



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. S. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 62

Tribunal File Number: GE-16-27

BETWEEN:

B. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Richard Sterne

HEARD ON: May 5, 2016

DATE OF DECISION: May 5, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, B. S., and her Representative, Jan Bicz, did not attend the teleconference hearing.

INTRODUCTION

[1] The Appellant was employed by Peacehold Incorporated (employer) until August 13, 2015.

[2] On September 17, 2015, the Appellant applied for employment insurance benefits (EI benefits).

[3] On October 9, 2015, the Canada Employment Insurance Commission (Respondent) advised the Appellant that they were unable to pay her any EI benefits because she had voluntarily left her employment on August 13, 2015, without just cause within the meaning of the Act.

[4] On October 29, 2015, the Appellant filed a request for reconsideration of the Respondent's October 9, 2015 decision, which was denied on December 1, 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 will be the only party in attendance.
- d) The information in the file, including the need for additional information.
- e) 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.

[6] On April 8, 2016, Canada Post Tracking confirmed that the Appellant had signed for the Notice of Hearing.

[7] On May 5, 2016, since neither the Appellant nor her Representative attended the teleconference hearing after receiving the Notice of Hearing, the Tribunal issued a decision based on the evidence in the docket.

ISSUE

[8] Did the Appellant have just cause for voluntarily leaving her employment, pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act)?

THE LAW

[9] Subsection 2(1) of the Act:

Definitions:

“common-law partner”, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

[10] 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) 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 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.

[11] 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."

[12] 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.

[13] Subsection 30(3) of the Act:

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

[14] Section 51.1 of the Regulations

For the purposes of subparagraph 29(c)(xiv) of the Act, other reasonable circumstances include

(a) circumstances in which a claimant has an obligation to accompany to another residence a person with whom the claimant has been cohabiting in a conjugal relationship for a period of less than one year and where

(i) the claimant or that person has had a child during that period or has adopted a child during that period,

(ii) the claimant or that person is expecting the birth of a child, or

(iii) a child has been placed with the claimant or that person during that period for the purpose of adoption; and

(b) circumstances in which a claimant has an obligation to care for a member of their immediate family within the meaning of subsection 55(2).

EVIDENCE

[15] The Appellant was employed by the employer from February 8, 2010 to August 13, 2015.

[16] On August 27, 2015, the employer issued the Appellant's record of employment (ROE) and indicated the reason for issuing the ROE was code E, Quit.

[17] On September 17, 2015, the Appellant applied for EI benefits.

[18] On October 7, 2015, the Appellant told the Respondent that she had quit her job to move from X to X, Ontario, to follow a person who was not her spouse, nor her common-law partner. She said that they had not lived together before the move. The Appellant stated that they had been together for about a year and a half and that they do not have a child together. They did not have any assets together at the time she quit. They plan to get married in June 2016. The

Appellant said that she had commuted from X to work in X for several months, but found the commute was too long.

[19] On October 8, 2015, the Appellant told the Respondent that she hadn't looked for work between the time she moved in April and the time she quit in August. The Appellant stated that her employer had allowed her to work from her home in X after her move, but then decided that it was too much of a security risk. The Appellant stated that she didn't look for work near X before she resigned, because she had a 3.5 week vacation booked.

[20] On October 9, 2015, the Respondent advised the Appellant that they were unable to pay her any EI benefits because she had voluntarily left her employment on August 13, 2015, without just cause within the meaning of the Act. The Respondent stated that they believed that voluntarily leaving her employment was not her only reasonable alternative.

[21] On October 29, 2015, the Appellant filed a request for reconsideration of the Respondent's October 9, 2015 decision.

[22] On December 1, 2015, the employer told the Respondent that the Appellant had moved to live with someone and had been commuting at least an hour and a half to get to work. The employer said that the Appellant had found the drive to be too much for her, so she quit.

[23] On December 1, 2015, the Appellant told the Respondent that she had moved from X to X to live with her partner. She said that she commuted for several months, but found the drive was too difficult, so she quit. She said that after quitting she and her partner went on a three week vacation to Poland. She said that she didn't look for a job before quitting because she had the three week vacation already booked. She planned to start looking for work after she returned from her vacation.

[24] On December 1, 2015, the Respondent advised the Appellant that they had not changed their October 9, 2015 decision.

SUBMISSIONS

[25] The Appellant submitted that:

- a. she had no choice in applying for EI benefits.
- b. she was not being treated fairly, which had brought unnecessary stress into her life.

[26] The Respondent submitted that:

- a. the Appellant did not demonstrate just cause for voluntarily leaving her employment, and therefore they imposed an indefinite disqualification pursuant to sections 29 and 30 of the Act, effective September 13, 2015.

ANALYSIS

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

[28] 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 her employment when she did.

[29] 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**).

[30] Subsection 29(c)(ii) of the Act provides that just cause for voluntarily leaving one's employment exists if the claimant had no reasonable alternative to leaving having regard to all circumstances including the obligation to accompany a spouse or common-law partner or a dependent child to another residence.

[31] Subsection 2(1) of the Act defines "common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

[32] The Tribunal finds that since the Appellant and her partner were not married nor living together for at least a year at the time the Appellant left her job, the Appellant's voluntarily leaving her employment to be with her partner does not qualify as just cause, pursuant to subsection 29(c)(ii) of the Act.

[33] The Federal Court has upheld that moving to be with one's partner is not just cause for leaving one's employment.

Canada (AG) v. Thompson, 2007 FCA 391

[34] The Tribunal finds that the Appellant did have other reasonable alternatives before quitting her employment. She could have continued to commute to X until she found suitable employment closer to X, before resigning. She could have asked her employer for a leave of absence or she could have postponed her vacation to Poland and used that time to find more suitable employment.

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

Canada (AG) v. White, 2011 FCA 190

[36] The Tribunal finds that the Appellant did not prove that there was no reasonable alternative to quitting when she did, and therefore she did not have just cause for voluntarily leaving her employment, pursuant to sections 29 and 30 of the Act.

CONCLUSION

[37] The appeal is dismissed.

Richard Sterne
Member, General Division - Employment Insurance Section