[TRANSLATION]

Citation: *LL v Canada Employment Insurance Commission*, 2024 SST 998

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	L. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (651453) dated February 27, 2024 (issued by Service Canada)

Tribunal member:	Normand Morin
Type of hearing:	Teleconference
Hearing date:	July 3, 2024
Hearing participant:	Appellant
Decision date:	August 1, 2024
File number:	GE-24-1421

Decision

[1] The appeal is dismissed.

[2] I find that the Appellant hasn't shown just cause for leaving her job when she did.[1] She didn't have just cause because she had reasonable alternatives to leaving. This means that her disqualification from receiving Employment Insurance (EI) benefits from March 12, 2023, is justified.

Overview

[3] From 2012 to March 13, 2023, inclusive, the Appellant worked as a service and maintenance worker for X, a private seniors' residence (X). She stopped working for that employer after voluntarily leaving.[2]

[4] On April 26, 2023, she made an initial claim for EI regular benefits.[3] A benefit period was established effective March 12, 2023.[4]

[5] On September 27, 2023, the Canada Employment Insurance Commission (Commission) decided that the Appellant wasn't entitled to EI benefits from March 12, 2023, because she had voluntarily left her job on March 13, 2023, without good cause within the meaning of the *Employment Insurance Act* (Act).[5]

[6] On February 27, 2024, after a reconsideration request, the Commission told her that it was upholding the September 27, 2023, decision about her voluntary leaving.[6]

[7] On April 11, 2024, the Appellant challenged the Commission's reconsideration decision before the Social Security Tribunal of Canada (Tribunal).[7]

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[1] See sections 29 and 30 of the *Employment Insurance Act* (Act).
[2] See GD3-3 to 26.
[3] See GD3-3 to 24.
[4] See GD3-1 and GD4-1.
[5] See GD3-35 and 38.
[6] See GD2-15 and GD3-48.
[7] See GD2-1 to 15.

[8] The Appellant says that she had just cause for voluntarily leaving her job. She says that, for several years, she worked on a specific floor of the residence preparing meals and performing maintenance tasks. She says that, without giving her advance notice or any explanation, the employer assigned her to another floor where several residents had contracted COVID-19.[8] She says that the employer inadequately informed her of the requirements she had to meet to perform her tasks (for example, wearing a mask at all times). The Appellant says that she was mistreated by the employer and that she experienced harassment in her workplace. She says that, in addition to having to change floors, the employer only gave her maintenance work to do from March 13, 2023. According to the Appellant, this situation made her tasks too difficult. She also argues that her health could have been compromised by continuing to work for the employer. The Appellant says that she should be entitled to benefits.

Issues

[9] I have to decide whether the Appellant had just cause for voluntarily leaving her job.[9] I have to answer the following questions:

- Did the Appellant's job end because she voluntarily left?
- If so, did the Appellant have no reasonable alternative to voluntarily leaving her job?

Analysis

[10] The Act says that a claimant is disqualified from receiving benefits if they left their job voluntarily and they didn't have just cause. Having good cause—in other words, a good reason for leaving a job—isn't enough to prove just cause.

[8] Coronavirus disease 2019.
[9] See sections 29 and 30 of the Act.

[11] Federal Court of Appeal (Court) decisions indicate that the test for determining just cause is whether, considering all the circumstances, the claimant had no reasonable alternative to leaving their job.[10]

[12] It is up to the claimant to prove that they had just cause.[11] They have to prove this on a balance of probabilities. This means that they have to show that it is more likely than not that their only reasonable option was to quit.

[13] When I decide whether a claimant had just cause, I have to look at all the circumstances that existed when they quit.

Question 1: Did the Appellant's job end because she voluntarily left?

[14] In this case, I find that the Appellant's job did end because she voluntarily left within the meaning of the Act.

[15] I find that the Appellant had the choice to continue working for the employer but decided to voluntarily leave her job on March 13, 2023.

[16] The Court tells us that, when it comes to voluntary leaving, it must first be determined whether the person had a choice to keep their job.[12]

[17] In this case, the Appellant's testimony and statements indicate that she made the decision to leave her job.[13]

[18] The Appellant doesn't dispute that she voluntarily left her job. I have no evidence to contradict this.

