



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. C. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 93

Tribunal File Number: GE-15-4225

BETWEEN:

A. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: June 14, 2016

DATE OF DECISION: July 15, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant, Ms. A. C., attended the teleconference hearing.

INTRODUCTION

[1] On October 9, 2013, the Claimant applied for employment insurance regular benefits after leaving her employment. On September 14, 2015, the Commission denied the Claimant's application for benefits because she did not show just cause for leaving her employment. It found that the Claimant had reasonable options to leaving when she did.

[2] On October 29, 2015, the Claimant requested that the Commission reconsider its decision and on November 25, 2015, the Commission maintained its decision.

[3] On December 18, 2015, the Claimant appealed to the General Division of the Social Security Tribunal (Tribunal).

[4] The hearing was held by teleconference because the Claimant was going to be the only party in attendance and given the information in the file, including the need for additional information.

ISSUE

[5] The Member must decide whether the Claimant should be disqualified from receiving any benefits because she voluntarily left her employment without just cause pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

THE LAW

[6] Section 29 of the EI Act stipulates that for the purposes of sections 30 and 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 EI Act stipulates that 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 EI Act stipulates that 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

[9] The Claimant was employed for 6 days with her employer from September 12 -18, 2013 when she voluntarily left. She applied for employment insurance regular benefits two weeks later on October 9, 2013. On her application form she indicated that she had only worked and was dismissed from another employer (on September 3, 2013). She indicated “no” to the question of whether she additional periods of employment in the last 52 weeks (GD3-3 to GD3-14).

[10] The employer advised the Commission that the Claimant just stopped showing up, did not give notice, reasons or a resignation letter. They have no record of a complaint; had one been received, they would have investigated the incident (GD3-17 and GD3-29).

[11] On September 14, 2015, the Commission advised the Claimant that it cannot pay her employment insurance regular benefits as of October 6, 2013 because she voluntarily left her employment without just cause (GD3-18). As a result of this decision, the Claimant is responsible for an overpayment of benefits in the amount of \$9,724.00 (GD3-20).

[12] The Claimant requested that the Commission reconsider its decision. She indicated that she left her employment because she no longer felt that she was working in a safe and trusting environment after her cell phone was stolen. The Claimant told the Commission that she probably reported the incident to her Manager at the time but does not recall the name. She stated that management did not investigate or review the cameras after she reported the incident so she did not return for her next shift. She did not file a complaint with the employer's human resources nor did she advise her employer of the reason she left. Further, she did not report this employment on her application because she had forgotten about it since it was for such a short period of time and she had not received an ROE at that time (GD3-21 to GD3-25).

[13] On November 25, 2016, the Commission maintained its initial decision (GD3-26 and GD3-27).

[14] At the hearing, the Claimant testified that she didn't include her employment with this employer on her application form because the employer told her she would not be getting a pay cheque since she still had the security badge. She was also not provided with an ROE. She stated that it was an honest mistake.

[15] The Claimant was referred to her submission (GD2-6) where she indicated that she had received "a small cheque" and asked by the Member why she didn't report those earnings and her employment at that time. The Claimant testified that she honestly didn't know to report it because she only received approximately \$100.00.

[16] The Claimant testified that she left her employment the same day that her phone was stolen from her desk because she didn't feel comfortable or safe there anymore. The Manager checked everyone's bags, but did not check the cameras or tell her to file a formal report.

[17] The Claimant testified that she told her Manager of the incident and the people who worked around her and hoped that something would be done about it. The Claimant stated she hoped the Manager would have done something that day, she did not, and so she left and just did not come back. The Claimant stated that she did not call in the next day nor did she ever get her phone back. She stated that she was employed shortly after leaving.

SUBMISSIONS

[18] The Claimant submitted that she left because her phone was stolen from her desk and the matter was not addressed by management. As a result, she did not feel comfortable or safe to return to work the next day. She did not report this employment when she applied for benefits because she was not expecting a pay cheque from this employer and when she did receive a small amount, she had already applied for benefits and didn't think she had to report it. Further, had she received the ROE in a timely manner (issued on December 11, 2013), she would have included it with her application and explained her reasons for leaving at that time and avoided the present situation/overpayment (GD2).

