



Citation: *JC v Canada Employment Insurance Commission*, 2024 SST 1725

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

## **Decision**

**Appellant:** J. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (632487) dated January 9, 2024  
(issued by Service Canada)

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**Tribunal member:** Susan Stapleton

**Type of hearing:** Videoconference

**Hearing date:** March 7, 2024

**Hearing participant:** Appellant

**Decision date:** March 27, 2024

**File number:** GE-24-357

## Decision

[1] The appeal is allowed. The Tribunal 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 as a personal care attendant, on April 23, 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 continued working while searching for another job, rather than quitting her job and then looking for another one. It says she could have tried to get an acceptable medical note from her doctor recommending that she leave her employment if it was the cause of her illness, or she could have considered asking her employer for another period of leave.<sup>1</sup>

[6] The Appellant disagrees and says that she was being bullied at work, and she had to have therapy because of stress from her job.<sup>2</sup> Her husband had gone to another province to work, and she was caring for her adult daughter, who has mental disabilities, on her own.<sup>3</sup> She says that after seeking a counselor's advice due to her mental health, she had no other choice but to resign.<sup>4</sup>

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<sup>1</sup> See GD4-6.

<sup>2</sup> See GD3-9.

<sup>3</sup> See GD3-39.

<sup>4</sup> See GD2-6.

## Issue

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

[8] 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**

[9] I accept that the Appellant voluntarily left her job. The Appellant agrees that she quit on April 15, 2023. I see no evidence to contradict this.

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

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

[11] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>5</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[12] 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.<sup>6</sup>

[13] 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.<sup>7</sup>

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<sup>5</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>6</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>7</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

[14] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when she quit. The law sets out some of the circumstances I have to look at.<sup>8</sup>

[15] 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.<sup>9</sup>

### **The circumstances that existed when the Appellant quit**

[16] The Appellant says that two of the circumstances set out in the law apply. Specifically, she says that her working conditions posed a danger to her health and safety, and that she was being bullied by her manager.

### **Working conditions that constitute a danger to health or safety**

[17] The law says that a claimant who experiences working conditions that constitute a danger to health or safety has just cause for leaving if they had no reasonable alternative but to quit.<sup>10</sup>

[18] Where a claimant says they quit their job because their working conditions were dangerous for their health or safety, they usually need to:

- (a) provide medical evidence;<sup>11</sup>
- (b) attempt to resolve the problem with the employer;<sup>12</sup> **and**
- (c) attempt to find other work prior to leaving.<sup>13</sup>

[19] The Commission says that the Appellant initially declared that she didn't receive advice from a doctor prior to her decision to quit her job. She later said that her counsellor had advised her that she may have to look for work in another field, and then

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<sup>8</sup> See section 29(c) of the Act.

<sup>9</sup> See section 29(c) of the Act.

<sup>10</sup> See section 29(c)(iv) of the Act.

<sup>11</sup> See *CUB 11045*.

<sup>12</sup> See *Hernandez 2007 FCA 320* and *CUB 21817*.

<sup>13</sup> See *Murugaiah 2008 FCA 10* and *CUBs 18965* and *27787*.

reported that her counsellor advised her to leave her job and find another profession. It says I should place more weight on the Appellant's first statement, which she made prior to becoming aware of the impact her statements would have on her potential entitlement to benefits. It says her initial statements clearly indicate that she quit her job because she didn't want to work in the healthcare field anymore, and that her decision was not based on the direction of her counsellor or her doctor.<sup>14</sup>

[20] The Appellant said in her application for benefits that she had been in therapy, and because of the stress of her job, due to the kind of work she was doing and being bullied, she had to resign before she totally had a breakdown. She said she would be looking for a new occupation.<sup>15</sup>

[21] During her first phone call with the Commission on May 31, 2023, the Appellant said that she couldn't continue working in the long-term care facility, dealing with people who have dementia. She said she has an adult daughter with autism, and that she had a lot of stress in her life. She reported taking sick leave due to stress for 15 weeks, from January 2023 to March 2023. She said she didn't want to work in healthcare anymore, and that her counsellor told her in March that she may have to look for work in another field. She lives in Newfoundland, and she said that her husband was working in Alberta. She said she applied for truck driving jobs in Alberta at the beginning of April 2023.<sup>16</sup>

[22] On June 5, 2023, the Appellant told the Commission that her reasons for quitting her job included, in order of priority, stress outside of the job, workplace stress, to follow her family member to work in another location, and to pursue another field of work.<sup>17</sup>

[23] On June 30, 2023, the Appellant told the Commission that she left her job due to mental health issues.<sup>18</sup>

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<sup>14</sup> See GD4-4-5.

