



Citation: *TH v Canada Employment Insurance Commission*, 2023 SST 2020

Social Security Tribunal of Canada

General Division – Employment Insurance Section

Decision

Appellant: T. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (606913) dated September 6, 2023 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: November 20, 2023

Hearing participant: Appellant

Decision date: December 4, 2023

File number: GE-23-2744

Decision

[1] The appeal is dismissed.

[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 was working as a letter carrier.

[4] She was new to the job and was struggling. She was taking much longer than her employer wanted to deliver the mail.

[5] She says that she was called into a meeting with her supervisor. She wanted a union representative to be present at the meeting, but she had been told about the meeting on such short notice the union said they could not send anyone.

[6] The Appellant says that at the meeting she was told by a supervisor that she should resign from her position as a letter carrier because her probationary report was so bad. She says her supervisor told her that she would be fired if she kept performing so poorly and it would be hard to find a job if she was fired.

[7] She says that her supervisor told her that she would just be resigning from her position as a letter carrier, which would still allow her to be considered an employee, since she would just resign from the specific position. This would allow her to still apply for internal positions and would prevent her from being fired due to her poor performance.

[8] The next day the Appellant sent in her resignation. At the end of the week she received a call asking her why she had quit. The Appellant says she was shocked to

learn that her resignation actually meant she had left her employer, not just the position of letter carrier.

[9] The Appellant says she was coerced into sending in a resignation and it was not explained to her what would actually happen when she did.

[10] The Canada Employment Insurance Commission (Commission) did not find the Appellant's statements that she was told to resign credible. Instead, they decided that it was her choice to resign and that she resigned because she was worried she might be fired.

[11] The Commission decided that she had other options besides quitting, so they could not pay her benefits.

Issue

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

[13] 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?

[14] To determine whether the Appellant voluntarily left her job the question to be asked is whether she had a choice to stay or leave.¹

[15] This question does not address the reasons the Appellant may have left. It is very possible an appellant may have extremely compelling reasons for why they had to leave. All I am looking at in relation to this question is if there was a possibility of the Appellant continuing to work if she chose to, or if that choice was taken away from her.

¹ *Canada (Attorney General) v Peace*, 2004 FCA 56

[16] I find the Appellant did voluntarily leave as she did have the choice to stay or to leave.

[17] I understand the Appellant's arguments that she was pressured and coerced by a supervisor into sending in a resignation under the threat of being fired, but she was not fired at the point she sent in her resignation; she could have kept working. She also testified that she was offered, and she accepted, a mail delivery route. This is further evidence that there was work available for her and she could have continued working as a letter carrier if she had decided to not send in her resignation.

Did the Appellant have just cause for voluntarily leaving?

[18] The law says that the Appellant is disqualified from receiving benefits if she left her job voluntarily and didn't have just cause.² Having a good reason for leaving a job isn't enough to prove just cause.

[19] The law explains what it means by "just cause." The law says the Appellant will have just cause to leave if she had no reasonable alternative to quitting her job when she did.

[20] It is up to the Appellant to prove that she had just cause.³ 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.

What the Appellant says

[21] The Appellant says that she was struggling as a letter carrier. She was brand new to the job and she was not getting the same training experience as everyone else. While the rest of her class was being trained by one trainer on a specific route, allowing

² Section 30 of the *Employment Insurance Act* (Act) explains this.

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

them to learn the route and improve, she was being bounced from trainer to trainer and route to route.

[22] She says this made it very difficult for her to improve her mail delivery times because every time she was on a new route she had to try and learn everything from scratch. It is familiarity with the route that allows a person to get more and more efficient in their mail delivery.

[23] The Appellant says that at the end of her shift on a Friday, she was told there would be a meeting with a supervisor on Monday afternoon. She says that she wanted to have a union representative at this meeting but since there was such short notice of the meeting, she could not get a hold of the union to ensure she had representation.

[24] When she went to the meeting there was another person with the supervisor whom the Appellant did not know. She was concerned about having someone present at the meeting whom she was not familiar with.

[25] The Appellant says the supervisor told her that they were going to discuss her probationary report, and that the report was bad; she was failing to meet the standards the employer wanted. The Appellant says that this probationary report was full of incorrect information to make her look bad.

[26] The Appellant says that her supervisor told her if she kept going the way she was going she would be fired. She says she was told that if she was fired, she would have trouble finding another job, and would not be eligible to work for the employer again in any other capacity.

[27] The supervisor then recommended the Appellant resign, specifically from her position as letter carrier. The Appellant says the supervisor told her that resigning just from her position as letter carrier would mean she would still be considered an employee, it would prevent her from being fired, and then she could apply for other internal positions.

[28] The Appellant says she told the supervisor she was not sure how to write such a resignation letter, but was assured by the other lady present that the supervisor would help her with the letter.

[29] The Appellant also says that she asked to speak to a gentleman, L. (an employee who was part of her training and had helped her with applying for a permanent position) as she wanted to talk to him about this since she found the situation unusual.

[30] She says her supervisor told her not to bother talking to L., they would do it for her.

[31] The Appellant then went home. The next day she was called by the other lady who was at the meeting and was asked why she had not sent in her resignation yet.

[32] The Appellant told the other lady that she had not heard from the supervisor about how to draft the resignation letter, despite sending her an email.

[33] The Appellant says she did eventually send in her resignation that day. Later in the week she was called by L. who wanted to know why she had quit. The Appellant says she told L. that she was quitting her position as a letter carrier, but L. told her that her resignation meant she had quit from the company, not just her position.

