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

Citation: *D. A. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 115

Tribunal File Number: GE-16-1107

BETWEEN:

D. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

O. L. Family Services

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: August 16, 2016

DATE OF DECISION: September 14, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

Mr. D. A., the Appellant (claimant) along with his representative Ms. Kim Hryciw, Community Unemployed Help Center attended the hearing.

Ms. N. D., supervisor at O. L. Family Services, employer attended the hearing.

INTRODUCTION

[1] On November 1, 2015 the Appellant established a claim for employment insurance benefits. On December 3, 2015 the Canada Employment Insurance Commission denied the Appellant benefits as it was determined he voluntarily left his employment without just cause. On January 7, 2016 the Appellant made a request for reconsideration. On March 7, 2016 the Commission maintained its original decision and the Appellant appealed to the *Social Security Tribunal of Canada* (Tribunal).

[2] The hearing was held by In person for the following reasons:

a) The complexity of the issue(s) under appeal.

b) The fact that the credibility may be a prevailing issue.

c) The fact that more than one party will be in attendance.

d) The information in the file, including the need for additional information.

e) The fact that the appellant or other parties are represented.

f) 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 Tribunal must decide whether an indefinite disqualification should be imposed as the Appellant failed to prove he had just cause for voluntarily leaving his employment pursuant to section 29 and 30 of the *Employment Insurance Act* (the Act).

THE LAW

[4] Section 29 of the Act for the purposes of section 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;

(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 is 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.

[5] [Subsection 30(1) of the Act states:

(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 employment; and

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

[6] Subsection 30(2) of the Act states:

(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.

EVIDENCE

[7] In his application for benefits the Appellant indicated he quit his employment due to illegal activities going on at work. He stated the illegal activity regarding the apprehension of children and not forthcoming with the parents that section 9 of the agreement had expired. He stated that he informed the protection worker that she and the agency were morally, ethically and legally obligated to inform the parents of the expiration of the agreement immediately. He stated that his employer was asking him to engage in these practices. He stated that it was the Child Protection Worker who asked him to engage in these activities and he refused. He stated that the Child Protection Worker did not have the authority to immediately address this situation with him concerning his opposing views regarding this case. He stated when they arrived at their destination they did not disclose the expiration of the Section 9 to the parents. He stated he spoke to his immediate supervisor and discussed the case thoroughly. He stated due to the complicating unethical and illegal aspects of this case and the way he was dealt with he was disciplined on numerous aspects concerning this case from upper management. He stated that his supervisor informed him he was being disciplined on other matters on how he handled this case. He stated he was notified is his attitude did not change by October 15, 2015 he would be terminated. He stated he then informed her that if he was not going to be allowed to work in an agency where he is very diligent in exercising moral, ethical, legal obligations concerning his work, and also not allowed to voice his constructive critical analysis and assessment of future work concerning his work place and especially not being allowed to voice

or raise concerns concerning his work with the agency he would prefer not to work in an agency that exercise unethical and illegal work promulgated by lateral violence resulting in an unhealthy work environment. He stated he informed the supervisor that if he continued to be disciplined for raising issues then he would no longer work for the agency. He stated after the conversation he left the agency at 12:00 PM on Friday October 2, 2015. He stated he did speak to a higher authority when he spoke to a Board Member and he explained why he was quitting. He stated he also met with another Board Member and explained the details. He stated he was later contacted by the Chief and Councillor on October 3, 2015 who said they would address the issue on October 6, 2015 at the council meetings. He stated he waited all day on the 6th to participate in the meeting but when he called he was told that that O. L. Family Services was not on the agenda that day. He stated when he heard this he went home and never heard from council or any other board member again. He stated he contacted a friend of his and explained the circumstances regarding the unethical and illegals aspects. The Appellant reiterated the issues surrounding the case and section 9. He stated he did not ask for a transfer because he was comfortable working in the prevention unit. He stated he looked for other work prior to leaving as he had applied for a job with the RCMP in X and had gone for an interview on June 15, 2015, however he was told a successful applicant would not be notified until late fall 2015 (GD3-3 to GD3-20).

[8] A record of employment indicates the Appellant was employed with O. L. Family Service (OLFS) from August 11, 2015 to October 2, 2015 when he quit his employment (GD3-21).

