

Citation: *A. C. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 126

Date: July 22, 2015

File number: GE-15-1079

GENERAL DIVISION – Employment Insurance Section

Between:

A. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Joseph Wamback, Member, General Division - Employment Insurance Section

Heard by Teleconference on July 22, 2015, Toronto, Ontario.

REASONS AND DECISION

PERSONS IN ATTENDANCE

A. C., the Appellant attended the hearing.

INTRODUCTION

[1] The Appellant filed for regular benefits stating she quit her job. The Respondent denied her application at the initial level and the Appellant requested reconsideration of that decision. The Respondent denied the Appellant's request at the reconsideration level and the Appellant filed an appeal to the Tribunal. The Tribunal scheduled a Teleconference hearing.

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

- a) The fact that the credibility may be a prevailing issue.
- b) 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 Appellant is appealing the Respondent's decision rendered following a Request for Reconsideration made under Section 112 of the *Employment Insurance Act* (Act) regarding the Commission's finding that she left her employment without just cause pursuant to sections 29 and 30 of the Act.

THE LAW

[4] Section 29 of the Act:

For the purposes of sections 30 to 33,

- (a) "employment" refers to any employment of the appellant 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 appellant 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, reasonable assurance of another employment in the immediate future,

(vi) significant modification of terms and conditions respecting wages or salary,

- (vii) excessive overtime work or refusal to pay for overtime work,
- (viii) significant changes in work duties,
- (ix) antagonism with a supervisor if the appellant is not primarily responsible for the antagonism,
- (x) practices of an employer that are contrary to law,
- (xi) discrimination with regard to employment because of membership in an association, organization or union of workers,
- (xii) undue pressure by an employer on the appellant to leave their employment, and
- (xiii) any other reasonable circumstances that are prescribed.

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

An appellant is disqualified from receiving any benefits if the appellant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

- (a) the appellant 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 appellant is disentitled under sections 31 to 33 in relation to the employment."

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

The disqualification is for each week of the appellant'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 appellant during the benefit period.

[7] Section 112 of the Act:

(1) An appellant or other person who is the subject of a decision of the Respondent, or the employer of the appellant, may make a request to the Respondent in the prescribed form and manner for a reconsideration of that decision at any time within

(a) 30 days after the day on which a decision is communicated to them; or

(b) any further time that the Respondent may allow.

(2) The Respondent must reconsider its decision if a request is made under subsection (1).

(3) The Governor in Council may make regulations setting out the circumstances in which the Respondent may allow a longer period to make a request under subsection (1).

[8] Section 51.1 of the Regulations

For the purposes of subparagraph 29(c)(xiv) of the Act, other reasonable circumstances include

(a) circumstances in which an appellant has an obligation to accompany to another residence a person with whom the appellant has been cohabiting in a conjugal relationship for a period of less than one year and where

(i) the appellant or that person has had a child during that period or has adopted a child during that period,

(ii) the appellant or that person is expecting the birth of a child, or

(iii) a child has been placed with the appellant or that person during that period for the purpose of adoption; and

(b) circumstances in which a appellant has an obligation to care for a member of their immediate family within the meaning of subsection 55(2).

EVIDENCE

[9] The Appellant filed for regular benefits on December 14, 2014. She stated she quit her job because of continual harassment by her office manager and the business owner. (GD3-3 to 16)

[10] The Appellant was employed by B. L. B., from February 1, 2010 to December 15, 2014 when she quit her job.(GD3-17)

[11] The employer advised the Respondent on January 15, 2015 that there was a lot of friction in the workplace. He understood that the Appellant was incompatible with another employee. He offered to hire an industrial psychologist to help work issues out but the Appellant told him it was either her or the other employee who was more qualified than the Appellant. (GD3-19)

[12] The Respondent notified the Appellant on January 15, 2015 that they could not pay benefits as they determined she voluntarily left her employment without just cause. (GD3-20)

[13] The Appellant requested reconsideration on January 26, 2015. The reconsideration request contained details of the Appellant's business relationship with her employer during her employment. In addition she included a copy of a hearing detailing the results of a professional misconduct investigation wherein the employer was suspended for a period of 2 months commencing November 2, 2013 for professional misconduct. (GD3-33). The Appellant provided a copy of a medical note dated January 23, 2015 stating that the Appellant sought professional assistance on 5 occasions presenting stress and anxiety and generalized anxiety disorder and gave her a prescription for Ativan to take as needed. "She certainly was not fully functional to work. I believe that if she continued working in that environment it would have negatively affected her health". (GD3-34) She also provided a lawyers letter advising her employer that she was constructively dismissed and requested she be reinstated on the clear understanding that the inappropriate treatment leveled upon her cease and that her employers relationship with her will continue forward on a professional level. (GD3-35, 36)

[14] The Respondent notified the Appellant on March 16, 2015 that they have reviewed her request for reconsideration and determined that they will uphold their decision dated January 15, 2015. (GD3-45)

[15] The Appellant filed an appeal with the Tribunal and provided additional medical documentation for review. (GD2-1 through 18)

[16] The Appellant advised the Tribunal that a co-worker caused friction in the office. The office had 14 employees in its largest form and over a period of 2 years when the antagonistic co-worker joined the firm numerous employees quit. The Appellant stated she was receiving complaints from staff, clients etc. about the antagonistic posturing of the co-worker and her employer. She stated that she became very unhappy at her job, however she stayed for almost 2 years hoping things would get better but the environment began to affect her psychological wellbeing. She stated she went to her doctors in April of 2014 for help and she was diagnosed with a general anxiety caused by the constant harassment at work. In November of 2014 she started looking for new jobs by putting out feelers and looking on line for alternate employment opportunities. When she finally quit her job because she could no longer take the abuse she started looking in earnest for full time employment and has since found a job in a different field as an office manager.

