Citation: *TA v Canada Employment Insurance Commission*, 2024 SST 1288

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	T. A.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (669993) dated June 17, 2024 (issued by Service Canada)

Tribunal member:	Audrey Mitchell
Type of hearing:	Teleconference
Hearing date:	August 20, 2024
Hearing participants:	Appellant Appellant's support person
Decision date:	August 27, 2024
File number:	GE-24-2444

Decision

[1] The appeal is dismissed. I disagree 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 left her job as a supply teacher on April 12, 2024, and applied for EI benefits. 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.

[4] The Commission says the Appellant could have stayed at her job until she found another one. It also says she could have tried to resolve her issues with her employer.

[5] The Appellant disagrees and states that her employer constructively dismissed her. She says she was subject to abusive bullying and intimidating behaviour.

[6] I must decide whether the Appellant voluntarily left her job or if she was dismissed. Depending on that, I have to decide whether has proven that she had no reasonable alternative to leaving her job or if she lost her job due to misconduct.

Issues

[7] Is the Appellant disqualified from receiving benefits because she voluntarily left her job without just cause or because she lost her job due to misconduct?

[8] To answer this, I must first address whether the Appellant voluntarily left or if she was dismissed from her job.

Analysis

The parties don't agree that the Appellant voluntarily left leaving

[9] The Commission has to show that the Appellant voluntarily left her job.[1] If it does so, then the Appellant has to show that she had just cause to leave her job. To determine if the Appellant voluntarily left her job, I have to decide if she had a choice to stay or leave.[2]

[10] In her application for benefits, the Appellant said she was dismissed from her job, but her employer didn't tell her why. She said her hours were reduced from five to two days a week without her consent and without notice or discussion.

[11] The Commission spoke to the Appellant's employer. The employer said the Appellant quit over email but didn't give a reason why. The employer said the Appellant was on a supply contract, on call, and confirmed that the week she quit, the Appellant was scheduled to work two days. The employer said the Appellant wasn't guaranteed a certain number of hours; rather, she was scheduled according to the employer's needs.

[12] The employer sent a copy of the Appellant's resignation email. In the email, the Appellant cites constructive dismissal. In a follow-up email, the Appellant confirmed that her resignation was effective April 18, 2024.

[13] The Appellant testified that she didn't voluntarily leave her job. She said she was dismissed and that it was because she asked for pay for sick days she had taken.

[14] I don't accept the Appellant's evidence that her employer dismissed her. She testified that her hours were reduced from full-time hours for no reason, and this was a surprise to her. But I find that she had a choice to stay or leave. Even though she believes her employer constructively dismissed her, I find that the Appellant acted on

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[1] See *Green v Canada (Attorney General)*, 2012 FCA 313; *Canada (Attorney General) v White*, 2011 FCA 190.
[2] See *Canada (AG) v. Peace*, 2004 FCA 56.

this belief and sent her employer an email resigning from her job. I find that this means that she voluntarily left her job.

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

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

[16] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[3] Having a good reason for leaving a job isn't enough to prove just cause.

[17] 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. It says that you have to consider all the circumstances.[4]

[18] It is up to the Appellant to prove that she had just cause.[5] 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.

[19] A claimant has just cause for voluntarily leaving a job if they had no reasonable alternative to leaving.[6] This includes harassment.[7] But a claimant should discuss working conditions with an employer to see if the employer can change the conditions in response to the claimant's concerns.[8]

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[3] Section 30 of the *Employment Insurance Act* (Act) explains this.
[4] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[5] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[6] See section 29(c) of the Act.
[7] See sections 29(c)(i) of the Act.
[8] *Canada (AG) v. White, 2011* FCA 190; *Canada (AG) v. Hernandez*, 2007 FCA 320; *Canada (AG) v. Murugaiah*, 2008 FCA 10.

[20] The Appellant sys she was constructively dismissed when her employer reduced her hours without her consent. She says this happened right after she questioned not getting paid for two sick days.

[21] The Commission says the Appellant didn't have just cause, because she had reasonable alternatives to leaving when she did. Specifically, it says the Appellant could have continued to work at her job until she found another one, or until she resolved her issues with her employer.

[22] I find that the Appellant had reasonable alternatives to leaving her job when she did.