[9] On December 1, 2015 the Commission contacted the N. D. (Supervisor) who stated the Appellant quit because he had found another position, therefore he was not willing to sign his performance agreement she had done. She stated the Appellant was still on probation and had been there about 8 weeks. She stated she followed the policy book and he had received a verbal warning for breaching confidentiality. She stated it was added to his performance improvement plan. She stated that they sign off and it's done, or it could be extended and if nothing is changed then they can let him go. She stated everything they do is based on X Family Services policy. She stated they are prevention services, they are not social workers. She stated they provide services so protection does not have to get involved. They run parenting support and

put plans together. The supervisor stated that the Appellant had not asked to speak the director but he was quite welcome to, and he was quite vocal about going over her head. She stated the Appellant was a difficult employee to deal with and he did not to the job he was hired to do and had he signed the performance review he could have stayed. He was stressing everyone out. She stated he breached confidentiality when he bumped into a family at Wal-Mart and talked about the facts on the file and he told her what they had spoken about. She stated the performance plan was done on October 1, 2015, written up for disregarding policies, he had confidential conversation in public and he had difficulty meeting deadlines. She will confirm with the director if she can fax the performance plan (GD3-23).

[10] On November 30, 2015 the Commission spoke to the Appellant who stated that this was the third time working there, the previous two times he was a protection worker and this time he was a prevention worker and he went back in a different capacity. The Appellant explained the situation with a case file that was to be transferred to his case load. The Appellant explained the protection worker had advised him of the agreement that had expired but they were not going to advise the parents of this. He reiterated that this was unethical and illegal. He stated he told the prevention worker to get a hold of her supervisor and get the agreement extended but he does not know what transpired. He stated they did not notify the parents until September 25, 2015. He stated September 18, 2015 was a Friday night and he was out shopping when he met up with both parents, he stated they came to him and were asking him questions and he told them that this was a public place and the would need them to come into the office. He said they confronted him on why he didn't tell them the agreement had expired. He stated he doesn't know how they knew. He stated that he was disciplined for speaking to them in public, for talking to the prevention worker and telling her what to do; he was given five written warnings on this case. The Appellant stated there was a meeting on September 25, 2015 with the family and regarding the children which he stated should have been returned on September 17, 2015. He stated the meeting did not go well and the family left upset. He stated he went to settle them since they were in such a bad stated as well as other staff. He stated they were threatening the council with a law suit, he said he advised them to get a lawyer. He stated he received a discipline as it wasn't his part to chase the parents outside and do what he did. The Appellant stated the next week he was sensing negativity and his supervisor called him into her office and said she had to give him the warnings. She stated that by October 15, 2015 if did not change he

would be terminated. He stated he was doing everything legally and ethically. He stated that he was an asset to the company and he does not agree with certain things and needs to bring them up. He stated when he was hired he questioned how some files had pieces missing. He stated that they were working on programs with children but the missing piece they were not working with the parents. He stated that they agreed to cancel a hunting trip that was planned for the fall so he could get a second opinion and he was disciplined for not doing his job. He stated that the agreement was made in August or early September and he was disciplined on October 2, 2015. The Appellant stated he was doing his best. He stated he asked to speak to the director but was refused. He stated that is why he quit, his mouth was being taped and he could not work in this environment. He stated that the people in the agency were doing self-care and he needed to look after his own issues before taking care of others. He stated at the morning briefings he was found to be bringing up issues that were not appropriate of when he and his family were evicted in 1984 and he was still having issues. He stated he was disciplined for this as well (GD3-24 to GD3-25).

[11] On December 8, 2015 the supervisor provided the Appellant's performance improvement plan. The plan indicates three issues being the reasons for the plan, which included (1) Disregard for Company Policies; (2) Inappropriate Client/Co-workers Relations; and (3) Performance. The plan indicates that these issues will be revisited again on October 15, 2015 (GD3-27).

[12] On December 12, 2015 the Commission contacted the Appellant and advised him of the supervisor's statements. He stated that he did not refuse to sign the plan because he had found other work but refused because of continuing being oppressed. He stated there was no reason for him to continue to work there and he wouldn't want to continue to be denied to be able to address certain issues. He stated he had to follow a chain of command and was not allowed to go directly to the board members or the director. The Appellant confirmed that he told the supervisor that he would go over her head to speak to the director if need be, but he thought what was the point now. He stated in the past he wasn't allowed to speak to the director but this time she said he could. He stated this was the third time he returned and he thought the agency would have changed by now. He stated after he quit he spoke to a couple of board member in hopes they could reinstate him and he spoke to council to have the issue brought up at their

meeting but they didn't. The Appellant stated he did not speak out on September 17, 2015 when he found out what was going on because he wanted his liability to be covered. He stated when the protection worker made the call to her supervisor he believed his liability was covered. He stated he disagreed with the agencies polices when he previously worked for the agency (GD3-28).

[13] On December 11, 2015 the Commission notified the Appellant they were unable to pay him benefits because it was determined he voluntarily left his employment without just cause (GD3-29 to GD3-30).

[14] On January 7, 2016 the Appellant made a request for reconsideration reiterating why he left his employment and that the agency had committed internal agency unethical, illegal and unprofessional conduct which he did not agree with. The Appellant stated he was not allowed to discuss his issues or the performance review with director. He provided letters of support regarding his involvement of the case that he was involved with (GD3-31 to GD3-36).

