Citation: *Canada Employment Insurance Commission v. L. W.*, 2015 SSTAD 1307

Appeal No. AD-13-109

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

L. W.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: November 10, 2015

DECISION: Appeal allowed

DECISION

[1] The appeal is allowed. The decision of the board of referees is rescinded and the determination of the Commission is restored.

INTRODUCTION

[2] On April 10, 2013, a panel of the board of referees (the Board) allowed the appeal of the Respondent against the previous determination of the Commission.

[3] In due course, the Commission filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] On June 16, 2015, a teleconference hearing was held. The Commission attended and made submissions. The Respondent contacted the Tribunal in writing to say that "unfortunately something came up" and that she would not be attending the hearing. As she did not request an adjournment and had clearly received notice of the hearing, I proceeded in her absence.

THE LAW

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[6] As previously determined by the Federal Court of Appeal in *Canada (Attorney General) v. Jewett*, 2013 FCA 243, *Chaulk v. Canada (Attorney General),* 2012 FCA 190, and many other cases, the standard of review for questions of law and jurisdiction in employment insurance appeals is that of correctness, while the standard of review for questions of fact and mixed fact and law in employment insurance appeals is reasonableness.

ANALYSIS

[7] This case revolves around the application of the law and jurisprudence regarding voluntarily leaving one's employment.

[8] The Commission has appealed against the decision of the Board on the basis that the Board ignored the jurisprudence of the Federal Court of Appeal as well as the uncontested evidence in determining that the Respondent had just cause for leaving her employment.

[9] The Respondent made no substantive submissions regarding this appeal.

[10] In its decision, the Board found that the Respondent "would have continued to work at [her Employer] had she not needed to do the condensed version of her last semester [of school] to finish quicker to go to work as a substitute teacher". The Board also found that the Respondent had "a reasonable assurance of work as a substitute teacher in the immediate further [sic]". The Board then allowed her appeal on the basis that she had "exhausted reasonable alternatives and had just cause" to leave her employment.

[11] Section 30(1) of the Employment Insurance Act ("the Act") states that a claimant is disqualified from receiving benefits if they voluntarily left their employment "without just cause".

[12] The Federal Court of Appeal has dealt with the issue of voluntary leaving for the purpose of attending school many times. *Canada (Attorney General) v. Cote*, 2006 FCA 219, is representative of this line of jurisprudence in holding that leaving one's employment to pursue studies not authorized by the Commission does not constitute "just cause" within the meaning of the Act.

[13] In *Canada (Attorney General) v. Martel,* A-1691-92, the court stated the rationale for this holding as follows:

> An employee who voluntary leaves his employment to take a training course which is not authorized by the Commission certainly has an excellent reason for doing so in personal terms; but we feel it is contrary to the very principles underlying the unemployment insurance system for that employee to be able to impose the economic burden of his decision on contributors to the fund.

[14] The Respondent stated in her initial application for benefits that she left her employment to finish her schooling. There is no evidence to suggest that she had the authorization of the Commission to do so. Notwithstanding this, the Board found that she had shown just cause for doing so because she had the reasonable assurance of another employment in the immediate future.

[15] This conclusion was based upon a letter from a school principal in which the principal stated that "since [the Respondent] completed her internship with our school, we were more likely to hire her over others who were not familiar with our school".

[16] With respect, there is no basis to conclude that this letter constitutes a reasonable assurance of another employment in the immediate future. I note that there was no actual job offer, and that any such potential employment would only occur after the Respondent had completed her schooling.

[17] I find that the Respondent did not have a reasonable assurance of employment in the immediate future. The fact that the Respondent did indeed eventually find such work is irrelevant.

[18] As the Court held in *Canada (Attorney General) v. Lessard*, 2002 FCA 469, failing to correctly understand the meaning of "reasonable assurance" and "the immediate future" constitutes an error of law, reviewable on the standard of correctness.

[19] I also note that as established by the Court in *Canada (Attorney General) v. Bell*, 2013 FCA 155, the Board's failure to apply the settled jurisprudence renders their decision unreasonable.

[20] I find that a review of the evidence in the file admits of only one possible conclusion: that the Respondent left her employment to finish her schooling more quickly, contrary to the case law cited above. This finding is amply supported by the uncontested statements of the Respondent, and indeed is the same conclusion reached by the Board (notwithstanding their ultimate determinations).

[21] Therefore, properly following the jurisprudence of the Court the only possible conclusion available to me is that the Respondent had not shown "just cause" for leaving her employment and the Board erred by not so finding.

[22] Having made the above finding, the Respondent cannot benefit from the insurable hours gained from the employment which she voluntarily left. Without them, she did not have sufficient hours of insurable employment to qualify for benefits.

[23] The Board decision cannot stand.

CONCLUSION

[24] For the above reasons, the appeal is allowed. The decision of the Board is rescinded and the determination of the Commission is restored.

Mark Borer
Member, Appeal Division