[23] The Appellant worked as a supply teacher. She said she wasn't hired to replace regular teachers who were away. She testified that each class has a permanent teacher and a supply teacher.

[24] The Appellant could not work for two days in November 2023, because she was sick. But she didn't get paid for those two days. The Appellant sent the Commission copies of text message between herself and the employer. The Appellant told her employer on December 22, 2023, that she didn't get paid for the two days. She asked the employer to look into it.

[25] On April 8, 2024, the Appellant sent the employer another text message about the sick days. She asked that she get paid for the two days. The employer responded by saying that sick days are for the calendar year and if it was to pay her, the two sick days would be taken from her three-day allotment for 2024. The employer added that sick or vacation days were supposed to be noted on timecards. The Appellant replied by saying that she should not have to use her 2024 sick days, and she hoped the issue could be resolved.

[26] The employer responded to the Appellant's text message on April 10, 2024. It said that December 22, 2023, was too late to bring up the issue of the sick days since the next pay was January 5, 2024. The employer again reminded the Appellant to write

down any absences, sick or vacation days on her timecards. The Appellant replied that she had raised the issue before December 22.

[27] In a final text message sent on April 11, 2024, the employer told the Appellant to stop blaming others for her mistake. The employer also said that it would include one sick day in her current pay.

[28] The Appellant told the Commission that she had been working five days a week. She said that suddenly, she got a schedule that had her working only two days a week. She said she asked her employer about it. The employer said it would call her as needed. The Appellant linked the reduced hours of work to her questions about the two sick days. She said that this is the reason her employer constructively dismissed her.

[29] The employer sent the Commission a copy of the Appellant's contract. It has a section on hours and scheduling. It says the Appellant's hours would be scheduled based on the employer's needs. It also says that if the number of children goes down and below ratios required by the Ministry, the supervisor can reduce a teacher's designated hours.

[30] I asked the Appellant about the supply contract and what it said in the hours and scheduling section. The Appellant responded by saying she was on a full schedule, working five days a week for months. She questioned why this would change.

[31] The employer spoke to the Commission about the Appellant's schedule. It said that the Appellant was scheduled to work a lot of shifts between October 2023 and April 2024, because most of its permanent teachers were away on vacation.

[32] I asked the Appellant about what the employer told the Commission. She said it isn't true. She said she had worked for the employer since November 2022 and nothing like that happened. She said the other teachers did take vacation, but it didn't affect her hours.

[33] I asked the Appellant if she always worked full-time hours. She said she had, since the beginning. She explained that the employer had two locations, and she

worked every day between the two locations. She said the employer didn't go according to the contract; she was given full-time work. The Appellant referred to her record of employment (ROE). She said it shows that she was working full-time. She added that she was on every week's schedule.

[34] The Appellant said in her notice of appeal that she had worked full-time from September 2023 to April 2024. She testified that she worked full-time since November 2023. And then she testified that she had always worked full-time hours. I asked her to explain the apparent difference in her evidence and pointed out that the pay shown on the ROE fluctuated in the different pay periods.

[35] The Appellant replied to my question by saying she was working full-time since September 2023. She said the reason for the fluctuation in pay over different pay periods is that she was on vacation one time for almost 10 days, and there were statutory holidays around Christmas and Thanksgiving. She also referred to the two sick days that she didn't get paid for and said there were mistakes on her paycheques.

[36] The Appellant then said about working full-time since September that she meant that she was given a schedule every week, and that she was on the schedule. She explained that at the beginning, she was on call, and the employer called her every day to cover needs at two of its locations. But by September 2023, she was given a schedule like all other teachers to work five days a week.

[37] I don't find that the Appellant's testimony about her work for the employer was clear and forthright. The following are some examples of why I don't find that her evidence is reliable.

[38] When I asked the Appellant about the hours and scheduling section in her contract, the Appellant said she wasn't on call but that the employer had made the Commission understand that she was. But she later testified that when she started her job, she was on call and the employer called her every day.

[39] The Appellant confirmed the employer's statement to the Commission that she wasn't guaranteed full-time hours. So, I accept the Commission's evidence from the

employer as fact that it scheduled the Appellant to work based on its needs. I find that in this sense, the Appellant was an on-call worker, and the employer could schedule her to work in advance or day-to-day as stated in the contract.

