



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. C. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 89

Tribunal File Number: GE-16-899

BETWEEN:

G. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Richard Sterne

HEARD ON: June 29, 2016

DATE OF DECISION: June 29, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, G. C., attended the hearing by telephone.

INTRODUCTION

[1] The Appellant was employed by the X Public Library (employer) until September 17, 2015.

[2] On September 22, 2015, the Appellant applied for employment insurance benefits (EI benefits).

[3] On October 15, 2015, the Canada Employment Insurance Commission (Respondent) advised the Appellant that they were unable to pay her any EI benefits because she had stopped working by voluntarily leaving her job with the employer on September 17, 2015, without just cause.

[4] On November 26, 2015, the Appellant filed a request for reconsideration of the Respondent's October 15, 2015 decision, which was denied on January 14, 2016.

[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 was not anticipated to be a prevailing issue.
- c) The fact that the appellant would 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.

ISSUE

[6] 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

[7] 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.

[8] 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."

[9] 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.

[10] 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.

EVIDENCE

[11] The Appellant was employed by the employer from September 4, 2014 to September 17, 2015.

[12] On September 22, 2015, the employer issued the Appellant's record of employment (ROE) and indicated the reason for issuing the ROE was code N, Leave of Absence.

[13] On September 22, 2015, the Appellant applied for EI benefits.

[14] On October 14, 2015, the Appellant told the Respondent that she requested and was granted a six month leave of absence from her job as a supply/casual worker so she could go to British Columbia to look for work. The Appellant said that she had been seeking full time work in X for several years, but was not having any success. Her employer of four years had not offered anything permanent either. The Appellant said she had some contacts in the area that were trying to help her find work but she did not have any work lined up when she left. She said

that she did not know how long she would be there. She said she was looking for work every day but would go back to X if she couldn't find any work.

[15] On October 15, 2015, the Respondent advised the Appellant that they were unable to pay her any EI benefits because she had stopped working by voluntarily leaving her job with the employer on September 17, 2015, without just cause.

[16] On November 26, 2015, the Appellant filed a request for reconsideration of the Respondent's October 15, 2015 decision.

[17] On January 14, 2016, the Appellant told the Respondent that she had been a supply worker for the employer and was basically on call with no steady hours. The Appellant stated that she had been working that way for 4 years and desired a change. She said that she was unsure of whether to fully quit her job and move to British Columbia to look for work or to take a leave of absence. She felt that the leave of absence would be safer as it still tied her to one employer in case it did not work out. The Appellant stated that she relocated to British Columbia and has been looking for work since arriving.

[18] On January 14, 2016, the Respondent advised the Appellant that they had not changed their October 15, 2015 decision.

[19] On June 23, 2016, the Appellant submitted to the Tribunal a letter detailing her current employment status.

SUBMISSIONS

[20] The Appellant submitted that:

- a. she voluntarily left her employment because the employer refused to hire her after five years of being on the supply/casual list.
- b. the employer had instead hired employees who were on the same list, but had less seniority than she did.
- c. she had been on call as a supply library service representative since January 2011.

- d. she had been underemployed for the past 4.5 years.
- e. she had applied to numerous positions internally and externally during this period.
- f. she had requested and obtained a six month leave of absence from her employer in order to relocate to British Columbia to look for work.

[21] The Respondent submitted that:

- a. the Appellant did not demonstrate just cause for voluntarily leaving her employment, therefore they imposed an indefinite disentitlement pursuant to sections 29 and 32 of the Act, effective September 14, 2015.

ANALYSIS

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

[23] 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.

[24] During the hearing, the Appellant stated that she had been working for several years with the employer in an underemployed state on their supply/casual list. Last year she decided to seek some other employment options and asked the employer for a leave of absence so she could go to British Columbia to look for employment. The Appellant stated that she thought that if she didn't leave her employer, she would be perpetually under employed.

[25] The Appellant stated that she had discussed her employment frustrations with her union, but didn't discuss them with the employer. The Appellant had submitted an extensive list of her job search activities, but had not been successful in finding more suitable full time employment.

[26] The Appellant advised her employer at the end of her leave of absence on March 19, 2016, that she had decided to remain in British Columbia and would not be returning to her supply/casual staff position.

[27] The Appellant said that she was very frustrated about not being able to find a full time job. She said that she thought about looking for work in neighbouring cities to X, but decided to go to British Columbia because she had never been there and had noted that it had one of the lowest unemployment rates in Canada.

[28] The Tribunal finds that the Appellant was credible during the hearing in that she was open and consistent in her testimony and answers to questions, while under oath.

[29] The Tribunal finds that the Appellant made a personal decision to quit her job.

[30] The Tribunal is sympathetic to the Appellant, but finds that the Appellant did not prove that she had no reasonable alternative to leaving her job when she did. The Appellant could have continued working for the employer on a supply/casual position until she found a full time position. She could have discussed her frustrations with her employer in the hope of getting more hours. She could have broadened her job search to neighbouring cities. She could have taken some training courses to broaden her skills and job opportunities.

[31] 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

[32] The Tribunal finds that the Appellant may have had good personal reasons for quitting her job, but they were not just cause for voluntarily leaving her job, pursuant to sections 29 and 30 of the Act.

[33] The Federal Court of Appeal made a distinction between a claimant showing his/her leaving their employment was reasonable given the circumstances and that they may have had good motive to leave or reasons, but that it is not synonymous with just cause.

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CONCLUSION

[34] The appeal is dismissed.

Richard Sterne

Member, General Division - Employment Insurance Section