

Citation: *A. D. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 5

Appeal #: GE-13-1152

BETWEEN:

**A. D.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance**

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SOCIAL SECURITY TRIBUNAL MEMBER: Michael Sheffe

HEARING DATE: 9 January 2014

TYPE OF HEARING: Teleconference

DECISION: Dismissed

## **PERSONS IN ATTENDANCE**

The Appellant attended the hearing alone.

## **DECISION**

[1] The Member finds that the Appellant has not demonstrated just cause for voluntarily leaving his employment and thus the appeal is dismissed.

## **INTRODUCTION**

[2] The Appellant submitted an initial claim for employment insurance benefits (benefits) on June 10, 2013. The Appellant received an unfavourable decision from the Canada Employment Insurance Commission (Commission) regarding his claim, on August 7, 2013. He requested a reconsideration of this decision on August 29, 2013. The Appellant received a decision on September 25, 2013 upholding the Commission's original decision. The Appellant appealed this decision to the Social Security Tribunal. The appeal was received on October 18, 2013.

## **FORM OF HEARING**

[3] The hearing was in the form of a teleconference for the reasons provided in the notice of hearing dated December 9, 2013.

## **ISSUE**

[4] Whether a disqualification imposed pursuant to sections 29 and 30 of the *Employment Insurance Act (Act)* because the Appellant voluntarily left his employment without just cause should be upheld.

## **THE LAW**

[5] Section 29 (c) of the *Act* states, “just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable

alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

- (i) sexual or other harassment,
- (ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,
- (iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,
- (iv) working conditions that constitute a danger to health or safety,
- (v) obligation to care for a child or a member of the immediate family,
- (vi) reasonable assurance of another employment in the immediate future,
- (vii) significant modification of terms and conditions respecting wages or salary,
- (viii) excessive overtime work or refusal to pay for overtime work,
- (ix) significant changes in work duties,
- (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
- (xi) practices of an employer that is contrary to law,
- (xii) discrimination with regard to employment because of membership in an association, organization or union of workers,
- (xiii) undue pressure by an employer on the claimant to leave their employment, and
- (xiv) any other reasonable circumstances that are prescribed.

[6] Subsection 30(1) of the Act states, "A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

- (a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

## **EVIDENCE**

[7] The Appellant wrote on a Questionnaire: Quit form supplied by the Commission, that he quit his job because he was harassed by his Branch Manager.

[8] The Appellant was told to guard the entrance of a plant to ensure that a recently terminated employee would not return. Because it was raining, he stayed in his car and watched the area from there. The management of the company where he was guarding thought that the Appellant was sleeping in his car and complained to his supervisor. The supervisor came to the location and spoke to him. In addition the Appellant was not wearing his safety boots. He told the manager that his feet were swollen and he could not put on the boots (Exhibits GD3-4 to GD3-8).

[9] During the hearing the Appellant said that he was asked to go to the office on the following day, a Friday. The Appellant was sure that he was going to be terminated. The Appellant had with him, a letter of resignation.

[10] The Appellant was reprimanded regarding his wearing unauthorized footwear and for a previous incident of sleeping while on duty. There was also another previous incident in which the Appellant left his post without waiting for a relief guard to take over. At the time this incident occurred, the Appellant stated that he did not think he was supposed to wait for a relief guard. He was also told that he must work during the upcoming weekend and then he would be suspended one day (Exhibit GD3-16).

[11] The Appellant returned his uniforms and handed in the letter of resignation he brought with him to the meeting. He could not "take the pressure" any more, and he lost his desire to work for the company. He also believed it was unfair that he was falsely accused of sleeping in his car.

[12] The Appellant returned his uniforms and handed in the letter of resignation he brought with him to the meeting. He could not "take the pressure" any more, and he lost

his desire to work for the company. He also believed it was unfair that he was falsely accused of sleeping in his car.

[13] During the hearing, the Appellant stated that the Scheduling Manager told the Appellant that he could purchase another pair of appropriate boots which would accommodate his swollen feet and the company would pay for these (Exhibit GD3-22).

