

Citation: *R. F. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 146

Appeal #: GE-14-3783

BETWEEN:

R. F.

Appellant
Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Michael Sheffe

HEARING DATE: December 18, 2014

TYPE OF HEARING: Teleconference

DECISION: Allowed

PERSONS IN ATTENDANCE

The Appellant attended the hearing. K. C. attended the hearing as a witness for the Appellant.

DECISION

[1] The Member finds that the Appellant had just cause for voluntarily leaving her employment; therefore the appeal is allowed.

INTRODUCTION

[2] The Appellant filed an initial claim for employment insurance benefits (benefits) on April 17, 2014 (Exhibit GD3-10). On June 12, 2014, she received a decision from the Canada Employment Insurance Commission (Commission) denying her benefits because it was determined that the Appellant voluntarily left her employment without just cause (Exhibits GD3-31 and GD3-32). The Appellant requested a reconsideration of this decision on July 3, 2014 (Exhibits GD3-22 and GD3-23). On August 20, 2014 the Appellant received a reconsideration decision which upheld the original decision denying her benefits (Exhibit GD2-12). The Appellant appealed this decision to the Social Security Tribunal (Tribunal) on September 19, 2014 (Exhibits GD2-1 to GD2-3).

FORM OF HEARING

[3] The hearing was in the form of a teleconference for the reasons provided in the notice of hearing dated October 28, 2014 (Exhibits GD1-1 to GD1-3).

ISSUE

[4] Whether a disqualification for voluntarily leaving an employment without just cause, pursuant to sections 29 and 30 of the *Employment Insurance Act (Act)*, should be upheld.

THE LAW

[5] Subsection 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] Section 30 of the *Act* states, “(1) 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.

(2) 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.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:

(a) hours of insurable employment from that or any other employment before the employment was lost or left; and

(b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the

maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.

EVIDENCE

[7] The Appellant was employed by W.C. S. Wholesale from March 29, 2011 to March 28, 2014 (Exhibits GD3-23).

[8] The Appellant wrote a letter which accompanied her appeal to the Tribunal. She described the office setting as an open concept office. Several of the owner's relatives worked there. These employees did not necessarily follow the company rules and policies, as other employees, who were not family members, were supposed to do. This created some tension among the Appellant and other staff members.

[9] Cameras were installed around the office. W. S., the owner's son installed and monitored the cameras. One was placed behind the Appellant's desk in such a way that it showed a view down her blouse. Subsequently it was repositioned.

[10] B. S. (B.), the owner, would yell at, swear at, and humiliate employees if he became angry with them. The company hired many students and he would treat them in a similar manner. B. had his desk in the middle of the large room. Since there were no walls, everything he said could be heard by everyone. The Appellant was supposed to be the students' supervisor, but if B. wanted them to do a job for him, he would tell them to leave the job they were presently working on and begin to work on the new job. The Appellant believed that this undermined her authority and interfered with her assigned tasks (Exhibit GD3-39).

[11] K. C.'s company was hired by the employer to perform a review of the company's business practices. Then he was to suggest improvements for the growth of the company.

Upon completion of the review, many deficiencies were noted. Many of these were around the issues of harassment, privacy, human rights, and personal deportment. K. C. ceased working with B. when he publically berated one of K. C.'s employees in a very rude and abusive manner (Exhibits GD2-13 and GD2-14).

[12] K. C. stated that B. has a short temper. He would engage in loud, abusive conversations with his son, or other employees. These arguments could be heard all over the office, due to the open concept nature of the building. The other employees, including the Appellant, became uncomfortable being in this situation. There was a high turnover of staff because of this and because of the abusive attitude shown by B. and his son, W. S., towards staff members.

[13] The Appellant advised that part of her job entailed writing out cheques to business associates, employees, and other people. Some of the cheques were in the opinion of the Appellant, for dubious, legitimate business expenses. Some cheques which she was asked to write, had no accompanying invoices or other paperwork. The Appellant advised that she did not feel comfortable having her name and reputation associated with this practice. She was afraid that if there was an audit, she might be implicated because she was doing these things and she did not want her name attached to this kind of behaviour.

[14] The employer advised that he has an accountant who advises him of what expenses is legitimate businesses expenses and which are not (Exhibit GD328).

[15] The Appellant advised that she had her hours cut by 5 hours per week. The Appellant confirmed that her salary did not change. When she asked B. about this change, he rudely told her he would not make any changes. After a lengthy discussion, B. suggested that the Appellant go home and they would discuss it again on the following day.

