Citation: *JZ v Canada Employment Insurance Commission*, 2023 SST 1960

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	J. Z.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (576545) dated April 11, 2023 (issued by Service Canada)

Tribunal member:	Elizabeth Usprich
Type of hearing:	Videoconference
Hearing date:	August 31, 2023
Hearing participants:	Appellant Interpreter
Decision date:	September 20, 2023
File number:	GE-23-1352

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 said she didn't quit her job. She said she told her employer, an employment agency, that she wanted to change from full-time to part-time work. She told her employer this was because she had too much to do at home. She also said her husband needed the car so she didn't have a car to get to work. But she went to work for another employment agency. The full-time work with the second employment agency didn't continue. She still worked from time to time for the first employer. After she lost her employment with the second employer, she didn't tell her first employer that she was available full-time again. She applied for EI benefits.

[4] 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.

[5] I must decide whether the Appellant quit and has proven that she had no reasonable alternative to leaving her job.

[6] The Commission said the Appellant could have told her first employer that she was available again full-time. The Commission said the Appellant could have looked into other transportation options.

[7] The Appellant disagreed and said she never left her first employer. She said it is not acceptable to force someone to continue at a job where she has transportation issues. She also said there wasn't much work for her there.

Matter I have to consider first

The Appellant requested an interpreter

[8] The Appellant asked for an interpreter to be present at the hearing, which was done.[1] At the hearing, the Appellant didn't always want to make use of the interpreter. But to make sure there wasn't an issue understanding what was being said I asked that the interpreter be used.

This hearing was heard along with GE-23-1351

[9] The Appellant had two separate cases she filed appeals on. To make it easier for the Appellant the two appeals were held on the same hearing day. This means one appeal was heard and then the second appeal was heard. The appeals were treated separately and a separate decision will be issued for each appeal.

Issue

[10] Did the Appellant voluntarily leave her job?

[11] If she voluntarily left, is she disqualified from receiving benefits because she voluntarily left her job without just cause?

[12] 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

Did the Appellant voluntarily leave her job

The parties don't agree that the Appellant voluntarily left

[13] The Commission said this is a case of voluntary leaving because the Appellant refused employment that was offered to her. The Commission said there was employment available, full-time, and it was the Appellant that refused the employment. The Commission said there was no shortage of work. It was the Appellant's choice to

[1] See GD9-1.

limit her availability. The employer never took any initiative to sever any working relationship with the Appellant.[2]

[14] The Commission said even though the employer changed a Record of Employment (ROE) from "quit" to "shortage of work" it doesn't change things. The Commission said there wasn't a shortage of work, rather there weren't hours available only on the weekend which is what the Appellant changed her availability to.[3]

[15] The Appellant said she never quit and that means there is no voluntary leaving.[4] The Appellant said she asked for a change from full-time to part-time hours with her employment agency employer. She said she did so because she found work through another employment agency. She said she also had other personal reasons for doing so.

– Background

[16] The Appellant worked for an employment placement agency ("employer MP"). She started with them in January 2022. She was placed in a warehouse for work (the "placement").

[17] The parties agree the Appellant was working at the warehouse placement from Monday to Thursday from 3:30 p.m. to midnight and on Friday from 3:30 p.m. to 9:30 p.m.[5]

[18] The Appellant also testified from the time she started for employer MP she was in the same placement (warehouse). The Appellant's supervisor told the Commission that this was a permanent schedule.[6] I accept the Appellant only worked at the warehouse placement on a set schedule for this employer MP.

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[2] See GD4-5.
[3] See GD4-5.
[4] See, for example, GD2-5, GD16-26, GD16-32 and GD18-9. The Appellant also testified to this.
[5] See GD3-36 and GD4-3. The Appellant also testified this was the case.
[6] See GD3-36.

[19] The Appellant testified that because the placement was through an employment agency it could be stopped at any time.

