[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. B. G.*, 2014 SSTAD 154

Appeal No.: 2012-1800

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

B. G.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal decision

SOCIAL SECURITY TRIBUNAL MEMBER:	Pierre LAFONTAINE
DATE OF DECISION:	June 18, 2014
TYPE AND DATE OF HEARING:	In-person hearing held in Rimouski on June 18, 2014, at 9:00 a.m. (Eastern Time)

DECISION

[1] The appeal is allowed, the Board of Referees' decision dated October 22, 2012 is rescinded, and the Respondent's appeal to the Board of Referees is dismissed.

INTRODUCTION

[2] On October 22, 2012, a Board of Referees found the following:

- The Respondent had just cause for voluntarily leaving his employment under sections 29 and 30 of the *Employment Insurance Act* (the Act).

[3] The Appellant appealed from the Board of Referees' decision to the Umpire on November 7, 2012.

TYPE OF HEARING

[4] The Tribunal held an in-person hearing for the reasons set out in the notice of hearing dated April 2, 2014. The Appellant did not participate. The Respondent also did not participate, but he was represented by Aline Caron.

THE LAW

[5] The Appeal Division of the Social Security Tribunal (the Tribunal) hears appeals that were filed with the Office of the Umpire and not heard before April 1, 2013, in compliance with sections 266 and 267 of the *Jobs, Growth and Long-term Prosperity Act* of 2012. On April 1, 2013, the Umpire had not yet heard or rendered a decision on the Appellant's appeal. This appeal was transferred from the Office of the Umpire to the Appeal Division of the Tribunal, since leave to appeal from the decision is considered to have been granted by the Tribunal on April 1, 2013, in compliance with section 268 of the *Jobs, Growth and Long-term Prosperity Act* of 2012.

[6] To ensure fairness, this appeal will be reviewed on the basis of the legitimate expectations of the Appellant at the time of filing its appeal to the Umpire. For this reason, the present appeal will be decided in accordance with the applicable provisions of the Act in effect immediately before April 1, 2013.

[7] In compliance with subsection 115(2) of the Act, in effect at the time of the appeal, 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 or order, whether or not the error appears on the face of the record; or
>
> (*c*) the board of referees based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[8] The Tribunal must decide whether the Board of Referees erred in fact or in law in finding that the Respondent had just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

SUBMISSIONS

[9] The Appellant submitted the following arguments in support of its appeal:

- According to the Federal Court of Appeal, having good personal reasons for leaving an employment does not constitute just cause under the Act;
- The Board of Referees found that the Respondent had just cause for leaving his employment because he had reasonable assurance of another employment. Given the facts on file, the Board's decision is unreasonable;
- The Respondent voluntarily left his employment because he had finished his studies and he wanted to return to live with his parents in his hometown;

- When he left, the Respondent was still participating in the hiring process for the Ambulances de Rimouski, and he did not have any offer of employment because he still needed to take medical and physical tests. In addition, it was a part-time and on-call job;

- The Respondent failed to show that he had to leave his employment when he did or that it was urgent for him to do so when he did.

[10] The Respondent submitted the following arguments to refute the appeal:

- The Board of Referees did not err in fact or in law and its decision is reasonable;

- The Umpire cannot substitute his assessment of facts for that of the Board unless he finds that the Board's assessment was not reasonably open to it.

STANDARDS OF REVIEW

[11] The Appellant submitted that the applicable standard of review for questions of mixed fact and law is reasonableness – *Canada (AG) v. White*, 2011 FCA 190. The Respondent did not make any submission concerning the applicable standard of review in this case.

[12] The Tribunal noted that the Federal Court of Appeal ruled that the applicable standard of review for a decision of a Board of Referees and an Umpire on questions of law is correctness – *Martens v. Canada (Attorney General)*, 2008 FCA 240, and that the applicable standard of review for questions of mixed fact and law is reasonableness – *Canada (AG) v. Hallée*, 2008 FCA 159.

ANALYSIS

[13] It is useful to reproduce below subparagraph 29(*c*)(vi) of the Act, which is relevant to this issue:

> 29(*c*) 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:
>
> (vi) reasonable assurance of another employment in the immediate future,

[14] The Federal Court of Appeal, in *Canada (AG) v. Lessard*, 2002 FCA 469, stated the following on the concept of "reasonable assurance of another employment":

> [13] The situation described in section 29(*c*)(vi) assumes three things: "reasonable assurance", "another employment" and "the immediate future".
>
> [14] I doubt that there can be "reasonable assurance of another employment" within the meaning of the subparagraph when obtaining the employment is conditional on completion of a thirteen-week course which has not yet been started. However, I do not have to decide this point since it is in any case clear, in my view, that the "immediate future" test was not met in the case at bar.
>
> [15] As regards the "immediate future", we know first that the future employment was conditional on completion of a course, and second that the time lapse in question was thirteen weeks. Both of these observations are inconsistent with the idea of the "immediate future".
>
> [16] The *Grand Robert de la langue française*, 2001, defines "immédiat" [immediate] as follows:
>
> II. 1. Qui précède ou suit sans intermédiaire, dans l'espace ou le temps.
>
> 2. Qui suit sans délai; qui est du moment présent, a lieu tout de suite.
>
> [17] *The Canadian Oxford Dictionary*, 2001, defines "immediate" as follows:
>
> 1. occurring or done at once or without delay (*an immediate reply*).
>
> 2a. nearest in time or space *(the immediate future; the immediate vicinity*)
>
> [18] In *Canada (Attorney General) v. Traynor* (F.C.A.) (1995), 185 N.R. 81, Marceau J.A. very properly used the phrase "in the near future".
>
> [19] It is accordingly clear that employment which only comes into being on the expiry of a course which has not yet been started and lasts thirteen weeks is not employment "in the immediate future".

[15] In accordance with the Federal Court of Appeal's teachings, the Tribunal finds that there cannot be "reasonable assurance of another employment" under subparagraph 29(*c*)(vi) of the Act when obtaining the employment is conditional on passing physical and medical tests.

[16] Concerning the "immediate future" element, the Tribunal notes that the future employment was conditional on passing the aforementioned tests and that the hiring date was unknown. Both these findings are incompatible with the concept of "immediate future".

[17] A reasonable solution for the Respondent would have been to keep his job while waiting for official and unconditional confirmation that he was hired by his new employer.

[18] In addition, it is well established in case law that leaving an employment for personal reasons, in this case to return to a home region (Exhibit 2-10), does not constitute just cause under the Act – *Tanguay v. Canada (UIC),* A-1458-84.

[19] The Tribunal must find that the Board of Referees erred in law in deciding that the Respondent had just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

CONCLUSION

[20] The appeal is allowed, the Board of Referees' decision dated October 22, 2012 is rescinded, and the Respondent's appeal to the Board of Referees is dismissed.

Pierre Lafontaine
Member, Appeal Division