



[TRANSLATION]

Citation: *CC v Canada Employment Insurance Commission*, 2024 SST 630

Social Security Tribunal of Canada
General Division, Employment Insurance Section

Decision

Appellant: C. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (637987) dated January 23, 2024 (issued by Service Canada)

Tribunal member: Normand Morin

Type of hearing: Teleconference

Hearing date: March 28, 2024

Hearing participant: Appellant

Decision date: May 17, 2024

File number: GE-24-518

Decision

[1] The Appeal is dismissed.

[2] The Appellant hasn't shown just cause for leaving her job when she did.¹ The Appellant didn't have just cause because she had reasonable alternatives to leaving. This means that her disqualification from receiving Employment Insurance (EI) benefits from October 29, 2024, is justified.

Overview

[3] From April 4, 2018, to October 27, 2023, inclusive, the Appellant worked as a forklift operator and was the head of the inspection department for X (employer) and stopped working after voluntarily leaving.²

[4] On November 8, 2023, she applied for EI (regular) benefits.³ A benefit period was established effective October 29, 2023.⁴

[5] On November 30, 2023, the Canada Employment Insurance Commission (Commission) decided that the Appellant wasn't entitled to EI benefits from October 29, 2023, because she had voluntarily left her job on October 27, 2023, without good cause within the meaning of the *Employment Insurance Act* (Act).⁵ On December 7, 2023, the Commission told the Appellant of its decision in writing.⁶

[6] On January 23, 2024, after a reconsideration request, the Commission told her that it was upholding the November 30, 2023, decision about her voluntarily leaving.⁷

¹ See sections 29 and 30 of the *Employment Insurance Act* (Act).

² See GD2-6, GD3-3 to GD3-17, GD14-3, and GD14-4.

³ See GD3-3 to GD3-13.

⁴ See GD3-1 and GD4-1.

⁵ See GD4-2 and GD12-1.

⁶ See GD3-21, GD3-22, and GD4-2.

⁷ See GD2-11 and GD3-26.

[7] On February 6, 2024, the Appellant challenged the Commission's reconsideration decision before the Social Security Tribunal of Canada (Tribunal).⁸

[8] The Appellant argues that she had just cause for voluntarily leaving her job. She says that she left so she could retire because she was no longer able to perform her duties because of her condition. The Appellant says that since a workplace accident happened in April 2023, she can no longer stand or sit for long periods of time. She says that she resigned herself to retire on October 27, 2023. The Appellant argues that if she didn't leave her job at that moment, the employer would have laid her off a few weeks later because of a reduction in business activities and the shutdown of the department she worked in. She says that she is entitled to benefits.

Issues

[9] I have to decide whether the Appellant had just cause for leaving her job.⁹ I have to answer the following questions:

- Did the Appellant's job end because she left voluntarily?
- If so, did the Appellant have no reasonable alternative to voluntarily leaving?

Analysis

[10] The Act says that you are disqualified from receiving benefits if you left your job voluntarily without just cause. Having a good cause—in other words, a good reason for leaving a job—isn't enough to prove just cause.

[11] Federal Court of Appeal (Court) decisions indicate that the test for determining just cause is whether, considering all circumstances, the claimant had no reasonable alternatives to leaving their job.¹⁰

⁸ See GD2-1 to GD2-12.

⁹ See sections 29 and 30 of the Act.

¹⁰ The Court established or reiterated this principle in *White*, 2011 CAF 190; *Macleod*, 2010 CAF 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Laughland*, 2003 FCA 129; and *Astronomo*, A-141-97; *Landry*, A-1210-92.

[12] It is up to the claimant is responsible to prove that she had just cause.¹¹ 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 Claimant had just cause, I have to look at all of the circumstances that existed when she quit.

Issue 1: Did the Appellant's job end because she voluntarily left?

[13] In this case, I find that the Appellant's job did end because she voluntarily left under the Act.

[14] I find that the Appellant had the choice to continue working for the employer but decided to voluntarily leave her job on October 27, 2023.

[15] The Court tells us that when it comes to voluntary leaving, it must first be determined whether the person had a choice to stay at their job.¹²

[16] In this case, the Appellant's statements show that she made the decision to leave her job.¹³

[17] The Appellant doesn't dispute that she voluntarily left her job. I have no evidence to contradict this.

[18] I now have to decide whether she had just cause for voluntarily leaving her job and whether she had no reasonable alternative to leaving when she did.

Issue 2: Did the Appellant have no reasonable alternative to voluntarily leaving?

[19] In this case, I find that the Appellant hasn't shown that she had just cause for leaving her job when she did. She didn't have reasons the Act accepts.