<sup>15</sup> See GD3-9.

<sup>16</sup> See GD3-24.

<sup>17</sup> See GD3-28.

<sup>18</sup> See GD3-36.

[24] In her request for reconsideration form, the Appellant said her job was damaging to her mental health. She said that after counselling and visits to her doctor, she was advised to seek employment elsewhere and change careers. She said that her work environment involved constant outbursts, hitting, and being cursed at. She said her daily routine included mental health issues, both at work and at home. So, she decided to join her husband and find a job in Alberta.<sup>19</sup>

[25] During the reconsideration process, the Appellant told the Commission that she had been on medical leave from April 6, 2022 to May 24, 2022 and from January 2023 to March 2023. She said that she quit her job because she worked with dementia patients and felt the physical and mental strain was a lot for her to handle. She said that her daughter was going through a mental breakdown at the time, and she was dealing with the stress. She said her employer was aware of the issues with her daughter, but no consideration was given. Her employer denied her request to take a leave of absence or vacation time, and she didn't have any sick days left. She said her counsellor advised her to leave her job and find another profession, or she was going to be in a very bad state mentally. She decided it was time to quit and change careers.<sup>20</sup>

[26] There are two reports on file from the Appellant's counsellor. On June 13, 2023, the counsellor said that she had seen the Appellant four times since February 27, 2023. She said the primary focus of her sessions with the Appellant had been her experience of being bullied/harassed at work. She noted that the Appellant had an adult daughter with exceptionalities, and that she managed her care. She said that at the time when the Appellant left her job, she was struggling with managing stress in her personal life, as well as the pressure and stress she was experiencing at work. She said that she would suggest that the Appellant needed time off work given the level of stress and anxiety that she presented with during her sessions.<sup>21</sup>

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<sup>19</sup> See GD3-39-40.

<sup>20</sup> See GD3-44.

<sup>21</sup> See GD3-32.

[27] In a second June 13, 2023 report, the Appellant's counsellor added that during her initial session, they discussed seeking alternative types of work that would relieve her from the caregiving role. She said she supported the Appellant's plan to seek alternative types of work outside of caregiving.<sup>22</sup>

[28] In a June 13, 2023 letter, the Appellant's doctor said that the Appellant had been struggling with family and work-related stressors since February 2023. The doctor noted that the Appellant had seen her counsellor a couple of times between February and June, and that it appeared she had a very hard time managing the stress in her life at the time she left her employment. The doctor said the Appellant may need some additional time to find new employment.<sup>23</sup>

[29] The Appellant testified as follows:

- After working for the employer as a personal care attendant for awhile, she noticed her mental health was deteriorating. She was crying a lot, very disturbed, her anxiety level was through the roof, and she was having little breakdowns.
- The dementia patients that she cared for hurt her. A male resident dislocated her thumb, and she still gets cortisone shots for that every three months. She has been beaten in the head to the point where she had to be sent home. She has been kicked and punched. Nothing was done about this abuse, because the patients have dementia.
- Her job was very physical, with a lot of lifting and pulling. She often had to do physical tasks by herself, because they were short-staffed. She is only 5 feet tall, and she weighs 104 pounds.
- She had a formal accommodation to work night shifts and not be mandated to stay later in the mornings, because of her difficulties with finding reliable daytime care for her daughter. Her daughter required 24-hour care. She couldn't leave

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<sup>22</sup> See GD3-35.

<sup>23</sup> See GD3-34.

her daughter at home alone, because she was a runner and would run away. She couldn't stay longer after her overnight shifts ended, because she didn't have consistent daytime care for her daughter. Her manager wanted to mandate her to stay longer after her night shifts, and she would try to make her stay.

