



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. L. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 29

Tribunal File Number: GE-16-177

BETWEEN:

S. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: February 25, 2016

DATE OF DECISION: February 25, 2016

PERSONS IN ATTENDANCE

The Claimant's representative, Mr. Don Mercer attended the teleconference hearing. Mr. Mercer confirmed that he was prepared to proceed in the absence of the Claimant.

INTRODUCTION

[1] On October 15, 2015, the Claimant made an initial claim for regular benefits noting that he had no alternative but to leave his employment on August 18, 2015 due to health and safety reasons (dangerous working conditions).

[2] On November 2, 2015, the Canada Employment Insurance Commission (Commission) denied the Claimant's application for regular benefits because he did not show just cause for leaving his employment.

[3] On November 12, 2015, the Claimant requested that the Commission reconsider its decision and on December 12, 2015, the Commission maintained its decision.

[4] On January 14, 2016, the Claimant appealed to the General Division of the Social Security Tribunal (Tribunal).

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

- a) The information in the file, including the need for additional information.
- 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

[6] The Member must decide whether the Claimant demonstrated just cause for leaving his employment on August 18, 2015, and whether he should be disqualified from receiving any benefits pursuant to sections 29 and 30 of the Employment Insurance Act (EI Act).

THE LAW

[7] Section 29 of the EI Act stipulates that for the purposes of sections 30 and 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, 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, common-law partner or 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 EI Act stipulates that 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 EI Act stipulates that 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 Claimant is an underground miner that left his employment after his first two-week rotation (July 29, 2015 to August 18, 2015) because the ground in the mine had many unstable areas and much flooding. He indicated that coworkers had been trapped due to the water and had to be rescued. Plus, there were many injuries at that site and other coworkers also quit. He did not consult or speak to anyone regarding the conditions of the mine as it had been in operation for several years; superiors were not on site and had no access to them. The mine was in the Northwest Territories (NWT), two days from home. He looked for employment with other mining companies (GD3-3 to GD3-16).

[11] The Employer advised the Commission that the working conditions are normal for that industry, she is not aware of trapped miners having to be rescued and, safety representatives are on site. The Claimant simply advised that the job is just not for him (GD3-17).

[12] On November 2, 2015, the Commission was unable to speak with the Claimant. It determined that the Claimant left his employment without just cause because leaving was not his only reasonable alternative (GD3-19).

[13] On November 12, 2015, the Claimant requested that the Commission reconsider its decision noting that he was unable to return due to the anxiety and stress he was experiencing due to the unsafe working conditions (GD3-21).

[14] The Claimant advised the Commission that he did not speak with the safety representative on site. The Claimant indicated to the Commission that the mine has since closed due to the water issues. The Commission advised the Claimant that at the time that he quit in August, the employer advised that there were no issues there. Further, having not addressed his anxiety or stress with a doctor prior to leaving, he has not shown that he had to leave for medical reasons and, he has not shown that he exhausted all reasonable alternatives. The initial decision was maintained (GD3-23 to GD3-27).

[15] Documentary evidence submitted by the Claimant included a December 5, 2015 CBC News release - reports that the employer closed down the mine in the NWT due to

market conditions and “downplayed another contributing factor: a larger-than-expected flow of naturally occurring groundwater in the mine’s underground workings”. The article reports that in March, the CEO of the employer stated “What many of you may not know, but some will, is that we have been storing large volumes of ... water underground for some time now”. Further, stating that “besides being unsafe for workers, the excess water ...” (GD2-9).

[16] At the hearing, the Claimant’s representative stated that the Claimant has no problem working in a mine and assumed that when he took the job in the NWT that the employer/site was safe. When he got there, he saw the water, heard of the miners that had to be rescued and others quitting. He had a genuine fear for his life.

[17] He is not unionized so there was nobody to go to regarding the working conditions and no way to grieve or complain. The health and safety representative could not address the issue of the water. The Claimant’s increased stress and fear would be a danger to himself and others. There was no access to a doctor prior to leaving at the mine site/area.

[18] The Claimant’s representative stated that the documentary evidence shows that the CEO of the company knew of the water issues and knew that the working conditions were unsafe. This gives credibility to the Claimant’s statements. The Claimant did not have a genuine fear of the work, but he had a genuine fear of the working conditions.

