



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. H. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 128

Tribunal File Number: GE-16-956

BETWEEN:

M. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

S. F., Denturist

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Joseph Wamback

HEARD ON: October 11, 2016

DATE OF DECISION: October 14, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

M. H., the Appellant attended the teleconference.

S. F. Denturist, the added party did not attend the teleconference.

INTRODUCTION

[1] The Appellant filed for regular benefits and was denied at the initial level. The Appellant requested reconsideration and was denied at the reconsideration level by the Respondent. The Appellant filed an appeal with the Tribunal and a hearing was scheduled.

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

- a) The fact that the credibility is not anticipated as a prevailing issue.
- b) 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 Appellant is appealing the Respondent's decision resulting from her request for reconsideration under Section 112 of the *Employment Insurance Act* (Act) regarding a disqualification imposed pursuant to sections 29 and 30 of the Act because she voluntarily left her employment without just cause.

EVIDENCE

[4] The Appellant filed for regular benefits on December 21, 2015. She stated that she quit her job because of a personal conflict at work with her employer. She stated her employer was verbally abusive. She stated that other co-workers witnessed the abuse and she did seek other employment prior to leaving her job through Service Canada job bank, Indeed.com and

Workopolis. She stated that her employer would not discuss her problems with her. (GD3-3 to 16)

[5] The Appellant worked with S. F. Denturist from October 24, 2013 to December 19, 2015 when she quit her job. (GD3-14)

[6] The Appellant advised the Respondent that her employer worked with her for 2 days per week, Tuesdays and Thursdays. The Appellant confirmed this to the Tribunal. She stated that he was better to get along with on Thursdays. She stated that she discussed his behaviour with him and he told her he was under a lot of stress. She also stated that she did have general friendly conversations with him and that it was a very busy clinic. The remaining days, Monday, Wednesday and Friday her employer was at another location.

[7] The Appellant advised the Respondent that her employer did not disparage her personally. He complained only about her work. She stated that she was called into his office numerous times a month to complain, however, he would always say things like "you're a good worker" or "thank you" at the end of the day. The Appellant confirmed to the Tribunal that he made these comments to her at the days end as she was often the only employee with him at the end of the day.

[8] The Appellant advised the Respondent that there was no final incident that caused her to quit but that she put her notice approximately in mid-November with 2 weeks' notice however she remained until mid-December at the employer's request. She stated that she did not try to speak with her employer before putting in her notice because he would never let her talk. She stated that she did confront him about how many times he called her in to speak to her in October and she explained that he did not even realize he had called her in that many times. (GD3-19)

[9] The Appellant advised the Tribunal that she provided 2 weeks' notice and she was asked to stay for 2 weeks to help train her replacement. She advised the Tribunal that she agreed to stay because she believed it was the right thing to do to stay and train the replacement. She had very little contact with her employer at that time.

[10] The Appellant advised the Respondent that she has been seeking alternate employment but there are not many jobs available and she does not have any medical education but was a receptionist at the clinic. (GD3-19) She stated to the Tribunal that started seeking alternate employment after her first year. She stated that she sought work as a medical receptionist or at a pharmacy. She stated that she applied for approximately 12 different positions without success. The Appellant reaffirmed to the Tribunal that her employer never insulted her nor made any personal derogatory comments. She stated that she is currently not working and is seeking employment.

[11] The employer advised the Respondent that the Appellant quit her job. He stated he did not believe he yelled at her but only asked her to do her job and the only confrontation was when she tendered her resignation. He stated that the Appellant had not mentioned about feeling harassed or uncomfortable at work other than when she asked him how many time he thought he had called her into his office in October. The employer stated that he didn't think 42 times was that much and he wasn't sure why she was counting. The employer stated that some of the times were just him telling her to do certain things or to bill a patient a certain way, or just explaining things about her job. (GD3-21)

[12] The Respondent notified the Appellant on March 21, 2016 that they are unable to pay any Employment Insurance regular benefits because they determined that she voluntarily left her employment without just cause within the meaning of the Act and they believed that voluntarily leaving her employment was not her only reasonable alternative. (GD3-22)