[34] The Appellant says she was shocked when she heard this as she did not want to leave the company.

[35] She says she felt tricked by her supervisor. The Appellant says that the probationary report being full of false information to make her look bad put pressure on her to quit and her supervisor gave her false information that she could just quit her position and not quit the entire organization.

What the Commission says

[36] The Commission says they do not find the Appellant's statement she was told to quit her job credible. They say the employer's statements, that they warned the

Appellant that being fired could affect her ability to secure other jobs but did not tell her to quit, is more credible. They say the employer is more credible because the probationary report indicates the employer's willingness to help the Appellant.

[37] The Commission says it is more reasonable to conclude that the Appellant inferred from the meeting with the employer that it would be better to quit rather than be eventually dismissed if she was unable to meet the employer's job expectations. In the Commission's view the Appellant was not facing any undue pressure to quit her job.

My findings on just cause

- Undue pressure or coercion to quit

[38] I find there was no undue pressure or coercion on the Appellant to quit.

[39] I do not find the Appellant's testimony credible that she was told to hand in a resignation, or quit, during the meeting with her supervisor because it is not plausible.

[40] I find it is not plausible because it makes no sense. Creating a false probationary report and lying to the Appellant that she could just quit her position to attempt to coerce her into resigning would only bring one result, removing the Appellant as an employee. The Appellant never mentioned any problems or animosity between herself and the supervisor, or any plausible reason why the supervisor would want to try and trick her into quitting. I find it is not plausible that the supervisor would falsify a probation report and then try and trick the Appellant into quitting for no particular reason.

[41] I accept that in the meeting the Appellant had the supervisor told the Appellant that her performance was poor and that if she continued performing poorly she would be terminated. I accept this as the supervisor confirmed this was discussed in the meeting⁴ and the probationary report shows the poor performance of the Appellant.⁵

⁴ GD03-46

⁵ GD03-41 and 42

[42] However, I find a supervisor explaining to an employee how their performance is falling short of expectations, and the consequences of failing to improve, is not undue pressure or coercion. This is something a supervisor not only needs to do in their position but should do. If an employee does not know where they need to improve, they cannot make changes to their actions. Also, impressing upon the employee the importance of meeting expectations by explaining what can happen if they fail to do so, is also a legitimate part of a supervisor's job.

[43] The Appellant did send an email to her supervisor, asking for help with drafting a resignation letter and applying for another position, but I find this email is not definitive proof she was told to resign by her supervisor.

[44] Whether the Appellant sent this email because the supervisor promised to help her resign just from her position, as the Appellant argues, or whether the Appellant concluded she would try and resign her position to avoid a bad probation report and/or being terminated and wanted help from her supervisor to do so, is not conclusively proven by this email.

[45] Looking at the email in the context of all the other evidence, and my finding that the Appellant's testimony her supervisor told her to resign is not credible, I find this email is simply the result of the Appellant's desire to try and avoid being fired by attempting to quit only her position as letter carrier and hoping her supervisor can help her with this.

Reasonable alternatives

[46] I find the Appellant had the reasonable alternative of continuing to work for her employer while attempting to improve in the areas her employer wanted her to improve.

[47] This is a reasonable alternative as there was still work available for the Appellant (she testified she was offered and accepted a delivery route). While she might have been worried about being fired, she was not at the time she quit. She still had a job and she could have continued to work at it.

[48] However, even if I am wrong about my findings on the Appellant's supervisor pressuring her to quit, and her supervisor had told her to send in a resignation to avoid being fired, she would still have had a reasonable alternative to quitting.

[49] First, she could have contacted the union about what she alleges she was told at the meeting with her supervisor. While the union was not able to be at the meeting, there was nothing preventing the Appellant from contacting the union once the meeting was over. She was still an employee after the meeting, as she had not quit the day of the meeting, nor even at the start of the next day, so reaching out to the union was still possible.

[50] She also could have contacted L. after the meeting ended. The Appellant says that she wanted to speak with L., but she was afraid to do so because she was worried what would happen if she went over her supervisor's head since her supervisor had told her they would do it.

[51] However, the Appellant's testimony on this does not match her actions, nor is it logical within the context of the Appellant's own testimony.

[52] First, it is not logical within the context of the Appellant's own testimony because her fear of speaking to L. was upsetting her supervisor. However, according to the Appellant's testimony, her supervisor was already upset with her since the Appellant is alleging that her supervisor was trying to get her to quit and making false allegations in the probationary report. So not speaking with L. to try and avoid something that had, according to the Appellant, already occurred, is not logical.

[53] She also testified that L. called her at the end of that week and spoke to her about how she had actually resigned from the company, not just her position. I find the fact that the Appellant was not afraid to speak to L. later in the week shows it was a reasonable alternative to speak with him right after the meeting about what she alleges she was told to do by her supervisor.

[54] So, as I have found the Appellant had reasonable alternatives, regardless of whether she was pressured to resign or not (and I have found that she was not

pressured to resign) she does not have just cause for her voluntary leaving. This means she cannot be paid EI benefits.

Conclusion

[55] The appeal is dismissed.

[56] I find that the Appellant was not facing undue pressure to resign, neither was she coerced into resigning.

[57] However, even if I am wrong on that finding, the Appellant would still have had reasonable alternatives to quitting, so she does not have just cause for her voluntary leaving.

[58] This means she cannot be paid EI benefits.

Gary Conrad
Member, General Division – Employment Insurance Section