

Citation: *C. S. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 145

Date: September 1, 2015

File number: GE-15-1451

GENERAL DIVISION – Employment Insurance Section

Between:

C. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

Wakamow Valley Authority

Added Party

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

Heard In person on August 10, 2015, Regina, Saskatchewan

REASONS AND DECISION

PERSONS IN ATTENDANCE

Mr. C. S., the Appellant (Claimant) along with his representative Mr. Mark Crawford, Community Unemployed Help Centre attended the hearing. Ms. Kim Hryciw, from the Community Unemployed Help Centre (Saskatoon) observed the hearing.

Wakamow Valley Authority, the employer **did not** attend the hearing.

INTRODUCTION

[1] On December 7, 2014 the Claimant made an initial claim for employment insurance benefits. On January 26, 2015 the Canada Employment Insurance Commission (Commission) denied the Claimant benefits because he voluntarily left his employment without just cause. On February 18, 2015 the Claimant made a request for reconsideration. On March 19, 2015 the Commission maintained their original decision and the Claimant appealed to the *Social Security Tribunal of Canada* (Tribunal).

[2] In accordance with subsection 10(1) of *Social Security Tribunal Regulations* (Regulations) the Tribunal may, on its own initiative or if a request is filed, add any person as a party to the proceeding if the person had a direct interest in the decision. In this case on June 5, 2015 the Tribunal determined the employer had a direct interest and added them as a party to the appeal.

[3] In accordance with subsection 12(1) of the Regulations if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of hearing. In this case, on August 6, 2015 the employer informed the Tribunal by telephone that they would not be attending the hearing. Thus the Tribunal is satisfied the party received notice and made a decision not to participate in the hearing and therefore proceeded under the authority of the above-noted subsection.

[4] 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 credibility may be a prevailing issue;
- c) The fact that more than one party will be in attendance;
- d) The information in the file, including the need for additional information;
- e) The fact that multiple participants, such as a witness, may be present; and
- f) The fact that the appellant or other parties are represented.

ISSUES

[5] 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 Claimant voluntarily left his employment without just cause.

THE LAW

[6] 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) 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.

[7] 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

[8] In his application for benefits the Claimant stated he quit his job because of harassment by the CEO. He explained the incidents of harassment. He stated he did not speak directly to the CEO however over the past year, he and other staff had met with the Board of Directors on several occasions to improve the situation. He stated he did not look for work before leaving because he left quickly (GD3-6 to GD3-9).

[9] A record of employment indicates the Claimant was employed with Wakamow Valley Authority from May 7, 1986 to December 1, 2014 when he quit/voluntarily retired from his employment (GD3-15).

[10] On January 22, 2015 the Claimant stated to the Commission he believed his manager was calling him just to harass him. He stated the shovel was not missing and she could have waited until the next day when he returned to work. He stated he believed his manager was upset with him for finding someone else to clear the snow. He stated he only returned the following day and resigned. He stated he had gone to the Board of Directors to discuss the manager's behavior but nothing ever happened, only that she was spoken to and required to take a course on how to deal with people. The Claimant stated that problem had existed for years and

the environment just became too stressful for him to continue. He did not look for other work or looked at taking time off. He wouldn't have been approved for sickness but he may have gotten a leave of absence but he never thought about that (GD3-16).

[11] On January 23, 2015 the employer stated to the Commission that the Claimant quit due to retirement. She stated the Claimant sent her an email stating he was retiring. She stated she was not informed of any alleged harassment. She stated the Claimant had a habit of misplacing things and as he had called in sick she need to call him and ask where the keys and shovel were.

[12] The employer stated to the Commission that there had not been enough snow that the Claimant needed to call in extra help. She stated she had been working with the Claimant since 2006 and he resents her for moving up the ranks and becoming her boss. She stated she only asked why he called someone in; she never called to harass him she just called to find out where the keys were. She did find the shovel as a renter had misplaced it. She stated it was not the Claimant's fault and she called the Claimant back when she found the shovel and thanked him (GD3-17).

[13] An email dated December 4, 2014 from the Claimant to his employer states he is retiring from his position immediately (GD3-18).

[14] On January 26, 2015 the employer submitted a written account of the reason she called the Claimant on December 1, 2014 (GD3-19).

[15] On February 4, 2015 the Claimant submitted information regarding his working conditions and issues with his manager and his attempts to rectify the situation (GD3-25).

[16] A letter dated January 31, 2015 from the Claimant's coworker was submitted in support of the Claimant's appeal and her personal experiences in the workplace and with the manager (GD3-26 to GD3-30).

[17] The Claimant's coworker provided information to support the working conditions and the attempts that were made to rectify the situation and meetings with the Board of Directors and Personnel Committee (GD3-31 to GD3-37).

