[TRANSLATION]

Citation : *A. B. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 61

Date: April 2, 2015

File number: GE-14-3708

GENERAL DIVISION – Employment Insurance Section

Between:

A. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Teresa Jaenen, Member, General Division - Employment Insurance Section

Heard by Teleconference on March 12, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

Ms. A. B., the Appellant attended the hearing.

INTRODUCTION

[1] On May 4, 2014 the Appellant made an initial claim for employment insurance benefits. On June 17, 2014 the Canada Employment Insurance Commission (Commission) disqualified the Appellant from receiving regular employment insurance benefits because she voluntarily left her employment without just cause. On July 8, 2014 the Appellant made a request for reconsideration. On August 12, 2014 the Commission maintained its original decision and the Appellant appealed to the *Social Security Tribunal of Canada* (Tribunal). A hearing was scheduled for December 15, 2014; however it was determined the Appellant did not receive the Notice of Hearing. In the interest of natural justice the Tribunal granted an adjournment and a new hearing date was set for March 12, 2015.

[2] The hearing was held by Teleconference for the following reasons:

- The fact that the credibility of the parties is not anticipated to be a prevailing issue;
- The fact that the Appellant will be the only party in attendance;
- The information in the file, including the gaps or need for clarification in the information; and
- The cost-effectiveness and expediency of the hearing choice.

ISSUE

[3] The Tribunal must decide whether a disqualification should be imposed pursuant to sections 29 and 30 of the *Employment Insurance Act* (the Act) because the Appellant voluntarily left her employment without just cause.

THE LAW

[4] Section 29 of the Act for the purposes of section 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;

(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) gnificant 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.

[5] Subsection 30(1) 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 employment." (b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

[6] Subsection 2(1) of the Act defines a common-law relationship as: “common-law partner”, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year.

EVIDENCE

[7] In her Notice of Appeal the Appellant stated there were a number of factors that were considered before relocating. They had endured a 10 hour commute for 18 months and once they decided to get married, one of them had to relocate. It was too expensive and unreasonable to maintain two homes and travel, plus her partner had a higher income and it was decided that it would be her to make the move (GD2-2).

[8] In her Request for Reconsideration the Appellant stated the Service Canada agent did not make an effort to adequately understand her situation. She stated she had to leave her employment to be with her partner as the commute of 10 hours each was too great and the expenses of maintaining two households became unreasonable. She stated that she was not in a common-law relationship, however believes the criteria in the legislation is flexible and that her situation meets the criteria, as well her upcoming marriage ensures her eligibility for benefits (GD2-4 to GD2-5).

[9] In her application for benefits the Appellant indicated that she quit her employment to accompany her spouse. She indicated they were not married and were not living together at the time she quit or had they lived together prior. They have no children together but they do have plans to marry on May 23, 2015. She did not request a transfer as there was no other job for her to go to (GD3-7).

[10] A record of employment indicates the Appellant was employed with Wheatland Shelter from May 9, 2013 to April 29, 2014 and she left her employment because she moved (GD3-15).

[11] On June 17, 2014 the Appellant stated to the Commission she quit her employment to move to Saskatchewan where her now common-law spouse resides. She is engaged with a wedding date set for May 2015. She stated she made the move at the end of April because that was when she would have had to renew her contract and the lease on her apartment. It was a well thought out decision. She stated before she moved she did send some emails to some

school boards but to no avail. She planned on looking for work more seriously once she moved as well to make sure the relationship would work out. She stated she and her partner had not lived together prior to her moving (GD3-17).

[12] On August 12, 2014 the Appellant stated to the Commission that she had not lived with her spouse prior to moving and that the impending marriage was over a year away. She stated that because they shared expenses like food and travel for a year to see each other she believes they should be considered common-law (GD3-22).