[20] The Appellant testified she had found other full-time work through a different employment agency, GC. She testified she thought she would be getting full-time work. She testified she started a placement through GC on October 17, 2022.

[21] On October 24, 2022, the Appellant wrote to her employer MP and said she was no longer available full-time, and asked if she could work part-time.[7] The employer MP asked the reason for the change and the Appellant wrote, "I have too much to do at home as my husband got severe low back issue. He needs our car to work and rest, and I have no vehicle to work, and many other things…".[8]

[22] The employer MP wrote to the Appellant the following day and said she had spoken to management. The employer said there would likely not be overtime work and therefore no weekend work. They said they couldn't accommodate the Appellant as a part-time. Two days later, on October 27, 2022, the employer told the Appellant that there was work available that weekend. The Appellant worked.

[23] The employer also contacted the Appellant on November 9, 2022, and asked if the Appellant was available on Saturday, November 12, 2022. The Appellant said she was available on November 12, 2022.

[24] The Appellant also told MP she was available on November 10, 2022 and November 11, 2022. She testified she was available during the week at that time because her new employer, GC, had laid employees off those days. MP said they didn't have work for her on those days. The Appellant says this is proof there was a shortage of work.

[7] See GD18-9 to GD18-11.
[8] See GD18-10.

[25] The Appellant testified her last day of work with GC was November 23, 2022. She said she was laid off and told to wait a couple of weeks to see if there was more work. GC never recalled her, so she didn't have any more work through them.

[26] The Appellant testified her last day she worked for MP was November 25, 2022. She said she was never asked to work any additional shifts through MP after that date. She said she still has PPE from them that she hasn't returned. She testified she didn't contact MP after November 25, 2022.

– **Did the Appellant voluntarily leave?**

[27] At issue in this appeal, is only the Appellant's relationship with MP.

[28] The Appellant wrote on her application for EI benefits that the reason for separation was "there was a shortage of work".[9]

[29] The Appellant believes the Commission denied her benefits because her employer incorrectly filled out the ROE as "quit".[10]

[30] The Appellant testified she did not quit. She said she just made a change to her job.[11] She testified she asked the employer to make a change from full-time to part-time work.[12]

[31] After the Commission told the Appellant about the coding of "quit" on the ROE, the Appellant wrote to her supervisor to ask about a different coding.[13] An amended ROE was sent to the Commission.[14]

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[9] See GD3-7.
[10] See GD3-18 original ROE dated December 29, 2022.
[11] See also GD18-9 of the Appellant's submissions.
[12] See also GD3-40 and the Appellant's notes at GD16-41 that the Appellant wanted to change from full-time to part-time.
[13] See GD18-14 and GD18-15 text messages from the Appellant to her Supervisor about the ROE.
[14] See GD3-20.

[32] The Appellant testified that only the second ROE should be considered. It is coded as "shortage of work/end of contract or season".[15] The Appellant said the employer made a mistake on the first ROE.

[33] The Commission spoke to the employer's payroll coordinator that filled out the ROE. He said he was told the Appellant had quit.[16] After the Appellant filed a request for reconsideration, the Commission spoke to the Appellant's direct supervisor. The Commission noted the supervisor told them the ROE was changed because the Appellant asked them to change it.[17]

[34] I am not bound by how the employer and employee characterize their separation.[18]

[35] The Appellant testified she still works for her employer and that there has been no separation. The Appellant says there was some kind of layoff.[19] I don't find that to be the case for the following reasons.

[36] The Appellant testified she asked her employer to change her hours from full-time to part-time. Initially, the employer told the Appellant they could not accommodate her request as they didn't think there would be a need for overtime at the placement and therefore no weekend work.[20] Yet, on a few occasions afterwards, the employer was able to offer some weekend work.[21]

[37] The employer told the Commission there was full-time work available and that the only reason the Appellant wasn't working was because she told them she could no longer work full-time.[22] The Appellant never disputed this. I find this means that there wasn't a shortage of work.

