



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. F. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 60

Tribunal File Number: GE-15-3687

BETWEEN:

S. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Claude Durand

HEARD ON: April 26, 2016

DATE OF DECISION: May 2, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, S. F., attended the hearing with two witnesses: her sister, L. F., and her spouse, J. D.

[2] This appeal was heard by teleconference for the following reasons:

- a) The fact that credibility could be a determinative issue.
- b) The fact that the Appellant would be the only party in attendance at the hearing.
- c) The information in the file, including the need to obtain additional information.
- d) The fact that this type of hearing is that which best meets the parties' accommodation needs.

INTRODUCTION

[3] In this case, the Canada Employment Insurance Commission (the Commission) determined that the Appellant had voluntarily left her employment without just cause within the meaning of the Employment Insurance Act (the Act) and was not entitled to benefits.

[4] The Appellant requested reconsideration of that decision, which was upheld by the Commission on October 21, 2015 (page GD3-28 and 29).

[5] The Appellant appealed to the Social Security Tribunal on November 13, 2015 (Exhibit GD-2).

ISSUE

[6] The Tribunal must decide whether the Appellant left her employment with just cause within the meaning of sections 29 and 30 of the Act and whether the disentitlement that was imposed was valid.

THE LAW

[7] Section 29 of the Act reads as follows.

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.*

EVIDENCE

Evidence in the file

[8] The Appellant had been working as an educator at Garderie X in X. She voluntarily left her employment on June 15, 2015.

[9] According to the report from the telephone interview, the Appellant stated that she left her employment because of a move. She had been living in X and moved to X with her spouse without first looking for employment at her new place of residence (page GD3-18).

[10] In her request for administrative review, the Appellant stated that she had moved to X to accompany her spouse. He had some serious heart problems and she herself had experienced episodes of depression. She could not travel the 150-kilometer round trip between X and X to keep her job.

[11] Moreover, the couple had only one car, and her spouse needed to have a car available because of his health. The couple could not afford to pay rent on two different places in different cities (pages GD3-23 and 24).

Appellant's evidence at the hearing

[12] She had been living with her spouse, J. D., for 24 years, and the couple had been married for 18 years.

[13] She was 56 years old and had been working at day care centres for over 20 years.

[14] Her husband had lost his job and the couple was experiencing financial problems. He decided to leave X and go to live in X, where he owned a country house.

[15] The assertion in an initial interview report that she did not look for work before leaving X in June 2015 is incorrect. She had applied at Garderie au pied de l'arc en ciel in X but was not successful in obtaining a position.

[16] She also looked for employment in neighbouring communities at early childhood education centres as well as private day care centres. She recently applied as a census officer.

Testimony of L. F.

[17] She is the Appellant's sister. She lives in X, the village next to X.

[18] She works as a legal secretary and is helping her sister in her efforts.

[19] She redid the Appellant's résumé and is helping her look for work in X and in the neighbouring communities.

[20] She can attest to the fact that her sister suffers from anxiety and would not be able to travel back and forth between X and X every day.

Testimony of J. D.

[21] He is 67 years old and worked as a taxi driver in X for 24 years. He did not own the vehicle but worked as a driver for M. T., who had three taxis.

[22] In the spring of 2015, the taxi owner, Mr. M. T., passed away. The licences and the vehicles were bought by another contractor who had his own drivers. He was laid off in June 2015.

[23] He tried to find work in X, but at his age it was very difficult and his efforts were unsuccessful.

[24] He has a worrisome heart condition and he needs to avoid stress.

[25] He had purchased a small country house in X in 2013. He had planned to renovate the house and eventually live there. Several of his in-laws live in the X area.

[26] In light of his inability to find work, the financial difficulty of living on a single salary and the high cost of living in X, he decided to move to X.

[27] He is counting on finding work in X or nearby.

[28] He could not imagine living alone in X and the couple could not afford to maintain two households.

PARTIES' ARGUMENTS

[29] The Appellant's arguments were essentially those found at Exhibit GD-5, which she had submitted to the Tribunal before the hearing:

- a) The Act authorizes voluntarily leaving an employment to accompany a spouse to a new residence;
- b) It is true that she and her husband had health problems. However, the main reason she left was her husband's decision to move to X, which could primarily be attributed to his loss of employment and a precarious financial situation;
- c) She left her job to accompany her husband to a new residence in X. After living with him for so many years, she could not contemplate living apart from her husband.