[18] On March 13, 2015 the Claimant stated to the Commission he quit his job because he was being bullied by his manager. He stated she called him lazy and incompetent in front of other staff. He stated he and other staff members went to the Personnel Committee (PC) over the manager. He stated they asked if they could sit down with the manager, however the PC did not want to do this but they would send her on a course. He stated the final incident happened when he had called in sick (he never calls in sick) and she called him at home demanding where the keys and the shovel were. He stated he told her where everything should be but she continued to argue with him, then she questions him why he called in someone to move the snow on the previous Friday. He stated he was sick and she was calling him at home to bully him and he couldn't take it anymore (GD3-38).

[19] On March 17, 2015 the employer stated to the Commission the Claimant and other staff had gone to the PC because she believed they wanted to get rid of her. She stated the PC investigated the complaint had she did go on a managers course. She stated the Claimant didn't like following her instructions. She stated she put on the record of employment why the Claimant stated he was leaving as he was retiring. She did not know he was unhappy (GD3-39 to GD3- 40).

[20] On March 19, 2015 the member from the Personnel Committee stated to the Commission that she was there just before all of the issues with two other employees being disgruntled occurred which she believes happened in June 2014. She stated the Claimant seemed to be on the side of the two other staff but never was included in putting anything down or putting his name on anything. She stated as far as she knew the PC never had any issues with the Claimant and that he never submitted or appeared in front of the PC. Nothing would be done unless the complaint was made in writing (GD3-41).

[21] On March 19, 2015 the Claimant stated to the Commission the person they spoke to on the PC got it all wrong. He stated four of them had gone to the PC but not all at once. He stated he did go to the PC and the manager had gone to training. He stated he didn't put anything in writing but spoke verbally to the PC. He stated the person the Commission to spoke to wasn't there when he spoke to the PC (GD3-42).

[22] In the Notice of Appeal the Claimant's representative stated the Claimant had no alternative to leave an intolerable work situation caused by an antagonistic and harassing management. No action was taken by the Board of Directors to address and deal with the problems in the workplace (GD2-1 to GD2-5).

SUBMISSIONS

[23] The Claimant's representative submitted that:

- a) The Claimant left his employment of 28 years because of antagonistic and harassment towards him and other employees by his manager;
- b) The Claimant made several attempts to rectify the situation by going to the Personnel Committee;
- c) It is clear there was issues as the manager was sent on a course on how to deal with people;
- d) The Claimant's and his coworkers were not addressed by the Board of Directors;
- e) The Board should have investigated the allegations and the evidence supports the manager admits to being sent on a course and she believed she fulfilled most of the course;
- f) The Claimant and his coworkers did everything they could to try and rectify the situation;
- g) The statements of the Personnel Committee the Commission spoke to in (GD3-41) are not credible as she wasn't even part of the meetings that took place and why the manager would refer this person to the Commission is in question;
- h) The Commission didn't speak to any member of the PC that was actually attended the meetings with the Claimant and coworkers;

- i) The manager's conduct was harassing and bullying and the information provided by the coworkers proves the intolerable workplace. The Claimant was a 28 year employee who was exemplary in his work. A letter submitted from his former CEO substantiates this;
- j) The final incident was the last straw when the manager called him while he was home sick, accusing him of misplacing the keys and snow shovel, then to question him on the issue of the snow clearing when he was the manager of maintenance; and
- k) The following case law supports the appeal: CUB's 43142; 65977; 66311; 77679 and 60902.

[24] The Claimant submitted that:

- a) He had called in sick and the manager called him at his home to ask him where the shovel and the keys were. He told her where they should be but she continued to argue with him and then questioned him why he had brought someone in to move the snow, stating they would have to talk about it when he returned. He was already ill and he didn't sleep the entire night and he had enough of the bullying;
- b) He had been the maintenance manager for 28 years and if he needed help clearing snow that was his discretion. That particular instance a heavy snowfall had occurred and there were events going on at the complex so the snow needed to be cleared from the parking lot;
- c) The manger's statement in GD3-17 is untrue, she did not call him back once she found the shovel and keys and thank him;
- d) The next day he went to work and told the office manager he was cleaning out his locker and handed in the keys, he just couldn't take it anymore;
- e) The manager called him to clarify that he had resigned, she never asked anything else;
- f) He took a few days to cool off and then sent an email stating he retired;