[15] On March 7, 2016 the Commission contacted the Appellant who reiterated the reasons for leaving his employment. The Appellant reiterated the issues surrounding the issue of the section 9 agreements and how he believed this was unethical and illegal. The Appellant confirmed his employment with the agency and that he was not employed as a social worker but as a prevention worker and he was not involved in protection services. He stated he was not responsible to make the decisions and he was told by the protection worker not to say anything to the parents regarding the section 9. He stated that he never spoke to his supervisor about the issue until September 25, 2015 the day the circle was held and he told the supervisor at that time they were going to advocate and stand up for the parents. He reiterated the state of the parents and his involvement with the parents at the end of the meeting. He stated that he wanted to quit on September 17, 2015 when the issue occurred however he didn't because he needed the job. The Appellant agreed that the real reason he quit was a result of being written up by his employer on October 2, 2015. He stated the employer fabricated the reasons and that there was no way he would be able to comply with their unreasonable requests and he knew he would be fired so he decided to quit. The Appellant confirmed that he did have a conversation with clients in Wal-Mart but he never discussed any confidential information and they agreed to

come to the office on Monday. The Appellant confirmed that he did speak of personal issues at the staff meetings but it wasn't inappropriate it was just his co-workers couldn't handle it. He stated that after he was written up it was clear he was trying to be muzzled. He stated that he had been trying to get the supervisor to let him see the director and only after he threatened to quit she was going to let him. He stated when he did go to speak to her, she was on vacation. He stated the letters of support were people he spoke to after he quit. He stated he didn't speak to them before because he was frustrated with being written up and he quit in a moment of anger (GD3-39 to GD3-40).

[16] On March 7, 2016 the Commission contacted the supervisor who stated that the Appellant had never come to her with ethical concerns. She stated he had to be spoken to regarding the breach of confidentiality several times and especially when it was discovered he had been speaking about case details in public at Wal-Mart. He also had been spoken to about using discretion when discussing his personal issues with co-workers as some discussions were not meant for the workplace. She reiterated the Appellant was employed as a prevention worker and that he was having trouble staying within the boundaries of his position and he had to be reminded of the policies and procedures. She reiterated her early statements that the Appellant had been put a on a performance plan and he refused to sign it and quit. She confirmed that the Appellant would be expected to address any issues with her first, as she was his direct supervisor, but that he would have been free to speak to the director at any time as well (GD3-41).

[17] On March 7, 2016 the Commission notified the parties the original decision of voluntary leave was maintained and provided the information of the right to appeal to the Tribunal (GD3-42 to GD3-44).

[18] On March 17, 2016 the Appellant filed a Notice of Appeal stating that was forced out and it was a constructive dismissal. The Appellant included letters of support in regards to the unethical behavior or his employer and the reasons he left the employment (GD2-1 to GD2-7).

[19] On May 30, 2016 the employer provided additional submissions of the Appellant's file and a witness statement on the day the Appellant quit his employment (GD8-1 to GD8-6).

[20] On May 31, 2106 the Appellant provided additional submissions as it regarded to the employers additional submissions and his performance plan (GD9-1 to GD9-5). The Tribunal notes that GD10 is a duplicate of GD9.

EVIDENCE AT THE HEARING

[21] The Appellant's representative stated that (GD10) addresses the disciplinary action that was taken against him in attempt to provide his perspective to the incidents that were identified by the employer.

[22] The Appellant confirmed as he stated on application for benefits he maintains he left employment pursuant to section 29(c)(xi) practices of an employer that is contrary to law. He stated things were done and the laws were not followed and he didn't want to be a part of it.

[23] The Appellant stated the employer broke the law under the X Family Services Act in relation to Section 9, where parents and guardians can agree with agency that they will seek treatment and give up their children for three months. He stated that this is a consensual agreement between the two parties

[24] The Appellant stated it was broken in this case when the file was in the protection unit and being in transition to the prevention unit where he was a prevention worker and was assigned to this file. He stated on September 17, 2015 he and the protection worker headed to the treatment centre to pick up the parents on the file. He stated on the way there the prevention worker told her that her supervisor told her not to tell the parents the section 9 was expiring on that same day. He stated he told her that the parents have that right under law, but she didn't know that.

[25] The Appellant stated that the parents didn't know the section 9 was expiring, however when asked by the Tribunal to clarify his earlier statement that the agreement was consensual, he answered that they wouldn't have known because they would have been excited about finishing their treatment.