[17] The Appellant stated to the Tribunal that she has paid into the employment insurance system for 30 years feels she is entitled.

[18] She stated that she was harassed by her employer and his assistant and she tried to stay as long as she could. She became frustrated when her employer was still practicing law when he was suspended by the law society and she felt she was being forced to do work that was illegal.

SUBMISSIONS

[19] The Appellant submitted that;

- a) She was harassed by both her employer and a co-worker for almost 2 years and her mental health was suffering as a result. She tried to quit earlier but she believed that the environment would change and when it didn't she was forced to quit.
- b) Her employer was practicing law illegally while he was suspended and she did not want to become associated with that practice.

[20] The Respondent submitted that;

- a) As a result of the Respondent's review of the Appellant's appeal, the Respondent has decided to concede the issue before the Tribunal because she has provided a new medical confirming "her work environment was detrimental to her health and it was in her best interest that she remove herself from that job" (GD2-15). This new medical evidence supports the Appellant had just cause to quit her job at B. L. B. on December 15, 2014 pursuant to section 29 and 30 of the Act.
- b) The Respondent is conceding the appeal on the issue of voluntary leave with no just cause from B. L. B. identified above. The Respondent relies on the judgments of the Federal Court of Appeal which ruled that once a Respondent's decision is appealed, that decision is out of the Respondent's hands and any change to a decision after it is appealed is null and void.

ANALYSIS

[21] The issue before the Tribunal is whether the Appellant voluntarily left her employment and, if so, if she had demonstrated just cause pursuant to section 29 and 30 of the Act.

[22] Appellants who voluntarily leave their employment will not be entitled to receive benefits unless they can establish they had "just cause" for doing so. The term "just cause" is not defined in the legislation. Paragraph 29(c) of the Act lists certain examples or circumstances which may constitute just cause. These examples are not exhaustive to all of the circumstances of each individual case in determining whether just cause exists.

[23] The legal test for just cause, as set out in paragraph 29(c) of the Act, is whether an appellant has "no reasonable alternative to leaving the employment". In making the determination as to whether just cause exists, the focus is on whether the appellant had a reasonable alternative to placing himself/herself in the position of being unemployed and forcing others to bear that burden. Just cause exists if, at the time an appellant leaves his/her employment without having secured another job, circumstances existed which excused him/her from taking the risk of causing others to bear the burden of his/her unemployment.

[24] In CUB 73370 Michel Beaudry, Chief Umpire Designate wrote:

“Section 30 of the Act provides that appellants who voluntarily leave their employment without just cause are not entitled to benefits. The legislation reflects the intention of the employment insurance scheme which is to compensate those individuals whose employment has been terminated involuntarily and who are without work through no fault of their own. The Act is not intended to benefit individuals who choose not to be employed.

[25] When an appellant voluntarily leaves his/her job, the appellant must show that he/she comes under any one of the enumerated grounds set out in paragraphs 29(c) of the Act, or that he/she had "no reasonable alternative to leaving the employment".

[26] An appellant who seeks to demonstrate just cause must also show that he/she had "no reasonable alternative to leaving or taking leave." The Federal Court of appeal has affirmed that the burden is on the plaintiff to demonstrate that there was no reasonable alternative to leaving (*Rena Astronomy* A-141-97)

[27] Under section 30(1) of the Act, an appellant is disqualified from receiving benefits if he/she voluntarily leaves an employment without just cause, unless he/she satisfies one of the exceptions set out in section 29(c) of the current Act. Section 29(c) of the Act stipulates that an appellant can voluntarily leave his/her employment if he/she has no reasonable alternative to leaving. This section also stipulates that just cause is proven when the existence of any of the 14 situations listed can be established. Those situations are set out in section 29(c)(i to xiv) of the EI Act. The Tribunal reviewed the exceptions with the Appellant as set out in section 29(c) with the evidence provided by the Appellant in her submissions to the Respondent and the Tribunal. In this case the Tribunal finds that the Appellant did establish that she met item (i) and item (x) as set out in section 29(c)(i to xiv) of the Act and specifically advised the Tribunal that she left her employment to unacceptable harassment. She stated that she tried to resolve issues with her employer and remained employed for almost 2 years after the harassment began, however the deteriorating environment began to take a toll on her psychological wellbeing as documented by her medical notes (GD2-14 and 15) The Tribunal finds that the Appellant began a search for

alternate employment when the harassment began, however, she finally quit her job when the harassment had a serious effect on her psychological health. (GD2-14, 15)

[28] The Tribunal finds that the Appellant left her employment after almost 2 years of verbal abuse and has provided medical documentation to support her evidence. The Tribunal finds that the Appellant has proven that she left her employment with just cause within the meaning of the Act.

CONCLUSION

[29] The appeal is allowed.

Joseph Wamback

Member, General Division - Employment Insurance Section