Citation: *J. G. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 212

Date: December 8, 2015

File number: GE-15-823

GENERAL DIVISION – Employment Insurance Section

Between:

J. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Richard Sterne, Member, General Division – Employment Insurance Section

Heard by Teleconference on December 4, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, J. G., and his Representative, Brandon MacKinnon (Business Representative Labours' International Union of North America, Local 1059), attended the hearing by telephone.

INTRODUCTION

[1] The Appellant was employed by Groundmasters Inc. (employer2) for one day on April 17, 2014.

[2] On November 27, 2014, the Appellant applied for employment insurance benefits (EI benefits).

[3] On January 31, 2015, the Canada Employment Insurance Commission (Respondent) advised the Appellant that they were unable to pay him any EI benefits because he had voluntarily left his employment with employer2 on April 17, 2014, without just cause within the meaning of the *Employment Insurance Act* (Act).

[4] On February 23, 2015, the Appellant filed a request for reconsideration of the Respondent's January 31, 2015 decision, which was denied on February 24, 2015.

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

a) The complexity of the issue(s) under appeal.
b) The fact that the credibility is not anticipated to be a prevailing issue.
c) The fact that the appellant would be the only party in attendance.
d) The information in the file, including the need for additional information.
e) The fact that the appellant or other parties are represented.
f) 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

[6] Did the Appellant have just cause for voluntarily leaving his employment, pursuant to sections 29 and 30 of the Act?

THE LAW

[7] Section 29 of the Act:

For the purposes of sections 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) he 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 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 are 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.

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

(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

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

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

(2) The disqualification is for each week of the claimant'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 claimant during the benefit period.

EVIDENCE

[10] The Appellant was employed by EAN Construction (employer1) from March 7, 2014 to March 21, 2014.

[11] The Appellant was employed by Groundmasters Inc. (employer2) for one day on April 17, 2014.

[12] On April 24, 2014, employer2 issued the Appellant's record of employment (ROE) and indicated that the reason for issuing the ROE was code E, Quit. The ROE indicated 8 insurable hours were earned.

[13] The Appellant was employed by JOBI Construction Ltd. (employer3) from June 16, 2014 to July 30, 2014.

[14] The Appellant was employed by Permanent Paving Ltd. (employer4) from September 8, 2014 to November 14, 2014.

[15] On November 26, 2014, employer4 issued the Appellant's ROE and indicated that the reason for issuing the ROE was code A, Shortage of Work. The ROE indicated 364 insurable hours were earned.

[16] On November 27, 2014, the Appellant applied for EI benefits.

[17] On November 28, 2014, employer3 issued the Appellant's ROE and indicated that the reason for issuing the ROE was code A, Shortage of Work / End of Contract or season. The ROE indicated 261 insurable hours were earned.

[18] On December 12, 2014, employer1 issued the Appellant's ROE and indicated that the reason for issuing the ROE was code A, Shortage of Work / End of Contract or season. The ROE indicated 108 insurable hours were earned.

[19] On January 31, 2015, the Respondent advised the Appellant that they were unable to pay him any EI benefits because he had voluntarily left his employment with employer2 without just cause within the meaning of the Act. They stated that they believed that voluntarily leaving his employment was not his only reasonable alternative. They stated that he only had 625 hours of insurable employment, but needed 700 hours of insurable employment.

[20] On February 23, 2015, the Appellant filed a request for reconsideration of the Respondent's January 31, 2015 decision.

[21] On February 24, 2015, the Respondent advised the Appellant that they had not changed their January 31, 2015 decision.

[22] On October 26, 2015, the Appellant's Representative wrote the Social Security Tribunal (SST) to argue that the Appellant had just cause to quit his employment with employer2 as he had suffered a "significant modification of terms and conditions respecting wages" as per section 29 of the Act.

SUBMISSIONS

[23] The Appellant submitted that:

a. the 108 insurable hours that he had earned with employer1 should be considered due to the fact that he had lost his job due to a shortage of work.

b. employer1 did not submit his ROE in a timely manner.

c. his union found him the job with employer2, but advised him to quit after only working a half day.

[24] The Respondent submitted that…

a. the Appellant did not demonstrate just cause for voluntarily leaving his employment, and therefore, they imposed an indefinite disqualification pursuant to sections 29 and 30 of the Act, effective March 8, 2015.

ANALYSIS

[25] The purpose of the Act is to compensate persons whose employment has terminated involuntarily and who are without work (**Gagnon [1988] SCR 29**).

[26] Subsection 30(1) of the Act provides for an indefinite disqualification when the claimant voluntarily leaves her employment without just cause. 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] During the hearing, the Appellant stated that when his union assigned him to the job with employer2 that he had forgotten to ask what the rate of pay was. When he found out that it was only $14.00/hour, he quit the job after working only half a day, because it was substantially less than what he had been earning at his previous jobs. The Appellant said that his union apologized for not telling him the rate, told him to resign, and go back on the union board in order to get assigned a position at a higher rate of pay.

[28] Sections 29 and 30 of the Act provide an exception to the general rule that insured individuals that are not deliberately unemployed are entitled to benefits. This exception must therefore be strictly interpreted (**Goulet A-358-83**).

[29] Subsection 29(c)(vii) of the Act states that 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 significant modification of terms and conditions respecting wages or salary.

[30] The Tribunal finds that the Appellant had the personal responsibility to find out the rate of pay before accepting the job with employer2, as any reasonable person would have. The Tribunal finds that subsection 29(c)(vii) of the Act does not apply since the Appellant had the responsibility to learn the rate of pay before accepting the job.

[31] After questioning, the Appellant's union Representative stated that if the Appellant had asked the union to find him a job that paid him a higher rate of pay while he continued working with employer2; that something could have been worked out since they had forgotten to advise him of the rate of pay.

[32] The Tribunal is sympathetic to the Appellant, but finds that the Appellant did not prove that he had no reasonable alternative to leaving his job when he did. He could have remained employed while his union found him more suitable employment.

[33] The Federal Court of Appeal reaffirmed the principle that where a claimant voluntarily leaves his employment, the burden is on that claimant to prove that there was no reasonable alternative to leaving when he did.

Canada (AG) v. White, 2011 FCA 190

[34] The Tribunal finds that the Appellant may have had good personal reasons for quitting his job, but they were not just cause for voluntarily leaving his job, pursuant to sections 29 and 30 of the Act.

[35] The Federal Court of Appeal made a distinction between a claimant showing his/her leaving their employment was reasonable given the circumstances and that they may have had good motive to leave or reasons, but that it is not synonymous with just cause.

FCA A-1458-84 Tanguay CONCLUSION

[36] The appeal is dismissed.

Richard Sterne

Member, General Division - Employment Insurance Section