



Citation: *Canada Employment Insurance Commission v PS*, 2025 SST 408

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: P. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (695998) dated December 11,
2024 (issued by Service Canada)

Tribunal member: Susan Stapleton

Type of hearing: Teleconference

Hearing date: January 14, 2025

Hearing participant: Appellant

Decision date: January 20, 2025

File number: GE-24-4067

Decision

[1] The appeal is allowed.

[2] The Canada Employment Insurance Commission (Commission) has not met its burden to show that the Appellant voluntarily left her job. So, the Appellant isn't disqualified from receiving employment insurance (EI) benefits.

Overview

[3] The Appellant worked for the employer, who operates a chain of pet supply stores, as an operations manager, beginning in November 2023. Her job ended in August 2024. She applied for EI benefits on August 13, 2024.

[4] 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.

[5] I must decide whether the Appellant voluntarily left her job, and if she did, whether she has proven that she had no reasonable alternative to doing so.

[6] The Commission says that the Appellant voluntarily left her job and had reasonable alternatives to leaving. It says she could have returned to work and asked the employer to discuss her concerns, taken a leave of absence to find alternate care for her child if she had concerns of being an extra 20-minute drive away, or contemplated on leaving the job and its consequences.¹

[7] The Appellant disagrees. She says she didn't voluntarily leave her job. She says she was constructively dismissed from her job. Her work location was changed to a different store, a significant distance away, without consulting her. Her job responsibilities were also changed dramatically. Her work environment was toxic.² The

¹ See GD4-5.

² See GD3-51.

employer pushed her out of her job to cut costs. She was willing to continue working at her original work location.³

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 whether the Appellant voluntarily left her job. If I find that she voluntarily left her job, I then have to decide whether she had just cause for leaving.

Analysis

[10] The law says that you are disqualified from receiving EI benefits if you left your job voluntarily and you didn't have just cause.⁴ Having a good reason for leaving a job isn't enough to prove just cause.

The Appellant didn't voluntarily leave her job

[11] The Commission has to prove on a balance of probabilities that the Appellant voluntarily left her job.⁵

[12] To decide if the Appellant voluntarily left her job, I have to consider whether she had the choice to stay in or to leave her job.⁶

[13] The Commission says the Appellant voluntarily left her job, because she refused to work at a new location. It says her dismissal was the outcome of her own actions. It says the employer asked the Appellant to go to work on the next working day, to discuss her move to the new location, but the Appellant wrote the employer an email, refusing the move and stating she would work from home instead. It says the employer

³ See GD2-5.

⁴ See Section 30 of the *Employment Insurance Act* (Act).

⁵ See *Green v Canada (Attorney General)*, 2012 FCA 313.

⁶ In *Canada (Attorney General) v Peace*, 2004 FCA 56, the Federal Court of Appeal says that a claimant has voluntarily left their job if they have a choice and they choose to leave.

considered this to be a resignation, because working from home wasn't an option, due to the requirements of the Appellant's position, and the hands-on selling requirements of the company.⁷

[14] The Appellant disagrees. She says she didn't quit her job, but was constructively dismissed. She says the employer changed her work location, to a store 30 minutes from her home, when the original work location she agreed to work at was only 10 minutes away. She says the employer dramatically changed her work duties, from operations manager, to store manager at the new location. She says the move to the new location was a demotion. She says the employer shared negative feedback about her to other employees, creating a toxic work environment. She says she would have continued working at the original location, doing the job she was hired to do.⁸ She says the employer pushed her out of her job to cut costs.⁹

[15] I find that the Appellant didn't voluntarily leave her job. I find that the employer, without discussing it with the Appellant, changed her job title and duties from being an operations manager to being the manager of one store, which was at a different location from where she normally worked. When she expressed her disagreement with the employer's decision, and attempted to discuss her concerns, the employer dismissed her. She didn't have the option to stay in her job.

[16] There are two Records of Employment (ROEs) on the file. They both say that the reason for issuing was dismissal or suspension.

[17] The Commission contacted the employer, and spoke to DM, on September 11, 2024. It asked DM why the Appellant was dismissed from her job. DM said the Appellant wasn't a good fit and wasn't performing as required by the company.¹⁰

[18] DM said during a second phone call on the same date, that the Appellant was dismissed because she didn't want to perform the role she was hired to do. She said the

⁷ See GD4-3-4.

⁸ See GD3-51.

⁹ See GD2A.