[16] The Appellant returned to work on the subsequent day. Several employees were also present at this meeting. One of these employees was B. A., a part time employee who worked in the payroll department. The Appellant was upset that B. A. was at the meeting. The Appellant was told by B. that nothing was going to change. She then told B. that she could not write any more cheques for personal expenses.

[17] The environment was becoming very difficult in which to work. Between the cheques for questionable business expenses she was told to write, B.'s rudeness, the unfair treatment of non-family members who were employees, and the privileges of family member employees, and the reduction in her hours, the Appellant believed she had no choice but to leave this job (Exhibits GD3-24 to GD3-26).

[18] The company is located in a small town. B. grew up in the area with many of the business owners. B. has become a business leader there. Between his community work and his business, he is friends with and /or does business with most of the other business owners in the area. Many of the business owners were people who went to school and grew up with B. Also, there are not many jobs available in the area because there are not a large number of businesses operating in the area.

[19] The Commission advised that the Appellant did not exhaust all reasonable alternatives before she left her employment. One of these alternatives was to look for another job before she left.

[20] The Appellant stated that in the past, if one of B.'s employees was looking for another job, B. would get a call from the prospective employer. Because of his friendships and/or business relationships with most of the business owners, they would call him either for a reference or just to inform him of the situation. B. usually would thwart the job for the employee because he would be upset at the perceived disloyalty shown by the employee. The Appellant knew this and realized that if she were to look for another job before she left, B. would quickly find out about this. She believed her situation would only become worse.

[21] The Appellant advised that she had been experiencing symptoms of stress from working in this situation. She went to a doctor because of this. Her doctor prescribed medications for her. The Appellant confirmed that she did not request a leave to take a break from the stress at work (Exhibits GD3-29 and GD3-30).

SUBMISSIONS

[22] The Claimant submitted that:

- a) She was uncomfortable writing cheques for dubious business expenses and was worried about her possible legal exposure if an audit were to be conducted.
- b) She was upset at the rude and abusive language in which the owner spoke to her and others.
- c) The Appellant was stressed due to the bullying tactics used by the employer with her and other employees.

[23] The Respondent submitted that:

- a) The Appellant's situation was far from ideal.
- b) The Appellant's situation was not intolerable, but merely unpleasant.
- c) The Appellant should have stayed in the job until she found another one.

ANALYSIS

[24] In cases of voluntary leaving, the test to be applied, having regard for all of the circumstances, is whether the claimant had a reasonable alternative to leaving her employment when she did.

[25] In *Hernandez* (2007 FCA 320) the Federal Court of Appeal upheld the principle that the Appellant had not explored the possibility with his employer that the nature or conditions of work at his employment could be changed in response to his concerns.

[26] The Appellant tried to discuss her concerns with the employer. During the meeting, he suggested she return on the next day after taking some time to reflect upon the situation. When she arrived the following day, other employees were present as well as some family members. The employer told her that he would not answer her questions unless she

committed to staying on as an employee. The Appellant was told that the employer would not entertain any changes.

[27] The Appellant needed the job so she stayed there for as long as she could, and hoped she could convince B. to amend his ways. The erosion of her duties and her work hours, B.'s continued abusive behaviour, and the admission by B. that nothing would change were the final incidents which led the Appellant to leave her employment.

[28] The Appellant was aware of B.'s standing in the community. She knew that if she tried to look for a job before she left, B. would find out. He would destroy her chances with obtaining a job with the potential new employer and B. would make things even more difficult for her at his place of work.

[29] Section 29 (c) (i) provides a just cause reason for voluntarily leaving one's job if sexual or other harassment. The Appellant had to endure being yelled at; being called names; being talked to in a rude manner; and being belittled. Because of the open concept of the office area, this was done in full view of the other employees. In addition, she was upset at the placement of the surveillance camera by the employer's son, such that it was placed so he could see down her blouse while she was at her desk. It was not until she complained that the camera was repositioned. This was another form of harassment which the Appellant had to endure.

[30] Section 29 (c) (xi) provides a just cause reason for voluntarily leaving one's job if the practices of an employer that are contrary to law. The Appellant was told to write business cheques for doubtful reasons. The Appellant was not comfortable having her name associated with this practice.

[31] The Member finds that the Appellant explored all reasonable alternatives before leaving her job. She tried to talk with her employer, to no avail. She could not look for a job because of B.'s connections in the community and her concern that he would find out about her attempts to secure another job, and make her situation worse. She had already had her job hours reduced and there was no assurance that other adverse changes would not be made at her expense.

[32] The Member finds that the Appellant had a just cause reason for voluntarily leaving her job.

CONCLUSION

[33] The appeal is allowed

Michael Sheffe
Member, General Division

DATED: December 24, 2014