Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *K. M. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 101

Tribunal File Number: GE-16-147

BETWEEN:

K. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: July 5, 2016

DATE OF DECISION: July 27, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant (K. M.) did not attend the hearing. Subsection 12(1) of the *Social Security Tribunal Regulations* states 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 notice of the hearing." The Tribunal finds the Appellant did not attend the teleconference hearing scheduled for July 5, 2016, at 1:30pm. The Tribunal finds the Appellant received her Notice of Hearing by Express Post on May 13, 2016. The Tribunal also finds the Appellant has not submitted any request for an adjournment. The Tribunal is satisfied the Appellant received her Notice of Hearing and will proceed in her absence.

INTRODUCTION

[1] The Appellant established an initial claim for Employment Insurance benefits (EI benefits) on September 27, 2015. The Appellant worked for "Andrew Fleck Child Care Centre" until September 21, 2015. The Canada Employment Insurance Commission (Commission) determined that the Appellant 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* (EI Act). The Appellant requested a reconsideration of the Commission's decision, which was denied, and the Appellant appealed to the Social Security Tribunal (Tribunal).

[2] The hearing was held by teleconference for the following reasons: The information in the file, including the need for additional information; and 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

[3] The issue is whether the Appellant had just cause for voluntarily leaving her employment pursuant to sections 29 and 30 of the EI Act.

THE LAW

[4] Section 30 of the EI Act provides that a person who loses an employment because of their misconduct or voluntarily leaves their employment is disqualified from benefits unless they can establish "just cause" for leaving. Paragraph 29(c) states that just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances; the paragraph goes on to give a non-exhaustive list of specific circumstances which may constitute just cause.

[5] The Federal Court of Appeal (FCA) has explained that the question of just cause for leaving employment requires an examination of whether having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving their employment. The FCA has affirmed that the burden is on the claimant to demonstrate there was no reasonable alternative to leaving their employment (*Patel v. Attorney General of Canada*, 2010 FCA 95; *White v. Attorney General of Canada*, 2011 FCA 190).

EVIDENCE

[6] The Appellant applied for EI benefits on September 22, 2015, and established an initial claim on September 27, 2015

[7] The Appellant indicated she worked for "Andrew Fleck Child Care Centre" until September 21, 2015, and was terminated. The Appellant explained that she was expected to do more work than time allowed. She explained that she was not able to complete some work and when she came to work on September 21, 2015, the director was rude towards her about not completing work on time. She indicated that she contacted head office and complained about the way the director spoke to her in the workplace. She explained that on September 22, 2015, she arrived at work and the director advised her to return her keys as she had spoken to Ms. R. M. (Head Office).

[8] The Appellant's Record of Employment indicated she quit her employment.

[9] On October 7, 2015, the employer (Ms. R. M./Human Resources) spoke to the Commission and said the Appellant submitted her resignation letter, because she was not happy. She indicated this was the second time the Appellant resigned within the last three-months. She

explained that the first time the Appellant indicated she did not mean to resign and they let her continue to work. She further explained that since the Appellant had done this before they accepted her resignation and paid her out for the two weeks' notice period.

[10] The employer (Ms. R. M.) provided a copy of the Appellant's resignation e-mail dated September 21, 2015 (Exhibit GD3-19). In the resignation letter, the Appellant wrote that she was often doing J's five-hour shift duties plus her duties and yard duties. She explained that if "K" would come to work in one of her moods she picked at her until she made her upset enough to want to go home. She further explained that when covering both housekeeping shifts she was being paid five-hours, but expected to complete 8-and-a-half hours of work.

[11] On October 16, 2015, the Commission wrote to the Appellant and explained that she voluntarily left her employment on September 21, 2015, without just cause and imposed an indefinite disqualification pursuant to sections 29 and 30 of the EI Act.

[12] In a request for reconsideration (dated November 17, 2015) the Appellant indicated that her Record of Employment indicated she chose to leave her employment. She explained that her intent was to have "AFCCS" address Ms. K. C.'s aggressive and inappropriate behavior toward her in the workplace. The Appellant further submitted an e-mail she sent to Ms. R. M. (dated September 24, 2016). In the e-mail, the Appellant wrote that it was not her intention to resign. She explained that her intention in that e-mail was to address the unwelcome manner in which Ms. K. C. spoke to her in the workplace.