¹¹ The Court established this principle in *White*, 2011 FCA 190 (para 3).

¹² The Court established this principle in *Peace*, 2004, FCA 56.

¹³ See GD2-6, GD2-12, GD3-5, GD3-6, GD3-18, GD3-23, GD3-25, and GD6-1.

[20] In my view, the Appellant had reasonable alternatives to voluntarily leaving.

[21] The statements the Commission got from the employer indicate the following:

- a) During the summer of 2023, the Appellant told the employer that she would retire in September 2023.¹⁴
- b) At the employer's request, the Appellant agreed to continue to work in September 2023, given the needs of the business.¹⁵
- c) She retired on October 27, 2023.¹⁶
- d) There was a shortage of work at the business (inspection and assembly) from October 28, 2023, to November 11, 2023.¹⁷

[22] The Appellant's statements and testimony indicate the following:

- a) She left her job to retire. She says that her retirement was voluntary.¹⁸
- b) In August 2023, the Appellant told the employer that she would be retiring. She was supposed to retire on September 2, 2023, but retired on October 27, 2023, because she agreed to continue to work until then at the employer's request. She didn't want to keep her job or continue working.¹⁹
- c) The work that she was doing required her to be very physically fit (for example, driving a forklift to move pallets, lifting heavy boxes and inspecting their contents). She was feeling tired and was less able to do her job but didn't want to take leave. She says that she resigned herself to retiring, since her condition no longer allowed her to perform her duties.²⁰

¹⁴ See GD3-20 and GD3-24.

¹⁵ See GD3-20.

¹⁶ See GD3-20.

¹⁷ See GD14-3 and GD14-4.

¹⁸ See GD3-6, GD3-18, and GD3-25.

¹⁹ See GD2-12, GD3-18, GD3-23, GD3-24, and GD3-25.

²⁰ See GD2-6, GD2-12, GD3-6, GD3-7, GD3-23, GD3-25, and GD6-1.

- d) The Appellant has back and hip pain. She says that her symptoms came from a workplace accident in April 2023 (fall). She says that she can't stand or sit for long because of the pain and symptoms (for example, numbness in her legs). The employer was aware of her situation but had no other duties to offer her.²¹
- e) After her April 2023 work accident, she didn't see a doctor. She didn't think she needed to see one. She completed an incident report with the employer but didn't take any other steps regarding this event (for example, reporting it to the *Commission de normes, de l'équité, de la santé et de la sécurité du travail* [Quebec's labour standards commission] (CNESST)). She continued to work.
- f) On May 30, 2023, she saw a chiropractor. They found that she had a hip dislocation and that her sciatic nerve was "pinched", but she could continue working. She was prescribed exercises. The Appellant saw her chiropractor again on June 6, 2023, and November 10, 2023. On November 10, 2023, the chiropractor told her there was nothing more he could do for her.²²
- g) During the period that she saw her chiropractor, she didn't see a doctor. She didn't feel like she needed to since she was seeing a chiropractor.
- h) After seeing her chiropractor on November 10, 2023, she tried to schedule an appointment with her family doctor but was only able to see him on February 20, 2024. He prescribed tests (for example, computerized axial tomography [CAT] scan) and recommended that she avoid making sudden movements. He didn't provide her with a medical attestation indicating that she was unable to work or had to leave her job for health reasons, or that she had functional limitations (for example, a weight limit for lifting).²³

²¹ See GD2-6, GD2-11, GD3-25, and GD6-1.

²² See GD3-25 and GD6-1.

²³ See GD3-25 and GD6-1.

- i) On her application for benefits, the Appellant answered “no” to the question about whether her health issues affected her decision to retire.²⁴
- j) Before leaving her job, the Appellant didn’t ask the employer for leave or a transfer.²⁵
- k) She argues that, if she hadn’t left her job on October 27, 2023, she would have been laid off after November 11, 2023, or in late November 2023 because of a shortage of work. She points out that the period from October 28, 2023, to November 11, 2023, was the last time the department where she worked was inspected. She says that she learned that three weeks after she voluntarily left, the employees of that department had been laid off. The employer didn’t tell her about a possible layoff when she told it she was going to retire or before she left her job on October 27, 2023. She says that, if she had known, she would have waited to be laid off. She points out that, if that had been the case, she could have received benefits.²⁶
- l) The Appellant says that she finds it unfair that she isn’t entitled to receive benefits after she stopped working for the employer. She points out that she has worked since the age of 16, paid EI premiums, and never abused the system.²⁷
- m) She said that she was looking for a job that would have been appropriate given her medical condition (for example, secretary, receptionist).²⁸
- n) In her application for benefits, the Appellant says that she didn’t look for another job before quitting.²⁹

²⁴ See GD3-6.

