Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *Canada Employment Insurance Commission v. L. L.,* 2016 SSTADEI 112

Appeal No. AD-15-273

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

L. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: February 26, 2016

DECISION: Appeal allowed

Canada

DECISION

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 The decision of the General Division is rescinded and the determination of the Commission is restored.

INTRODUCTION

[2] On April 24, 2015, a member of the General Division 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 December 17, 2015, a teleconference hearing was held. The Commission attended and made submissions, but the Respondent did not. The Respondent personally signed for her notice of hearing, as evidenced by the Canada Post signature card in the file. Because of this, I was satisfied that she had received notice and 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.

ANALYSIS

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

[7] The Commission has appealed against the decision of the General Division member on the basis that the member 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.

[8] The Respondent, in her written submissions, repeated many of the arguments she successfully made to the General Division member and asks that the appeal be dismissed.

[9] In its decision, the General Division member found that the Respondent had shown just cause to leave her employment because she had a reasonable assurance of employment in the immediate future. In doing so, the member also found that once her company failed to recognize her new credentials as a pharmacy technician, she was "justified in looking for full time work in her profession and voluntary leaving to find and accept a full time position as a pharmacy technician".

[10] Subsection 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". Subsection 29(c) adds that just cause will exist where "the claimant had not reasonable alternative to leaving…having regard to all of the circumstances".

[11] As noted above, the General Division member found that she had shown just cause for doing so because she had the reasonable assurance of employment in the immediate future.

[12] This conclusion was based upon the fact that the Respondent had "been in contact with another employer, received an invitation for an interview and was hired…within two weeks of deciding to leave her…job".

[13] With respect, this betrays a fundamental misunderstanding of what constitutes a reasonable assurance of another employment in the immediate future. I note that there was no actual job offer and that the Respondent left her employment to look for work, as opposed to leaving work because she thought (correctly or otherwise) that she had a job waiting for her (as found by the General Division at paragraph 26 of his decision).

[14] One cannot be said to have a reasonable assurance of another employment if one has not yet begun to look for a new job. The fact that the Respondent did indeed quickly find such work is irrelevant.

[15] 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.

[16] I note as well that in her representations to the General Division, the Respondent claimed just cause for leaving because of a dispute she had with her Employer. Although she found another job quickly, the reasons she gave to the Commission for leaving (found at Exhibit GD3-46) are solely based upon her workplace dispute with her employer. The Respondent did not look for work before leaving, or accept the discipline imposed by her Employer and not leave her employment.

[17] Because of the above, I find that the Respondent did not have a reasonable assurance of employment in the immediate future. By finding to the contrary, the General Division member failed to correctly consider and apply the relevant jurisprudence and erred in law.

[18] In fact, a review of the evidence admits of only one possible conclusion: that, as initially determined by the Commission, the Respondent had reasonable alternatives to leaving her employment and has not shown just cause to quit within the meaning of the Act. By finding to the contrary, the General Division erred.

[19] This decision cannot stand.

CONCLUSION

[20] For the above reasons, the appeal is allowed. The decision of the General Division is rescinded and the determination of the Commission is restored.

Mark Borer

Member, Appeal Division