[13] On December 18, 2015, the Appellant spoke to the Commission and explained that the first e-mail she sent was not meant to be a resignation. She indicated that she sent this e-mail as she was "very upset" about her situation at work with Ms. K. C. (the director of the day care). She explained that she did go back to work after sending the e-mail and was told by the director that she had spoken to Ms. R. M. and was advised to return her keys. She further indicated that the director would yell at her (and other staff) in front of others and criticize her work and appearance. The Appellant said she felt degraded. She indicated that the director would go on a tirade and this would happen approximately every six-weeks. She indicated this would go on for a few days and then everything would be okay. She said she did speak to Ms. R. M. regarding her concerns numerous times, but nothing changed.

[14] On December 18, 2015, the employer (Ms. R. M.) spoke to the Commission. She explained that the Appellant's resignation letter (dated September 21, 2015) was the first time she was aware of any concerns the Appellant had regarding the director and being treated poorly. She indicated that there had been a discussion regarding the lawn cutting and the Appellant's choice of head gear on her last day worked. She said after reviewing the situation there was no indication the director acted inappropriately. She indicated that the Appellant had previously brought issues forward regarding other co-workers, but not the director. She said the Appellant previously resigned (June 2015) due to a smell in the basement and this had been addressed. She said there had been no indications in the e-mail about concerns between the Appellant and the director. She said the Appellant belonged to a union and no grievance had been filed.

[15] On December 30, 2015, the Appellant spoke to the Commission and explained that she spoke to Ms. R. M. about the situation on September 18, 2015. She said she spoke to her immediate supervisor ("A") about Ms. K. C. many times in the past, but did not go to the union or Human Resources since she was an adult and could handle things on her own. She said she contacted the union on September 21, 2015, after she submitted her resignation. She then provided further information about her resignation. She explained that Ms. K. C. had asked her loudly to go and clean up the grass in the gardens, but it was not what she said but the tone that she used when she expressed these words. She indicated that she was just upset when she wrote her e-mail resignation, but tried to take it back a couple of days later. The Commission agent asked if the Appellant had done something similar in the past. The Appellant indicated she had resigned before and it was her way of letting her employers know that Ms. K. C. had better shape up or she was leaving.

[16] In a Notice of Appeal (dated January 7, 2016) the Appellant wrote that it was never her intention to resign her position as cook/housekeeper with the employer. She wrote that in a moment of extreme frustration on September 21, 2015, she did send an e-mail to her immediate manager (Ms. K. C.) and copied Ms. R. M. (Human Resources Manager) which stated her intention to resign. She wrote that on September 22, 2015, she was informed by Ms. K. C. that her resignation had been accepted. She explained that she was stunned by this and immediately contacted her union. She explained that on September 24, 2015, she sent an e-mail which stated it was not her intention to resign and requested a meeting to resolve the misunderstanding. She

indicated that the employer refused her request to meet. She further indicated it was not her intention to resign, but instead to get help from senior management to try to address Ms. K. C.'s inappropriate communications with her in the workplace. The Appellant further indicated her job prospects were limited. She also explained that she had current financial challenges and needed EI benefits to carry her through her unemployment.

SUBMISSIONS

[17] The Appellant submitted that:

> a) She was expected to do more work than time allowed.
>
> b) It was never her intention to resign her position, but instead to get help from senior management to try to address Ms. K. C.'s inappropriate communications with her in the workplace
>
> c) She had current financial challenges and needed EI benefits to carry her through her unemployment.
>
> d) She did go back to work after sending her e-mail resignation letter and was told by the director she had spoken to Ms. R. M. and was advised to return her keys.
>
> e) The director (Ms. K. C.) would yell at her and other staff in front of others and criticize her work and appearance.

[18] The Respondent submitted that:

> a) The evidence clearly established that it was the Appellant who initiated the termination of this employer-employee relationship. The Appellant began her e-mail dated September 21, 2015, by outlining the reasons why she felt it was necessary to resign and closed the e-mail by stating that the employer could consider this e-mail to be her two weeks' notice of her resignation.
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> b) The Appellant was unable to provide any other specific examples as to how Ms. K. C. might have verbally abused her in

the workplace. The Appellant presented insufficient evidence to establish that this working environment was of such a genuinely intolerable nature that the she was left with no other reasonable alternative but to quit immediately.

c) The Appellant's reasonable alternative to quitting would have been to continue to work in this employment at least until she could have secured new employment elsewhere so as to protect herself from entering into a position of unemployment.

d) The Appellant could have requested some time off or a leave of absence if she wished to take some time to reflect and re-assess the situation instead of making a hasty decision to resign during a moment of frustration.

