

Citation: *B. P. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 39

Appeal #: GE-14-3811

BETWEEN:

B. P.

Appellant
Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Richard Sterne

HEARING DATE: February 26, 2015

TYPE OF HEARING: Teleconference

DECISION: Appeal is allowed.

PERSONS IN ATTENDANCE

The Claimant, B. P., attended the hearing by telephone.

DECISION

[1] The Tribunal finds that the Claimant did prove that she had just cause for voluntarily leaving her employment, pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[2] The appeal is allowed.

INTRODUCTION

[3] The Claimant was employed by Food Services (Ontario) Inc. (employer) until January 28, 2014.

[4] On February 10, 2014, the Claimant applied for employment insurance benefits (EI benefits). In her application, the Claimant indicated that she had quit her job because of discrimination, harassment and personal conflict at work.

[5] On April 9, 2014, the Canada Employment Insurance Commission (Commission) advised the employer that they had approved the Claimant's application for EI benefits because they had concluded that the Claimant had just cause for voluntarily leaving her employment, as she had no reasonable alternative under the circumstances.

[6] On April 30, 2014, the employer filed a request for reconsideration of the Commission's April 9, 2014 decision.

[7] On August 27, 2014, the Commission advised the Claimant that upon reconsideration, they had changed their April 9, 2014 decision, such that they were unable to pay her EI benefits starting January 28, 2014 because she had voluntarily left her employment without just cause within the meaning of the Act. They said that they believed that voluntarily leaving her employment was not her only reasonable alternative.

FORM OF HEARING

[8] The hearing was held by teleconference for the reasons provided in the Notice of Hearing dated February 2, 2015.

ISSUE

[9] Did the Claimant prove that she had no reasonable alternatives to voluntarily leaving her employment with just cause?

THE LAW

[10] Section 29 of the Act:

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;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(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:

(i) sexual or other harassment,

(ii) obligation to accompany a spouse or common-law partner or a 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 are 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.

[11] Subsection 30(1) of the Act:

(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."

[12] Subsection 30(2) of the Act:

(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

EVIDENCE

[13] The Claimant was employed by Food Services (Ontario) Inc. (employer) from May 7, 2012 to January 28, 2014.

[14] On February 10, 2014, the Claimant applied for EI benefits. In her application, the Claimant indicated that she had quit her job because of discrimination, harassment and personal conflict at work.

[15] On February 13, 2014, the employer issued the Claimant's record of employment (ROE) and indicated that the reason for issuing the ROE was code E, quit.

[16] On April 8, 2014, the Claimant told the Commission that her team leader was bullying her and not helping her to resolve her work related issues. She said that her manager asked her to keep track of her time doing her job, so that they could assess her work load. She said that applied for another position in the credit department, but was blocked because she was on performance monitoring.

[17] On April 9, 2014, the Commission advised the employer that they had approved the Claimant's application for EI benefits because they had concluded that the Claimant had just cause for voluntarily leaving her employment, as she had no reasonable alternative under the circumstances.

[18] On April 30, 2014, the employer filed a request for reconsideration of the Commission's April 9, 2014 decision.

[19] On July 10, 2014, the Claimant told the Commission that she had planned to remain in her employment until she could obtain her annual bonus in late February and could secure another job. The Claimant stated that she was a single mom and could not afford to quit her job. She said that she left as a result of the harassment and bullying which started in October 2012. The Claimant said that she told the employer that she was leaving to assist in the care of her grandmother-in-law, for which she didn't receive any remuneration.

[20] On July 10, 2014, the employer told the Commission that the Claimant had resigned stating that she would be caring for her boy-friend's grandmother. The employer said that the Claimant had come to her with accusations of bullying and harassment. The employer stated that they found no evidence of bullying or harassment, but rather there were

performance issues that the employer was looking into, and the Claimant was being "managed". The Claimant did not like being managed and felt that she was being micromanaged and harassed. The employer stated the Claimant was not being targeted with any malicious intent, but rather to identify and rectify the performance issues.

[21] The employer stated that the Claimant was never on a formal performance improvement plan; instead that the time tracker and "managing" of the Claimant was in an effort to determine whether there was in fact a problem, and potentially to resolve that problem without having to resort to a performance improvement plan.

[22] On August 27, 2014, the Commission advised the Claimant that upon reconsideration, they had changed their April 9, 2014 decision, such that they were unable to pay her EI benefits starting January 28, 2014 because she had voluntarily left her employment without just cause within the meaning of the Act. They said that they believed that voluntarily leaving her employment was not her only reasonable alternative.