- She did get scheduled to work some daytime shifts, but if her daughter's caregivers didn't show up, she would have to go home. On one occasion when this happened, her manager called her and told her, "When you step in that door, Western Health owns you, and until we give you permission to leave, you do not leave." She said her manager had no compassion or consideration, and that she bullied her on several occasions. Her manager didn't like it that she had an accommodation to work night shifts. One time, she tried to mandate her to stay late four shifts in a row.
- She put in a formal complaint about her manager. She had a meeting with Human Resources and her union. She told them her manager was bullying her and giving her ultimatums, because she didn't agree with her having an accommodation. The meeting didn't help her situation, it only resulted in her being suspended without pay for one day, because she didn't speak respectfully with her manager. Her manager wasn't respectful towards her either, but there was no consequence for her manager.
- In January 2023, she saw her doctor. Her doctor said she could see she was deteriorating, and she needed to take some time off work. Her doctor recommended she see a counsellor, which she did. Her doctor said, "you need time for yourself and to get away, or this will take you down." She suggested she discuss finding another job with a counsellor.
- She went to Alberta while she was on sick leave from January to March 2023, to be with her husband and look for work there. The company her husband works for told her they would hire her as a truck driver, under their new driver program,



when the new contracts came out. There was no formal job offer, and she didn't know when the job would start.

- She started regular counselling in February 2023, and had virtual counselling sessions while she was in Alberta. Her counsellor's advice was to find a different career, because her job, combined with caring for her daughter, was "breaking her physically, emotionally, and mentally." She told her to "get out now while you still have your mental health." She suggested that she join her husband in Alberta and come up with a resolution for their daughter's fulltime caregiver needs.
- While she was off on sick leave from January to March 2023, she got her daughter set up in her own apartment with 24-hour care.
- She returned to work, but she couldn't continue in her job. She was at the end of her rope and felt that if she continued to do that job, it was going to ruin her. She was having suicidal thoughts and had reached her breaking point. She felt she had no choice but to quit her job, before she had a mental breakdown.
- She went to Alberta to work in September 2023, and was laid off in November 2023. When the new contracts start again, she will return to her job in Alberta.

[30] I find that the Appellant's working conditions constituted a danger to her health and safety.

[31] The Commission says I should place more weight on the Appellant's first statement, which she made prior to becoming aware of the impact her statements would have on her potential entitlement to benefits. It says her initial statements clearly indicate that she quit her job because she didn't want to work in the healthcare field anymore, and that her decision was not based on the direction of her counsellor or her doctor.<sup>24</sup>

[32] I acknowledge that the Appellant had significant stressors outside of work, related to caring for her daughter, and her husband working in a different province.

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<sup>24</sup> See GD4-4-5.

However, the Appellant said in her application for benefits that she was in therapy because of stress from her job, and she had to resign before she had a breakdown. In her request for reconsideration form, she said her job was damaging to her mental health. She consistently reported to the Commission that she quit her job because of its negative impact on her mental health. She testified that her job was destroying her mental and physical health, that she was on the verge of a mental breakdown, and that she was having suicidal thoughts. She testified that her doctor and her counsellor recommended to her that she find a different job, while she still had her mental health.

[33] I found the Appellant to be credible in the entirety of her testimony. This is because she provided her testimony directly to me under affirmation, and answered my questions in a manner that was straightforward and consistent throughout the hearing. Her testimony was consistent with what she told the Commission, and with the evidence she submitted that is on the file.

[34] For these reasons, I find that at the time that she quit, the Appellant's job constituted a danger to her health and safety.

[35] I therefore find that this circumstance applies.

### **Antagonism with a supervisor**

[36] The law says that where there is antagonism with a supervisor and the claimant is not primarily responsible for the antagonism, the claimant has just cause for leaving if they had no reasonable alternative but to quit.<sup>25</sup>

[37] The Appellant testified that her manager didn't agree with her having an accommodation to work night shifts and not be mandated to stay longer at the end of her shifts. She said she had this manager for the last six months she worked for the employer. She said her manager bullied her and gave her ultimatums, telling her that if

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<sup>25</sup> See section 29(c)(x) of the Act.

she didn't stay longer at work, there would be consequences. She said that one time, her manager tried to mandate her to stay longer four shifts in a row.