¹⁰ See GD3-22.

Appellant was hired to be a store manager, but she would also look after the managers of the other store locations. She said her main job was to manage one store location.

[19] DM told the Commission that the Appellant was moved to another location, because the manager of that location was being moved to another store. Then on August 7, 2024, the Appellant sent the employer an email that said she was not in sales, wasn't hired to manage the store, and she could manage the other managers from home. As a result, she wouldn't be returning to the store. The employer sent the Appellant an email informing her that they would take that statement as her resignation, as she couldn't manage the store from home. The Appellant told the employer she didn't intend for her email to be her resignation. But DM said the employer had no choice but to dismiss her if she didn't want to come in to work.¹¹

[20] The Appellant told the Commission she was hired to work as a general manager, based out of one of the employer's stores. She had to visit the other locations once a week to check on the store managers. The employer told her she would be based out of a different location starting on August 5, 2024, for an indefinite period of time. She felt this was a demotion, because she would no longer be travelling to the other stores to meet with the store managers. Also, the new location was 30 minutes away from her, as opposed to the 10-minute commute she had to the original location. She felt this went against her contract and written agreement with the employer, and declined the changes, as she wouldn't be compensated for fuel or getting a salary change.¹²

[21] The Appellant told the Commission she worked at the new location from August 5-7, 2024. She then emailed the employer and said the move wasn't in keeping with her employment contract, as her job was changed from the general manager role she was hired for. She said she would work at the new location on August 8 and 9, but she would begin working from home on August 12, 2024. She told the employer she understood if they wanted to let her go for declining the changes. She said the employer

¹¹ See GD3-25.

¹² See GD3-26.

responded that they would take her email as a resignation, and it would be best to terminate her immediately, because she couldn't manage the operation from home.¹³

[22] The Appellant's email to the employer is in the file. In it, she said that the transfer to the new location was not the travel, or the job offer that she accepted in October 2023. She had the title of general manager, but was being treated as a store manager, with a few extra responsibilities. She said she didn't accept the store manager position, and changing her location amounted to a totally different job and title, that she hadn't agreed to. She originally accepted the job because she would be working close to her home, not 30 minutes away. She had also made it clear that she wouldn't work Saturdays, but she had worked many, which she would no longer be doing. She also wouldn't be going out of her way to do deliveries.

[23] The Appellant stated in her email that she thought it best to "resign from doing retail," adding that this wasn't really "resigning," because she was never offered a retail position, but was just thrown into it, against her written agreement with the employer. She said she declined to move to the new location, to the position of store manager, and that she would not be doing retail. She proposed that she work from home going forward, managing the managers and store operations. She added that she understood if the employer chose to terminate her employment as a result of her refusal to move to the new location.

[24] The Appellant testified as follows:

- She worked for the employer as a general operations manager. She took care of all of the company's human resources (HR) functions. Her main function was completing HR tasks.
- She had a dinner meeting with the employer shortly after she was hired, to develop a clear-cut job description. The employer told her he wanted her to build policies and procedures, and track employee attendance, because there were issues with employees being late for

¹³ See GD3-26.

work. He said he wanted her to travel from store to store, to check in with the store managers once a week. He also asked her to handle visits with agents from the Ministry of Labour. He didn't say she would have to do retail.

- The employer confirmed that although store hours included Saturdays, her working hours would be from Monday to Friday, and she would not have to work on Saturdays. She did end up working a few Saturdays, to cover when an employee was out sick, but this was rare.
- Her office was located in the employer's Walkerton store. There were other employees working there, who managed the store.
- She built all of the employer's company policies and procedures from scratch. She had to build spreadsheets because the employer had none. She was very busy with paperwork and computer work.
- She tracked employee attendance. She traveled between the employer's various store locations, to check in on the stores' managers.
- Orders came in weekly from suppliers. The workers would put it away and she would input it into the system.
- She only did retail work in the Walkerton store when necessary, which wasn't very often. She would occasionally cover an employee's lunch, or if someone needed a day off, she would cover the store for the day. She was not trained in doing retail work in the stores, so she tried her best to teach herself what she had to do. She was never sent to do retail at the employer's other stores.
- She doesn't agree with the employer's statement that she was hired to be a store manager. Her ROE says she was a general operations manager, not a store manager. Her job offer letter says her position

was as a general operations manager, not a store manager. She didn't work as a store manager.