[26] The Appellant stated that he didn't want to be a part of this and he began to feel apprehensive because of his ethics and that he has as social worker had signed an oath. He stated the protection worker told him there were going to backdate the agreement. He stated he felt he couldn't do this and they were not being honest in following the people they serve. He stated that technically without a valid agreement and by the law the children were being kidnapped by the agency

[27] The employer stated that a section 9 is an agreement between the parents and child family services that children will be apprehended. She stated that a section 9 generally goes to 12 months but can be anywhere up to 24 months depending on the decision of the Executive Director. She stated that she wanted to be clear that they were not protection but prevention. The parents are given a list of conditions and there is often when the list is not completed and the section 9 is extended because all the conditions were not met. She stated that the prevention unit will often slide in to assist protection with a section 9. The employer confirmed that it is the prevention unit that issues a section 9; they have no jurisdiction in doing so. She also confirmed that the Appellant was a prevention worker and not a protection worker. She stated they don't deal with the legalities of section 9 and that they had no jurisdiction on determining the length of the section 9 would be.

[28] The Member asked the Appellant to explain how the law was broken and he stated he believed that law was broken when they didn't inform the parents and have them sign another extension. He stated he wasn't concerned as to whether the agreement should be extended or not because it wasn't his place to decide that because he was a prevention worker. He stated that he felt the parents needed to be notified.

[29] The Member asked the Appellant if wouldn't have been compelled to contact his own supervisor to advise them of what was going on if he felt it wasn't right. He stated at the time this was transpiring, he was driving and they were getting close to the destination, and he wasn't concerned with the length of time of the section 9 as this wasn't his call to make but the ethically part of his work and for him he felt obligated that the parents should know. He felt he cannot be a part of this and that there would be consequences, such as legal actions. He stated he told the protection worker that when they arrived at the treatment center they need to tell the

parents. The Appellant stated what happened is he ended up going with it and they never informed the parents.

[30] The Appellant stated he told the prevention worker to cover herself and call her supervisor to tell them to go to court and get an extension. He stated he never asked her again what happened because he didn't want to know. He stated for himself he told himself to disregard the situation and deal with the parents.

[31] The Appellant stated he returned to work and as the days went by this situation started to affect him by working behind peoples back. He started to feel uneasiness in the workplace. The Appellant stated that there was going to be a healing circle on September 25th and the parents were going to be informed on the section 9.

[32] The Appellant stated on the next day, he spoke to the prevention worker and the supervisor about the case and they were interrupted by the parents and he held an impromptu mediation session, regarding the apprehension of their other son.

[33] The Appellant was asked by the Member if the agency broke the law did he bring the matter up with his own supervisor, executive director, the Ministry of Family Services or the police and he answered "no he didn't" because he just spoke to his colleagues. He stated the repercussions where the agencies could get into serious trouble. He stated had mixed emotion if he should report it to a higher authority but he had just started to work there and thought if he opened up a can of worms he could lose his job. He was concerned about his employment. He stated he didn't report it and someone might intervene on his part.

[34] The employer was asked by the Member to explain what the protocol would be in the event that a law was being broken. She stated that the reality to this was the Appellant was not assigned to the case and the reason the Appellant had gone with the protection worker was for safety reasons as they do not send female employees alone. She stated that there are things on this file that the Appellant did not know or needed to know regarding decisions that were made by the agency and by protection. She stated the Appellant did come to her with his concerns but had he had genuine concerns she would have brought them up to her executive director and addressed the protocol and section 9. She stated parents are given a copy of section 9; they are

given copies of the court documents and are aware of the expiration date of the section 9. She stated had there been any ethical issues or laws broken the executive director would handle it. She stated that it is not her job as supervisor or the Appellant as a prevention worker. She reiterated the Appellant never spoke to her about the section 9 but she was in the office and she had spoken to the prevention worker and knew about the conversation on the ride to the treatment center and the issue of the section 9 and she did have a conversation with the executive director about it. She stated that the law was not broken.

[35] The employer stated in regards to (GD3-34) and the Appellant was denied to speak to the executive director, she stated she has emails that she had sent to the executive director regarding issues raised by the Appellant, as it was her job as his supervisor to deal with it first. She stated there were times that she told the Appellant to go speak to the executive director. She stated the executive director has her door open 50% of the time and staff will go knock on her door.

[36] The Appellant stated he had asked to see the executive director on several occasion and on the day he quit, he was frustrated and he said if he couldn't see her then he would quit. He stated it was a very emotional week. He stated he brought up other issues and he couldn't keep working in an environment that was unhealthy, and if couldn't address his issues of personal wellness. The Appellant stated he can't confirm if he sent an email to the executive director requesting a meeting. He said numerous times he addressed the supervisor several times as he stated in (GD10) but he felt they were not being addressed.

[37] The Appellant stated the biggest part isn't whether the law was broken or not but the part where his ethics were being comprised.

[38] The employer stated that going to the Chief and Council is huge overstepping of boundaries that is the executive director's job to do. She stated they would work with the executive director as they have very clear polices.

