

Citation: *J. B. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 105

Appeal #: GE-14-1832

BETWEEN:

**J. B.**

Appellant  
Claimant

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: Katherine Wallocha

HEARING DATE: September 11, 2014

TYPE OF HEARING: Teleconference

DECISION: Appeal Allowed

## **PERSONS IN ATTENDANCE**

J. B., the claimant, attended the hearing via telephone.

## **DECISION**

[1] The Tribunal finds that the claimant has proven just cause to voluntarily leave his employment in accordance with sections 29 and 30 of the *Employment Insurance Act* (EI Act).

## **INTRODUCTION**

[2] The claimant became unemployed on October 7, 2013. He filed for Employment Insurance (EI) benefits on January 14, 2014. An initial claim for EI benefits was established on January 12, 2014. The Canada Employment Insurance Commission (Commission) denied the claim because it was determined that the claimant voluntarily left his job without just cause. The claimant sought reconsideration of the Commission's decision, which the Commission maintained in their letter dated April 28, 2014. The claimant appealed to the Social Security Tribunal (SST).

## **FORM OF HEARING**

[3] The hearing of this appeal was by teleconference for the reasons given in the Notice of Hearing dated August 22, 2014.

## **ISSUE**

[4] The issue under appeal is whether the claimant had just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of the EI Act.

## **THE LAW**

[5] Section 30 of the EI Act states, in part, that a claimant is disqualified from receiving benefits if the claimant voluntarily left any employment without just cause.

[6] Paragraph 29(c) of the EI Act provides that *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.

[7] In **Tanguay (A-1458-84)** the Federal Court of Appeal (FCA) drew a distinction between a "good cause" and "just cause" for voluntary leaving. In **Landry (A-1210-92)** the FCA said that it is not sufficient for a claimant to show that he or she was acting reasonably in leaving one's employment. Reasonableness may be good cause but it is not necessarily just cause. It must be shown that after considering all of the circumstances the claimant had no reasonable alternative to leaving his or her employment.

## **EVIDENCE**

[8] The evidence in the docket is as follows:

- a) The claimant submitted his initial application stating that he is no longer working because of a Leave of Absence (LOA) as he was travelling from Canada (Page GD3-6).
- b) The claimant stated that he was on approved vacation leave as his mother is sick and she lives outside of Canada. He was on vacation from October 10 to November 10, 2013. However, he did not return until December 2, 2013 and his employer assumed that he had abandoned his position so they issued a Record of Employment (ROE) as quit. The claimant explained that he first attempted to make contact with his employer in November 2013 just before the official end of his vacation leave. He stated that he called his employer but left a message and an international telephone number for the employer to call. The employer did not return his call. The claimant further stated that he did not attempt to reach the employer again until he returned to Canada on December 2, 2013. When he returned to Canada he noticed that the employer attempted to contact him back on his home phone number and he had received two letters from the employer asking if he was returning to work. The claimant stated that he called the employer and was told that they would not hire him back. The claimant stated that he did speak with his employer and did not look for

work prior to quitting his job. He has been looking for work since he quit (Pages GD3-14 and GD3-15).

- c) The claimant was contacted by the Commission and he confirmed that he was approved vacation leave from October 10 to November 10, 2013. The claimant stated that his employer knew that he was away to visit his ill mother in Sudan, Africa. He confirmed that he returned to Canada on December 2, 2013 and he explained that he needed more time off and could not come back on the agreed date. He phoned the employer and left a message. He further explained that he got an email from his supervisor when he came back stating that he was scheduled to work on November 29, 2013 (Page GD3-17).
- d) The claimant submitted his Request for Reconsideration stating that the Muslim Religion states you must obey your parents and he is the oldest child for his mother. He explained that the time he called his employer, he was not able to speak with his employer and was told the employer would call back but that never happened. He further explained that he waited for his call or email but he received nothing. And on December 2, 2013 he received his termination letter (Page GD3-20).
- e) The claimant was contacted by the Commission following the Request for Reconsideration and he stated that he spoke with one of his supervisors who told him that he would not be scheduled until November 29, 2013 but he did not get permission from his employer as the supervisor was to have someone call him. The claimant stated that he also emailed his employer and asked for additional time (Page GD3-22).
- f) The claimant provided the email conversation with his employer. The first email is dated November 14, 2013, and the claimant stated that he had some difficulty with his flight after he lost his reservation and the employer informed the claimant that he will be put on the schedule for November 29, 2013 and they will talk when he returns. The employer sent another email dated November 27, 2013 stating that he was told that the claimant tried to call him. The employer stated that he will not be