[14] The Appellant stated he did not look for other work before quitting.

[15] The decision to leave his job was made suddenly, the night before he was scheduled to have what turned out to be the final meeting with management personnel. He had been contacted by management during the evening before the meeting regarding the two incidents, allegedly sleeping on the job, and leaving before a relief worker arrived. When asked to attend the meeting on the subsequent day, the Appellant waived his right to have a union representative accompany him. It was at that point that the Appellant composed his letter of resignation and collected his uniforms to return to the company during the meeting.

[16] The Appellant advised that he was collecting Social Assistance and that the only reason he is appealing the Commission's decision was because he was told that to continue to receive that money, he must appeal. The Appellant reiterated this during the hearing. The Appellant also advised that he does not care if his appeal is denied (Exhibit GD3-22).

## **SUBMISSIONS**

[17] The Claimant submitted that:

- a) He was falsely accused of sleeping on the job and that he was being suspended for this.
- b) He was not wearing his safety boots because he had swollen feet.
- c) He could not take the pressure anymore.

[18] The Respondent submitted that:

- a) The Appellant did not discuss his concerns with management before he quit his job voluntarily.
- b) He did not dispute any of the facts, other than the alleged sleeping on the job, but did not discuss this with management during the meeting.
- c) He accused the Branch Manager of harassment after he approached the Appellant and spoke to him regarding the obligations of the job.

## ANALYSIS

[19] The test for determining whether an Appellant had just cause under section 29 of the Act for voluntarily leaving, is whether having regard for all of the circumstances, on a balance of probabilities, the Appellant had no reasonable alternative to leaving the employment. This principle has been upheld in a plethora of decisions of the Federal Court of Appeal of Canada. In *White* 2011 FCA 190, the Court held that the Appellant in that case did not pursue any reasonable alternative which was open to her. She just voluntarily quit her employment without discussing her concerns with her employer.

[20] Subsection 29 (c) (i) of the *Act* provides a just cause reason for leaving an employment if a claimant is suffering harassment. A complaint by a client was lodged regarding the Appellant's purported sleeping on the job. When the manager approached the vehicle in which the Appellant was sitting to discuss the situation, the Appellant seemed to become defensive. He stated he was not sleeping on the job and that the client could not possibly see clearly into his car on that rainy evening. The manager only wanted to investigate the complaint both then and subsequently at the meeting.

[21] The only action the employer wanted to take was to suspend the Appellant for a previous infraction, that of leaving his post without waiting for a relief guard to come. They also wanted to investigate the circumstances of the previous evening on which the Appellant was accused of sleeping in his car.

[22] The Member finds that it was a reasonable action taken by the employer to investigate the complaint made by their client. The employer tried to accommodate the Appellant's swollen feet problem by advising him of alternate footwear which he could purchase and use. The employer would also reimburse the Appellant for the new shoes. The Member finds that there was no evidence of harassment on the part of the supervisor with respect to the Appellant.

[23] The Member finds that the Appellant had alternatives which he did not consider, before he left his employment. He could have discussed his concerns with management. He could have looked for another job before he quit this one arbitrarily. The Appellant did not consult with his union.

[24] The Member finds that the Appellant made a spur of the moment decision to write out and then hand in his letter of resignation on the following day. He did not look for other work beforehand. He did not discuss any concerns he had with management.

[25] The Member finds that the Appellant has not provided a just cause reason according to the *Act* for voluntarily quitting his job.

[26] The Member notes the clerical error made on the notice sent to the Appellant dated September 25, 2013 regarding the date of the decision. The date should have been August 7, 2013 not September 25, 2013. The Federal Court of Appeal in A-128-89 confirmed the principle, that an error which does not cause prejudice is not fatal to the decision under appeal.

## **CONCLUSION**

[27] The appeal is dismissed.

Michael Sheffe  
Member, General Division

DATED: January 15, 2014