



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. R. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 70

Tribunal File Number: GE-15-3803

BETWEEN:

**R. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Takis Pappas

HEARD ON: May 30, 2016

DATE OF DECISION: May 30, 2016

## REASONS AND DECISION

**PERSONS IN ATTENDANCE:** The Appellant did not attend the teleconference hearing on April 11, 2016. The Tribunal waited 15 minutes past the appointed time and then proceeded to conclude the hearing. The Tribunal notes that the Notice of Hearing was mailed to the Appellant on January 20, 2016. Evidence on file from Canada Post Office was not clear as to whether the Appellant received the Notice of Hearing. The Tribunal adjourned the hearing to May 30, 2016 and notified the Appellant via regular mail on April 15, 2016. The Appellant did not attend the teleconference hearing on May 30, 2016. The Tribunal waited 15 minutes past the appointed time and then proceeded to conclude the hearing. Section 12(1) of the Social Security Tribunal Regulations provides that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received the Notice of Hearing. The Tribunal is satisfied that the Appellant received his Notice of Hearing since this Notice of Hearing was mailed on April 15, 2016 and to this date has not been returned to the Tribunal.

## INTRODUCTION

[1] The Appellant established an initial claim for Employment Insurance benefits on July 5, 2015.

[2] The Respondent imposed an indefinite disqualification on the Appellant, according to sections 29 and 30 of the *Employment Insurance Act* (the Act), because he voluntarily left his employment without just cause.

[3] On September 17, 2015, the Appellant requested a reconsideration of the Respondent's decision. The Respondent maintained its original decision and on November 20, 2015 the Appellant appealed to the General Division of the Social Security Tribunal.

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

- a) The complexity of the issue(s) under appeal.
- b) The fact that the appellant will be the only party in attendance.

- c) 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**

[5] Whether a disqualification should be imposed on the Appellant according to sections 29 and 30 of the Act, because he voluntarily left his employment without just cause.

## **THE LAW**

[6] Section 29 of the Act states: 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.

[7] Subsection 30(1) of the Act provides:

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."

[8] Subsection 30(2) of the Act provides:

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.

[9] Section 51.1 of the Regulations states:

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**

[10] The Appellant established an initial claim for Employment Insurance benefits on July 5, 2015.

[11] The Appellant was employed until July 2, 2015 at which time he voluntarily left this employment because his employer accused him of inappropriate dress (wearing shorts).

[12] The Appellant stated that he was dismissed from his employment. He indicated that he was dismissed for wearing shorts. The Appellant stated that he has been employed for 14 years and has always worn shorts during the summer months without issue (GD3-3 to GD3-15).

[13] The employer was contacted and they indicated that there may not have been a rule about wearing shorts when the Appellant was first hired but since then they have implemented policy changes in regards to safety. The employer indicated that all staff were advised of the new rules. They also agreed to provide copies of the warnings provided to the claimant (GD3-18).

[14] The documentation provided by the employer indicates that they issued warnings to the Appellant regarding safety violations on May 2, 2015 and June 17, 2015. Included was the minutes from a health and safety meetings held May 6, 2015 and June 3, 2015, that detailed personal protective equipment, specifically work boots, safety glasses, and pants, as topics (GD3-19 to GD3-26).

[15] Additional documents provided by the employer include incident reports dated June 26, 2015 and July 2, 2015, where the Appellant refused to wear pants on the job as required and the steps taken by the employer to rectify the situation (GD3-19 to GD3-26).

[16] The Respondent imposed an indefinite disqualification on the Appellant, according to sections 29 and 30 of the Act, because he voluntarily left his employment without just cause.

[17] In his request for reconsideration, the Appellant provided that he did not quit his employment but rather was dismissed for wearing shorts.

## **SUBMISSIONS**

[18] The Appellant submitted that:

- a) He contests the Respondent's decision because he does not feel that he quit this employment, rather he was dismissed.

[19] The Respondent submitted that:

- a) The Appellant did not have just cause for leaving his employment because he failed to exhaust all reasonable alternatives prior to leaving.
- b) A reasonable alternative to leaving would have been to adhere to the employer's safety policy and wear pants.

## **ANALYSIS**

[20] Paragraph 29(c) of the Act sets out the just cause test for cases of voluntarily leaving one's employment: "No reasonable alternative to leaving the employment, having regard to all circumstances".

[21] The Respondent must show that the Appellant left employment voluntarily and the Appellant must show "just cause" for leaving his/her employment, that is, considering all circumstances, the Appellant had no reasonable alternative to leaving (*Patel A-274-09, Bell A-450-95, Landry A-1210-92*).

[22] In the case at bar, the evidence from the Respondent indicates that the Appellant voluntarily left his employment on July 2, 2015.

[23] The Appellant claims that he did not quit his employment but rather that he was fired. The evidence provided by the employer suggest that the Appellant was aware of the employer's safety rule in regards to wearing pants and had been issued written discipline for his failure to follow the employer's safety policy (GD3-24). The employer went so far as to purchase pants for the Appellant, so that he would be in compliance with the employer's safety policy; as the

Respondent submitted, the Appellant remained steadfast in his refusal to wear pants (GD3-25 to GD3-26).

[24] The final incident occurred when the Appellant was found again to not be in compliance with the employer's safety policy. When confronted about his refusal to wear pants, the Appellant was given an ultimatum; he could return to work on Monday morning wearing pants or he would no longer be able to work for the employer. The Appellant immediately stated that he would not be wearing pants, so he was done with the company.

[25] The Tribunal accepts the above submissions of the employer and finds that the Appellant voluntarily left his employment.

[26] The onus of proof now shifts to the Appellant show that she left his employment for just cause (*White A-381-10, Patel A-274-09*).

[27] Did the Appellant have no reasonable alternative to leaving? The evidence before the Tribunal indicates that he did.

[28] The Court has established that 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*).

[29] As the Respondent submitted, a reasonable alternative would have been to adhere to the employer's safety policy and wear pants.

[30] The Tribunal considered the Appellant's statement that he was dismissed for refusing to wear pants.

[31] The Tribunal does not agree with the Appellant's submissions that he was dismissed.

[32] The evidence before the Tribunal indicates that the Appellant could have returned to work on Monday morning wearing pants and thus continuing his employment.



[33] The Act is clear that a claimant has to utilize all reasonable alternatives before leaving his employment with just cause.

[34] In this case, the Tribunal finds that the reason the Appellant provided does not amount to just cause for leaving one's employment because the Appellant did not explore the reasonable alternative available to him.

[35] Therefore, the Tribunal finds that the Appellant had a reasonable alternative to leaving his employment. He would have been allowed to continue with this employment if he would have worn pants to work and be in compliance with the employer's safety rules. By refusing to continue his employment, he made the decision to leave. The Appellant had employment to return to on Monday morning, with the stipulation that he wears pants. The employer would have allowed him to continue his employment if he was in compliance with their safety rules.

[36] The Tribunal finds that the Appellant did not employ the alternative available to him.

[37] For all the above reasons the Tribunal finds that the Appellant did not demonstrate just cause for voluntarily leaving his employment because he did not show that he had no reasonable alternative to leaving his employment when he did, therefore a disqualification should be imposed on his claim effective July 5, 2015, according to sections 29 and 30 of the Act.

## **CONCLUSION**

[38] The appeal is dismissed.

*Takis Pappas*

Member, General Division - Employment Insurance Section