SUBMISSIONS

[19] The Claimant submitted that:

- a) he is an experienced miner of 10 years, eager to work, but he had not experienced these types of conditions underground before; the unsafe working conditions contributed to the inherent fear usually associated with this type of work - he not fear the work but feared for his life under those working conditions; he left because he was stressed, anxious and feared for his life; he had no choice but to leave;

- b) the documentary evidence shows that the situations was intolerable and justifies him leaving when he did; even the CEO of the company referred to the large amounts of water underground that existed there for some time, and admitted that the conditions were unsafe for the workers.

[20] The Respondent submitted that:

- a) initially, it was determined that the Claimant did not have just cause for leaving his employment because he failed to exhaust all reasonable alternatives prior to leaving including discussing his concerns with the safety representatives on site;
- b) the documentary evidence now provided to the Tribunal regarding his working conditions supports the Claimant's decision to leave his employment and as a result, it concedes on the issue.

ANALYSIS

[21] Sections 29 and 30 of the EI Act stipulate that a claimant who voluntarily leaves his/her employment is disqualified from receiving any benefits unless he/she can establish 'just cause' for leaving.

[22] The Member recognizes that it has been a well-established principle that just cause exists where, having regard to all the circumstances, the Claimant was left with no reasonable alternative to leaving pursuant to subsection 29(c) of the EI Act (Patel A-274- 09, Bell A-450-95, Landry A-1210-92, Astronomo A-141-97, Tanguay A-1458-84).

[23] The Member first considered that it is incumbent of the Commission to show that the Claimant left his employment voluntarily. In this case, it is undisputed evidence that the Claimant left his employment on August 18, 2015 (GD3-16).

[24] The onus of proof then shifts to the Claimant to show that he left his employment for just cause (White A-381-10, Patel A-274-09). In this case, the Claimant did meet that onus for the reasons to follow. He provided evidence to demonstrate that he was left with no reasonable alternative to leaving his employment when he did pursuant to paragraph 29(c)(iv) of the EI Act.

[25] The Member first considered the circumstances referred to in subsection 29(c) and whether any existed at the time the Claimant took leave from his employment. According to case law, these circumstances must be assessed as of that time (Lamonde A-566-04). In this case, the Claimant submitted that he left his employment because of the dangerous underground mining conditions created by large amounts of water (flooding) and areas of unstable ground. He feared for his life and experienced anxiety and stress thinking about returning to those conditions after his two-week rotation was over. He felt that he was left with no reasonable alternative but to quit.

[26] The Member therefore, considered paragraph 29(c)(iv) of the EI Act which stipulates that just cause exists if the Claimant had no alternative to leaving, having regard to all the circumstances, including, working conditions that constitute a danger to health or safety.

[27] The Member agrees with both parties, that the evidence supports a finding that the working conditions did constitute a danger to the Claimant's health and safety, and the Claimant's fear for his life is justified. Further, the Member finds that the Claimant had no alternative but to leave when he did for the following reasons. First, the situation was volatile - the CEO's comments indicate that this particular mine was not safe for workers, which provides credibility to the Claimant's position. Plus, the Claimant had indicated to the Commission that workers had previously been trapped underground and there was a high turn-over rate because of the working conditions. Second, given the remote location of the mine, the Claimant had limited access to his superiors, no doctors, was not unionized/represented, and pursuing other alternative jobs with other employers in that area were not reasonable options. Thirdly, the employer did not seem willing to accommodate and/or change the working environment, as evidenced in its ongoing operation of the mine at the time despite its CEO's knowledge that it was unsafe for workers. The Member agrees with the Claimant therefore, that speaking with the health and safety representative, at the time, would likely be futile.

[28] Having regard to all the circumstances noted above, the Member therefore finds that the Claimant did demonstrate that he was left with no reasonable alternative but to leave his employment pursuant to subsection 29(c) of the EI Act.

[29] The Member finds that the Claimant has shown just cause for voluntarily leaving his employment on August 18, 2015, and therefore should not be disqualified from receiving benefits pursuant to sections 29 and 30 of the EI Act.

CONCLUSION

[30] The appeal is allowed.

Eleni Palantzas
Member, General Division