Citation: ***C. R. v. Canada Employment Insurance Commission*****, 2015 SSTGDEI 119**

Date: July 2, 2015

File number: GE-15-511

GENERAL DIVISION – Employment Insurance Section

Between:

C. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

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

Heard In person on June 22, 2015, Winnipeg, Manitoba

REASONS AND DECISION

PERSONS IN ATTENDANCE

Mr. C. R., the Appellant (Claimant) attended the hearing.

INTRODUCTION

[1] On November 2, 2014 the Claimant made an initial claim for benefits. On December 16, 2014 the Canada Employment Insurance Commission denied the Claimant benefits because he voluntary left his employment on September 5, 2014 without just cause and he has not worked long to enough to receive benefits because since leaving his employment without just cause has only 184 hours of insurable employment and needs 700 hours to qualify. On December 16, 2014 the Claimant made a request for reconsideration. On January 7, 2015 the Commission maintained its original decision and the Claimant appealed to the *Social Security Tribunal of Canada* (Tribunal)

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

a) The complexity of the issue(s) under appeal;

b) The fact that the appellant or other parties are represented; and

c) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[3] The Tribunal must decide whether a disqualification should be imposed pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act) because the Claimant voluntarily left his 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; and

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

EVIDENCE

[6] In the Notice of Appeal the Claimant stated that needed to quit his employment when they could not find daycare. He stated he did not know he could have gone on a temporary leave

until he was told by a Service Canada agent. He stated he stopped working for three weeks and returned to his job as soon as he could. He stated it has been a struggle since they decided that his wife should go back to school (GD2-4).

[7] The Claimant stated that in the spring of 2014 they made the decision that his wife would return to school in September. His wife looked for daycare spots in the area but was not able to secure spots for their three youngest aged 1, 2 and 4 so they made a decision he would quit his job and care for the kids. He stated he kept asking family member to babysit but still no luck. He stated after a few weeks in September his oldest son was having issues at school and they decided to take him out of school. He stated at that point he and his wife decided if their son was not going to school he could care for the younger siblings. The Claimant stated at that point he called his employer and asked to have his job back. He stated that he is hoping he can get benefits and he does not deserve this. He has been waiting patiently for approval and he knows this is a situation he never wants to be in again (GD2-6 to GD2-7).

[8] In his application for benefits the Claimant indicated he quit his employment to care for his younger children. He stated he stayed home from September 8, 2014 to September 30, 2014 to care for his children. He stated that he needed to quit because his wife was going to school to get her GED. He stated they looked for childcare but could not find any family to do it and they don't trust anyone but family to care for the youngest child. The Claimant indicated that he did not ask his employer for a leave of absence because he did not know he could have. He was able to find daycare later (GD3-6 to GD3-9).

[9] A record of employment (ROE) indicates the Claimant was employed with J & D Penner Ltd. from May 20, 2014 to September 5, 2014 when he quit his employment. The ROE indicates the Claimant accumulated 659 hours of insurable employment (GD3-16).

[10] On December 16, 2014 the Claimant confirmed to the Commission he quit his job so his wife could go back to school and there was no other reason (GD3-18).

[11] In his request for reconsideration he relies on employment insurance benefits to get him through the winter as he has been unable to find other employment. He stated he has no other source of income (GD3-19).

[12] On January 6, 2015 the Claimant stated he had explained to two of his supervisors that his wife was trying to secure employment and she needed to have her GED. He stated they never suggested that he ask for a leave of absence or that they would talk to the owner for him. The Claimant reiterated his reasons for quitting and that after his son was able to provide care, he called up one of the owners and asked if he could come back to work and was given his job back immediately. He stated that he didn't know he could have asked for a leave of absence to which he likely would have received (GD3-23).

SUBMISSIONS

[13] The Claimant submitted that:

a) He and his wife decided she should get a job but she would need to go back to school and get her GED;

b) They had tried to get daycare for their three youngest children but there is much fault in the daycare system and they don't trust anyone but family;

c) The decided that he would quit and she would go to school;

d) He didn't know the EI system and that he could have asked for a leave of absence;

e) His employer didn't give him an option to take a leave of absence, but he never asked his employer either, or if there was other options available to him;

f) He was a seasonal worker and decided to cut his season short so his wife could go to school;

g) He stopped looking for daycare once they made the decision to quit as they didn't trust daycare centers;

h) He could have secured daycare for two of the older children at the school where the wife was attending, however they youngest was placed on a waiting list;

i) His older son wasn't doing well in school and he and his wife decided that he could provide daycare for his siblings;

j) He returned working for the same employer and accumulated 183 hours of insurable employment prior to being laid off for the season; and

k) He didn't realize his decision to quit would cause him such grief and he will never make such a mistake again and he hopes the decision is in his favor.

[14] The Respondent submitted that:

a) There was no immediate need for the Claimant to quit his job to care for his dependents until he and his wife determined that it would be better for her to go to school than for him to continue working;

b) The childcare issue only arose as a result of the Claimant's decision to put his wife's schooling and possible future employment before his own employment. Though this is a considerate gesture on his behalf towards his wife, it does not amount to just cause under the legislation;

c) The Claimant did not have just cause for leaving his employment within the meaning of the Act on September 5, 2014 because he failed to exhaust all reasonable alternatives prior to leaving; and

d) A reasonable alternative to leaving would have been to ask for a leave of absence from his employer, or to simply have remained employed and to postpone his wife's training until they were able to secure childcare.