SUBMISSIONS

[13] The Appellant submitted that:

a) She believes the Commission was incorrect in determining she did not qualify as a common-law relationship;

b) She loved her job and wouldn't have quit if she had not had to move to be with her partner;

c) She believes her relationship should be considered as common-law as the legislation is flexible. She stated they shared expenses for over year, they maintained two households and shared travel expenses. However they did not have any children together;

d) Her decision wasn't make in haste and that she had given her employer a 3 month notice;

e) Her wedding date is now set for May 2, 2015 and they have had a verbal agreement to be engaged since March 2014;

f) She chose the most optimal time to move as her employment contract was expiring and as she was going to be getting married;

g) Her situation should be reconsidered and although she knows this is the way the legislation has been imposed in the past, it doesn't mean it should be now, the Tribunal should be able to do something about it;

h) Denying women employment insurance benefits deprives them and puts them at risk financially; and

i) She asks the Tribunal to allow her to collect benefits and set a precedent for women similar to her situation.

[14] The Respondent submitted that:

a) The Appellant was not required to accompany her partner to another residence. She relocated to begin a co-habiting relationship at her partner's residence. The marriage was not scheduled to take place for a year and so could not be considered imminent, and there were no children in the relationship;

b) The Appellant's decision to relocate must be considered personal in nature;

c) The Appellant would have needed to ensure that she had secured employment in the new area prior to relocating in order to prove that leaving her employment was her only reasonable alternative. Although she may have had some prospects at the time of her departure, she had not secured an offer;

d) A reasonable alternative would have been for the Appellant to secure employment prior to her relocating or to attempt to maintain a commuting relationship until she could secure employment; and

e) The Appellant has failed to prove she left her employment with just cause within the meaning of the Act.

ANALYSIS

[15] The Tribunal must decide whether the Appellant should be disqualified pursuant to sections 29 and 30 of the Act because she voluntarily left her job without just cause. Under subsection 30(1) of the Act it states an employee is disqualified for receiving EI benefits if she loses her job as a result of misconduct, or voluntarily leaves her job without just cause. Subsection 29(c) of the Act provides that an employee will have just cause by leaving a job if this is no reasonable alternative to leaving taking into account a list of enumerated

circumstances, including, at paragraph 29(c)(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence. The test to be applied, having regard to all the circumstances, is whether the Appellant had a reasonable alternative to leaving her employment when she did.

[16] There is no dispute that the Appellant quit her job because she and her partner decided it was in their best interest for her to move to Saskatchewan to live together. The burden of proof is on the Appellant to prove that she had no reasonable alternatives to leave when she did.

[17] In *Rena-Astronomo* (A-141-97), which confirmed the principle established in *Tanguay* (A-1458-84) according to which the onus is on the claimant who voluntarily left an employment to prove that there was no other reasonable alternative for leaving the employment at that time, MacDonald J.A. of the Federal Court of Appeal (the Court) stated: "The test to be applied having regard to all the circumstances is whether, on the balance of probabilities, the claimant had no reasonable alternative to leaving his or her employment."

[18] Moreover, the term "just cause", as it is used in subsections 29(c) and 30(1) of the Act, was interpreted by the Court in *Tanguay v. C.E.I.C.* (A-1458-84 (October 2, 1985); 68 N.R. 154) as follows:

> *In the context in which they are used these words are not synonymous with "reasons" or "motive". An employee who has won a lottery or inherited a fortune may have an excellent reason for leaving his employment: he does not thereby have just cause within the meaning of s. 41(1). This subsection is an important provision in an Act which creates a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur. To be more precise, I would say that an employee who has voluntarily left his employment and has not found another has deliberately placed himself in a situation which enables him to compel third parties to pay him unemployment insurance benefits. He is only justified in acting this way if, at the time he left, circumstances existed which excused him for thus taking the risk of causing others to bear the burden of his unemployment.*

[19] The Appellant presents the argument that her relationships should be considered a common-law relationship because she meets a portion of the criteria. She argues that her and her partner shared the expenses of maintaining two households along with incurring travel expenses going between the two locations.

[20] The Tribunal finds although the Appellant may consider her relationship to be that of common-law, it does not fall within the parameters of the section of the Act which defines "common-law partner. The law is clear and defines "common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year.

[21] In this case, the Tribunal finds the Appellant does not meet the legal definition of "common-law". The Tribunal finds from the evidence on the file, and from the Appellant's oral evidence that she and her partner, did not live together prior to her move. Therefore the Tribunal finds the Appellant has not established or provide evidence that a common-law relationship or a cohabitation of at least twelve months' duration existed prior to her move. The Tribunal finds the Appellant relocated to begin a common-law relationship and does not meet the requirement of "obligation to accompany a spouse".

