Citation: *MI v Canada Employment Insurance Commission*, 2024 SST 793

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

# Decision

| | |
|---|---|
| **Appellant:** | M. I. |
| **Respondent:** | Canada Employment Insurance Commission |

| | |
|---|---|
| **Decision under appeal:** | Canada Employment Insurance Commission reconsideration decision (654313) dated March 26, 2024 (issued by Service Canada) |

| | |
|---|---|
| **Tribunal member:** | John Noonan |
| **Type of hearing:** | Teleconference |
| **Hearing date:** | May 22, 2024 |
| **Hearing participants:** | Appellant |
| **Decision date:** | May 27, 2024 |
| **File number:** | GE-24-1605 |

## Decision

[1] The appeal is dismissed.

## Overview

[2] The Appellant, M. I., a worker residing in X, was upon reconsideration by the Commission, notified that it was unable to pay her Employment Insurance regular benefits starting February 4, 2024 because she voluntarily left her employment with X on January 31, 2024 without just cause within the meaning of the Employment Insurance Act. The Commission is of the opinion that voluntarily leaving her job was not her only reasonable alternative. The Appellant asserts that she did not resign, she was not dismissed, and she was not laid off. The Tribunal must decide if the Appellant should be denied benefits due to her having voluntarily left her employment without just cause as per section 29 of the Act.

## Issues

[3] Issue # 1: Did the Appellant voluntarily leave her employment with X on January 28, 2024?

Issue #2: If so, was there just cause?

## Analysis

[4] The relevant legislative provisions are reproduced at GD4.

[5] A claimant is disqualified from receiving EI benefits if the claimant voluntarily left any employment without just cause (Employment Insurance Act (Act), subsection 30(1)). Just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances (Act, paragraph 29(c)).

[6] The Respondent has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Appellant to demonstrate he had just cause for leaving. To establish she had just cause, the Appellant must demonstrate she had no

reasonable alternative to leaving, having regard to all of the circumstances **(Canada (Attorney General) v. White, 2011 FCA 190; Canada (Attorney General) v. Imran, 2008 FCA 17).** The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

[7] The test for determining whether a claimant had "just cause" under section 29 of the EI Act is whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment (**White 2011 FCA 190; Macleod 2010 FCA 301; Imran 2008 FCA 17; Astronomo A-141-97).** A claimant who leaves his/her employment must show that he/she had no other alternative but to do so. **Tanguay (A-1458-84)**

## Issue 1: Did the Appellant voluntarily leave her employment with X on January 28, 2024?

[8] Yes.

[9] For the leaving to be voluntary, it is the Appellant who must take the initiative in severing the employer-employee relationship.

[10] When determining whether the Appellant voluntarily left his employment, the question to be answered is: Did the employee have a choice to stay or leave? (**Canada (Attorney General) v. Peace, 2004 FCA 56).**

[11] At the time of leaving, it was the Appellant who made the decision. She advised the employer of her resignation stating the job was no longer suitable for her.

[12] Both parties agree the Appellant left this employment with X on January 31, 2024.

[13] I find that the Appellant voluntarily left this employment.

## Issue 2: If so, was there just cause?

[14] No.

[15] The Appellant, at her hearing, testified that she worked at Sorrento's as Front of House Manager and did all the admin work.

[16] She gave reasons why her husband decided to sell his interest in the business to his partner.

[17] She testified she was not fired but felt she had to resign to not create or be in an awkward situation.

[18] The Appellant here worked for X from June 16, 2012 through to January 28, 2024 before resigning.

[19] The Appellant states she felt pressured by the owner to leave. Specifically, her husband sold his share of the business to his business partner, F. replaced her. She believed it would be awkward to continue working once her husband was no longer working there and she no longer felt welcome. The Appellant is citing Section 29 (c)(xiii) of the Act "undue pressure by an employer on the claimant to leave their employment"

[20] In a statement to the Commission, the Appellant clarified that she was not pressured to leave after her husband sold his half of the business to his business partner – F.

[21] F. did not tell her to leave.

[22] She explained that it was awkward, and she believed F. wanted to hire his own relatives. She did not discuss this with him because she believed it would be awkward if she stayed. She did look for other work before leaving but did not request leave because she didn't think it would have been an option.

[23] The employer submitted that he took over the business on February 1, 2024. When the Appellant's husband left, she also decided to leave. He indicated that she

was not forced to leave, and he still calls her for help with the books. He would not have been opposed to her staying, but she never discussed it with him.

[24] The Appellant stated she did not resign, she was not dismissed and was not laid off but she did make the decision to quit.

[25] In her appeal, having had an unfavourable decision on her request for reconsideration, the Appellant asserts the employer had started training her replacement and the workplace had become toxic.

[26] If this were the case, the onus is on the Appellant to substantiate such claims.

[27] This assertion is refuted by the fact that the employer had no discussion with the Appellant regarding her plan to leave and in fact still calls her for assistance.

[28] Of course, the employer would start training a replacement given that the Appellant had given her notice to resign.

[29] Everyone has the right to leave / quit an employment but that decision does not automatically qualify one to receive EI benefits. It is inevitable that a person who has the right to receive benefits will be called upon to come forward and prove that he or she satisfies the conditions of the Act.

[30] I find that the Appellant had reasonable alternatives available to her other than leave her employment with X when she did. She could have remained employed until she sought and found other, more suitable, employment. She could have attempted mitigation with her employer regarding the possibility of perceived awkwardness issues.

[31] There is no evidence before me that the Appellant sought medical advice regarding stress issues prior to her quitting.

[32] I find that the Appellant made a personal choice to leave her employment when she did and although it may have been a good cause for her, it does not meet the standard of just cause required to allow benefits to be paid.

[33] This was confirmed at the hearing when the Appellant testified “I felt it was best if I left.”

[34] Her leaving her employment when she did not meet any of the allowable reasons outlined in section 29 (c) of the Act.

[35] Neither I, the Commission or the Tribunal has any authority to circumvent, ignore or change the legislative requirements as dictated by the Act even in the interest of compassion **(Canada (Attorney General) v. Knee, 2011 FCA 301).**

[36] Neither the Tribunal or the Commission have any discretion or authority to override clear statutory provisions and conditions imposed by the Act or the Regulations on the basis of fairness, compassion, financial or extenuating circumstances.

## Conclusion

[37] Having given careful consideration to all the circumstances, I find that the Appellant has not proven on a balance of probabilities that she had no reasonable alternative to leaving her job when she did. The question is not whether it was reasonable for the Appellant to leave her employment, but rather whether leaving the employment was the only reasonable course of action open to her (**Canada (Attorney General) v. Laughland, 2003 FCA 129**). Given the Appellant did voluntarily leave her employment, I find she had reasonable alternatives to leaving when she did and thus does not meet the test for having just cause pursuant to section 29 of the Act. The appeal is dismissed.

John Noonan

Member, General Division – Employment Insurance Section