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[10] This Court established or reiterated this principle in *White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Laughland*, 2003 FCA 129; *Astronomo*, A-141-97; and *Landry*, A-1210-92.
[11] This Court established this principle in *White*, 2011 FCA 190 (para 3).
[12] The Court established this principle in *Peace*, 2004, FCA 56.
[13] See GD2-4, GD3-3 to 24, GD3-32, GD3-33, GD3-36, GD3-37, GD3-39, GD3-41, GD3-42, GD3-46, and GD3-50.

[19] I now have to decide whether she had just cause for voluntarily leaving her job and whether she had no reasonable alternative to leaving when she did.

Question 2: Did the Appellant have no reasonable alternative to voluntarily leaving her job?

[20] In this case, I find that the Appellant hasn't shown that she had just cause for leaving her job when she did. She didn't have reasons that the Act accepts.

[21] I find that the Appellant had reasonable alternatives to voluntarily leaving.

[22] The statements the Commission got from the employer indicate the following:

a) The Appellant's job was to do maintenance work in residents' rooms, as well as to prepare and serve their meals. She worked full-time.[14]

b) During the COVID-19 pandemic, public health rules required all employees in all departments of the residence to wear a mask at all times.[15]

c) When the Appellant left her job, wearing a mask was mandatory for everyone at the residence, without exception.[16]

d) The employer (Ms. S. F., head of human resources) says that the director, Mr. E. P., told the Appellant several times that she had to wear a mask at all times. The employer points out that the reason the director bothered to tell the Appellant this is that the problem was raised more than once.[17]

e) The head of human resources says that the director always speaks respectfully, but that, in the Appellant's case, he was firm in requiring her to follow health and safety guidelines.[18]

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[14] See GD3-31 and GD3-47.
[15] See GD3-31.
[16] See GD3-47
[17] See GD3-31 and GD3-47.
[18] See GD3-47.

f) There was no conflict between the director, Mr. E. P., and the Appellant.[19]

g) The employer had no intention of dismissing or reprimanding the Appellant. It was the Appellant who submitted her resignation. She gave two weeks' notice but left her job one week after giving it.[20]

h) There was no possibility of transfer for the Appellant.[21]

[23] The Appellant's testimony and statements indicate the following:

a) She worked for the employer for about 10 years. During her last three or four years of work, she was assigned to floor 4000 of the residence. Her job was to prepare and serve residents' meals, as well as to perform maintenance tasks.[22]

b) On March 8, 2023, after an employee working on another floor of the residence (floor 3000) left, the employer assigned her to that floor, without giving her advance notice of the change or any explanation. The Appellant says that about half of the 25 residents on this floor had contracted COVID-19, but she didn't get this information until she was assigned to the floor. Her tasks remained the same as those she had performed on floor 4000.[23]

c) When she worked on floor 4000, she wore a blue surgical mask in the presence of others. On this floor, she wasn't required to wear an N-95 mask. When she was assigned to floor 3000, she always wore a blue mask. While preparing residents' lunches in the kitchen, the head nurse asked her to wear an N-95 mask. The Appellant told her that she would wear it later, when she

[19] See GD3-31.
[20] See GD3-31 and GD3-47.
[21] See GD3-31.
[22] See GD3-3 to 24, GD3-27 to 29, GD3-32, and GD3-46.
[23] See GD2-9, GD3-32, GD3-36, GD3-39, and GD3-46.

was in the presence of others. The nurse then came back to the kitchen and told her to go meet with the employer about it, which the Appellant did.[24]

d) The Appellant points out that, when the head nurse told her that she had to wear an N-95 mask, she could have given her one instead of telling her to go meet with the employer. She also says that having to wear a mask (for example, a blue mask or an N-95 mask) to do her work isn't a reason for her voluntary leaving.