[19] The Commission submitted that the Claimant did not have just cause for leaving her employment because she failed to exhaust all reasonable alternatives prior to leaving. A reasonable alternative to leaving would have been to ask her employer to document a formal complaint for the theft of her phone and/or waited until she secured other employment. With respect to the overpayment, had the Claimant reported this employment when she filed for benefits (just two weeks after leaving), the reason for separation could have been adjudicated at that time and an overpayment could have been prevented.

ANALYSIS

[20] Sections 29 and 30 of the EI Act stipulate that a claimant who voluntarily leaves his/her employment is disqualified from receiving any benefits unless he/she can establish 'just cause' for leaving.

[21] The Member recognizes that it has been a well-established principle that just cause exists where, having regard to all the circumstances, the Claimant was left with no reasonable alternative to leaving pursuant to subsection 29(c) of the EI Act (Patel A-274-09, Bell A-450-95, Landry A-1210-92, Astronomo A-141-97, Tanguay A-1458-84).

[22] The Member first considered that it is incumbent of the Commission to show that the Claimant left her employment voluntarily. In this case, it is undisputed evidence that the Claimant left her employment voluntarily on September 18, 2013 (GD3-14, GD3-17, GD3-21 and GD3-24).

[23] The onus of proof then shifts to the Claimant to show that she left her employment for just cause (White A-381-10, Patel A-274-09). In this case, the Claimant did not meet that onus for the reasons to follow. Although she provided good personal reasons as to why she decided not to return to her employment, she did not show that she was left with no reasonable alternative to leaving pursuant to subsection 29(c) of the EI Act.

[24] The Member first considered the circumstances referred to in subsection 29(c) and whether any existed at the time the Claimant took leave from her employment. According to case law, these circumstances must be assessed as of that time (Lamonde A-566-04). In this case, the Claimant submitted that because her cell phone was stolen from her desk, she no longer felt safe or comfortable in her work environment so she quit (GD3-23 and GD3-24).

[25] The Member therefore, considered paragraph 29(c)(iv) of the EI Act which stipulates that just cause exists if the Claimant had no alternative to leaving, having regard to all the circumstances, including, working conditions that constitute a danger to health or safety. In this case, the Claimant submitted that when she reported the incident, management did not address the situation by checking the security cameras or investigate the matter any further. As a result, she no longer felt like she was working in a safe and trusting work environment (GD3-23 and GD3-24). The Claimant testified that the Manager checked everyone's bags, but did not check the cameras or tell her to file a formal report. She had hoped that the Manager addressed the situation that day; she did not, so she quit.

[26] Although the Member understands the Claimant's frustration of that day, the Claimant has not described a situation or work environment that was so intolerable and/or unsafe that she had to immediately leave when she did, on September 18, 2013. The Member agrees with the Commission therefore, that in order for the Claimant to show just cause for leaving, she must show that she considered and exhausted other reasonable options prior to leaving. The Commission submitted that a reasonable option would have been for the Claimant to put in a

formal complaint and/or remained employed until she secured alternative employment. The Member acknowledges that the Claimant testified that she had not been told that she can lodge a formal report/complaint. The Member finds however, that the Claimant left without notice or explanation so had she indicated her intent to not return for next shift or called her employer, the option may have been presented to her. Further, the Claimant testified that she was employed shortly thereafter, thus demonstrating that attempting to secure other employment prior to leaving was a realistic, reasonable alternative to putting herself in an immediate unemployment situation. The Member finds that the Claimant simply left and did not consider any alternatives to leaving, this or any other.

[27] Finally, the Member considered that it has been well established in case law that a claimant's dissatisfaction with one's work conditions, does not generally constitute just cause under the EI Act, unless they are so intolerable that the claimant had no other choice but to leave (CUB 74765).

[28] Having regard to all the circumstances noted above, the Member finds that the Claimant did not demonstrate that she was left with no reasonable alternative but to leave her employment pursuant to subsection 29(c) of the EI Act.

[29] The Member finds that the Claimant has not shown just cause for voluntarily leaving her employment on September 18, 2013, and is therefore disqualified from any benefits as of October 6, 2013 pursuant to sections 29 and 30 of the EI Act.

CONCLUSION

[30] The appeal is dismissed.

[31] The Member recommended that the Claimant speak to the Commission directly regarding any further entitlement/review the overpayment amount as she had surgery possibly during the time that she was receiving benefits. This is not an issue before the Tribunal.

Eleni Palantzas
Member, General Division - Employment Insurance Section