

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act* R.S.B.C. 1996, C. 113

-by-

Mary Ann Meegan Insurance Agency Ltd.  
(the "Appellant")

-of a Determination issued by-

The Director of Employment Standards  
(the "Director")

ADJUDICATOR:	E. Casey McCabe
FILE NO.:	98/636
DATE OF HEARING:	December 17, 1998
DATE OF DECISION:	January 13, 1999

**DECISION**

**APPEARANCES**

Mr. Peter Meegan	for the Appellant
Ms. Monica Kautz	for herself
No one	for the Director of Employment Standards

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination dated September 15, 1998. That Determination found that the complainant, Monica Kautz, was entitled to two weeks' compensation based on her length of service pursuant to Section 63(2) of the *Act*.

**ISSUE(S) TO BE DECIDED**

Did the complainant quit her employment?  
If the complainant did not quit her employment did she give her employer just cause for termination?

**FACTS**

The employer operates a general insurance agency in Coquitlam, British Columbia. Mr. Peter Meegan is the day to day manager of the operation. At the time of the complainant's termination there were three employees. Those employees were Shelley Isberg, Sarah Satte and the complainant, Monica Kautz. Mary Ann Meegan, who is currently retired, does not play an active role in the day to day operations, but, at the material time, was replacing Peter Meegan who was on annual vacation.

The complainant held an Insurance Agent I designation and, at the time of her termination, had been employed approximately 31 months. There is no issue of work performance as Mr. Meegan conceded that, during the course of her employment, the complainant was a good worker.

The facts giving rise to the termination occurred between August 5 and August 12, 1998. On the morning of August 5, 1998 the complainant reported for work as usual. The employer had been experiencing problems with the computers and the complainant called the technicians. The complainant states that she had entered the bank deposits for that

morning in the bank book but had not yet entered them into the computer because of the difficulties. At approximately 11:00 a.m. she informed her co-workers, Ms. Isberg and Ms. Satte, that she would be leaving work for a medical appointment. The complainant attended at her medical appointment at approximately 11:30 a.m.

After the medical appointment the complainant returned to her work place. When she entered the work place she noticed that Ms. Isberg was on the telephone so she approached Ms. Satte. She informed Ms. Satte that she was suffering from stress and that the doctor had told her to take medical leave. The complainant discussed with Ms. Satte the work that was on the complainant's desk. There was one matter that the two were not able to deal with immediately and that matter was left outstanding. The complainant then walked by Ms. Isberg's desk and seeing that she was still on the phone made a comment to the effect that "I'll talk to you later" and left.

It is notable that at this time Mr. Peter Meegan was on annual vacation in Osoyoos, B.C. His mother, Mary Ann Meegan, was managing the office in his absence. However, at the time that the complainant returned to the office Mary Ann Meegan was not present.

Ms. Isberg testified that once the complainant had left the office she had a conversation with Ms. Satte. Ms. Satte informed Ms. Isberg that the complainant was off on stress leave. Mary Ann Meegan was informed in the early afternoon of the complainant's condition.

The complainant telephoned Ms. Isberg later in the afternoon. She informed Ms. Isberg that she was taking her doctor's advice and that she would be off work for some time to deal with her stress related problems. Ms. Isberg testified that she was very annoyed at this point because she had requested the upcoming Saturday and Monday off and felt that this time off would be jeopardized by the complainant's absence. She also testified that the complainant, in this conversation, had asked whether Mary Ann Meegan was present to which Ms. Isberg responded yes. Ms. Isberg testified that the complainant stated that it was a good thing that Mary Ann Meegan wasn't there in the morning and that she, the complainant, was not there presently. Ms. Isberg further testified that despite the complainant's trying to continue the conversation that she, Ms. Isberg, stated "whatever" and hung up.

Mr. Peter Meegan learned of the complainant's absence on or about Friday August 7, 1998. He returned from his vacation one week early because of the staff shortage. Mr. Meegan testified that he returned to the office on August 10, 1998 and was concerned at that point with the general office administration and ensuring that things ran smoothly due to the complainant's absence. It was not until August 12, 1998 that he attempted to contact the complainant. Mr. Meegan testified that it was a short conversation in which he took the position that the complainant had quit her job and that she could come to the office to pick up her Record of Employment. Mr. Meegan does not recollect discussing work that the complainant had left incomplete and particularly one account where there was a shortage. The employer subsequently issued a Record of Employment which showed that the complainant had quit her employment.

When the complainant arrived at the office to pick up her Record of Employment she testified that she presented the employer with a standard form claim for wage indemnity benefits with an attending physician's statement. The complainant had filled out most of the sections of the form but the critical sections with respect to the medical diagnosis, prognosis and doctor's signature had been filled out by her physician. Mr. Meegan testified that he thought she was attempting to present him with a letter from the doctor, not an application for disability benefits, but, regardless, he refused to accept the document. Mr. Meegan testified that he did not realize it was a wage claim form with attending physician's statement until he attended an E.I. Commission hearing some weeks later. The employer took exception to the manner in which the form had been filled out and I will return to this point later.