[39] The Appellant agreed that there were policies and that is why he didn't go any higher because he had to follow the policy. He stated he thought about going to the Child Advocate but he would have been disciplined. He stated what he should have done is bypassed the

supervisor and the Executive and go directly to the Chief and Council or to the Board Members which he did later. He stated if he had of gone higher up he would have broken policy. He stated it was a very serious situation; however he would have compromised himself. He would have taken a lot of risk. He stated he went to the supervisor and told her that he couldn't work there anymore and he would suffer the consequences because he would be unemployed, and he knew that and at the same time when he files for EI benefits he might not even get them because he was quitting and at the same time he was willing to live on social assistance. That is how serious he was and if he couldn't get a job right away he would have to the first time in his life go on social assistance. He stated he gave up a lot based on his ethics, he voluntarily left knowing he was going to have a hard time with Service Canada, that's how committed and passionate he is about following his ethics.

[40] The employer stated that any social worker or worker in the agency can go to the Child's Advocacy office voice their concerns. She stated they have to respect the person's anonymity because they understand the conflicts this could cause for the worker. She stated they actually had a person from the Child Advocacy come into their office and let the staff know they could call their office at any time and that they would remain anonymous.

[41] The Appellant agreed that he was aware of the Child Advocacy office and he was able to voice his concerns, but he didn't want to blow everything out of proportion and he believed that everything could resolve this internally. He stated they needed to maintain patience. He stated it became too emotional and he couldn't deal with it. He stated this is the first time he has ever dealt with this, which involves with his professionalism.

[42] The Appellant stated he told the employer that he may get a job with the RCMP but he said this out of frustration, he did not quit because he had another job.

[43] In regards to the undue pressure by an employer, the representative stated that it was all part in parcel, the issue with the section 9 and the disciplines issued by the employer and what had been addressed earlier in the hearing.

[44] The employer stated the performance plan was done on October 1, 2015.

[45] The Appellant stated on October 2, 2015 the supervisor called him into her office to discuss the performance plan, which he didn't know she had done. He stated that he totally disagreed, especially when he was told he broke the confidentiality. He stated that he was Wal-Mart and seen the clients and he seen him so he had to acknowledge them. He stated they wanted to start talking about their son and they wanted more information, he told them before they went any further could they come to his office on Monday. He stated there wasn't any mention of the case itself. He said in Cree that he wasn't able to discuss their case in public.

[46] The Appellant stated these were the same people who he spoke about earlier regarding the section 9 and they were his clients. He stated he didn't know if they had been assigned to him yet but he had the file in his office in his desk. He stated he had the file before the supervisor started there and were given to him by a co-worker.

[47] The employer stated the Appellant's position was a prevention worker delivering programs to boys and youth in the schools and within the agency. If she is going to assign file it would be given to a parent mentor. She stated there are times when they would need a male presence but only for support. She stated that the Appellant's job was to deliver the programs and culture specifically to the boys. She stated that the Appellant was still on probation when all of this was happening. She explained further on how files are assigned and the duties of the parent mentors. She stated that none of them are counsellors and if counselling is required the clients are referred.

[48] The employer stated in regards to the performance plan and the confidentiality breach it was discovered on the Monday when the Appellant told her he had run into the clients in Wal-Mart and had a conversation with them in regards to the file. She stated at that point she had brought the Appellant into her office and explained there was a confidentially policy and that discussing files outside the office was not allowed.

[49] The Appellant stated that when the family came in on Monday and he facilitated a mediation with the protection worker regarding the apprehension of their four year old. He stated he was requested to do the mediation. He isn't sure who requested him to participate but that is what he has skills do to. He stated he was to take his directive from the supervisor.

[50] The employer stated that she had not been aware of the mediation which took place until after and that the Appellant had not been asked to do this.

[51] The employer stated the Appellant would disappear for hours and they hall have cell phones so they could text or leave a message. His job was to administer the school programs.

[52] The Appellant disagreed that he would disappear. He stated he would write on the white board and he followed the rules. The Appellant agreed that his job was to administer the school programs. He stated that he was issued a brand new cell phone but it was still in the box as he didn't know how to use it well. He stated that in regards to shooting the supervisor an email, it was very busy but he always informed a co-worker to tell them where he was going. Plus he would have to sign out a vehicle. He told the front desk receptionist every time he left.

[53] The Appellant disagreed that he did not meet deadlines. He provided an explanation that he requested to change the three day camp because he wouldn't have enough time as he wanted to have the parents and guardians join in and be a part of this. He stated that his wanting to cancel the program for the year was held against him.

[54] The employer stated that she had several emails to the Appellant requesting how his visits to the school went and how the programs were coming along. As for the camping trip there are times that the agency needs to take kids away from their parents and send them to the camp. She stated that after the Appellant left the previous worker returned and organized the camp to go ahead within two weeks. She stated that nothing had been prepared previously.

[55] The Appellant stated he had a previous interview with the RCMP but he didn't look for another job. He stated he wasn't thinking of quitting until October 2, 2015 when the performance plan was brought to his attention.