- g) He didn't take this final incident to the Board because he had already been down that road and nothing was ever done to fix the situation;
- h) The issues started in 2006 when she became the manager;
- i) He along with other staff had a meeting with three members from the Personnel Committee (P. D., D. R. and R. P.); C. A. whom the Commission spoke to was never involved in meetings. She was a Board Member appointed by the city but not a PC member;
- j) He attended all the meetings and it was his coworkers sending the emails to the PC and Board which included him, he just never signed anything;
- k) When he decided to resign, a coworker went to the Board on his behalf and they let her go;
- l) He had been working there for 28 years and tried to be a tough guy and continue to put up with it but he just saw it was not going to change;
- m) There were regular staff meetings with the previous CEO but once M. C. took over in 2012 she didn't have regular staff meetings and it became more of a power struggle with her and the staff;
- n) The manager would continually tell him he was lazy and incompetent and he didn't know how to run a maintenance crews and she would also do this in front of other staff and the people who he supervised;
- o) The letters submitted by his coworkers and his former CEO document the harassment; and
- p) It was a poisonous workplace and taking a leave of absence would not solve the problem. He never considered a stress leave as this would not be his way, and how could he go to a doctor and prove stress.

[25] The Respondent submitted that:

- a) Subsection 30(2) of the Act provides for an indefinite disqualification when the claimant leaves his employment without just cause. The test to be applied, having regard to all

circumstances, is whether the claimant had a reasonable alternative to leaving his employment when he did;

- b) The Claimant did not have just cause for leaving his employment on December 1, 2014 because he failed to exhaust all reasonable alternatives prior to leaving;
- c) Considering all of the evidence, a reasonable alternative to leaving would have been to discuss the issues with his employer and/or to seek and obtain other suitable employment prior to leaving the job he had;
- d) Consequently the Claimant failed to prove he left his employment with just cause within the meaning of the Act;
- e) The Claimant indicated that the issues that compelled him to leave this employment had been going on for years but he chose to ignore it rather than report the issue;
- f) The Claimant confirmed that although he spoke to with the Personnel Committee he did not provide any written statements about the allegations;
- g) The Claimant had a reasonable alternative to make a formal complaint with the Personnel Committee if he was not satisfied with their initial response;
- h) Given the extended period of the Claimant's allegations, he also had a reasonable alternative to see and obtain suitable employment prior to quitting; and
- i) There is no evidence that the Claimant's working conditions were so intolerable that he had no choice to leave without exhausting these reasonable alternatives.

ANALYSIS

[26] 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. Under subsection 30(1) of the Act, an employee is disqualified for receiving EI benefits if he loses his job as a result of misconduct, or voluntarily leaves 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 (iv) working conditions that constitute a danger to health or safety; and (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism. 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.

[27] 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)).

[28] 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.”

[29] The Respondent presents the argument that considering all of the evidence, a reasonable alternative to leaving would have been to discuss the issues with his employer and/or to seek and obtain other suitable employment prior to leaving the job he had. They argue that the Claimant confirmed that although he spoke to with the Personnel Committee he did not provide any written statements about the allegations. The Claimant had a reasonable alternative to make a formal complaint with the Personnel Committee if he was not satisfied with their initial response. Given the extended period of the Claimant’s allegations, he also had a reasonable alternative to see and obtain suitable employment prior to quitting and there is no evidence that the Claimant’s working conditions were so intolerable that he had no choice to leave without exhausting these reasonable alternatives.

[30] The Respondent presents the argument that there is no evidence that the Claimant’s working conditions were so intolerable that he had no choice to leave without exhausting these reasonable alternatives.

[31] The Claimant presents the argument that he was a 28 year employee and he could no longer tolerate the harassment and bullying he was experiencing by his manager. He argues that he made several attempts to rectify the situation along with coworkers. He stated there was written documentation that was issued to the Personnel Committee and his coworkers can attest to this. As well the former CEO has provided documentation to support the harassing behavior of the manager.

[32] It has been said unsatisfactory working conditions will only constitute just cause for leaving employment (a) where they are “so manifestly unsatisfactory as to give rise to a genuine grievance,” where the claimant has taken all reasonable steps to alleviate the grievance or dissatisfaction by discussing them with the employer, and has also made an attempt to try to find other employment; or (b) where conditions are so intolerable that the employee has no other choice but to separate from that employment. There is a high obligation on a claimant to seek solutions to intolerable conditions before leaving. A claimant who does take reasonable steps to alleviate intolerable conditions will generally have just cause if those steps are unsuccessful.

[33] The Tribunal finds the evidence on the file and from the oral testimony from the Claimant he made several attempts to resolve the situation. He and along with coworkers addressed their concerns with the Personnel Committee on several occasions. The evidence on the file and from the Claimant’s oral evidence the only solution that was offered was to send the manager on a management course however there is no record from the employer of what the outcome of that training was or if there was any follow up to whether it was successful and if remedied the situation.