e) When the Appellant met with the director, he told her that the N-95 mask was mandatory 24 hours a day throughout the residence, without exception. The Appellant says that she then asked why she wasn't required to wear an N-95 mask when she was working alone (for example, in the kitchen) on floor 4000 when she was required to do so on floor 3000. She says that she didn't like how the director responded to her about this requirement. She says that he didn't yell at her but that she didn't like his attitude or the dry or very firm tone he used. The Appellant points out that the director could have said things differently, especially since she had more than 10 years of experience. She says that she was mistreated by the employer and that she experienced harassment.[25]

f) The Appellant says that, contrary to what the employer said, the director never warned her several times that she had to wear a mask.[26] She points out that she almost never saw the director on residents' floors except to show rooms for rent to future residents. The Appellant argues that, if she had been warned several times about this, she would have received a letter (for example, a written warning) from the employer. She says that she hasn't received any disciplinary measures from the employer in more than 10 years of work.

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[24] See GD2-9, GD3-3 to 24, GD3-32, GD3-39, and GD3-46.
[25] See GD2-9, GD3-3 to 24, GD3-27, GD3-29, GD3-32, GD3-33, GD3-39, and GD3-46.
[26] See GD3-31.

g) The Appellant also argues that another younger employee with less seniority could have been assigned to floor 3000 in her place. But she didn't ask her union about this. She says that she didn't think of it, especially since she never saw her union representative. She points out that the employer has always said that it is the employer who decides.[27]

h) On March 8, 2023, she told the employer that she would be leaving her job on March 18, 2023.[28]

i) On March 13, 2023, at the start of her day, she was told that she would only be doing maintenance work on floor 3000 and that she would no longer be working in the kitchen. She says that the employer made a change to her work duties.[29]

j) The Appellant performed the work requested. She points out that she did her best, but that it was too much for her, especially since the maintenance work hadn't been done in a very long time. The Appellant ended her day at 4:30 p.m. and handed over the keys to the head of human resources explaining the work she had done. The head of human resources then told her, [translation] "just that […]." While doing her work, she also took photos and shared them with the employer to show how much dirt there was on that floor (for example, residents' rooms, bathrooms).[30]

k) She argues that, if the employer had met with her to talk, she would have stayed at her job. She points out that it wasn't in her plans to leave her job.[31]

l) The Appellant also argues that she left her job out of [translation] "dignity" and that her health could have been compromised by continuing to work for the employer. She says that she had a lumbar sprain while doing her job. The

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[27] See GD2-13, GD3-3 to 24, GD3-32, GD3-33, GD3-49, and GD3-50.
[28] See GD3-3 to GD3-24, GD3-32, and GD3-33.
[29] See GD3-3 to 24, GD3-32, GD3-36, and GD3-50.
[30] See GD2-13, GD2-14, GD3-3 to 24, GD3-36, GD3-46, and GD3-49 to GD3-52.
[31] See GD3-27 to 29.

Appellant says that she didn't see a doctor before leaving her job. She says that she experienced other health problems after that (for example, back pain), in September 2023 and October 2023. She says that she was hospitalized in December 2023 to undergo surgery.[32]

m) The Appellant says that she looked for a job after leaving the one she had.[33]

n) She argues that she should not be penalized by EI because she has to earn a living.[34]

[24] I find that the Appellant's reasons for voluntarily leaving her job don't show that she had just cause, within the meaning of the Act.

[25] I find that she hasn't shown that her conditions of employment had become such that they could justify her leaving her job when she did.

– **Employer's attitude in giving the Appellant a requirement for the performance of her duties**

[26] Although the Appellant argues that the director inadequately told her that she had to wear an N-95 mask at all times, she hasn't shown that the director used inappropriate language, disrespected her, or harassed her.

[27] Even though the Appellant says that she didn't appreciate the director's dry or very firm attitude and tone when he told her that she had to wear a mask at all times, the situation she describes doesn't show that she had just cause for voluntarily leaving for the following reason: "antagonism with a supervisor if the claimant is not primarily responsible for the antagonism."[35]

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[32] See GD2-4, GD2-9, GD2-11, GD2-12, GD3-33, GD3-36, and GD3-41 to GD3-45.
[33] See GD3-27, GD3-29, GD3-32 and GD3-46.
[34] See GD3-36 and 37.
[35] See section 29(c)(x) of the Act.