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[15] See GD3-20 amended ROE dated February 21, 2023.
[16] See GD3-26.
[17] See GD3-36 and see the Appellant's comments about that on GD16-37. Yet, there are text messages that show the Appellant asked for the change to her ROE see GD18-14 and GD18-15.
[18] See, for example, *Canada (Attorney General)* v. *Morris*, 1999 CanLII 7853 (FCA).
[19] See GD16-32.
[20] See GD18-10.
[21] See GD18-11 and GD18-12.
[22] See GD3-36.

[38] The employer also told the Commission they weren't aware of the Appellant having transportation issues. The employer said if they had known this was an issue, they could have looked into a different placement.[23]

[39] The Appellant argued that she did tell the employer about her transportation issues and submitted text messages of what she told the employer.[24] The text messages don't say the Appellant has transportation issues. The text messages say the Appellant's husband needs the car. The text messages say she has no vehicle to work. The text messages say the Appellant isn't available any longer for full-time work.[25]

[40] I understand the Appellant believes she was telling the employer she had transportation issues. Yet, I also accept the employer's interpretation of what they believed the Appellant was saying. The plain reading of the text messages is that the Appellant can't work full-time because she isn't available and her husband needs the car.

[41] The Appellant testified there is public transportation to the placement location.

[42] The Appellant testified she didn't feel comfortable walking to the bus when her shift ended at midnight. But she didn't tell any of that to the employer. She only said she was too busy for full-time work and her husband needed the car.

[43] I find both versions of what happened to be credible. I don't think the Appellant was lying about how she felt. Yet, that isn't what she plainly told the employer. I find this means that the employer only understood that the Appellant was no longer available full time and also that her husband needed the car.

[44] I accept that the employer believed that the only issue with the work placement was that the Appellant couldn’t work full-time. I find this because the Appellant worked

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[23] See GD3-36.
[24] See GD16-37 and GD18-10.
[25] See GD18-10.

some shifts at the placement location after the Appellant reduced her availability to weekends with her employer.

– **ROE**

[45] An ROE is one piece of evidence that I can consider when determining what the reason for separation is between an employer and an employee.

[46] The Appellant argued that the employer's first ROE, which said she quit, should be ignored.[26] She argues the second ROE that says there was a shortage of work is accurate.[27]

[47] The employer told the Commission they only changed the reason for separation because the Appellant asked them to.[28]

[48] The Appellant argued there was a shortage of work because the placement didn't have weekend work available for her.

[49] I find that there was no shortage of work. There was work available. The Appellant made a personal choice that she no longer wanted the full-time shift through her employer.

[50] The employer also told the Commission that if they had known there was an issue with the particular placement they could have looked into a different shift or different placement.[29]

[51] The Appellant argued that she still has an ongoing relationship with her employer. Yet, the Appellant says she hasn't worked for, nor spoken to, the employer since November 25, 2022.

[52] The Appellant applied for benefits on December 10, 2022. When there is an application for benefits either the applicant or the employer has to supply an ROE. It

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[26] See GD3-18.
[27] See GD3-20.
[28] See GD3-36 and GD4-3.
[29] See GD3-36.

appears, in this case, that the Commission asked the employer for the ROE. The employer supplied the Commission with an ROE on December 29, 2022.

[53] On a balance of probabilities, I find it was reasonable for the employer to understand that when the Appellant applied for EI benefits that she wouldn't be returning. There has been no further communication between the Appellant and the employer about working. In fact, the Appellant provided text messages between her and her supervisor that confirm the Appellant's last day of work was on November 25, 2022. The employer told the Appellant in the text message "I can't change that date to an earlier one as this is what is in our records".[30]

[54] I find this means that there isn't an ongoing relationship with that employer. It is possible that at some point the employer still considered the Appellant an occasional part-time employee. Yet, by the time they exchanged text messages about the ROE it was clear that the employer doesn't believe the relationship is ongoing.

