



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Life Choice Ltd. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 56

Tribunal File Number: GE-15-2959

BETWEEN:

Life Choice Ltd.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

L. M.

Added Party
Claimant

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Paul Demers

HEARD ON: April 5, 2016

DATE OF DECISION: April 27, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant was present for the hearing and was represented by Agnes Dahl. The Claimant was also present for the hearing.

INTRODUCTION

[1] The Claimant established an initial benefit period effective March 1, 2015.

[2] The Claimant had been working until February 27, 2015 when she voluntarily left her employment.

[3] On April 17, 2015 the Respondent determined that the Claimant did not demonstrate just cause for voluntarily leaving her employment and imposed an indefinite disqualification pursuant to sections 29 and 30 of the *Employment Insurance Act* (the Act).

[4] On May 1, 2015 the Claimant filed a request for reconsideration of the decision.

[5] Following the reconsideration process, the Respondent rescinded on August 20, 2015 the original decision and approved her reason for separation.

[6] On September 15, 2015 the Appellant appealed that decision to the Social Security Tribunal (Tribunal).

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

- a) The complexity of the issue(s) under appeal.
- b) The fact that more than one party will be in attendance.
- c) The information in the file, including the need for additional information.
- d) The fact that multiple participants, such as a witness, may be present.

- 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.

ISSUE

[8] The Tribunal must determine if the Claimant proved just cause for voluntarily leaving her employment pursuant to sections 29 and 30 of the Act.

THE LAW

[9] 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, 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.

[10] Section 30 of the Act says:

(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.

(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

[11] The Claimant provided a letter of resignation on February 19, 2015 explaining the company culture and environment was not a good fit for her. Her last day of employment was on February 27, 2015.

[12] In her application for benefits the Claimant cited that she quit her job because of illegal activities in the workplace.

[13] On April 20, 2015 the Claimant filed a complaint with Health Canada regarding the employer.

SUBMISSIONS

[14] The Appellant submitted that the Claimant's allegations about illegal activities are unsubstantiated and were made to help her receive EI benefits. They explained that a discussion after she handed her resignation confirmed that she was not happy and wanted to leave. Prior to the letter of resignation, she had never spoken to them about her concerns with the work

environment and certainly had not mentioned any issues relating to label tampering before quitting. They added that she was never harassed or treated any differently than any other employees. They concluded that they strongly believe that the Claimant is fabricating a case for “just cause” in order to be able to collect benefits.

[15] The Claimant submitted that in January of 2015 she was told by a colleague that the Appellant was changing expiration date labels and therefore no longer wanted to be involved with the company. She did not bring up the issue with her employer because she was not comfortable doing so and did not want any trouble at work. She added that about one week before she resigned, negativity started in the workplace after she expressed her concerns about a situation regarding customer service. She therefore made the decision to leave her employment because the company did not align with her morals and was just not the right fit for her. She acknowledges that she never discussed her concerns with the Appellant because her mind was made up to leave and she wanted to do so amicably. She concluded that she did eventually make a complaint with Health Canada and confirmed that she did look for work two weeks before giving her resignation letter.

[16] The Respondent submitted that because both the Appellant and the Claimant’s statements were equally credible, they gave the benefit of the doubt to the Claimant and allowed her claim for benefits.

ANALYSIS

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

[18] Section 29 and 30 of the Act state that a person who voluntarily leaves his or her job is disqualified from benefits unless he or she can establish “just cause” for leaving.

[19] Section 29 (c) gives specific examples of “just cause”. This section provides exceptions to the general rule that insured individuals that are not deliberately unemployed are entitled to benefits. These exceptions must therefore be strictly interpreted (Goulet A-358-83).

[20] In Tanguay (A-1458-84), J. A. Pratte, said that the words "just cause" were not synonymous with "reason" or "motive". Speaking to section 30 of the Act, J. A. Pratte said: "This section is an important provision in an Act which creates a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur. He is only justified in acting in this way if, at the time he left, circumstances existed which excused him from thus taking the risk of causing others to bear the burden of his unemployment."

[21] The burden of proof is on the claimant to demonstrate just cause for leaving their employment (Green 2012 FCA 313; White 2011 FCA 190; Patel 2010 FCA 95).