## ANALYSIS

The employer argues that the complainant abandoned her position. As a result of the abandonment the employer assumed that she had quit and therefore was not liable for two weeks' termination pay. The employer argues that an employee has a positive duty to inform the employer if the employee will be absent and unable to discharge her duties. The employer argues that the complainant did not inform him personally of her medical condition and consequent requirement for medical leave of absence nor did she inform Mary Ann Meegan at the time. The employer states that the complainant's abandonment of her work at approximately 11:00 a.m. on August 5, 1998 constituted a quit or, alternatively, that her failure to directly inform Mr. Peter Meegan or Ms. Mary Ann Meegan constituted just cause for termination.

The complainant, in her defence, argues that she had no intention of quitting her job. She states that despite her doctor's advice to go on stress leave immediately she returned to her work place to inform her co-workers of her condition and ensure that those matters that required immediate attention were looked after. The complainant testifies that she intended to return to work once she was fit. She testified that she believed that informing her co-workers, particularly Ms. Isberg who is the senior office worker, was sufficient notification to her employer. She testified that she enjoyed her work, that she got along well with her co-workers and was distraught that she had lost her job over this matter.

The first question that requires analysis is whether the complainant quit her position. The determination requires an analysis of the subjective intention of the employee and her objective behavior. There must be evidence of an intention on behalf of the employee to terminate employment and proof of subsequent acts that are inconsistent with maintaining the employment relationship. In this case I do not find any evidence to support an intention by the complainant to quit her employment. She left the work place at approximately 11:00 a.m. on August 5, 1998 for a valid reason -- to attend a medical appointment. I accept the medical evidence tendered that she was diagnosed with stress and the prognosis at that time was a return to work on September 8, 1998. When the complainant returned to the work place after her medical employment she informed her co-workers that she was going

on stress leave not that she intended to quit her employment. Furthermore, in the conversation with Mr. Meegan on August 12, 1998 she reiterated that she was on stress leave and not that she was quitting. There was no subjective intention to quit her employment and I cannot find any objective behavior thereafter that would support a quit or give any indication of positive action to put a decision to quit into effect.

I turn now to the employer's second argument. The employer argues that the complainant gave sufficient cause for termination. The employer argues that an employee has a positive duty to inform the employer if the employee will be absent from work and that the complainant failed to discharge this duty. The employer argues that the complainant should have spoken directly with Mary Ann Meegan that day or alternatively should have contacted him on his cell phone while he was on vacation.

I am not able to agree that the complainant gave sufficient cause for termination. I note that the employer was on vacation in Osoyoos. He had left his mother in charge but she was not at the office at the time and the evidence indicated that her presence at the office is infrequent and irregular at other times. I also note that this is a small office with a congenial staff. The workplace is more akin to a professional than industrial setting. I find as a fact that the complainant informed her co-workers of her condition and that those co-workers informed Mary Ann Meegan promptly. The employer did not attempt to contact the complainant until August 12, 1998. The complainant had made no attempt to contact the employer during that period because she believed that the employer was knowledgeable about the absence and the reasons for it.

I accept that the complainant could have made a better effort to inform the employer, but on the other hand, the employer did learn promptly of the absence and the reason for it. The employer could have mitigated its concern by calling the complainant for clarification or confirmation of her absence. I am not prepared to find on the facts and circumstances of this case that the complainant has fundamentally breached the terms and conditions of her employment by going on medical leave on August 5, 1998 or failing to inform the employer personally.

There is one matter remaining. The employer argues that the claim for wage loss benefits and the attending physician's statement indicate that the complainant was not candid with the employer or the doctor. The employer argues that because the complainant filled out all of the information in the "employee's statement" portion of the claim, three sections of the "employer's statement" and the basic information on the "attending physician's statement" ie name and address of the patient, referring doctor, clinic attended and date of attendance that the employer is justified, subsequently, in taking its position. I cannot agree with the employer on this matter. I accept the complainant's evidence that she filled out the non-critical portions of the form in order to save her doctor time. I note that the doctor filled out the critical portions which include diagnosis, prognosis, date of examination and approximate date of return. The form was signed and dated August 5, 1998.

I note also that on the employer's statement portion of the form that the employer did not sign in the allotted space. The employer takes strong objection to the manner in which the

form was filled out. I am more concerned with its substance and I am not prepared to draw any type of adverse inference against the complainant for the manner in which this form is completed. The critical issue, which was not contested at this hearing, is that she attended her physician who diagnosed her with stress, ordered a medical leave from work and, at the time, felt that September 8, 1998 would be an appropriate return date.

The employer had also raised the issue of the assessment of 4% holiday pay against the two weeks' termination pay that had been ordered under the Determination. After a discussion of the underlying reasons for holiday pay being assessed on top of the two weeks' termination pay the employer withdrew that portion of the appeal. That is not to suggest that the employer, by doing so, in any way conceded its position with respect to the determination of the termination pay owing. It is simply to say that the total amount determined, which included a holiday pay assessment and interest on the two weeks' termination pay, was included in its objection to the Determination.

**ORDER**

I confirm the Determination dated September 15, 1998.

**E. Casey McCabe**  
**Adjudicator**  
**Employment Standards Tribunal**