[55] I found above there wasn't a shortage of work. I found above the Appellant made a personal choice to change her availability from full-time to part-time. While the employer had a few part-time shifts for her, they didn't have regular part-time hours.

[56] The change the Appellant made was what eventually led to the separation with her employer. When I am considering whether the Appellant voluntarily left her employment, I have to consider whether the Appellant had a choice to stay or leave.[31]

– **Did the Appellant have the choice to stay or go?**

[57] I find the Appellant had the choice to stay or go with her employer.

[58] There is no dispute that the Appellant told her employer that she couldn't work full-time anymore. Although the Appellant says she still has a relationship with her employer and has not separated, I find this not to be the case.

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[30] See GD18-15.
[31] See Canada (Attorney General) v Peace, 2004 FCA 56.

[59] The Appellant testified she hasn't spoken to the employer since she last worked on November 25, 2022. This means the Appellant and the employer haven't spoken about the Appellant working for over 9 months. The Appellant also applied for EI benefits and the employer told the Commission that the Appellant quit.[32] The employer forwarded what they took as the Appellant's resignation letter and sent it to the Commission.[33]

[60] I fully understand the Appellant disputes that she separated from her employer.[34] Her position is that she is still employed. Yet, there is no dispute that the Appellant applied for EI benefits on December 10, 2022.[35] I find that because she has had no contact and no work since November 25, 2022, when the Appellant applied for EI benefits it was reasonable for the employer to take the position the relationship had ended.

[61] I find the evidence supports that the employer believes there isn't an ongoing relationship with the Appellant. I find this because the employer told the Commission that the Appellant quit.

[62] I understand the Appellant said there was a "shortage of work" with her employer and that is the reason she is not working. Above, I found that there wasn't a shortage of work. This was based on the information provided by the employer to the Commission. This also includes that the employer told the Appellant there wasn't a shortage of work.[36] This also includes that the employer told the Commission they only amended the ROE after pressure from the Appellant.[37]

[63] This means the Appellant voluntarily put herself in the position that she finds herself in.

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[32] See GD3-26 and GD3-36.
[33] See GD3-40.
[34] See GD16-23.
[35] See GD3-3 to GD3-17.
[36] See GD18-14 and GD18-15.
[37] See GD3-36.

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

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

[65] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[38] Having a good reason for leaving a job isn't enough to prove just cause.

[66] 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. The law sets out some of the circumstances I have to look at.[39] It says that you have to consider all the circumstances.[40]

[67] It is up to the Appellant to prove that she had just cause.[41] 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.

[68] After I decide which circumstances apply to the Appellant, she then has to show that she had no reasonable alternative to leaving at that time.

The circumstances that existed when the Appellant left

[69] The Appellant testified she had no issues with her employer MP or the placement itself.

[70] The Appellant testified that there were a few reasons why she couldn't remain in her employment:

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[38] Section 30 of the *Employment Insurance Act* (Act) explains this.
[39] See section 29(c) of the Act.
[40] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c)(xiv) of the Act.
[41] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

- her husband had a sore back and needed their car for transportation (she said it hurt his back to carry a backpack which would have been needed on public transportation)
- the placement location was difficult to get to by public transportation
- she felt that she wanted something more permanent because there were layoff days

[71] The Appellant testified she thought she had no reasonable alternative but to change from full-time to part-time with her employer MP.

[72] The Appellant testified she had no choice but to move on. The Appellant testified she found another placement agency, employer GC, that she thought would give her full-time hours. She started working through the second employer in mid-October 2022.[42]

– **Did she leave employer MP for employer GC**

[73] The Appellant testified she stopped her full-time hours with employer MP for a number of reasons. She said she thought she could get a better placement with full-time hours through employer GC. So, she reduced her availability/hours with employer MP.