[22] At the hearing it was established that the Claimant quit her employment because she was not happy with her employer and the work environment. She acknowledged to the Tribunal that after working for about 7 months she simply did not find the company a good fit for her.

[23] While the Claimant provided her motives to justify her decision to quit, she has not been able to provide any proof regarding any illegal activities in her workplace. Although she explained that she had filed a complaint with Health Canada, she did so only after quitting and after she was denied her benefits. Unfortunately at the hearing the Claimant was still not able to substantiate her allegations. With this in thought, the credibility of her accusations cannot be viewed as fact and simply cannot be regarded as demonstrating "just cause" as per section 29(c) of the Act.

[24] She also explained that the workplace had become negative over the last week before her resignation. While the Tribunal finds no reason to doubt her credibility on this aspect, it cannot determine that only one week of negativity establishes a pattern that her workplace had become so intolerable that she needed to quit when she did. This is especially true when considering that she never spoke to the employer about her concerns regarding the negative work environment.

[25] Now, the legal test for determining whether a claimant had "just cause" under section 29 of the EI Act is also whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment (White 2011 FCA 190; Macleod 2010 FCA 301; Imran 2008 FCA 17; Astronomo A-141-97).

[26] The question is not whether it was reasonable for the claimant to leave their employment, but rather whether leaving the employment was the only reasonable course of action open to them, having regard to all the circumstances (Laughland 2003 FCA 129).

[27] The Federal Court of Appeal has drawn the distinction between the concepts of good cause and just cause for voluntarily leaving. It is not sufficient for claimants to prove they were reasonable in leaving their employment; reasonableness may be good cause but it is not necessarily just cause. It must be shown that after considering all of the circumstances the claimants had no reasonable alternative to leaving their employment. (McCarthy A-600-93)

[28] In this case, the Tribunal, having regards to all circumstances, finds that the Claimant simply has not proven that she had no reasonable alternative to leaving her employment when she did.

[29] In her circumstances, a reasonable alternative to quitting would have been to remain employed until she had found herself another job. If she was so dissatisfied with her employer, the Appellant had an obligation to first find herself another job before taking the risk of causing her own unemployment.

[30] A claimant in most circumstances must remain employed even in a difficult work environment rather than deliberately being unemployed and causing others to bear the burden of their unemployment.

[31] In this case the Tribunal finds that the Claimant simply did not show that there was any element of urgency or necessity that would constitute just cause for voluntarily leaving her employment when she did. Dissatisfaction with the work environment, being upset with a work colleague or supervisor or the wish to find another job does not constitute just cause according to the Act and has been tested by past jurisprudence.

[32] Another reasonable alternative would have been for the Claimant to discuss all of her concerns with the employer before making the decision to quit. It has been demonstrated in past jurisprudence that the obligation is on a claimant, in most cases, to attempt to resolve workplace conflicts with an employer before taking a unilateral decision to quit a job (White 2011 FCA 190; Murugaiah 2008 FCA 10; Hernandez 2007 FCA 320; Campeau 2006 FCA 376).

[33] In this situation, she simply did not satisfy the Tribunal as having demonstrated a reasonable attempt of resolving the potential workplace conflict before quitting. The Tribunal therefore finds that the Claimant made a personal choice of no longer wanting to work for the employer.

[34] While the Claimant's personal decision may have had "good cause" or "good reason" to quit since she was very upset with the work environment and the employer, it regrettably cannot be found that she had "just cause" under the Act since she did not exhaust any obvious reasonable alternatives prior to quitting.

[35] The Tribunal reiterates that the employment insurance system was devised as a temporary financial aid to those who have lost their employment through no fault of their own.

[36] In this case, the Appellant's personal decision to leave her employment without exhausting any reasonable alternatives is the cause of her unemployment and "just cause" has not been proven within the meaning of sections 29 and 30 of the Act.

[37] As a result, the claim is not allowed and an indefinite disqualification should be imposed.

CONCLUSION

[38] The Appellant's appeal of the Respondent's reconsideration decision is allowed.

Paul J. Demers

Member, General Division - Employment Insurance Section