[22] The Appellant presents the argument that she and her partner shared the expenses of maintaining two households and the costs of travelling back and forth between the two locations and this should be considered exceptional circumstances.

[23] The Tribunal finds from the evidence presented the Appellant is in a committed relationship with her partner, but not one of common-law. The Tribunal finds there have been cases where benefits were paid due to exceptional circumstances, as it has been considered in cases where children were involved and relocation was necessary to keep the family intact; this is not the case in this appeal. The Appellant provided documentary and oral evidence that there were no children involved and the Tribunal finds the sharing of expenses or travel costs do not present "exceptional circumstances".

[24] The Appellant presents the argument that she did not make the decision to leave her employment and move to where he partner resided without considerable thought. She stated she

provided her employer with a three month notice, and that her contract for both her work and apartment were ending. It was a natural fit.

[25] The Act imposes a duty on the claimant not to deliberately cause the risk of unemployment to occur. A claimant who has voluntarily left her employment and has not found other employment is only justified in acting in this way if, at the time she left, the circumstances existed which excused her from thus taking the risk of causing other to bear the burden of her unemployment. A claimant is responsible to exhaust all reasonable alternatives prior to placing themselves in a position of unemployment.

[26] The Tribunal finds the Appellant had reasonable alternatives available to her that she could have exhausted before she placed herself in a position of unemployment

[27] The Tribunal finds the Appellant has failed to provide evidence that she exhausted all reasonable alternatives available to her prior to her quitting her job. The Tribunal finds from the Appellant's evidence that although she did not make the decision in haste the Tribunal determined that the Appellant made a personal decision to leave her employment.

[28] The Tribunal finds the Appellant had reasonable alternatives available to her such as she could have secured employment prior to moving. She provided evidence that she had provided her employer with a three month notice, which would have provided her an opportunity to seriously look for work in the new area. She did provide oral evidence that she had done some research on line and had communicated by email with some school divisions however she had not made serious attempts to find employment prior to leaving.

[29] The Tribunal finds the Appellant could also have renewed her contract with her employer and stayed employed until she was able to secure employment in the new area or until the time of her impending marriage. The Tribunal does not disagree with the Appellant wanting to move on to the next step of her life; however the Appellant did not provide any evidence that there was an urgency to move. The evidence supports the Appellant has been in a relationship for 18 months of commuting and there were only plans for an impending marriage in May 2015, which was over a year away, which again presented no urgency.

[30] In the decision in *White* (2011 FCA 190 (CanLII) – A-381-10), Justice Carolyn Layden-Stevenson of the Court stated the following:

> *"…The jurisprudence of this Court imposes an obligation on claimants, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job: Canada (Attorney General) v. Hernandex, 2007 FCA 320 (CanLII); Canada (Attorney General) v. Campeau, 2006 FCA 376 (CanLII); Canada (Attorney General) v. Murugaiah, 2008 FCA 10 (CanLII)….The Board's observation that good cause does not equate to just cause was proper."*

[31] The Appellant presents the argument that denying women employment insurance benefits is unfair and puts them at risk financially. She argues that the Tribunal has the authority to change the legislation and by allowing her benefits will set a precedent for women in the future.

[32] The Tribunal sympathies with the Appellant's situation and understands her decision to move to live with her partner and start a new chapter in her life would be a good decision; however it does not meet the legislation.

[33] The Tribunal does not find any evidence the Appellant was denied benefits because of gender but rather she failed to prove just cause for voluntary leaving her employment without just cause.

[34] The Tribunal relies on Landry A-1210-92 where the Court concluded that it is not sufficient for the claimant to prove she was reasonable in leaving her employment, but rather the claimant must prove that after considering all of the circumstances she had no reasonable alternative but to leave her employment.

[35] The Tribunal does not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Appellant. *Canada (AG) v. Levesque,* 2001 FCA 304.

[36] The Tribunal relies *on Canada (A.G.) v. Knee* 2011 FCA 301 which states:

> *However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.*

[37] The Tribunal finds that pursuant to subsection 30 (1) of the Act that an indefinite disqualification be imposed because the Appellant voluntarily left her employment without just cause.

CONCLUSION

[38] The appeal is dismissed.

Teresa Jaenen
Member, General Division – Employment Insurance Section