[74] The Act says if you have a reasonable assurance of another employment in the immediate future that could mean you have just cause for leaving your employment.[43]

[75] I have to consider the specific facts of the Appellant's case. Here she testified she never left employer MP. The Appellant reduced her full-time hours with employer MP in October. She says she had many reasons for doing so. The Appellant said one of the reasons was so she could full-time work for employer GC.

[76] So, I find the Appellant did initially change the terms of her employment with employer MP so she could take the job with employer GC. But, as testified to by the Appellant repeatedly, she did not separate with employer MP at that time.

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[42] I considered section 29(c)(vi) of the Employment Insurance Act.
[43] See section 29(c)(vi) of the Employment Insurance Act.

[77] I find the separation between the Appellant and MP didn't come until after November 25, 2022. I find the date of separation was after the Appellant applied for EI benefits on December 10, 2022. Therefore, I don't find that the Appellant left MP to go to GC.

– **Other reasons for not remaining in full-time placement with MP**

[78] The Appellant made it clear that with any placement agency there are no guaranteed hours or placement.

[79] The Appellant testified she had been wanting to make a change for a long time because her husband needed their car. She said he also hurt his back and needed to rest it. She said carrying a backpack on public transportation was not good for him. She also said her husband works at various job sites at various hours.

[80] She said she had been looking for another job for this reason. She said she also wanted to find a permanent job, not one through a temp agency. She said there were layoff days.[44]

[81] The Appellant testified that both her first employer MP, and second employer GC, were temp/placement agencies which meant the jobs could end at any time.

[82] The Appellant testified she thought the second employer GC would be better because the job was easier for her to get to. She said it turned out to be short-term. She said the second employer GC told her to wait to see if they had more work. She said she waited but there was no more work and the second employer GC later issued an ROE. The last day she worked for the second employer GC was November 23, 2022.

[83] During a layoff time with the second employer GC, in early November 2022, the Appellant reached out to her first employer MP to see if there was any work.[45] The

[44] It should be noted that the only layoff days that the Appellant had evidence of through her employer at the warehouse placement seemed to be in July 2022. See GD18-13.
[45] See GD18-12.

Appellant testified this was evidence that there was a shortage of work at MP. Yet, the Appellant worked for employer MP at least twice in November 2022.[46]

[84] The Appellant said she had no reasonable alternative to leaving at that time because of all of the circumstances she was experiencing.

[85] The Commission said the Appellant didn't have just cause, because she had reasonable alternatives to leaving when she did. Specifically, it said the Appellant could have gone back to her employer MP to increase her availability to full-time again. The facts are clear that she hadn't separated from MP when she lost her job at GC. She could have spoken with co-workers or her employer about her transportation issues. She could have spoken to her employer MP about transferring to a different placement or shift.

[86] So, the circumstances that existed for the Appellant were: she thought she was going to have better full-time work through employer GC; her husband needed the car which meant she had difficulties with public transportation due to the placement location; and she wanted something that was permanent and more reliable hours.

The Appellant had reasonable alternatives

[87] The Appellant testified she never left her first employer MP. She testified she made a change to her employment from full-time to part-time. She testified she did so mainly because her husband needed the car due to his back issues. She testified this meant she had difficulties getting to the placement because public transportation was an issue.

[88] The Appellant also testified she wanted to find permanent work that was not through a placement agency (temp agency).

[89] I find the Appellant didn't leave her first employer MP to go to her second employer GC. I make this finding because the Appellant repeatedly testified that she

[46] See GD18-12 when there was discussion about some overtime work availability and it is not disputed that the Appellant worked for employer MP on November 25, 2022.

didn't separate from her first employer MP. This means when the second employer GC didn't have work available, it may have been possible to increase her availability with her first employer MP. There is no evidence that the Appellant ever told her first employer MP that she was available again full-time. The Appellant testified that she did not do so.

