

[TRANSLATION]

Citation: *P. G. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 58

Appeal No.: GE-13-2516

BETWEEN:

P. G.

Appellant
Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Jean-Philippe Payment

HEARING DATE: May 20, 2014

TYPE OF HEARING: In Person

DECISION: Appeal dismissed

PERSONS IN ATTENDANCE

The Claimant attended the hearing with his legal representative.

DECISION

[1] The Tribunal dismisses the Claimant's appeal and concludes that he can be disqualified from receiving Employment Insurance benefits because he voluntarily left his employment without just cause.

INTRODUCTION

[2] The Claimant filed a claim for benefits on April 10, 2010 (Exhibit GD3-7). In a communication on August 13, 2013, the Canada Employment Insurance Commission (the Commission) informed the Claimant that he left his employment at Métal Presto on October 24, 2012, that he did not inform the Commission of this and that he had to complete a form explaining the situation (Exhibits GD3-29 to 31). After an investigation, the Commission sent a communication to the Claimant dated September 16, 2013, indicating that his claim had been reviewed and that the Commission could not pay benefits to him as of October 21, 2012, because he left his employment without just cause (Exhibit GD3-39). The Claimant appealed from this initial decision, and on November 22, 2013, the Commission informed the Claimant of its reconsidered decision, which upheld the initial decision on the voluntary leaving in its entirety (Exhibit GD3-49). The Claimant therefore appealed from the Commission's reconsidered decision to the Tribunal (Exhibit GD2).

FORM OF HEARING

[3] The hearing was held for the reasons given in the notice of hearing (Exhibit GD1-1).

ISSUE

[4] The Tribunal must determine whether the Claimant voluntarily left his employment without just cause in accordance with section 29 and subsections 30(1) and 30(2) of the *Employment Insurance Act* (the Act).

APPLICABLE LAW

[5] According to subsection 30(1) of the Act, 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.

[6] According to subsection 30(2) of the Act, the disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

[7] According to subsection 7(1) of the Act, unemployment benefits are payable to an insured person who qualifies to receive them.

[8] According to section 29, for the purposes of sections 30 to 33,

(a) "employment" refers to any employment of the claimant within their qualifying period or their benefit period; ...

(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 [translation] those set out in paragraphs i to xiv and in the Regulations.

[9] In *Tanguay v. Canada (Canada Employment and Immigration Commission)* (A-1458-84), the Court explained that the onus is on the Commission to prove that the leaving was voluntary. Once that has been established, the onus is on the claimant to demonstrate that there was just cause for the leaving.

[10] *Canada (Attorney General) v. Bois* (A-31-00) is part of a series of consistent case law that explains that the term “just cause” is not defined in the Act. However, “just cause” is not the same as “good reason”. Therefore, although a claimant may have a good reason for leaving an employment, that reason may not necessarily constitute just cause within the meaning of the Act.

[11] As explained in *Astronomo v. Canada (Attorney General)* (A-141-97), the task of the decision-maker is to determine whether leaving was the claimant’s “only reasonable alternative in his case”.

[12] According to *Canada (Attorney General) v. Laughland* (2003 FCA 129), the issue is not whether it was reasonable for the claimant to leave his employment, but whether the claimant’s only reasonable alternative, having regard to all the circumstances, was to leave the employment.

[13] In *Canada (Attorney General) v. Lessard* (2002 FCA 469), the Court explained that paragraph 29(c)(vi) of the Act supposes the existence of three elements of analysis, namely, “reasonable assurance”, “another employment” and an “immediate future”. In this regard, future employment that is conditional on an action or confirmation does not meet the requirements for the application of paragraph 29(c)(vi) of the Act.

[14] In *Gagnon v. Canada (Canada Employment and Immigration Commission)* (Gagnon [1988] S.C.R. 29), the Court indicated that the purpose of the *Employment Insurance Act* is to compensate persons whose employment has ended voluntarily and who are without work.

EVIDENCE

[15] The evidence in the file is as follows:

- (a) an initial claim for Employment Insurance regular benefits dated April 10, 2012 (Exhibit GD3-7);
- (b) there was no advance notice of layoff in the Claimant’s file (Exhibit GD3-45);
- (c) the Claimant stopped going to work (Exhibit GD3-45);

(d) the Claimant went back to work for another employer three weeks after leaving his employment (Hearing).