[30] The respondent Commission made the following submissions:

- a) In determining whether leaving her employment was the only reasonable alternative, it is necessary to consider the circumstances surrounding the move. The claimant and her spouse decided to move to a different residence for personal reasons. The spouse also left his employment to move to X. It was not a transfer or deployment or a new job, since he is not working at the new location. The couple did not move because he had to be closer to the major centres to undergo medical treatment. Whether it was the claimant, the spouse or the couple who decided to purchase a house and move there is of little importance;
- b) In this case, the claimant left on his own initiative, and the situation is considered a case of voluntary leaving. The claimant's spouse, to whom she is married, took possession of a house in X because houses are more affordable there. The reasons for this decision were personal, because they were not work related. The fact that the claimant and her spouse left their employment to move to another location had nothing to do with their work;
- c) The claimant noted that she had been depressed during that period and was taking medication. The claimant should have been on sick leave with the employer and should

have obtained a doctor's certificate to that effect. However, if the reason for the voluntary leaving was related to her health, the claimant should have obtained a doctor's certificate supporting her decision to resign. However, she stated in her declaration that the reason for her resignation was not related to her health. The voluntary leaving was without just cause within the meaning of the legislation since it reflects a personal choice to leave their employment to move to a town where houses are more affordable.

- d) In this case, the Commission found that the claimant did not have just cause for leaving her employment on June 15, 2015, because she failed to establish that she had exhausted all reasonable alternatives before leaving. Having regard to all the circumstances, a reasonable alternative would have been to find other employment before resigning. Accordingly, the claimant has not been successful in proving that she had just cause for leaving her employment within the meaning of the Act.

ANALYSIS

[31] The test for whether a claimant has just cause for leaving an employment under section 29 of the Act is whether, 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).

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

[33] The onus on the Commission is to show that the claimant left voluntarily and the onus on the claimant is to show just cause for voluntarily leaving the employment (*Green*, 2012 FCA 313; *White*, 2011 FCA 190; *Patel*, 2010 FCA 95).

[34] The balance of evidence shows that the Appellant left her employment. That is what is indicated on the record of employment and what emerges from the whole of the evidence in the file.

[35] I have therefore considered this matter in light of the parameters under the Act and the case law on voluntary leaving.

[36] With regard to the matter at issue, the test is whether, having regard to all the circumstances, the only reasonable alternative in the Appellant's case was to leave her employment at the time when she did.

[37] We recall that the Act creates exemptions for voluntarily leaving employment, including the ones set out in section 30(3). They include the following:

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,

[38] At the hearing, the testimony of the Appellant's spouse was enlightening. He explained to me how he had lost his job, how difficult it was to find work after the age of 65 and how the couple was experiencing financial difficulties. Those clarifications resolved some of the uncertainty surrounding the reasons for the couple's move from X to X.

[39] It would appear that the cost of living is much higher in X than in X. Furthermore, aside from his stable albeit worrisome heart condition, the Appellant's husband had to deal with a two-fold problem: the loss of a job for which he was not responsible and the difficulty in finding other work at his age (over 65).

[40] Therefore, Mr. J. D.'s decision to go to live in X at a property he had owned since 2013 so that he could stabilize his financial situation and improve his quality of life does not seem unreasonable to me, particularly in light of his assertion that he felt it would be easier to find work in X than in X. I find his testimony to be credible.

[41] The Appellant explained to me that she had looked for work before leaving X and was continuing to make the necessary effort to find a job in the X region. I accept her testimony.

[42] In such circumstances, I do not find it reasonable to ask a couple that has lived together for 24 years to live apart.

[43] I therefore dismiss the Commission's arguments that the Appellant and her husband both left their respective employment without just cause.

[44] Under subparagraph 29(c)(ii) of the Act, a spouse accompanying a claimant is not required to have found employment at the new residence, although such a consideration can also be taken into account. *Mullin*, A-466-95, confirmed that principle in a case similar to this one. In that case, the claimant's husband lost his job and moved to another province where he had a house and had some hope of finding work. The claimant left her employment and moved to be with her husband and their children.

[45] We further recall that preservation of a family unit involving spouses and dependent children is now officially recognized (in the past it was merely a policy; this is no longer the case in the context of paragraph 29(c) of the Act (*Kuntz* A-1485-92)). Although the couple in this case does not have dependent children, the fact remains that they constitute a family, having lived together for 24 years and having been married for 18.

[46] After considering the facts in the file and assessing the Appellant's testimony, the Tribunal finds that she had just cause for leaving her employment within the meaning of sections 29 and 30 of the Act and that she had no reasonable alternative to leaving, having regard to all the circumstances. In such circumstances, no disentitlement is imposed and the Appellant was entitled to benefits.

CONCLUSION

[47] The appeal is allowed.



Claude Durand
Member, General Division - Employment Insurance Section