[13] The Appellant requested reconsideration on January 20, 2016. She stated that she was harassed and worked in a hostile environment. The Appellant provided several examples of her alleged harassment. The examples included a comment by her employer in front of a patient "It is your sole responsibility to ensure the ramp is shoveled and salted. I don't want anyone to fall and break their leg so do what you have to do to ensure that", he accused her of throwing away dental tools and on another occasion when discussing patient billing he uttered a profanity under his breath. The Appellant stated that her employer would say to her. "Don't speak, just listen and get me to where I need to go to do my job. I don't care." (GD3-24 to 29)

[14] The Appellant advised the Respondent on February 12, 2016 that she was constantly subjected to a condescending tone, demeaning manner by the Employer. He would raise his voice frequently over matters that were not serious. She stated that she agreed to work for 4 weeks to help train a replacement and that during the notice period she noticed a slight improvement but not enough of a difference to change her mind and stay. She stated that the employer would talk to her in a condescending manner questioning her work or the schedule. She stated that she had health issues which led to her making the decision to leave.

[15] The Appellant advised the Tribunal that she was having trouble going to sleep because her job was stressful. She did not seek medical advice. She stated that she was already on anxiety medication and has been on that medication for approximately 10 years.

[16] The Appellant advised the Respondent that she could not sleep and she began experiencing anxiety and that prior to each shift she would have to talk to herself to calm herself down. She worked Tuesdays and Thursdays with her employer and sought alternate employment prior to quitting. (GD3-20)

[17] The employer advised the Respondent on February 12, 2106 that the Appellant never spoke to him prior to leaving; her resignation came as a surprise. The Appellant advised the Tribunal that she agreed with her employer's statement to the Respondent but she also stated she would not allow her to speak to him.

[18] The employer advised the Respondent that the Appellant may have talked to co-workers about issues, but not to him. Regarding the stress involved in the working environment caused by the Employer, he stated he did not feel there were issues, nor was she called into the office over 40 times. When she was spoken to, it was guidance on how to do aspects of her job. He stated that the Appellant was not reprimanded for anything. (GD3-32)

[19] The Respondent notified the Appellant on February 19, 2016 that they have performed an in-depth review of the circumstances of the case and of any supplementary information provided and based on their findings and the legislation advised that they have not changed the decision as communicated on January 12, 2016. (GDF3-33)

[20] The Appellant filed an appeal of the Respondent's decision with the Tribunal on March 8, 2016. (GD2-1 to 8)

SUBMISSIONS

[21] The Appellant submitted that;

- a) Her employer spoke to her with hostility, in a demeaning tone and raised his voice and pointed his finger at her.
- b) Her employer was verbally abusive.

[22] The Respondent submitted that;

- a) Subsection 30(2) of the Act provides for an indefinite disqualification when the appellant voluntarily leaves an employment without just cause. The test to be applied, having regard to all the circumstances, is whether the appellant had a reasonable alternative to leaving her employment when she did.
- b) In this case, the Appellant has alleged that she voluntarily left her employment due to harassment and antagonism with her employer. She indicated that she feels that her employer created a hostile work environment by raising his voice and was demeaning her (GD2-2).
- c) When originally contacted, the Appellant stated that her employer never said anything to her in a personal manner (GD3-19). She stated that he never made comments about her appearance, gender or age. The Appellant also indicated that there was no final incident that led to her making the decision to quit. The Appellant cited a couple of incidents which she felt she was treated unfairly. The Appellant discussed an incident where the employer had accused her of throwing away a tool and also a time where the employer was upset with her about shoveling and salting the walkway, even though she had completed that task. The Appellant also noted that she heard the employer curse one time under his breath, while he was on the phone because he realized that he had done something wrong.