²⁵ See GD3-7 and GD3-25.

²⁶ See GD2-6, GD6-1, GD15-1, GD17-1, and GD18-1.

²⁷ See GD2-6, GD2-12, and GD3-23.

²⁸ See GD2-6 and GD6-1.

²⁹ See GD3-8.

[23] I find that the Appellant's reasons for voluntarily leaving her job don't show that she had just cause within the meaning of the Act.

[24] I find that the Appellant's decision to leave her job to retire was a personal choice.

[25] Although the Appellant argues that her physical or medical condition no longer allowed her to perform her duties, she hasn't shown that she had just cause for voluntary leaving because of health reasons.

[26] She also hasn't shown that she had functional limitations that could get in the way of performing her duties.

[27] Despite her work accident in April 2023, she continued to work and didn't see a doctor. The Appellant says that she didn't feel the need to do so. She saw a chiropractor. He said that she could continue working despite his diagnosis.

[28] I note that in her application for benefits, the Appellant also indicates that her decision to retire wasn't influenced by any medical conditions.³⁰

[29] The Court tells us that a claimant who says they left their job for health reasons must provide objective medical evidence, which not only attests to the medical condition, but also shows that the claimant was forced to leave their job for that reason.³¹ The Court says that they must show that they tried to reach an agreement with the employer to meet their particular health needs and prove that they looked for another job before leaving the one they had.³²

[30] The Appellant hasn't shown that her voluntary leaving was justified by the existence of "working conditions that constitute a danger to health or safety."³³

³⁰ See GD3-6.

³¹ The Court established this principle in *Dietrich*, A-640-93.

³² The Court established this principle in *Dietrich*, A-640-93.

³³ See section 29c(iv) of the Act.

[31] I don't accept the Appellant's argument that she would have been laid off after November 11, 2023, or around late November 2023 because of a shortage of work if she hadn't retired on October 27, 2023. The fact is that she said in August 2023 that she would be retiring on September 2, 2023.³⁴

[32] Her statements indicate that she then agreed to work until October 27, 2023, at the employer's request, given the needs of the business.³⁵

[33] In this context, I find that when the Appellant said she would retire, it wasn't foreseeable that she would be laid off in the weeks after. She continued to work several weeks after September 2, 2023, which was when she first planned on retiring.³⁶

[34] I note that the Record of Employment the employer issued, dated October 31, 2023, indicates that the Appellant stopped working on October 27, 2023, and that she was voluntarily leaving for retirement.³⁷ This document doesn't say that her job ended because of a shortage of work or because of an end of contract.

[35] I find that the Appellant's situation isn't an anticipated loss of employment within the meaning of the Act.³⁸ The evidence on file doesn't support such a conclusion.

[36] Although the Appellant argues that she has worked since the age of 16 and has paid EI premiums, this situation isn't just cause for her voluntary leaving.

[37] Contributing to the EI fund doesn't automatically entitle a claimant to benefits. They must meet all the requirements of the Act to qualify for them.³⁹

[38] The Appellant hasn't shown that her conditions had become such that they gave her just cause for voluntarily leaving her job when she did.

³⁴ See GD3-20, GD3-23, and GD3-24.

³⁵ See GD3-20 and GD3-24.

³⁶ See GD3-23 and GD3-24.

³⁷ See GD3-16 and GD3-17.

³⁸ See section 33 of the Act.

³⁹ See *D'Astoli*, A-999-96.

[39] In summary, I find that, by voluntarily leaving her job to retire, the Appellant created her own unemployment situation.

[40] I find that the Appellant had other options besides leaving her job if she didn't want to.

[41] A reasonable alternative within the meaning of the Act would have been, for example, for the Appellant to continue working for the employer while waiting to find a job that better met her expectations.

[42] Since the Appellant also raises issues related to her physical fitness or health situation, another reasonable alternative would have been for her to ask the employer for a period of leave to see a doctor to obtain medical evidence indicating that she had to leave her job for health reasons or that she had functional limitations to perform her duties.

[43] I find that the Appellant hasn't shown that she had no reasonable alternative to leaving her job.

Conclusion

[44] Considering all the circumstances, I find that the Appellant didn't have just cause for voluntarily leaving her job. She had reasonable alternatives to leaving.

[45] The Appellant's disqualification from receiving EI benefits from October 29, 2023, is justified.

[46] This means that the appeal is dismissed.

Normand Morin
Member, General Division, Employment Insurance Section