[28] She also hasn't shown that this situation amounts to just cause for her voluntary leaving because of "undue pressure by an employer" to leave her job.[36]

[29] There is no indication that the employer made any comments to the Appellant that would suggest that it wanted her to leave her job.

– **Appellant's assignment to another floor of the residence**

[30] Although the Appellant also argues that another younger employee with less seniority could have been assigned to floor 3000 in her place, she hasn't shown that the employer breached any rules specific to her work agreement (for example, the employees' collective agreement) concerning the assignment of tasks to employees.

[31] The Appellant also says that she didn't make any effort to ask her union about this or to get it to intervene.

[32] In this context, I find that there is no evidence that the Appellant's assignment to floor 3000, without considering her seniority, represents a decision stemming from "practices of an employer that are contrary to law" that could justify voluntarily leaving, within the meaning of the Act.[37]

[33] Even though the Appellant also argues that her duties changed as of March 13, 2023, since she was informed that she would only be doing maintenance work from then on, this situation doesn't show that she had just cause for voluntarily leaving because of "significant changes in work duties."[38]

[34] I note that the Appellant announced her resignation on March 8, 2023, several days before she was informed of this decision.

[35] The fact is that the Appellant continued to do maintenance work, as she had done for several years.

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[36] See section 29(c)(xiii) of the Act.
[37] See section 29(c)(xi) of the Act.
[38] See section 29(c)(ix) of the Act.

– Occupational health and safety

[36] The Appellant also hasn't shown that she had just cause for leaving her job because her health could be compromised by continuing to work for the employer.

[37] She says that she didn't see a doctor before leaving her job.

[38] The Appellant also hasn't submitted any relevant documents to show that she was unable to work for medical reasons before she voluntarily left.

[39] The medical evidence she presents doesn't refer to her period of employment with the employer, but to a period after that (for example, hospitalization from December 16 to December 23, 2023, to undergo surgery).[39]

[40] There is also no indication that the Appellant discussed her medical conditions with the employer before she voluntarily left her job.

[41] The Court tells us that a claimant who claims to have left their job for health reasons must provide objective medical evidence, which not only attests to the health issue, but also shows that the claimant was forced to leave their job for that reason.[40] The Court says that they must show that they tried to reach an agreement with the employer to meet their particular health needs and prove that they looked for another job before leaving the one they had.[41]

[42] I find that the Appellant hasn't shown that she had just cause for voluntarily leaving because of "working conditions that constitute a danger to health or safety."[42]

– Reasonable assurance of another job

[43] I find that the Appellant also hasn't shown that she had reasonable assurance of another job in the immediate future before voluntarily leaving the one she had.[43]

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[39] See GD3-43 to 45.
[40] The Court established this principle in *Dietrich*, A-640-93.
[41] The Court established this principle in *Dietrich*, A-640-93.
[42] See section 29(c)(iv) of the Act.
[43] See section 29(c)(vi) of the Act.

[44] The Appellant says that it was after she voluntarily left that she looked for another job.

[45] In summary, I find that, by voluntarily leaving her job, the Appellant created her own unemployment situation.

– **No reasonable alternative**

[46] I find that the Appellant had other choices than to leave her job.

[47] A reasonable alternative within the meaning of the Act would have been, for example, for the Appellant to continue working for the employer while waiting to find another job that better met her expectations and offered her more satisfactory conditions.

[48] The Appellant could also have asked her union whether it was possible for her to continue on floor 4000, as had been the case for several years, and asked it to intervene with the employer if necessary in the event of non-compliance with her work agreement.

[49] Since the Appellant also raises a health issue related to her job, another reasonable alternative would have been for her to discuss this issue with the employer before leaving her job or to provide it with a document indicating that she was unable to work for medical reasons.

[50] I find that the Appellant hasn’t shown that she had no reasonable alternative to leaving her job.

Conclusion

[51] Considering all the circumstances, I find that the Appellant didn’t have just cause for voluntarily leaving her job. She had reasonable alternatives to leaving.

[52] The Appellant’s disqualification from receiving EI benefits from March 12, 2023, is therefore justified.

[53] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section