ANALYSIS

[15] The Tribunal must decide whether the Claimant should be disqualified pursuant to sections 29 and 30 of the Act because he voluntarily left his 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 29(c)(v) obligation to care for a child or member of the immediate family. The test to be applied, having regard to all the circumstances, is whether the Claimant had a reasonable alternative to leaving his employment when he did.

[16] The Tribunal cites *Rena-Astronomo v. Canada* (A-141-97), which confirmed the principle established in *Tanguay v. Canada (A.G.)* (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 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."

[17] The Federal Court of Appeal reaffirmed the principle that where a claimant voluntarily leaves his employment, the burden is on the claimant to prove that there was no reasonable alternative to leaving when he did. *Canada (AG) v. White*, 2011 FCA 190 (CanLII).

[18] There is no dispute that the Claimant quit his job and the burden of proof is on the Claimant to prove that he had no reasonable alternatives to leave when he did.

[19] The Claimant presents the argument that after being unsuccessful at securing daycare, he and his wife made a decision that he would quit his job while she returned to school and he didn't want her to miss the opportunity to start in September 2014.

[20] The Tribunal finds that wanting to better ones livelihood is commendable however the decision to quit his job was for a personal reason, and unfortunately personal reasons do not constitute just cause within the meaning of the Act.

[21] The Tribunal finds from the evidence on the file and from the Claimant's oral evidence that he wasn't aware of the EI program and that he could have asked for a leave of absence. The Tribunal sympathies with the Claimant's ignorance, however the Tribunal finds that speaking to his employer to discuss his situation and if there were any options available to stay employed would have been a reasonable alternative available to him. The Tribunal finds the Claimant did not act like a reasonable person in his situation. The Tribunal finds the evidence on the file support the Claimant and his wife made the decision for her to return to school in the spring of 2014 and she would not start until September 2014, would have provided the Claimant with ample time to discuss his plans with his employer to remain employed *Canada (A.G.) v. Yeo* FC A-271-10; *Canada (A.G.) v. Hernandez* 2007 FCA 320.

[22] The Tribunal finds from the Claimant's oral evidence that of not wanting his wife to miss the opportunity to return to school to be very admirable; however it again is a personal decision and does not meet the legal test of just cause.

[23] The Claimant presents the argument that they did not trust daycare centers and were looking for family members to care for the children.

[24] The Tribunal finds the Claimant's decision on what type of daycare would be suitable is one of his discretion and once again a personal decision to only allow family members to care for his children. The Tribunal finds from the Claimant's oral evidence that they were able to secure daycare spots for two of the three children at the school, and with the youngest on a waiting list the Tribunal finds a reasonable alternative would have been for the Claimant to remain employed and the his wife delay her start date until all three children were accepted into the school daycare program.

[25] The Tribunal finds the Claimant has not provided any evidence to support that there was urgency for his wife to return to school and that she couldn't have applied at a later time when they were able to secure daycare.

[26] The Claimant presents the argument that after three weeks he was able to secure daycare as his oldest son was no longer in school and could care for the children. He argues that he called his employer and requested his job back but was only able to work 183 insurable hours before his seasonal layoff took place so he needs his previous hours to obtain benefits.

[27] The Tribunal finds it very unfortunate that the Claimant was not able to obtain additional hours, however as the legislation stands the Claimant is required to have at least 700 hours of insurable hours and he only had 183 as it has been determined he left his previous employment without just cause.

[28] The Tribunal sympathies with the Claimant's situation of feeling he was the only one to care for his children while his wife pursued further education and that this would be a good reason to quit his employment however this does not constitute just cause within the meaning of the Act and causing other to bear the burden of his unemployment.

[29] The Claimant presents the argument that he made a mistake and that he would never let this happen again. He requests that the decision be in his favor.

[30] The Tribunal finds the situation very unfortunate however it 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 Claimant *Canada (A.G.) v. Levesque*, 2001 FCA 304

[31] 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*.

[32] The Tribunal relies on *Canada (A.G.) v. Landry* A-1210-92 where the Court concluded that it is not sufficient for the claimant to prove he was reasonable in leaving his employment, but rather the claimant must prove that after considering all of the circumstances he had no reasonable alternative but to leave his employment.

[33] The Tribunal finds that the Claimants reasons may be very good reasons, however, unfortunately these reasons do not constitute just cause within the meaning of the Act.

[34] Under subsection 30(1) of the Act, an employee is disqualified for receiving employment insurance benefits if she loses her job as a result of misconduct, or voluntarily leaves her job without just cause.

[35] The Tribunal sympathies with the Claimant's situation however finds the Claimant had not proven that he exhausted all the reasonable alternatives available him and has not proven he had just cause to voluntarily leave his employment and an indefinite disqualification should be imposed.

CONCLUSION

[36] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section