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

Citation: *H. V. v. Canada Employment Insurance Commission,* 2017 SSTGDEI 7

Tribunal File Number: GE-16-2461

BETWEEN:

H. V.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

Saputo Produit Laitiers Canada

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: January 4, 2017

DATE OF DECISION: January 19, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

Mr. H. V., the Appellant (claimant) along with his legal counsel Ms. Rhea Majewski, Donald Legal Services attended the hearing.

Ms. Robin Danners represented the employer, Saputo Produit Laitiers Canada at the hearing.

INTRODUCTION

[1] On December 27, 2015 the Appellant established a claim for employment insurance benefits. On March 8, 2016 the Canada Employment Insurance Commission (Commission) notified the Appellant he was approved for 4 weeks of compassionate care; however he would not be entitled to regular benefits because he lost his employment due to his own misconduct. On March 10, 2016 the Commission advised the Appellant that it was determined he voluntarily left his employment. On March 16, 2016 the Appellant made a request for reconsideration. On May 26, 2016 the Commission maintained its decision on voluntary leaving. On June 22, 2016 the Appellant filed an appeal of that decision 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 a disqualification should be imposed pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act) because the Appellant voluntarily left his employment without just cause.

EVIDENCE

[4] A record of employment (ROE) indicates the Appellant was employed with Saputo Produits Laitiers Canada from July 27, 2015 to December 24, 2015 when he voluntarily left his employment (GD3-13).

[5] On March 2, 2016 the employer contacted the Commission who stated the Appellant was terminated from his employment for job abandonment. She stated on December 22, 2015 the Appellant came to them and told he was leaving and going home because his Dad was sick. She stated that his wife has left a week earlier as it was close to Christmas. She stated the Appellant did not submit a leave request and they told him he had to and had to provide proof to support his reason for leaving just before Christmas as it was a blackout period and they are very busy. She stated the Appellant called the next day and advised them he had bought the tickets and he was leaving, he was told to complete a leave request form and he did not. She stated on January 27, 2016 she called the Appellant because they had not heard back from him. He didn't call them to let them know he had a doctor's note for his Dad so that they could verify his verbal leave request. She stated the Appellant answered the phone and said he was back. She stated the Appellant stated he was back in Brandon and if he could come in to work and meet with her. She stated she advised him it had been over a month since he had contacted them and he did not submit any proof of his need to leave so they considered his actions to be job abandonment. The employer stated that had the Appellant provided a doctor's note to support his father's illness they would have allowed the leave. She stated he could have asked for a leave sooner and submitted the leave request. The employer stated that if the Appellant had of contacted them from Columbia and negotiated how they wanted the doctor's note, ie: when he returned, sent electronically they would have approved his leave, she stated they approve Compassionate Care all the time but people provide whatever is requested given the circumstances and how the employer request the information requires a leave request form. She

stated in this case the Appellant just left even though they told him they needed proof and they needed him to complete a leave request. She stated the Appellant had posted pictures on Facebook and they did not look like he was providing care for an ill Dad (GD3-15).

[6] On March 8, 2016 the Commission notified the Appellant he was approved for 4 weeks of compassionate care benefits however due to a result of misconduct he will not be eligible for regular benefits (GD3-17 to GD3-18).

[7] On March 10, 2016 the Commission contacted the Appellant who stated on December 23, 2015 he received a call from Columbia that his father was very ill and was admitted to the hospital. He stated he spoke to his supervisor that he was leaving due to the situation. He stated the manager told him they had no one to cover his position. He stated he told the supervisor this was urgent and he had to leave because his father was a single man and had no one to care for him. He stated his father had the same illness 6 months earlier. He stated he manager told him to come back the next day as he couldn't make the decision (GD3-19).

[8] On March 16, 2016 the Appellant made a request for reconsideration he reiterated his conversation with the manager. He stated that his father's health did not improve and he had to fly to Columbia on December 25, 2015 and his father was alone in the hospital with a very serious illness and he needed his assistance. He stated when he returned he reported to his employer to start work again and was told his position was over because they had a business to run and could not hold his position any longer (GD3-21 to GD3-24).

[9] On May 26, 2016 the Commission contacted the Appellant who stated he was told there was nobody to cover him and that they cannot give him the time off and was asked to come back the next day. He stated they couldn't give him the time off so he left. He stated that his dad's brother was in Columbia and could have helped out for 3 days but he didn't ask him for help. He stated that he didn't get help from his employer and he could not get in touch with them from Columbia (GD3-27).