- d) The Appellant further stated that her employer created a negative work environment by raising his voice and speaking in a condescending tone (GD3-30). She mentioned that the final incident that led her to quit was when the employer swore out loud and the language used offended the Appellant. The Appellant cited other incidents that contributed to her decision to leave. Such as; the employer being upset over patients cancelling their appointments and making the Appellant fill the schedule gaps. The Appellant also stated that the employer would talk to her in a condescending manner questioning her work or the schedule. The Appellant confirmed that prior to quitting she did not speak with the employer as she wanted to maintain a harmonious relationship.
- e) The Appellant stated that after she submitted her resignation she stayed for an extra month of employment in order to help the employer transition into hiring and training a replacement (GD3-19 and GD3-30).
- f) The Appellant has maintained that the reason she left her employment was due to the hostile and intolerable work environment created by her employer (GD3-7, GD3-19, GD3-24 and GD3-30). However, the Appellant's actions of choosing to remain employed for a month long notice period in the same working environment leads one to believe that the situation was not truly intolerable.
- g) The employer has maintained that the Appellant never spoke with him prior to quitting and her resignation came as a surprise (GD3-32). The employer also stated that anytime that the Appellant was spoken to it was strictly guidance on how to do aspects of her job. The employer's actions of providing guidance to the Appellant in regards to her work duties do not appear to have been personal towards the Appellant but more so corrective actions.
- h) The perceived conflict may not have improved the work atmosphere from the Appellant's view however; this treatment does not demonstrate an intolerable environment or abuse by the employer.

- i) In this case, the Respondent concluded that the Appellant did not have just cause for leaving her employment on December 19, 2015 because she failed to exhaust all reasonable alternatives prior to leaving. Considering all of the evidence, a reasonable alternative to leaving would have been to discuss her concerns with her employer, take a leave of absence or secure alternative employment. Consequently, the Appellant failed to prove that she left her employment with just cause within the meaning of the Act.
- j) The jurisprudence supports the Respondent's decision. The Federal Court of Appeal reaffirmed the principle that where an appellant voluntarily leaves her employment, the burden is on that appellant to prove that there was no reasonable alternative to leaving when she did. *Canada (AG) v. White*, 2011 FCA 190

ANALYSIS

[23] The relevant legislative provisions are reproduced in the Annex to this decision.

[24] The only issue before the Tribunal is whether the Appellant voluntarily left her employment and, if so, if she had demonstrated just cause pursuant to section 29 and 30 of the Act.

[25] Appellants who voluntarily leave their employment will not be entitled to receive benefits unless they can establish they had "just cause" for doing so. The term "just cause" is not defined in the legislation. Paragraph 29(c) of the Act lists certain examples or circumstances which may constitute just cause. These examples are not exhaustive to all of the circumstances of each individual case in determining whether just cause exists.

[26] The legal test for just cause, as set out in paragraph 29(c) of the Act, is whether an appellant has "no reasonable alternative to leaving the employment". In making the determination as to whether just cause exists, the focus is on whether the appellant had a reasonable alternative to placing himself/herself in the position of being unemployed and forcing others to bear that burden. Just cause exists if, at the time an appellant leaves his/her employment without having secured another job, circumstances existed which excused him/her from taking the risk of causing others to bear the burden of his/her unemployment.

[27] The Appellant advised the Respondent that her employer did not disparage her personally. He complained only about her work. She stated that she was called into his office numerous times a month where he complained about her work, however, he would always say things like "you're a good worker" or "thank you" at the end of the day. The Appellant confirmed to the Tribunal that he made these comments to her at the end of the day as she was often the only employee with him at the end of the day.

[28] She stated that she did not try to speak with her employer before putting in her notice because he would never let her talk. The Appellant reaffirmed to the Tribunal that her employer never insulted her nor made any personal derogatory comments. The Appellant advised the Tribunal that she was having trouble going to sleep because her job was stressful. She stated that did not seek medical advice and that she was already on anxiety medication and has been on that medication for approximately 10 years. The employer advised the Respondent on February 12, 2016 that the Appellant never spoke to him prior to leaving; her resignation came as a surprise. The Appellant advised the Tribunal that she agreed with her employer's statement to the Respondent but she also stated she would not allow her to speak to him.

[29] The Tribunal finds that the Appellant did not make any attempts to mitigate her problems by meeting with her employer to discuss her feelings about the way she was allegedly spoken to. She stated that she did not try to speak with her employer before putting in her notice because he would never let her talk, yet she advised the Tribunal that she discussed his behaviour with him and he told her he was under a lot of stress. She also stated that she did have general friendly conversations with him and that it was a very busy clinic.