SUBMISSIONS OF THE PARTIES

[16] The Claimant submitted the following:

- (a) he resigned because of discrimination, harassment or personal conflict at work (Exhibit GD3-14);
- (b) he had serious personality conflicts with his only co-worker and he was put down by that co-worker (Exhibit GD3-15);
- (c) he knew before leaving his employment that he had work on another site (Exhibit GD3-32);
- (d) the co-worker dropped his tools next to him to scare him (Exhibit GD3-46);
- (e) he did not have another job lined up when he quit (Exhibit GD3-46);
- (f) the employer is a Quebec company and only one employee of the company worked with him at the Valleyfield site (Hearing);
- (g) there was no company supervisor on site (Hearing);
- (h) he worked with his co-worker for several months without any problems until the co-worker began a form of “psychological harassment” (Hearing);
- (i) the co-worker dropped a hammer in the staircase when the Claimant was working there and he believed the co-worker did it on purpose (Hearing);
- (j) he intimidated him indirectly in what he said by choosing his words (Hearing);
- (k) he discussed the situation with his union and did not discuss it with anyone at the company (Hearing)

- (l) his union told him about a job in Fermont when he mentioned his problems with his co-worker (Hearing);
- (m) the job in Fermont was supposed to start a week after he left his employment, but the union was awaiting confirmation from Arcelor Mittal (Hearing);
- (n) he accepted a job with Béton Brunet, rather than going to Fermont to help his union (Hearing);
- (o) for him, the important thing was to be working (Hearing);
- (p) his co-worker made him feel like he was good for nothing (Hearing);
- (q) he could have worked with other tradespeople, but he saw them talking about him. He did not know what they were saying, but it was not a good atmosphere (Hearing);
- (r) his co-worker allegedly told him that he was not a good worker and that the co-worker was superior to him and could make [translation] “things” happen to him (Hearing);
- (s) he had done 100 jobs in eight years of working in construction (Hearing);
- (t) in construction, the reality is not stability with a single employer, but with several (Hearing).

[17] The Respondent submitted the following:

- (a) when the problem has to do with labour relations, working conditions or interpersonal relationships at work, for example, it is generally expected that the insured person will not spontaneously leave their employment before using all typical reasonable alternatives to remedy the situation (Exhibit GD4-4);

- (b) the Claimant initially alleged that he left his employment because of personal conflict and subsequently stated that he left for another employment and that he had assurance of this employment before leaving (Exhibit GD4-4);
- (c) the Claimant then submitted that he left because of a conflict with his co-worker and that the situation, that is, his being put down, was getting worse every day (Exhibit GD4-4);
- (d) the Claimant alleged that he preferred to leave before he [translation] “lost his cool” rather than speak to the employer about it (Exhibit GD4-4);
- (e) the Claimant demonstrated that he did not use all the reasonable alternatives before leaving his employment, and also that he did not have assurance of another employment before leaving (Exhibit GD4-4);
- (f) given all the evidence, a reasonable alternative would have been to discuss his situation with the employer before leaving his employment and/or to ensure he had another employment before leaving (Exhibit GD4-5).

ANALYSIS

[18] Subsection 30(1) of the Act stipulates that 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. On this subject, the Court explained in *Tanguay* that the onus is on the Commission to prove that the leaving was voluntary and, once that has been established, the onus shifts to the claimant to show that they had just cause for leaving.

[19] Section 29 of the Act sets out a non-exhaustive list of circumstances that must be considered in determining whether the voluntary leaving was the only reasonable alternative in a claimant’s situation. As stated in *Bois*, “just cause” is not the same as “good reason”. A claimant may have a good reason for leaving an employment, but that does not mean the claimant has just cause within the meaning of the Act. Lastly, in *Astronomo* the Court very clearly explained that

the duty of the decision-maker is to determine in all cases whether the claimant's leaving was the only reasonable alternative in their case.

[20] The Claimant informed the Tribunal of the reasons that resulted in his leaving his employment. Essentially, the Claimant stated that he was being psychologically harassed by his co-worker. The Claimant told the Tribunal that he worked for several months without having any problems with this co-worker, until the co-worker began a form of "psychological harassment". The Claimant stated that his co-worker dropped a hammer in the staircase where the Claimant was working, and he told the Tribunal [translation] "that he believed he did it on purpose". In addition, the Claimant stated that the co-worker intimidated him [translation] "indirectly through what he said by choosing his words". As an example, the Claimant submitted that the co-worker told him that he was not a good worker and that the co-worker was superior to him, and said that he saw this same co-worker talking about him with other workers, that he [translation] "did not know what they were saying, but it was not a good atmosphere". The Claimant said he discussed this situation with his union job placement officer but not with the employer because he never met the employer and his only contact with the employer was through the problematic co-worker in question.