granting anymore leave and he expected to see the claimant back for his shifts on Friday November 29 and Saturday November 30, 2013 (Pages GD3- 24 to GD3-30).

- g) The claimant was contacted by the Commission and he explained that he did not make his arrangements on November 14, 2013 after the first email because he had trouble with the reservations. He could not remember when he made the reservations for the return flight (Page GD3-31).

[9] The evidence at the hearing is as follows:

- a) The claimant confirmed that he was authorized vacation time from October 10 to November 10, 2013. The claimant stated that when he travelled to visit his mother, he knew his mother was sick. His sister was taking care of his mother but when he arrived he was the only one who was taking care of his mother. He explained that his mother was so sick he could not leave her and therefore he could not return by November 10, 2013. He was in a village with no communication and had to travel to a city for telephone and internet.
- b) The claimant stated that he tried to make a phone call to his employer before November 10, 2013 but he could not get through. The security in Sudan is very restricted. The next time he tried was November 14, 2013. He sent an email but was not sure if his employer received it. The claimant stated that he then made the reservation for the return flight on November 27, 2013. He cannot remember when he made the reservation but believes it was after November 14, 2013. The claimant stated that his reservation for the flight on November 27, 2013 was cancelled by the airline and he was required to come home on December 2, 2013.
- c) The claimant explained that the emails he received from the employer he did not get until he returned home because he could not open his emails while he was in Sudan due to the security restrictions. He further explained that the emails he sent were dated differently than the date he sent them. On the day he returned to Canada, he contacted his employer and he left a message for his supervisor asking why he was fired. His supervisor called him back told him to come to work because his position

was still open. When he returned to work his supervisor told him that he could not hire him back.

## **SUBMISSIONS**

[10] The claimant submitted that:

- a) He called his employer on November 27, 2013 and explained that he had difficulty with his flight to Canada and he informed his employer that he will be back in Canada on December 2, 2013.
- b) He received a termination of employment letter while he was traveling, without notice and that is after three days only from the time the employer agreed to in his email.

[11] The Respondent submitted that:

- a) The claimant did not have just cause for leaving his employment on November 29, 2013 because he failed to exhaust all reasonable alternatives prior to leaving. Considering all of the evidence, a reasonable alternative to leaving would have been to ensure his reservation was changed to allow him to return to work as scheduled. Consequently, the claimant failed to prove that he left his employment with just cause within the meaning of the EI Act (Page GD4-3).
- b) The claimant had an obligation to return to work after his leave of absence. The employer was not obligated to provide him extended time in the first place but did so, advising him he was scheduled to work on November 29, 2013. This was reinforced in the email of November 27, 2013 where he was advised no further time off would be allowed. The claimant had enough time from November 14, 2013 when he was granted the additional time off to ensure he arranged his return flight home on time so he could return to work when scheduled. His negligence in doing so caused him to be further delayed and he became unemployed as a result (Page GD4-3).

- c) The claimant made a personal choice to not return to work while on leave due to family related issues. He had a responsibility to his employer to ensure he was able to return to work when expected. Though the Commission sympathises with his situation, it does not negate his responsibility to his employer (Page GD4-4).
- d) The claimant stated he is obligated to care for his mother as part of his religion and that might be so, but he also has an obligation to his employer. The claimant was given four weeks off work to go to Sudan and was then given a two week extension and was specifically advised no further time off would be approved. The claimant should have made all efforts to ensure his return flight was arranged so he would be back in Canada in time to return to work as scheduled (Page GD4- 5).
- e) The reason for separation could be considered a voluntary leaving or termination because the claimant failed to return to work when scheduled to do so. It does not matter whether the case is one of loss of employment through misconduct or voluntary separation without just cause provided that a disqualification would be warranted in either case (Page GD4-3).

