent: Canada Employment Insurance Commission

Added Party: N. H.

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (623090) dated October 11, 2023
(issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference

Hearing date: December 14, 2023

Hearing participants: None

Decision date: December 28, 2023

File number: GE-23-3048

Decision

[1] I'm dismissing this appeal. My decision explains why.

[2] The Claimant (the Added Party in this appeal) didn't leave her employment as a home support worker voluntarily. This means that I agree with the Commission that she isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The **Appellant** is the Employer. The Employer is appealing a decision by the **Respondent**, that is, the Canada Employment Insurance Commission (Commission). The Employer's former employee is the **Added Party**. I refer to her in this decision as the Claimant.

[4] After the Claimant applied for EI benefits, the Commission first decided that she left her job voluntarily without just cause. So, it refused her benefits. On reconsideration, the Commission reversed that decision and allowed her benefits. It said she had just cause for leaving because she had no reasonable alternative at the time.

[5] That's the decision that the Employer is now appealing. The Employer says the Commission's decision makes it seem as if the Claimant's job loss was their fault and they want to set the record straight.

Matters I must consider first

[6] None of the parties attended the hearing.

[7] Due to their special circumstances, the Employer says they couldn't attend a teleconference, videoconference, or in-person hearing. They wished to rely on their written submissions.

[8] The reason I scheduled a hearing by teleconference was to allow for a full and fair hearing for the Claimant, who stands to lose EI if the Employer's appeal succeeds. Procedural fairness requires me to consider the interests of all parties to an appeal.

[9] But I told the Employer that if the Claimant attended the hearing, I would send an audio file containing the recording of that hearing. I would then give the Employer the chance to respond fully in writing to any new arguments that the Claimant might make.

[10] Since the Claimant didn't attend the hearing to make new arguments, there's no recording to send to the Employer. This means no further written submissions are required.

[11] A hearing can go ahead without the parties if they got the notice of hearing.¹ I find it more likely than not that the parties in this appeal got the notice of hearing. So, the hearing took place when it was scheduled but no-one attended.

The issues I must consider

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

[13] To answer this, I must first look at all the circumstances when the Claimant's employment ended. If she left voluntarily, I'll then decide if she had just cause for leaving.

Analysis

Did the Claimant leave her job voluntarily?

[14] No. On a balance of probabilities, I find that the Claimant didn't leave voluntarily on April 27, 2023. The legal test to determine if you leave voluntarily is whether you had the choice to stay or to leave.² The evidence shows that the Claimant no longer had that choice. That's because when she enquired about her schedule for the following day, she was told not to come in to work.

[15] So, the question is: **was the Claimant's resignation voluntary?** On her benefit application, she reported that she quit. This matches what the Employer reported on the Record of Employment (ROE). There's no resignation letter on file but the Claimant later told the Commission she'd been forced to resign. That's not quitting voluntarily.

¹ Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

² See *Attorney General of Canada v Peace*, 2004 FCA 56.

[16] Since I find that the Claimant didn't leave her employment voluntarily, I don't need to consider whether she had just cause, that is, whether she had reasonable alternatives to leaving. So, I've come to the same conclusion as the Commission that the Claimant isn't disqualified from receiving EI benefits, but with a different rationale.

[17] Having made this finding, I acknowledge that it's sometimes unclear whether a job ended because a claimant left voluntarily or was dismissed. The Federal Court of Appeal (FCA) has said that in both cases, a claimant can lose benefits because of their actions. The consequences are the same: a disqualification from receiving benefits.³

[18] So, I could consider whether the Claimant was dismissed, but the FCA also says that I'm not required to do this.⁴ I don't have to question the Commission's decision that this case is about voluntary leaving, so I won't be considering whether she was dismissed.

[19] As well, in the appeal before me, the Employer hasn't argued that they dismissed the Claimant. There's no dismissal letter on file. Reporting a dismissal for misconduct was open to the Employer on the ROE, but they didn't choose that option. As noted above, at the time when the Claimant's job ended, the Employer reported on her ROE that she quit.

[20] For the purposes of this appeal, the Employer has argued that the Claimant shouldn't get EI because of her "poor work ethic" and "maniacal nature."⁵ The evidence shows that the Employer told the Claimant on January 3, 2023, to "be prepared to submit your resignation letter."⁶ This seems to be where the idea that she should resign first appears, although the evidence also shows that the Employer later rehired her.

[21] I've carefully considered all the Employer's evidence and sympathize with the frustrations of their employment relationship with the Claimant. But it's not my role to assign blame for the breakdown in that relationship. So, I make no finding on this issue.

³ See *Attorney General of Canada v Easson*, A-1598-92.

⁴ See *Canada (Attorney General) v Eppel*, A-13-95, as explained by the Tribunal's Appeal Division in *DM v Canada Employment Insurance Commission*, 2020 SST 575.

⁵ The Employer has argued that the Claimant often failed to show up for work or confirm availability, stole cash, food and other items and created a toxic work environment for other employees. They say she damaged mobility and breathing equipment, and they blame her for an eye infection that they contracted.

⁶ See page GD3-27.

Conclusion

[22] After finding that the Claimant didn't leave her employment voluntarily, I agree with the Commission that she isn't disqualified from receiving EI benefits.

[23] This explains why I'm dismissing the Employer's appeal.

Lilian Klein

Member, General Division – Employment Insurance Section