[21] According to the Claimant, when he discussed his problems with his union, the union representative mentioned a future job in Fermont for which they had not yet received confirmation from the originator, but it was due to start the following week. But, since this contract was delayed, he responded to a request from his union and accepted employment for Béton Brunet within three weeks of leaving his employment. Lastly, the Claimant indicated that job stability is not a reality in construction and that he had done nearly 100 jobs in eight years working in construction.

[22] As for the Commission, it indicated that, when the problem has to do with labour relations, working conditions or interpersonal relationships at work, for example, it is generally expected that the insured person will not spontaneously leave their employment before using all the usual reasonable alternatives available to remedy the situation. The Commission submitted that the Claimant initially alleged that he left his employment because of a personal conflict and subsequently stated that he left for another employment and that he had assurance of that

employment before leaving. The Commission stated that the Claimant did not stop there and that he later said that he had left because of a conflict with his co-worker and that the situation, that is, his being put down, was getting worse every day. The Commission submitted that the Claimant demonstrated that he did not use all the reasonable alternatives before leaving his employment, and also that he did not have assurance of another employment before leaving and that, considering all the evidence, a reasonable alternative would have been to discuss his situation with the employer before leaving this employment and/or to ensure that he had another employment before leaving.

[23] In this case, the Tribunal is of the view that the Commission proved that the leaving was voluntary. It is clear even in the Claimant's arguments that he made the decision alone to leave his employment at the time he did and that this decision must be considered voluntary leaving within the meaning of the Act.

[24] For the Tribunal, the Claimant's actions are not consistent with having just cause pursuant to paragraph 29(c)(vi) of the Act because he did not have reasonable assurance of another employment in the immediate future. The Tribunal is of the view that the Claimant did not have reasonable assurance of another employment in the immediate future because, although he discussed a future opportunity with his union job placement officer, the officer allegedly told him, and I quote the Claimant, [translation] "that the union was awaiting confirmation from Arcelor Mittal". Barriers such as awaiting confirmation and the possibility of being assigned this work, even by patronage, do not correspond to reasonable assurance of another employment in the immediate future. With regard to the claimant's submissions according to which he received another employment by patronage in the three weeks that followed, not in two to three months as the Commission stated in its arguments, the Tribunal finds that this is also not the "immediate future". In fact, the Tribunal relies on *Lessard* to state that, since the future employment was conditional, in this case, on confirmation from the company based in Fermont, it is inconsistent with the concept of "immediate future" set out in paragraph 29(c)(vi) of the Act.

[25] With regard to the Claimant's statement that the construction field is unstable and that he has done 100 jobs in eight years, the Tribunal is of the view that it is reasonable to believe that

the Employment Insurance regime is available for persons who inadvertently lose their employment as indicated in *Gagnon*.

[26] With regard to the issue of harassment by the co-worker, the Tribunal is of the view that the Claimant did not prove that he did everything that was in his power to fix his co-worker's supposed behavioural problems before leaving his employment. The Claimant did go to his union job placement officer, but the officer with whom he spoke was not his employer. Although the Claimant discussed these supposedly problematic situations with his union job placement officer, the officer was limited to trying to find another employment for him, not trying to find a solution to the presumed problem at work, as an employer is morally obligated to do, or must do in accordance with the labour legislation of the Claimant's province of residence. The Tribunal is of the view that the Claimant's allegations in this case with regard to the issue of the harassment he suffered (the hammer dropped in the stairs, comments about the claimant's work abilities, discussions between tradespeople targeting him personally, etc.) are subject to personal interpretation and do not constitute, separately or together, just cause for leaving his employment as he did.

[27] Unfortunately for the Claimant, he may have felt that he had a good reason for leaving his employment, but he did not have just cause for leaving as set out in *Bois*. For the Tribunal, the Claimant did not prove that he used the only reasonable alternative in the circumstances, as set out in *Astronomo*.

CONCLUSION

[28] The appeal is dismissed.

Jean-Philippe Payment
Member, General Division

DATE OF REASONS: June 18, 2014