



Citation: *NC v Canada Employment Insurance Commission*, 2024 SST 1718

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: N. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (665119) dated May 17, 2024
(issued by Service Canada)

Tribunal member: Katherine Parker

Type of hearing: Teleconference

Hearing date: July 16, 2024

Hearing participant: No Parties attended the hearing

Decision date: July 16, 2024

File number: GE-24-2177

Decision

[1] The appeal is allowed. The General Division agrees with the Appellant.

[2] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving her job when she did. The Appellant had just cause because she had no reasonable alternative to leaving. This means she isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant left her job on July 11, 2023, 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] I have to decide whether the Appellant has proven that she had no reasonable alternative to leaving her job.

[5] The Commission says that, instead of leaving when she did, the Appellant could have taken an extended leave. The Commission didn't provide an analysis of the Appellant's allegation of harassment and bullying, or working in unsafe conditions.¹

[6] The Appellant disagrees and says that she was being bullied, harassed and forced to work in a toxic environment. She said she was exposed to sexual assault by a customer, exposed to regular racial and anti-LGBTQ2S+ comments from management, and forced to do tasks that were unsafe.

¹ Section 29(c) of the *Employment Insurance Act* (the Act) states some of the reasons for just cause to quit a job. Section 29(c)(i) says that harassment or sexual harassment is considered just cause.

Matter I have to consider first

The Appellant wasn't at the hearing

[7] The Appellant wasn't at the hearing. A hearing can go ahead without the Appellant if the Appellant got the notice of hearing.² I think that the Appellant got the notice of hearing because a courier package was received on July 3, 2024, with the information for the hearing. A voice message was left for her on the phone on file on July 9, 2024. The helpdesk tried to call her during the hearing and left a detailed voice message. I waited half an hour, and the party didn't show up. So, the hearing took place when it was scheduled, but without the Appellant.

Issue

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

[9] 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

The parties agree that the Appellant voluntarily left

[10] I accept that the Appellant voluntarily left her job. The Appellant agrees that she quit on July 11, 2023. I see no evidence to contradict this.

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

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

² Section 58 of the *Social Security Tribunal Rules of Procedures* sets out this rule.

[12] 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.

[13] 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

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

[15] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I have to look at.⁶

[16] 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.⁷

The circumstances that existed when the Appellant quit

[17] The Appellant says that two of the circumstances set out in the law applies. Specifically, she says that she was being harassed⁸ and forced to work in unsafe conditions.⁹ The Appellant provided detailed submissions, including a submission she made to the Ministry of Labour. These submissions are detailed in GD2 and GD3. They include the following allegations.

- On January 14, 2023, a customer made inappropriate comments to her. He returned an hour later and exposed himself to her.

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 4.

⁶ See section 29(c) of the Act.

⁷ See section 29(c) of the Act.

⁸ See section 29(c)(i) of the Act.

⁹ See section 29(c)(iv) of the Act.

She complained to her manager, B., and wrote an incident report. It wasn't investigated by the employer. The customer wasn't banned, and her manager made light of the incident saying, "You're not over that yet?"¹⁰

- A colleague told the Appellant that she had been instructed by B., to try and make her quit. This colleague said that B. told her, "Just push her to the limits and I will step in to finish it."¹¹
- B. started docking the Appellant one hour per day of wages. She had been getting nine hours a day, including paid breaks. B. decided to stop paying for one hour but continued paying other workers. When the Appellant confronted B., he said he didn't need her there, but needed the others. This was said in front of colleagues, and she was embarrassed and humiliated. She felt degraded.
- The Appellant was forced to use and clean a bathroom facility that wouldn't lock. She said she had to put her hand into the toilet with unknown substances that were visible. She said she felt threatened by this and unsafe using the bathroom.
- The Appellant said that B. made derogatory comments about transgender people. She said the slur was directed at her because of some family and friends who identified as transgender. She said that B. also made shaming remarks about a coworker who had a physical disability which she found offensive.

[18] The circumstances that existed when the Appellant quit were just cause for leaving. I find that the Appellant was being harassed. This is just cause under section 29(c)(i) of the Act. Here are my reasons for finding harassment.

¹⁰ See GD2-5.

¹¹ See GD2-5.

- The Appellant provided detailed submissions that the employer, and specifically, B., ignored her complaint about being sexually assaulted. He refused to provide her with the video and didn't ban the customer or take any action. He allowed the customer to continue shopping there.
- The Appellant was a young person aged 19. She felt unsafe and experienced severe anxiety after this incident. Her mother had to drive her to work when she was scheduled early in the morning and wait until others arrived. She was afraid to be alone in the store.
- B. told colleagues to push her to the limit and he would finish the job. This is harassment and evidence that B. was trying to force the Appellant to quit.
- B. made discriminatory comments about family and friends of the Appellant, and she felt unsafe and unwelcome in that environment.
- B. docked the Appellant an hour a day but didn't dock others. He was treating her differently.

[19] I agree with the Appellant when she says in her submissions, if this isn't just cause what, then what is?¹² I am very unclear why the Commission didn't consider this harassment because the Commission didn't provide an analysis of section 29(c) in its submissions.

[20] I find that the allegation of being forced to work in an unsafe environment as stated in section 29(c)(iv) to be unfounded. The work environment may have posed unsafe conditions, but the Appellant could have used safety gear and personal protection when required to clean the toilet. She could have looked for another bathroom facility to use if the one offered wasn't safe.

¹² See GD2-8.

[21] The Appellant made a complaint to the Ministry of Labour for unsafe work environment and unfair payment of wages. She said she received a decision from the Ministry and the employer was required to pay her for the hour. This substantiates what she has said about being unfairly treated.

[22] The Appellant only needs one reason for just cause. That reason is because she was being harassed by her employer.

The Appellant had no reasonable alternative

[23] I must now look at whether the Appellant had no reasonable alternative to leaving her job when she did.

[24] The Appellant says that she had no reasonable alternative because she felt unsafe and harassed at work. It was a toxic environment, and she was being bullied.

[25] The Commission disagrees and says that the Appellant could have taken an extended leave.

[26] I find that the Appellant had no reasonable alternative but to quit when she did.

- The Appellant made complaints to the manager B.. However, B. ignored her complaints and made light of sexual assault.
- The Appellant couldn't be transferred because the nearest location was one hour away.
- The degrading comments were causing her mental health to suffer. She did seek treatment, but the toxic work environment didn't help.

- The Commission said that an extended leave was a reasonable alternative to quitting. However, the Commission provided no evidence that the employer had an extended leave policy or that it would have been approved. I'm unclear how an extended leave could have changed harassment in the workplace that included feeling physically unsafe and exposed to possible sexual assault. It isn't a reasonable alternative in this circumstance.

[27] Considering the circumstances that existed when the Appellant quit, the Appellant had no reasonable alternative to leaving when she did, for the reasons set out above.

[28] This means the Appellant had just cause for leaving her job.

Conclusion

[29] I find that the Appellant isn't disqualified from receiving benefits.

[30] This means that the appeal is allowed.

Katherine Parker
Member, General Division—Employment Insurance Section