- She regularly worked from home. She spent 3-4 days a week working at her office and on the road visiting store managers, and otherwise worked from home.
- On July 31, 2024, she had a dinner meeting with the employer. She was told it was going to be a leadership meeting about changes that were going to be happening, because employees were leaving, and holidays were coming up. She was told they were going to talk about schedules, numbers, profits and loss.
- Around the middle of the meeting, the employer said the Appellant was going to be moved to their X store. He said she wouldn't be able to do her HR job and its functions anymore. Her job was going to be retail and customer interaction, orders, deliveries, and other store manager tasks, because she would be the only one working at that location. The employer then quickly changed the subject. She felt ambushed. She didn't understand or have time to ask questions. They didn't give her an opportunity to say anything.
- The day after the dinner meeting, the employer went to the Walkerton location. She tried to ask him questions about what was going to happen the following week, when she was expected to transfer to the X location. She said she had questions from the dinner meeting. She became upset and cried. The employer told her to chill, and to go home, so she went home.
- The employer had never told her they had any issues with her job performance.
- She wasn't told the move to X would be temporary.

- She worked at the new location on August 6 and 7, 2024. The employer was at the new location on her first day there. She asked him to have a conversation, but he said he had to go and left.
- Since the employer wouldn't have a conversation with her, she sent them an email expressing her concerns. She told them she didn't want to work full time in retail, and that she wanted to go back to her original job.
- Her objective in writing the email she sent to the employer was to be moved back to her original job, at the Walkerton location, or at least get the employer's attention, so they would agree to have a conversation about what was happening. She just wanted to talk to them, but then they sent her a termination email instead of talking to her.
- The employer sent her a reply email, and said they thought it was best to let her go effective immediately.
- She was shocked and distraught when she received the employer's email saying they were letting her go. She didn't expect that response. She thought the employer would finally agree to have a conversation, either in a meeting or a phone call.
- She loved her job and didn't want to leave. She was fighting to keep her job, the job she was hired to do. She could have just left if she didn't want her job. It was never her intention to leave her job.
- The employer paid her three weeks of severance pay after they terminated her.

[25] The Commission says the Appellant quit her job because she initiated the separation by refusing to work at the new location, and the employer accepted her email

as a resignation. It says the dismissal is merely the logical outcome of the claimant's deliberate actions.¹⁴ I disagree.

[26] I have considered case law, in particular, *Canada (Attorney General) v Côté*, 2006 FCA 219, which outlines the principle that an employee who advises their employer that they are less available than previously is for all intents and purposes asking the employer to terminate the employment contract. Dismissal is the only logical consequence of the employee's deliberate act and cannot erase the fact that there was first and foremost voluntary leaving on the part of the employee.

[27] I do not, however, find that this principle applies in the present case. I do not find that the Appellant advised her employer that she was less available than previously. She wasn't for all intents and purposes asking the employer to terminate her employment.

[28] I have considered the Appellant's statement in her email to the employer that she "resigned from doing retail," and proposing that she work from home doing the job she was hired for, as opposed to working in the new position at the X location.

[29] Dismissal wasn't the only logical consequence of the Appellant's email to the employer, and I further find that it was not the intended consequence of the Appellant's email. I found the Appellant's testimony to be credible, and conclude that her email was sent in an attempt to prompt the employer to discuss her concerns, which until that time the employer had refused to do, despite repeated requests by the Appellant.

[30] The Appellant testified that it was never her intention to quit her job, or to provoke the employer to dismiss her. I found her testimony in this regard to be credible. 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. I was able to question the Appellant and test the evidence. I believe that the Appellant's email to the employer was an attempt to engage the employer in conversation, to

¹⁴ See GD4-6.

discuss her concerns about the employer's decision, not a resignation or invitation to the employer to dismiss her.

[31] However, the employer chose to dismiss the Appellant. The employer didn't give the Appellant the option to stay in her job.

[32] This means that the Appellant didn't voluntarily leave her job.

[33] The Commission therefore has not met its burden of proving that it is more likely than not that the Appellant voluntarily left her job.

[34] Having determined that the Appellant did not voluntarily leave her job, I do not need to determine whether she had just cause for doing so.

Conclusion

[35] The Commission has failed to meet its burden to show that the Appellant voluntarily left her job. So, the Appellant isn't disqualified from receiving EI benefits.

[36] This means that the appeal is allowed.

Susan Stapleton
Member, General Division – Employment Insurance Section