[56] The Appellant stated he was disciplined for self-care and he didn't think it was wrong to talk about his problems.

[57] The employer stated that she a meeting with other staff on September 28, 2015 and had several complaints from the other workers regarding the Appellant's behaviour and his actions. She stated after the concerns she had no choice to bring it to the Appellant's attention.

[58] The employer stated when discussing the Performance Improvement Plant the Appellant disagreed with it and continued to rehash situations from the past and that had already been discussed. She stated she told him that the meeting was to deal with the issues at hand and that in two weeks they would see how things were going.

[59] The Appellant stated that it wasn't anything personal when he talked about venting out; he only discussed the event when he was evicted from Chief and Council in 1984 and he still suffers from this. He stated that week his brother asked him what year it was and that triggered him. That is what he discussed with the staff he never discussed personal that would have been an issue to the other staff.

[60] The employer stated that the Agency follows the guidelines, policy and procedures as outlined by the Ministry of Family Services. The performance improvement plan was also based on these guidelines.

SUBMISSIONS

[61] The Appellant along with his representative submitted that:

a) He maintains that he had just cause to leave his employment pursuant to subsection 29(c)(v) practices of an employer that are contrary to law as it relates to section 9;

b) He feels that ongoing conflict surrounding a case that involved the apprehension and eventual subsequent return of children to the parents led to the discipline, which ultimately cause him to feel had no reasonable alternative but to leave his employment;

c) The representative stated according to the Government of Canada Labour Interpretations, Policies, and Guidelines, Constructive Dismissal is defined as "situations where the employer has not directly fired the employee. Rather the employer has failed to comply with the contract of employment in a major respect, unilaterally changed the terms of employment or expressed a settled intention to do so either thus forcing the employee to quit:

d) A letter from the lawyer of the parents involved and the director from the treatment center has provided a letter of support in order to show he was looking for the best interest of the children and parents involved in this situation;

e) CUB 50475 supports the appeal as in this case the Umpire stated: the employer was making working conditions such that the claimant's job was becoming so stressful and it was likely she would leave. When she spoke to Mr. McKay, he suggested to her is she didn't like it she could leave, the Umpire goes on to state: "I find that the claimant did have just cause to quit";

f) CUB 54186 the Umpire states "there is sufficient evidence by the number of incidents documented to show that there was pressure being placed on the claimant. The changes in her working conditions, the evaluation which caused her great stress and the number of other items when put together are in my view sufficient to satisfy the provisions set out in 29(c)(xiii) undue pressure by an employer on the claimant to leave their employment"; and

g) There is sufficient evidence in this case to show that undue pressure did occur culminating in his departure from his employment.

[62] The Respondent submitted that:

a) The Commission concluded that the Appellant did not have just cause for leaving his employment because he failed to exhaust all reasonable alternatives available to him;

b) Considering the evidence a reasonable alternative would have been to stay employed and taking up his ethical concerns and his disagreements with policy with the Director of O. L. Family Services;

c) There is no evidence to show that the Appellant was constructively dismissed as the employer was willing to work with him during his probation and his performance improvement plan; and

d) Consequently, the Appellant has failed to prove that he left his employment without just cause within the meaning of the Act.

ANALYSIS

[63] The Tribunal must decide whether the Appellant should be disqualified pursuant to sections 29 and 30 of the Act because he voluntarily left his job without just cause. Subsection 29(c) of the Act provides that an employee will have just cause by leaving a job if there is no reasonable alternative to leaving taking into account a list of enumerated circumstances including: (xi) practices of an employer that is contrary to law; and (xiii) undue pressure by an employer on the claimant to leave their employment. The test to be applied, having regard to all the circumstances, is whether the Appellant had a reasonable alternative to leaving his employment when he did. Under subsection 30(1) of the Act, an employee is disqualified from receiving benefits if he voluntarily leaves his job without just cause.

[64] The Appellant presents the argument that he did not voluntarily leave his employment but rather it was a constructive dismissal.

[65] The Supreme Court of Canada has stated that the cardinal principal of section 28 (now section 29) is that the loss of employment which is insured against must be involuntary. Thus claimants are disqualified if they lose employment by reason of their own misconduct, or if they voluntarily leave their employment without just cause. The consequences under (i.e., disqualification under section 30(1) whether it is found that he claimant lost his employment because of misconduct or because he voluntarily left under the Act are the same. Parliament linked voluntary leaving and misconduct due to the fact that contradictory evidence may make it unclear to the cause of the claimant's unemployment (*Canada A.G. v Easson* A-1598-92).

[66] The Tribunal finds from the evidence on the file and from the Appellant's oral evidence that he quit his employment due to personal reasons. The evidence is substantiated by the evidence from the employer. The Tribunal finds the evidence clearly supports it was the Appellant who initiated the separation of the employee/employer relationship therefore the Tribunal is satisfied that Appellant voluntarily left his employment.