[40] The Appellant testified that the employer didn't give her a new contract as a full-time teacher. She said they should have changed the contract but didn't. She then said the employer told her sometime between April and June 2023, that the original contract was invalid. But the employer told the Commission the Appellant was on a supply contract, on call, and it sent the copy of the contract to the Commission. So, I find it unlikely that the employer told the Appellant that the contract was invalid.

[41] The Appellant added that in fact, she was full-time all summer 2023. She said she wasn't given a schedule, but the employer told her verbally to come in every week. But the ROE shows earnings from a low of $728 to a high of $1,601.95 in pay periods 18 to 22, which fell in the summer of 2023.

[42] The employer told the Commission that it could schedule the Appellant for a shift between 7:00 and 6:00 p.m., Monday to Friday. It said it could also contact the Appellant in the morning for additional shifts, if needed. And even though the employer did confirm that the Appellant had been working full-time for months as justification to pay her the two sick days for 2023, I don't find that this means that by not putting the Appellant on a full week's schedule for the week of April 15, 2024, the employer constructively dismissed her.

[43] I from the evidence that the Appellant was hired on a supply contract to work as a teacher. I find that at the start, she was called to work based on the employer's needs. I find that as the employer's needs changed, it added the Appellant to a more routine schedule for several months so that the Appellant was working close to or at full-time hours. But I also find that the employer's needs changed again, at least for the week of April 15, 2024, and it scheduled the Appellant to work for two days. Again, I don't find that this means that the employer constructively dismissed the Appellant.

[44] I agree that the timing of the Appellant's last text message exchange with the employer happened around the time that the Appellant's hours for the following week were reduced. But I'm not persuaded that the reason is that the Appellant asked again to be paid for the two sick days she took in November 2023. Apart for what appears to be the employer's frustration with the back-and-forth, the employer gave the Appellant what I find is a reasonable explanation for not paying the sick days; the Appellant didn't report them on her timecard. And the employer compromised by agreeing to pay the Appellant for one of the sick days.

[45] Despite the Appellant's statement that there was no change in the number of children at school for the week of April 15, 2024, I give more weight to the Commission's evidence that supply teachers replaced permanent teachers. I do so because the Appellant gave an example in her testimony about a permanent teacher who had returned to work and the need to reduce one supply teacher in that class.

[46] In her notice of appeal, the Appellant referred to abusive bullying, and intimidating behaviour from her employer. I asked her about this. The Appellant said it was the owner of the centre who was bullying and intimidating her. She referred to the owner's response to her request for sick pay when she was told to stop blaming others for her mistake.

[47] I asked the Appellant if she had any conflict with the owner before. She said she wasn't dealing with her much. I asked if she had experienced any bullying, harassment, or intimidation before the text message from the owner. The Appellant said there were two owners. She said she felt unwelcome, and when they came into the classroom, they didn't say hi and they spoke with other teachers who spoke the same language as they did, and sometimes they laughed. So, she felt humiliated and isolated. She said this happened two or three times.

[48] I accept as fact that the Appellant may have been uncomfortable when the owners came into her classroom and spoke to other teachers in a language she could not understand. But I don't find that this in any way shows that the owner who sent her the text message was bullying, harassing or intimidating her. The Appellant testified that

she could not stay at this job because it was a toxic environment. Given my assessment of the Appellant's testimony as noted above, I find this testimony exaggerated. And I do so even though the employer agreed that its language in the last text message the owner sent to the Appellant was inappropriate.

[49] I asked the Appellant why she could not have stayed at her job while she pursued a complaint with the Ministry of Labour. As noted above, the Appellant said she could not because of the toxic environment. I have already found that this reason was exaggerated. And the Appellant submitted an email from her former employer showing that her complaint to the Ministry of Labour led to her getting the second of the two days' sick paid and agreement from the employer that its comments were inappropriate. I find that this supports that she quit before trying another way to resolve her conflict with her employer.

[50] The Appellant also said she could not stay at her job because she could not afford to work only two days a week. She said she needed an income to support her family. I understand this but find that the Appellant placed herself in a position of earning no income by leaving her job when she did. I find that she could have stayed at the job until she found another job with more weekly hours or until she found a job to supplement her existing income.

[51] Based on the above, I find that the Appellant had reasonable alternatives to leaving her job. So, I find that she hasn't shown that she had just to leave her job when she did.

Conclusion

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

[53] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section