## **ANALYSIS**

[12] The claimant must show that, having regard to all the circumstances, on a balance of probabilities, he had no reasonable alternative to leaving the employment (**Tanguay A-1458-84**).

[13] Pursuant to the EI Act, all the circumstances put forward by the claimant must be taken into account to determine whether the claimant had just cause for leaving an employment.

[14] In this case, the claimant was authorized leave to return to Sudan, Africa to visit his mother. The Tribunal accepts the claimant's testimony that his mother lives in a small village where communication infrastructure is limited and he needed to travel to the city to make phone calls and access the internet.

[15] The claimant stated that he could not return home on November 10, 2013 because his mother became very ill and he could not leave. It has been established that being prevented from working to care for a family member can constitute just cause for leaving employment (**Maughan 2012 FCA 35**).

[16] However, it was not the claimant's intention to leave his employment. He testified that he attempted to contact his employer before November 10, 2013 when he was expected to return. There is further evidence to show that the claimant contacted his employer via email on November 14, 2013 and by phone on November 27, 2013. He further testified that he contacted his employer on the day he returned. While the Commission stated that the employer provided the claimant with an extension to November 29, 2013, the Tribunal accepts the claimant's testimony that he did not receive this email until his return to Canada and therefore was not aware of the return to work date of November 29, 2013.

[17] The Tribunal finds that the claimant did not voluntarily leave his employment. He was unable to return to Canada as his mother was very sick and he was the only one looking after her. He contacted his employer and attempted to explain the situation but because of the lack of communication infrastructure and the difficulties in contacting his employer, he was not able to provide an adequate explanation. While the Commission stated that the claimant had an obligation to ensure he arranged a return flight home, the Tribunal is satisfied that he made other arrangements to return home in time for his November 29, 2013 shift but that reservation was cancelled by the airline and he was forced to delay his return further.

[18] The Federal Court Appeal has determined in **Easson (A-1598-92)**, that the notions of dismissal for misconduct and voluntarily leaving without just cause may be two distinct and abstract notions, but they are dealt with together in sections 29 and 30 of the EI Act, which is quite rational since they both refer to situations where the loss of employment is the result of a deliberate action or actions on the part of the employee. By uniting the two notions in the EI Act, it is clear that the difference between the two situations will have to be taken into consideration.

[19] The claimant was authorized to be absent from work for a set number of days and through no fault of his own, he was absent for longer than authorized. He made every effort to keep his employer informed of his situation. It was not his intention to be away from work longer than authorized, he was not willfully absent from work.

[20] The Tribunal finds that the claimant's conduct was not willful or deliberate or so reckless as to approach willfulness where he ought to have known that his conduct was such that it would result in dismissal. Voluntary leaving without just cause and misconduct both refer to situations where loss of employment resulted from a deliberate action of the employee. In this case, there are no conscious, deliberate or intentional actions of the claimant that resulted in his loss of employment. On the contrary, the claimant's conscious and deliberate actions were to protect his employment by arranging to have time off and making every effort to keep his employer informed of his situation.

[21] As has often been stated, the EI system was put in place to provide financial assistance to employees who become unemployed for reasons beyond their control and not to assist those who create their own unemployment when they have other reasonable alternatives. The Tribunal finds that the claimant became unemployed due to circumstances that were beyond his control.

[22] For these reasons, the Tribunal finds that the claimant did have just cause to voluntarily leave his employment in accordance with paragraph 29(c) of the EI Act.

## **CONCLUSION**

[23] The appeal is allowed.

*K. Wallocha*

Member, General Division

DATED: September 16, 2014