[67] The Federal Court of Appeal reaffirmed the principle that where a claimant voluntarily leaves his employment, the burden is on the claimant to prove that there was no reasonable alternative to leaving when he did (*Canada (AG) v. White*, 2011 FCA 190 (CanLII)).

[68] The Tribunal cites (*Rena-Astronomo v. Canada* (A-141-97)), which confirmed the principle established in (*Tanguay v. Canada (A.G.)* (A-1458-84)) according to which the onus is on the claimant who voluntarily left an employment to prove that there was no other reasonable alternative for leaving the employment at that time, MacDonald J.A. of the Federal Court of Appeal stated: "The test to be applied having regard to all the circumstances is whether, on the balance of probabilities, the claimant had no reasonable alternative to leaving his or her employment."

[69] The Appellant presents the argument that he had just cause pursuant to section 29(c)(v) practices of an employer that are contrary to law. He argues that the agency broke section 9 when they failed to advise the parents that the section 9 had expired which related to the apprehension of their child. The Appellant stated this was unethical and illegal.

[70] The Respondent presents the argument that considering the evidence a reasonable alternative would have been to stay employed and taking up his ethical concerns and his disagreements with policy with the Director of O. L. Family Services.

[71] The Tribunal finds that the allegation of the employer practices that are contrary to law cannot be substantiated. The Tribunal finds the explanation of the section 9 provided by the Appellant and how he believed it was breached was contrary to that of the employers explanation which demonstrated that the Appellant was not fully aware of the complexity of the section 9 and/or the governing body responsible to apply the section 9. The Appellant testified that a section 9 was for a 3 month period and that it was a consensual agreement between the parents and the agency. However he believed it to be the responsibility of the agency to let the parents know it had expired, despite the fact it was consensual and the parents would have known the details of the agreement.

[72] The Tribunal finds from the employers oral evidence to be credible and the fact that their department which included the Appellant had no jurisdiction over the section 9. The employer provided that a section 9 is an agreement between the parents and child family services those children will be apprehended. She stated that a section 9 generally goes to 12 months but can be anywhere up to 24 months depending on the decision of the Executive Director. She stated that she wanted to be clear that they were not protection but prevention. The parents are given a list of conditions and there is often when the list is not completed and the section 9 is extended because all the conditions were not met. She stated that the prevention unit will often slide in to assist protection with a section 9. The employer confirmed that it is the prevention unit that issues a section 9; they have no jurisdiction in doing so. She also confirmed that the Appellant was a prevention worker and not a protection worker. She stated they don't deal with the legalities of section 9 and that they had no jurisdiction on determining the length of the section 9 would be.

[73] The Tribunal finds the employer provided credible evidence that if one believed the laws of the agency were being broken there were avenues available to have the issues resolved, which included staying anonymous. She testified that any social worker or worker in the agency can go to the Child's Advocacy office voice their concerns. She stated they have to respect the person's anonymity because they understand the conflicts this could cause for the worker. She stated they actually had a person from the Child Advocacy come into their office and let the staff know they could call their office at any time and that they would remain anonymous.

[74] The Tribunal find from the Appellant's oral evidence that he agreed that he was aware of the Child Advocacy office and he was able to voice his concerns, but he didn't want to blow everything out of proportion and he believed that everything could resolve this internally. He stated they needed to maintain patience. He stated it became too emotional and he couldn't deal with it. He stated this is the first time he has ever dealt with this, which involves with his professionalism.

[75] The Tribunal finds from the Appellant's oral evidence that he believed his ethical and professionalism was in jeopardy and it was causing him a great deal stress. The Appellant testified "the biggest part isn't whether the law was broken or not but the part where his ethics were being comprised" demonstrates the Appellant's reasons for leaving were personal reasons and now one that proves that section 29(c)(v) practices of an employer that are contrary to law would provide just cause for the Appellant to voluntarily leave his employment.

[76] The Tribunal finds that if the Appellant believed that the employer was breaking the law he had reasonable alternatives available to him. The Tribunal finds the Appellant could have contacted the Child Advocacy, where he could have remained anonymous. The Tribunal finds the Appellant also could have gone to the executive director, the governing body of the agency, the board members and/or the Chief and Council.

[77] The Appellant presents the argument that he had just cause to leave pursuant to 29(c)(xiii) undue pressure by an employer on the claimant to leave their employment

[78] The Appellant presents the agreement that he feels that ongoing conflict surrounding a case that involved the apprehension and eventual subsequent return of children to the parents led to the discipline, which ultimately cause him to feel had no reasonable alternative but to leave his employment. The Appellant presents letters from the lawyer of the parents involved and the director from the treatment center has provided a letter of support in order to show he was looking for the best interest of the children and parents involved in this situation.