SUBMISSIONS

[23] The Claimant submitted that:

- a) she was bullied and treated unfairly.
- b) she was harassed through the micromanagement of tasks.
- c) she was setup to fail by her team leader.
- d) she was given an unmanageable workload.
- e) she was denied help.
- f) she was denied a new position

[24] The Respondent submitted that:

- a) they initially decided that the Claimant had demonstrated just cause for voluntarily leaving her employment. Therefore, they allowed the Claimant access to regular benefit employment insurance absent any disqualification pursuant to sections 29 and 30 of the Act.
- b) after reconsideration requested by the employer, they decided that the Claimant did not demonstrate just cause for voluntarily leaving her employment, and therefore they imposed an indefinite disqualification pursuant to sections 29 and 30 of the Act, effective May 18, 2014.

ANALYSIS

[25] The purpose of the Act is to compensate persons whose employment has terminated involuntarily and who are without work (**Gagnon [1988] SCR 29**).

[26] Subsection 30(1) of the Act provides for an indefinite disqualification when the claimant voluntarily leaves her employment without just cause. The test to be applied, having regard to all the circumstances, is whether the claimant had a reasonable alternative to leaving her employment when she did.

[27] During the hearing the Claimant stated that she had been hired in May 2012 on a full time basis. After several months, she was moved to a new position to cover a maternity leave. She said that she was given a lot more tasks to do than the girl on maternity leave. She said that she became overloaded and asked her manager for help, but none was provided.

[28] The Claimant said that in October 2012, she began being harassed by her team leader. In October 2013, she filed a complaint with her supervisor about the team leader's harassment and unfair treatment. After she complained, she was asked to track her time (time tracker) each day and her harassment continued. The Claimant provided many details of the harassment in her appeal submission and the hearing.

[29] The Claimant said that in November, she had applied for a position in the credit department in order to get away from the micromanagement and harassment. Unfortunately, she did not get the new position because the company policy prohibited moving someone if their performance was under review.

[30] The Claimant's resignation letter stated that she was leaving to care for her step-grandmother. The Claimant said that she only did this a couple of times a week and was not paid to do it. She said that caring for her stepmother was not the reason that she resigned.

[31] The Tribunal finds that the Claimant was credible during the hearing in that she was open and consistent in her comments and answers to questions, while under oath.

[32] The Tribunal accepts the Claimant's statement that harassment in her work place was the main reason that she decided to resign.

[33] Sections 29 and 30 of the Act provide an exception to the general rule that insured individuals that are not deliberately unemployed are entitled to benefits. This exception must therefore be strictly interpreted (**Goulet A-358-83**).

[34] Subsection 29(c)(i) of the Act provides that just cause for voluntarily leaving ones employment exists if the claimant had no reasonable alternative to leaving having regard to all circumstances including sexual or other harassment.

[35] The Tribunal finds that the Claimant provided evidence that she was subjected to harassment in her work place. The harassment came from:

- her team leader's unfair treatment of her
- her employer's lack of dealing with her harassment complaint in October 2013
- her employer's imposition of a time tracker and micromanaging her
- her employer prohibiting her from getting help from others
- her employer's policy that prohibited her from a job change because she was on a performance improvement plan, when she wasn't.

[36] The Federal Court of Appeal reaffirmed the principle that where a claimant voluntarily leaves her employment, the burden is on that claimant to prove that there was no reasonable alternative to leaving when she did.

Canada (AG) v. White, 2011 FCA 190

[37] During the hearing, the Claimant said that prior to resigning; she had been looking for a job with a different employer and had attended a couple of job interviews. She said that she had hoped that she could stay with her current employer until late February in order to get her annual bonus. She said that she was a single mother and could not afford to be unemployed. However, she said she could not stand the continued harassment and micromanagement and therefore decided to resign on January 28, 2014 because she had no other reasonable alternative.

[38] The Tribunal finds that the Claimant did prove that there was no reasonable alternative to leaving when she did, and therefore did have just cause for voluntarily leaving her employment, because of the harassment. The Claimant had tried to remove herself from the situation by applying for a new position, both within and outside the company.

[39] The Tribunal finds the fact that the Claimant chose not to wait for her annual bonus in late February even though she was a single mother and needed the money, confirms the degree of stress caused her by the harassment, such that her only alternative was to resign.

[40] The Tribunal finds that the Claimant did have just cause for voluntarily leaving her employment because she had no other reasonable alternative, pursuant to sections 29 and 30 of the Act.

CONCLUSION

[41] The appeal is allowed.

Richard Sterne
Member, General Division

DATED: February 26, 2015