



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Tribunal File Number: GE-19-1950

BETWEEN:



Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

DATE OF DECISION: September 20, 2019

DECISION

[1] The appeal is allowed. The Commission and the employer did not prove that the Appellant, [REDACTED] (the Claimant) quit her job.

OVERVIEW

[2] The Claimant initially applied for employment insurance sickness benefits because, at the time of separation from her employment, she was injured and was on a light duty return to work plan. Because the Claimant was capable of working, she changed her application to regular benefits. The Canada Employment Insurance Commission (Commission) disqualified the Claimant from receiving regular benefits because she left her employment without just cause. The Commission determined that the Claimant did not show that she had no reasonable option but to quit her job. The Claimant asked that the Commission to reconsider its decision arguing that she did not quit. She argued that she was constructively dismissed when the employer gave her an ultimatum to take an unpaid leave of absence or leave. The Commission however, disagreed and maintained its initial decision. The Claimant appealed that decision to the Social Security Tribunal of Canada (Tribunal).

PRELIMINARY MATTERS

[3] The Claimant's former employer requested that they be added as a party to this appeal. On June 4, 2019, I refused the request because the employer did not show that they had a direct interest in this appeal. Reasons were provided in a letter to the employer. To date, the Tribunal has not received any submissions from the parties regarding this decision.

ISSUE

Should the Claimant be disqualified from receiving benefits because she voluntarily left her job without just cause?

- (a) Did the Claimant quit her job? If so, did she have a reasonable alternative to leaving?

ANALYSIS

Issue 1: Should the Claimant be disqualified from receiving benefits because she voluntarily left her employment without just cause?

[4] When a claimant leaves or takes a leave of absence from their employment, they are not automatically entitled to benefits. The claimant must show “just cause” for leaving their employment in order to receive benefits.¹

[5] To show just cause for leaving, or taking a leave of absence, a claimant must show that, given the circumstances, they had no reasonable alternative to leaving.²

[6] Because the Claimant disputes that she left her job, I must first decide whether in fact she did quit before deciding whether she had just cause for doing so.

(a) Did the Claimant quit her job? If so, did she have a reasonable alternative to leaving?

[7] No. The evidence does not show that the Claimant voluntarily left her employment on October 23, 2018. Although this is the Claimant’s last day of work, she neither desired nor initiated the separation of employment.

[8] The initial responsibility is on the Commission and the employer to show that the Claimant voluntarily left her employment.

[9] The following is undisputed. The Claimant sustained a right arm injury and was unable to perform her regular duties. From August 27, 2018 to October 9, 2018, the Claimant performed her regular job with some accommodation given her medical restrictions. On October 9, 2018, her doctor indicated that she required one more month of light duties. Her employer accommodated her by providing her light duties in another department. On October 15, 2018, the Claimant’s doctor provided the employer with her medical restrictions and completed a return work plan. The Claimant continued to perform light duties according to the plan until she

¹ Section 29(c) of the *Employment Insurance Act* (EI Act)

² Patel, A-274-09; Astronomo, A-141-97; Tanguay, A-1458-84

was called into a meeting with management on October 23, 2018. At that meeting, the employer offered to give the Claimant an unpaid leave of absence until December 17, 2018.

[10] The employer indicated on the Record of Employment (ROE) that the Claimant quit for health reasons. They gave her a vacation pay and a pay in lieu of notice (GD3-18). The employer said that they were simply being lenient when they paid her the severance pay. The employer also told the Commission that the Claimant said she could not continue working so they offered her a leave of absence. The Claimant refused to take a leave until December 17, 2018, and quit instead (GD3-24).

[11] The Commission determined that the Claimant quit her job on October 23, 2018. It found that taking the leave of absence was a reasonable alternative to her quitting. It therefore disqualified the Claimant from receiving regular employment insurance benefits as of October 28, 2018.

[12] For several reasons, I find that the Commission, and the employer, have not met the burden of showing that the Claimant quit her employment.

[13] First, the Claimant did not initiate the separation from employment; the employer did. The Claimant was on a return to work plan working on light duties when the employer called her into a meeting on the last day. It is obvious from the termination letter that the employer who decided that the Claimant should take time off as of October 23, 2018. The employer stated, “At this stage we feel that this will be the best course of action for your health ...” (GD3-21). They offered the Claimant an unpaid leave of absence with a return date of December 17, 2018. The Claimant however, did not want to take a sudden unpaid leave of absence. Instead of the employer continuing with the return to work plan that was in place, the employer initiated the separation by offering the Claimant only one other choice: a severance payment in lieu of notice.

[14] Second, I agree with the Claimant’s submission that the employer’s offer of a severance payment in lieu of notice is contrary to their position that the Claimant quit. The employer was under no legal obligation to pay the Claimant a severance had she quit. Yet, the employer paid the Claimant a severance in lieu of notice because they “decided to be lenient” (GD3-24). The employer’s explanation however does not rebut the assumption that such a payment is usually

made by an employer who ends a contract without notice. Further, even if the Claimant accepted the employer's offer of a severance pay, this too, is not conclusive evidence that she quit.

[15] Third, there is no evidence that the Claimant wanted, initiated or otherwise left her employment on October 23, 2018. The Claimant has consistently, and adamantly, submitted that she did not quit her job. She was called into a meeting and provided with two options: to take an unpaid leave of absence until December 17, 2018 or leave. The Claimant refused to take a sudden unpaid leave of absence (during which she would also have to pay her share of benefits) because she could not afford to do so. The Claimant had no desire or reason to be off work because she could have continued with the assigned light duties as part of a return to work plan.

[16] Further, contrary to the employer's submission that the Claimant stated she could not continue working; there is no evidence that the Claimant was not capable of working. The medical evidence shows that she was fit for light duties and was participating in a return to work plan (GD6-10). The Claimant was therefore fit for light duties on her last day and would have continued working had the employer not called her into a meeting.

[17] Finally, I note that the Commission only contacted the employer once at the initial investigation phase. Upon reconsideration, the Commission did not ask the employer why they called the Claimant into a meeting on October 23, 2018. The employer has not provided an explanation for not continuing to accommodate the Claimant's medical restrictions. There is no evidence that the Claimant was unable, or unwilling, to continue with the return to work plan. I therefore cannot come to the same conclusion as the Commission that the Claimant quit her employment.

[18] I find that, having regard to all the circumstances, the Commission did not meet the initial burden of showing that the Claimant voluntarily left her employment. The Claimant therefore should not be disqualified from receiving regular benefits from October 28, 2018 onward.

CONCLUSION

[19] The appeal is allowed.

Eleni Palantzas

Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Questions and answers
SUBMISSIONS:	Shannon Stewart, Appellant Christopher Drinovz, Representative for the Appellant