



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. J. M.*, 2016 SSTADEI 129

Tribunal File Number: AD-13-1171

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

J. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Appeal decision

DECISION BY: Pierre Lafontaine

HEARD ON: February 25, 2016

DATE OF DECISION: March 8, 2013

REASONS AND DECISION

DECISION

[1] The appeal is granted, the decision of the board of referees dated May 8, 2013, is rescinded and the appeal of the Respondent before the board of referees is dismissed.

INTRODUCTION

[2] On May 8, 2013, the board of referees determined that:

- The Respondent left his employment with just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* (the “Act”).

[3] The Appellant requested leave to appeal to the Appeal Division on May 15, 2013. Leave to appeal was granted by the Appeal Division on July 30, 2015.

TYPE OF HEARING

[4] The Tribunal held a telephone hearing for the following reasons:

- The complexity of the issue(s) under appeal.
- The fact that the credibility of the parties is not anticipated being a prevailing issue.
- The information in the file, including the need for additional information.
- The requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[5] The Appellant, represented by Carol Robillard, was present at the hearing. The Respondent was not present at the hearing although he did receive the notice of hearing on September 28, 2015.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (the “*DESD Act*”) states that the only grounds of appeal are the following:

- a. the board of referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b. the board of referees erred in law in making its decision, whether or not the error appears on the face of the record; or
- c. The board of referees based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[7] The Tribunal must decide if the board of referees erred in fact and in law when it concluded that the Respondent had just cause to leave his employment pursuant to sections 29 and 30 of the *Act*.

ARGUMENTS

[8] The Appellant submits the following arguments in support of the appeal:

- The correct legal test and the question the board should have resolved was whether the Respondent had no reasonable alternative to leaving his employment when he did;
- The board further erred in finding that the Respondent had just cause to quit due to an obligation to care for an immediate family member;
- The Federal Court of Appeal has confirmed that in order to prove just cause pursuant to section 29(c)(v) of the *Act*, the evidence must show that it was necessary for the Respondent to personally provide care and that he had no reasonable alternative to leaving his employment in order to do so;

- In the case at hand the evidence does not support that there was a serious illness of a family member and that there was a necessity for the Respondent to provide care. The Respondent wanted to be there to support his girlfriend through a difficult time, which may have been a good personal choice but is not sufficient to establish just cause within the meaning of s 29 (c)(v) of the *Act*;
- Furthermore, the fact that the Respondent was tired of the travelling after only five months with his position in Alberta does not establish just cause after a reasonable period of absence from family pursuant to section 29(c) of the *Act*;
- A proper application of the legal test for just cause under section 29(c) of the *Act* to the facts of this case leads to the reasonable conclusion that the Respondent had the alternative of remaining employed, whether through a leave of absence or continuing to travel between Alberta and Nova Scotia, until he secured other employment back home in Nova Scotia;
- The Appellant respectfully requests that the Appeal Division give the decision that the board of referees should have given in accordance with section 59(1) of the *DESD Act*.

[9] The Respondent did not submit any arguments against the appeal.

STANDARD OF REVIEW

[10] The Appellant submits that the standard of review for questions of law is correctness and for questions of mixed fact and law, is reasonableness - *Canada (AG) v. Hallee*, 2008 FCA 159.

[11] The Respondent did not make any representations regarding the applicable standard of review.

[12] The Tribunal acknowledges that the Federal Court of Appeal determined that the standard of review applicable to a decision of a board of referees or an Umpire regarding questions of law is the standard of correctness - *Martens c. Canada (AG)*, 2008 FCA 240

and that the standard of review applicable to questions of fact and law is reasonableness - *Canada (PG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[13] The Tribunal proceeded with the appeal hearing in the absence of the Respondent since it was satisfied that he had received proper notice of the hearing on September 28, 2015, in accordance with section 12(1) of the *Social Security Tribunal Regulations*.

[14] Whether one had just cause to voluntarily leave an employment depends on whether he had no reasonable alternative to leaving having regard to all the circumstances including several specific circumstances enumerated in section 29 of the *Act*. The burden of establishing just cause rests on the Respondent.

[15] In the present case, the board of referees failed to apply the legal test and ask itself if the Respondent, having regard to all the circumstances, had no reasonable alternative to leaving his employment. Therefore, the test was not applied and interpreted correctly.

[16] The Tribunal is therefore justified to intervene and render the decision that should have been rendered in the present case.

[17] The evidence before the board of referees demonstrates that the reason the Respondent quit his job was that his girlfriend lives in Nova Scotia and she did not want him to go back to Alberta. His girlfriend's grandmother died in early December 2012 and she was having a hard time dealing with it and he quit his job to stay in Cape Breton and support his girlfriend. He is not married to his girlfriend and does not live in the same residence and they are not in a common-law relationship (Exhibit AD2-17).

[18] The Respondent did not request a leave of absence from his employer and he was not actually on a leave of absence because he quit his job before he was supposed to return on his days off after stopping work for his last rotation. He was seeking work in Cape Breton before he quit but he did not have a job secured before he quit this job. He wanted to stay in Nova Scotia to be there for his girlfriend for emotional support and he was tired of

travelling back and forth between Alberta and Nova Scotia and so he quit his job (Exhibit AD2-17).

[19] The Tribunal finds that the evidence before the board does not support that there was an obligation to care for a child or a member of the immediate family and that there was a necessity for the Respondent to provide care. The Respondent wanted to come back home and support his girlfriend through a difficult time, which may have been a good personal choice but is not sufficient to establish just cause within the meaning of section 29(c)(v) of the *Act*.

[20] However commendable the Respondent's intentions may have been, the board erred in relying on them to reverse the Appellant's decision. The Federal Court of Appeal has reiterated on several occasions that leaving one's employment to improve one's situation does not constitute just cause within the meaning of paragraph 29(c) of the *Act* - *Canada (AG) v. Richard*, 2009 FCA 122.

[21] A proper application of the legal test for just cause under section 29(c) of the *Act* to the facts of this case leads to the reasonable conclusion that the Respondent had the alternative of remaining employed, whether through a leave of absence or continuing to travel between Alberta and Nova Scotia, until he secured other employment back home in Nova Scotia.

CONCLUSION

[22] The appeal is granted, the decision of the board of referees dated May 8, 2013, is rescinded and the appeal of the Respondent before the board of referees is dismissed.

Pierre Lafontaine
Member, Appeal Division