[90] The Appellant repeatedly said the problem with the original placement warehouse, through MP, was its location. She said because of the hours she worked; she couldn't get public transportation so late at night. Yet, there is no evidence that the TTC buses don't run at that time. The Appellant also testified that part of the issue was that she didn't feel safe walking to get public transportation after her shift ended at midnight.[47]

[91] The parties agree the Appellant was working to midnight from Monday to Thursday. On Friday, her shift ended at 9:30 p.m. The Appellant testified it wasn't possible to do any kind of ride-share because she knew her co-workers had similar transportation issues. Yet, the Appellant still had reasonable alternatives.

[92] The Appellant didn't say why her husband couldn't pick her up some nights. The Appellant didn't say why she couldn't take a taxi, Uber or other type of transport if she didn't feel safe walking to take the bus. The Appellant also testified that her co-workers had similar issues so it is unknown why the Appellant couldn't walk with a co-worker to the bus stop.

[93] It would have also been reasonable to speak with her employer to let them know her issues. The employer told the Commission they could have considered a different shift or different placement.[48]

[94] The Appellant testified she had been wanting to leave her job before her husband hurt his back. She testified once he hurt his back it was then required that he

[47] See GD3-27.
[48] See GD3-36.

have the car. She also testified her husband worked at various locations at various times. She also testified he needed to rest his back.

[95] So, from the Appellant's testimony it seems her husband's issue with his back was a temporary one. Even if her husband's issue was permanent, the Appellant had options open to her other than the drastic one of giving up her work placement.

[96] It would have been reasonable to continue to look for work and find a job that was not through a temp/placement agency. The Appellant testified this was what she wanted to do. She testified it was difficult working through a temp agency because the work wasn't permanent. Yet, the Appellant had, at the time, the option of having full-time hours that was on a consistent schedule. She didn't have full-time hours through her own personal choice.

[97] There wasn't a lack of work at the employer's placement warehouse. Full-time hours were available. The Appellant argued that some of her colleagues were let go and that there weren't shifts for her when she asked.[49] Yet, the Appellant's supervisor didn't say there was a shortage of work.

[98] I do not find occasional layoff days amount to the shortage of work that the Appellant is arguing.[50] The Appellant told her supervisor on October 24, 2022 that she has "too much to do at home as my husband got severe low back issue. He needs our car to work and rest, and I have no vehicle to work, and many other things…..".[51]

[99] The Appellant could have spoken to her supervisor about a different shift. The evidence supports the Appellant only told her supervisor that she couldn't work full-time anymore.[52] It was a reasonable alternative to ask the supervisor for a different shift or to

[49] See GD18-4.
[50] See GD18-13 where the Appellant shows text messages from July 2022, long before she changed her work hours, of layoff days. See also GD18-12 where the Appellant argues that when she asked for more work around November 9, 2022, that there wasn't any work. Again, this was after the Appellant changed her availability from full-time to part-time.
[51] See GD18-10 text message from the Appellant to her supervisor on October 24, 2022.
[52] See GD18-9 and GD3-40.

see if there was a different placement location for work available. The Appellant never did so.

[100] Once the work with the Appellant's second employer GC didn't continue permanently, the Appellant didn't tell her first employer that she was once again available full-time. It would have been a reasonable alternative for the Appellant to speak to her employer MP to see if there was full-time work available.

[101] The Appellant made a personal choice that the full-time hours no longer worked for her due to her personal circumstances. Yet, I find that there were reasonable alternatives open to the Appellant.

[102] I empathize with the Appellant that she was trying to accommodate her husband. Yet, I find there were reasonable alternatives open to the Appellant in which she could have continued to be employed full-time. I also find that when her second employer didn't have any more work available for her, she could have gone back to her first employer to increase her availability again. The Appellant didn't stay in touch with her first employer. The Appellant applied for EI benefits. The Appellant's employer reasonably understood that the Appellant no longer had an ongoing relationship with them.

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

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

Conclusion

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

[106] This means that the appeal is dismissed.

Elizabeth Usprich

Member, General Division – Employment Insurance Section