ANALYSIS

[19] The Tribunal must decide whether the Appellant had just cause for voluntarily leaving her employment pursuant to sections 29 and 30 of the EI Act.

[20] The Tribunal finds the Appellant established an initial claim for EI benefits on September 27, 2015.

[21] The Tribunal recognizes the Appellant worked as cook and housekeeper for "Andrew Fleck Child Care Centre" until September 21, 2015. The Tribunal realizes the Appellant indicated in her application for EI benefits that her employment was terminated. Nevertheless, the employer submitted the Appellant's resignation letter which was sent from the Appellant by e-mail on September 21, 2015 (Exhibit GD3-19). Under the circumstances, the Tribunal finds the Appellant voluntarily left her employment.

[22] The Tribunal recognizes the Appellant submitted a number of arguments about why she resigned from her employment. The Tribunal will address those arguments in a moment. However, the Tribunal wishes to first emphasize the legal test for voluntarily leaving. First: Section 30 of the EI Act provides that a person who loses an employment because of their misconduct or voluntarily leaves their employment is disqualified from benefits unless they can

establish "just cause" for leaving. Paragraph 29(c) states that just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances; the paragraph goes on to give a non-exhaustive list of specific circumstances which may constitute "just cause."

[23] Second: The Federal Court of Appeal (FCA) has explained that the question of just cause for leaving employment requires an examination of whether having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving their employment. The FCA has affirmed that the burden is on the claimant to demonstrate there was "no reasonable alternative to leaving their employment" (*Patel v. Attorney General of Canada*, 2010 FCA 95; *White v. Attorney General of Canada*, 2011 FCA 190).

[24] The Tribunal will now address the Appellant's reasons for leaving her employment. First: The Appellant indicated it was never her intention to resign her position, but instead to get help from senior management to address Ms. K. C.'s inappropriate communications with her in the workplace. Second: The Appellant indicated that she did go back to work after sending her e-mail resignation letter and was told by the director she had spoken to Ms. R. M. and was advised to return her keys. Third: The Appellant indicated that the director (Ms. K. C.) would yell at her and other staff in front of others and criticize her work and appearance. Fourth: The Appellant submitted she was expected to do more work than time allowed.

[25] The Tribunal certainly realizes the Appellant was unhappy with the director of her workplace (Ms. K. C.). The Tribunal further realizes the Appellant indicated she was overworked. The Tribunal also realizes the Appellant explained that the reason she submitted her resignation was to have "senior management" address her concerns with Ms. K. C.

[26] At this point, the Tribunal wishes to re-emphasize the legal test for voluntarily leaving. In short: Did the Appellant have no reasonable alternative to leaving her employment having regard to all the circumstances? The Tribunal has examined all the evidence and finds that on a balance of probabilities the Appellant had reasonable alternatives to leaving her employment for the following reasons. First: The Appellant could have submitted a formal complaint about Ms. K. C. to Human Resources before making her decision to submit a letter of resignation. Second:

The Appellant could have filed a grievance through her union about the situation in the workplace before she resigned. Third: The Appellant could have requested a leave of absence to assess her situation before resigning. Fourth: The Appellant could have secured alternate employment before resigning her position.

[27] As cited above, the Tribunal realizes the Appellant was unhappy with her supervisor and displeased with the overall workplace environment. However, the Tribunal recognizes the Appellant made a personal choice to resign her employment. Perhaps this was a good personal choice for the Appellant. Nevertheless, the Tribunal wishes to emphasize that a good personal choice is not synonymous with "just cause" for leaving an employment pursuant to sections 29 and 30 of the EI Act.

[28] The Tribunal also realizes the Appellant submitted she had current financial challenges and needed EI benefits to carry her through her unemployment. However, the Tribunal must apply the EI Act. In short: The Tribunal cannot ignore, re-fashion, circumvent or re-write the EI Act even in the interest of compassion (*Knee v. Attorney General of Canada*, 2011 FCA 301).

[29] In the last analysis, the Tribunal finds that on a balance of probabilities the Appellant did not have just cause for leaving her employment pursuant to sections 29 and 30 of the EI Act (for the reasons cited above).

CONCLUSION

[30] The appeal is dismissed.

Gerry McCarthy

Member, General Division - Employment Insurance Section