[34] The Tribunal does not accept the evidence provided by the Board Member as credible because she was not involved in any of the meetings that had taken place with the Claimant and the coworkers because she was not on the Personnel Committee. This is substantiated by the documentary evidence provided by the former CEO (GD7-2) that lists the same people who did attend the meeting as stated by the Claimant and confirms she was not in attendance. The Tribunal finds the employer provided the Commission with this contact to support her position and should have known this person did not participate in the meetings. The Tribunal would

question why the manager did not provide the names of the people who were involved with the issues, thus the Tribunal finds the manager's evidence is not credible. The Tribunal finds the manager misled the Commission when she did not provide a contact to someone who actually was on the Personnel Committee and could answer to the Claimant's allegations.

[35] The Tribunal finds from the evidence on the file that the manager had issues with her management style to which she herself admits, and further the Board provides written evidence that once they learned of her behavior sent her on a management course. However she herself admits to only doing most of the course, so the Tribunal is not satisfied that her management style would have changed.

[36] The Tribunal finds from the manager's statements to the Commission lacks credibility and that the final incident occurred as it did. In her statements she stated that she called the Claimant to find out where the shovel and keys were and once she found them called the Claimant back to let him know she found them and to thank him. The Tribunal finds from the Claimant's oral evidence that this lacked the truth. He stated that the manager called him, demanding to know where the shovel and keys were, argued with him when he tried to tell her and then subsequently questioned him on the snow removal, stating they would be talking about that when he returned. She did not call him back at all. The Tribunal finds the Claimant's statements to be a more accurate account of the events because the manager's actions caused the Claimant to resign from his position the next day.

[37] The Tribunal finds an employer has no obligation to attend the hearing and support their position therefore based on the evidence before it and based on the balance of probabilities the Claimant did act like a reasonable person when he left his employment as he had no choice. The Tribunal finds the Claimant to be a credible witness and the facts pleaded as true. The Tribunal finds the Claimant did not quit his employment but rather it was the manager's actions that constituted the interruption of employment.

[38] The Tribunal prefers the information provided by the former CEO as the Tribunal finds is a more accurate account of the behavior of the manager even before she became the manager. The CEO also provided information that there had been more than one discussion on her behavior and recommended termination. (GD7-2).

[39] The Tribunal finds the witness statements provided in the file support that the workplace was not satisfactory and that the manager was antagonistic to the Claimant and to the other staff as well.

[40] The Tribunal finds that from the Claimant's oral evidence that he had not looked for other employment prior to leaving. The Tribunal finds that the Claimant provided satisfactory evidence that he did not look for work, because he had no plans on quitting the day he did, however the situation became so intolerable that he had to choice to leave when he did.

[41] The Tribunal finds the final incident was the cause of the manager and it was her antagonist behavior and his unsuccessful attempts to have the situation rectified with the Personnel Committee that left the Claimant no choice but to leave when he did.

[42] The Tribunal is satisfied and accepts the evidence of the Claimant on how he was treated by his manager and that it is clear from his attempts to rectify the situation that there was nothing more than he could do.

[43] The Tribunal must apply the test of whether the Claimant had a reasonable alternative to leaving his employment when he did. The Act imposes a duty on the claimant not to deliberately cause the risk of unemployment to occur. A claimant who has voluntarily left his employment and has not found other employment is only justified in acting in this way if, at the time he left, the circumstances existed which excused him from thus taking the risk of causing other to bear the burden of his unemployment. A claimant is responsible to exhaust all reasonable alternatives prior to placing themselves in a position of unemployment.

[44] The Tribunal is satisfied the Claimant was reasonable and that he had no other reasonable alternatives. He was a 28 year employee who loved his job and who tried to rectify the situation on several occasion by going through the proper channels with no success and he tried for a lengthy period to put up with the manager's behavior towards him. However when the manager called him when he was sick, argued with him over where a shovel and keys were, and then to go on to question him on his actions on his own department and then threaten him that she would be talking to him when returned left him no alternative but to leave his employment.

[45] Past cases have held that a claimant does not have just cause for leaving employment merely because of a disagreement with a supervisor's instructions or the way the supervisor ran a department. However subsection (x) provides that just cause will exist where there is "antagonism with a supervisor if the claimant is not primarily responsible. Antagonism has been defined as a form of hostility or attitude which in most cases cannot be detected by what may have occurred in one incident or one dispute.

[46] The Tribunal finds the Claimant was able to provide solid and compelling reasons to leave the employment when he did. The evidence supports that there was antagonism between the Claimant and the manager and that the Claimant was not primarily, or at all, responsible for the antagonism which will constitute just cause for leaving his employment as per the Act.

[47] 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.

[48] Under subsection 30(1) of the Act, an employee is disqualified for receiving EI benefits if he loses his job as a result of misconduct, or voluntarily leaves his job without just cause.

[49] The Tribunal the Claimant has proven he had no reasonable alternative but to voluntarily leave his employment therefore an indefinite disqualification should not be imposed because

CONCLUSION

[50] The appeal is allowed.

Teresa Jaenen
Member, General Division – Employment Insurance Section