[30] The Tribunal finds the Appellant's evidence contradictory. She advised the Respondent that there was no final incident that caused her to quit her job (GD3-19) and subsequently advised the Respondent that the final incident that led to her making the decision to resign from her employment was after the Employer swore out loud. The Appellant then advised the Respondent she was experiencing health issues which led to her making the decision to leave. She could not sleep and she began experiencing anxiety. Prior to each shift she would have to talk to herself to calm herself down. (GD3-30) The Appellant advised the Tribunal that she was having trouble going to sleep because her job was stressful and that she did not seek medical

advice. The Appellant did not provide any evidence that her employment was the cause of any stress and stated that her anxiety issues were pre-existing and she has been on medication for Approximately 10 years. The Appellant advised the Respondent that she worked Tuesdays and Thursdays with her employer and sought alternate employment prior to quitting.

[31] The employer advised the Respondent that when he spoke to the Appellant it was guidance on how to do aspects of her job. He stated that the Appellant was not reprimanded for anything. (GD3-32)

[32] Considering all of the evidence, a reasonable alternative to leaving would have been to discuss her concerns with her employer, take a leave of absence or secure alternative employment. Consequently, the Appellant failed to prove that she left her employment with just cause within the meaning of the Act.

[33] An appellant who seeks to demonstrate just cause must also show that he/she had "no reasonable alternative to leaving or taking leave." The Federal Court of appeal has affirmed that the burden is on the plaintiff to demonstrate that there was no reasonable alternative to leaving (*Rena Astronomy* A-141-97)

[34] The Tribunal finds that the Appellant made the personal decision not to continue employment with her employer. The Appellant confirmed that she did not speak to her employer concerning his alleged treatment of her and thereby eliminated the possibility of making the employer aware of actions that concerned her. The Appellant confirmed that she did not consult a doctor about her alleged sleep deprivation and confirmed that her sleeplessness and anxiety was a pre-existing condition.

[35] The Tribunal finds that the Appellant failed to prove that she left his employment with just cause within the meaning of the Act. The Tribunal finds that the Appellant failed to demonstrate that she had "no reasonable alternative to leaving or taking leave from her employment. She could have remained employed full time by his employer until she found suitable alternate employment. This is evident because she agreed to remain employed to assist her employer beyond her initial notice period demonstrating that her work environment was not so intolerable. Jurisprudence states that remaining in employment until a new job is secured is,

without more, generally a reasonable alternative to taking a unilateral decision to quit a job: (*Murugaiah* 2008 FCA 10; *Campeau* 2006 FCA 376).

[36] In this case the preponderance of the evidence, including the Appellant's own testimony, demonstrates that she voluntarily left her job. She took the initiative in severing her relationship with her employer. Occasional friction, animosity or conflict is certainly not going to improve the work atmosphere, but these situations do not in themselves constitute just cause for leaving employment. If each person makes a reasonable effort to accommodate differences and find a common ground, the situation should not degenerate into constant or irresolvable conflict.

[37] The Tribunal finds that the Appellant failed to show that the option of remaining in the job was not a reasonable alternative in view of all the circumstances and that ultimately the decision to leave was the only reasonable alternative she had left.

[38] The Tribunal cannot conclude, based on the evidence that the Appellant's circumstances were such as to justify placing the financial risk, which would arise from leaving her employment, on others.

CONCLUSION

[39] The appeal is dismissed.

Joseph Wamback
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

30 (1) A Appellant is disqualified from receiving any benefits if the Appellant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the Appellant 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 Appellant is disentitled under sections 31 to 33 in relation to the employment.

(2) The disqualification is for each week of the Appellant'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 Appellant during the benefit period.

(3) If the event giving rise to the disqualification occurs during a benefit period of the Appellant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the Appellant is otherwise entitled to special benefits.

(5) If a Appellant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:

(a) hours of insurable employment from that or any other employment before the employment was lost or left; and

(b) hours of insurable employment in any employment that the Appellant subsequently loses or leaves, as described in subsection (1).

(6) No hours of insurable employment in any employment that a Appellant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the Appellant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a Appellant may be disqualified under subsection (1) even if the Appellant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.

29 For the purposes of sections 30 to 33,

(a) *employment* refers to any employment of the Appellant 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 Appellant 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 Appellant 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 Appellant to leave their employment,
and

(xiv) any other reasonable circumstances that are prescribed.