[38] Antagonism has been defined as a form of hostility or attitude, which in most cases cannot be detected or determined by what may have occurred in one incident or in one dispute.<sup>26</sup> The antagonism has to occur independently from the will or participation of the claimant and is beyond their control.<sup>27</sup>

[39] A claimant doesn't have just cause for leaving employment merely because of a disagreement with a supervisor's instructions, or the way the supervisor ran the department.<sup>28</sup>

[40] I accept the Appellant's testimony about her manager's behaviour. I find that the manager's unwillingness to respect the Appellant's accommodation, and her related mistreatment of the Appellant, constitutes antagonism for which the Appellant was not responsible.

[41] I therefore find that this circumstance applies.

### **Other considerations**

[42] I have also considered whether any additional circumstances set out in the law apply.

[43] I have considered whether the Appellant had an obligation to care for a child or a member of the immediate family.<sup>29</sup> The Appellant didn't argue that she quit her job for this reason. While she said that she had difficulty with her manager respecting it, she had an accommodation to work night shifts, so that she could care for her daughter during the day. I therefore find that this circumstance doesn't apply.

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<sup>26</sup> See *CUB 36792*.

<sup>27</sup> See *Smith v Canada (Attorney General)*, A-875-96 (FCA).

<sup>28</sup> See *CUBs 16911, 52228, and 22680*.

<sup>29</sup> See section 29(c)(v) of the Act.

[44] I have also considered whether the Appellant had a reasonable assurance of another employment in the immediate future.<sup>30</sup> The Appellant also didn't argue that she quit her job for this reason. To show that she had a reasonable assurance of another employment in the immediate future, within the meaning of the *Act*, the Appellant must show three things:

- when she quit, she had to know she would have another job;
- she had to know what that job would be; and
- she had to know when in the future that job would start.<sup>31</sup>

[45] The Appellant testified that she didn't have a formal job offer when she quit. So, she didn't know she would have another job when she quit. She said her husband's employer told her it would hire her under its new driver program as a truck driver, when the new contracts came out. She didn't know when the new contracts would come out, so she didn't know when in the future the potential job would start.

[46] I therefore find that the Appellant didn't have a reasonable assurance of another employment in the immediate future. So, this circumstance doesn't apply.

[47] So, the circumstances that existed when the Appellant quit were that she was experiencing antagonism from a supervisor that she wasn't responsible for, and her job conditions constituted a danger to her health and safety.

### **The Appellant had no reasonable alternative**

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

[49] The Commission says that the Appellant could have continued working while she looked for another job, instead of quitting her job and then looking for another one. It says she could have tried to get an acceptable medical note from her doctor

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<sup>30</sup> See section 29(c)(vi) of the *Act*.

<sup>31</sup> See *Canada (Attorney General) v Bordage*, 2005 FCA 155.

recommending that she leave her employment if it was the cause of her illness, or she could have considered asking her employer for another period of leave.

[50] The Appellant disagrees and says that she had no reasonable alternative because she was being bullied by her manager, abused by the patients she cared for, and was on the verge of a mental breakdown.

[51] I find that continuing to work while she looked for another job was not a reasonable alternative to the Appellant quitting when she did. Although the medical note she provided from her doctor doesn't specify that the doctor advised her to find a different job, because her job with the employer was a danger to her health, I found the Appellant's testimony to that effect to be credible and persuasive.

[52] The Appellant's counsellor confirmed in her report that she and the Appellant talked about her looking for a different type of work, right from their initial session. She said she supported the Appellant in looking for work outside of the caregiving role. I accept the Appellant's testimony regarding the advice she was given by her counsellor, namely that she should leave her job before her mental health collapsed, and that she was on the verge of that happening at the time when she quit. I note in that regard that the Appellant testified that she was even beginning to have suicidal thoughts. Continuing to work while looking for another job was therefore not a reasonable alternative for the Appellant.

[53] I asked the Appellant whether taking another leave from work was an option for her. She said that her employer denied her request to take a personal leave, as well as her request to take vacation time that she had banked. She was also out of sick days, so she couldn't take another sick leave. So, I find that asking the employer for another period of leave was not a reasonable alternative for the Appellant.

[54] When I consider all of the Appellant's circumstances, I find that she had no reasonable alternatives to leaving her job when she did. This means the Appellant had just cause to voluntarily leave her job.

## **Conclusion**

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

[56] This means that the appeal is allowed.

Susan Stapleton

Member, General Division – Employment Insurance Section