[79] The Tribunal finds from the Appellant's testimony that when the family came in on Monday and he facilitated a mediation with the protection worker regarding the apprehension of their four year old. He stated he was requested to do the mediation. He isn't sure who requested him to participate but that is what he has skills do to. He stated he was to take his directive from the supervisor.

[80] The Tribunal acknowledges the letters of support and there is no doubt the Appellant was trying to be helpful and to utilize his mediation skills, however the Tribunal finds from the employers evidence, to which the Appellant agreed, he was not a social worker and was not hired in a capacity to handle case files.

[81] The Tribunal finds the employers testified that she was not aware that the Appellant had participated in the mediation until after the fact. The employer stated the Appellant's position was a prevention worker delivering programs to boys and youth in the schools and within the agency. If she is going to assign file it would be given to a parent mentor. She stated there are times when they would need a male presence but only for support. She stated that the Appellant's job was to deliver the programs and culture specifically to the boys. She stated that the Appellant was still on probation when all of this was happening. She explained further on how files are assigned and the duties of the parent mentors. She stated that none of them are counsellors and if counselling is required the clients are referred.

[82] The Appellant argues that CUB 50475 supports the appeal as in this case the Umpire stated: the employer was making working conditions such that the claimant's job was becoming so stressful and it was likely she would leave. When she spoke to Mr. McKay, he suggested to her is she didn't like it she could leave, the Umpire goes on to state: "I find that the claimant did have just cause to quit".

[83] The Appellant argues that CUB 54186 supports his appeal as the Umpire states "there is sufficient evidence by the number of incidents documented to show that there was pressure being placed on the claimant. The changes in her working conditions, the evaluation which caused her great stress and the number of other items when put together are in my view sufficient to satisfy the provisions set out in 29(c)(xiii) undue pressure by an employer on the claimant to leave their employment".

[84] The Tribunal find CUB's 50475 and 54186 cannot support the case at hand as the evidence supports there were no changes in the Appellants working conditions but rather that it was the Appellant who was making the working conditions stressful when he clearly overstepped his boundaries when he subjected himself into a position he clearly was not hired for. The Tribunal finds there is no evidence to support the employer advised the Appellant he could quit if he didn't like it, but rather it was the Appellant who made the decision to quit when he wasn't happy when the employer had issues with his performance and provided a performance improvement plan.

[85] The Tribunal finds from the Appellant's evidence that he did not agree with the employer's allegations, however there is sufficient evidence to substantiate that the Appellant's was not preforming the duties he was hired for and therefore the employer was addressing the issues according to the their policies and procedures.

[86] The Tribunal finds from the evidence on the file and from the employer's evidence they were willing to work with the Appellant to improve his performance and that the plan would be revisited in two weeks. However from the Appellant's own admission he stated he went to the supervisor and told her that he couldn't work there anymore and he would suffer the consequences because he would be unemployed, and he knew that and at the same time when he files for EI benefits he might not even get them because he was quitting and at the same time he was willing to live on social assistance. That is how serious he was and if he couldn't get a job right away he would have to the first time in his life go on social assistance. He stated he gave up a lot based on his ethics, he voluntarily left knowing he was going to have a hard time with Service Canada, that's how committed and passionate he is about following his ethics.

[87] The Tribunal finds that the Appellant had reasonable alternatives to leaving as he could have stayed employed and worked with his employer regarding the issues regarding his performance and he could have spoken to the executive director.

[88] The Tribunal finds the Appellant testified that he did not look for work prior to leaving; however a reasonable alternative would have been to stay employed until such time he could secure other employment he felt was more suitable.

[89] In making the determination as to whether just cause exists, the focus is on whether the claimant had a reasonable alternative to placing himself in the position of being unemployed and forcing others to bear that burden. Just cause exists if, at the time an Appellant leaves his employment without having secured another job, circumstances existed which excused him from taking the risk of causing others to bear the burden of his unemployment.

[90] The Tribunal finds from the Appellant's evidence on the file and from his oral evidence that he left his employment because of his ethical and professional beliefs, which the Appellant may have felt was good cause, however the evidence supports the Appellant left for personal

reasons and unfortunately personal reasons do not constitute just cause within the meaning of the Act.

[91] The Tribunal finds the Appellant failed to show that leaving his employment was his only alternative and that he didn't have any reasonable alternatives available to him or that circumstances existed that made him leave his employment when he did.

[92] The Tribunal sympathies with the Appellant's situation, however the Tribunal does not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Appellant (*Canada (AG) v. Levesque*, 2001 FCA 304).

[93] The Tribunal relies on (*Canada (A.G.) v. Knee* 2011 FCA 301) which states:

> *However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.*

[94] The Tribunal finds an indefinite disqualified from receiving benefits be imposed because the Appellant voluntarily left his employment without just cause pursuant to sections 29 and 30 of the Act.

CONCLUSION

[95] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section