[10] On May 25, 2016 the Commission spoke with the employer who stated the Appellant did not ask for permission to leave. She stated the Appellant stated he needed to go home because someone was ill. She stated they understand compassionate leave but it didn't sound

like a serious illness, not terminal. She stated the Appellant's wife and kids went home to Columbia a week earlier. She stated they had tried to contact him a month later with no response and then the Appellant sent them an email asking to speak to them but there was nothing to discuss as the position had been filled. She stated the issue went to the union and the union agreed. The employer stated that a leave of absence has to be submitted in writing and they allow case by case. She stated that December and January are blackout periods as this is their busiest times; therefore no requests are approved during this time. She stated the Appellant was a cheese maker so they were unable to transfer roles. She stated they gave the Appellant the benefit of the doubt and waited a month. She stated she will send the email (GD3-28).

[11] On May 25, 2016 the employer provided an email with a time line of events and the email sent to the employer on December 25, 2015 by the Appellant explaining his absence and an email dated January 27, 2016 to the Appellant from the employer and his response on January 28, 2016 (GD3-29 to GD3-30).

[12] On May 26, 2016 the Commission notified the Appellant the decision of voluntary leave was maintained and provided him his right to appeal to the Tribunal (GD3-31 to GD3-32).

[13] On June 22, 2016 the Appellant filed a Notice of Appeal stating he did not voluntarily leave his employment. He stated he took a leave of absence for compassionate reasons because his father was sick. He stated he gave ample notice to his employer and his employer wrongfully denied the leave and then deemed him to have abandoned his job. He stated for these reasons he was wrongfully terminated and did not voluntarily leave his employment. The Appellant provided medical documentation to support his appeal (GD2-1 to GD2A-5).

EVIDENCE AT THE HEARING

[14] The Appellant and his legal counsel did not have the docket but agreed to proceed with the hearing.

[15] The Appellant explained the circumstances that led to his leaving his employment without an authorized leave of absence.

[16] The Appellant testified that there were extenuating circumstances which did not allow him to contact the employer once he arrived in Columbia due to the remote location and communication and transportation difficulties that existed.

[17] The employer explained the information she provided to the Commission (GD3-29) is a simple chain of events that she relies on.

[18] The employer testified that at the time the Appellant requested a leave of absence there was a blackout period in effect; however it was not a written policy.

[19] The employer testified that that there was leave of absence request policy and that the Appellant had been asked by the supervisor to complete and he didn't.

[20] The employer testified that a leave of request is done through the supervisor who either allows or denies the request. She stated that they do not have a specific policy for this specific issue but they would follow the EI policy for compassionate care and request medical proof.

[21] The employer testified that she is the Human Resources Manager (HR) and works in a different building so the protocol is to speak to a supervisor, which the Appellant was correct in doing so when he spoke to Sam about his family issue.

[22] The employer testified that the Appellant sent her an email on December 25, 2015 explaining the his situation, but she didn't respond because it was Christmas and she can't recall why she didn't respond after but it was likely because the Appellant was asked to submit a leave request and he didn't.

[23] The employer testified that they do have a voicemail system on their phones and that the Appellant also had stated he had text his supervisor so he would have had the supervisor's cell phone as well.

[24] The employer testified that she reached out to the Appellant first on January 27, 2016 with an email and the Appellant waited 24 hours to reply. She stated that she couldn't recall if the receptionist ever told her that the Appellant had called as it had been over a year.

[25] The employer testified that had the Appellant provided proof of the seriousness of his situation before he left there would have been a different conversation and who would they be the ones to say he couldn't leave for compassionate reasons. She stated they had an instance in February where an employee came with all the necessary information and was granted the time off.

[26] The employer testified the Appellant emailed her on December 25, 2015 but confirmed that the email information recorded on (GD3-29) is not the original copy.

SUBMISSIONS

[27] The Appellant submitted that:

a) He received a call on December 22, 2015 from his uncle in Columbia that his father was seriously ill and had been hospitalized. He stated he text his supervisor advising him he may have to go. He stated the next morning he called to say he wasn't coming in. He stated he came in on the afternoon and spoke to supervisor and explained the situation and that there was nobody else to be with his Dad and that it was an emergency. He stated he reached his uncle who told him his Dad had a stroke and had lost ½ of his body movement and was unconscious;

b) His supervisor told him that he couldn't go because he had no one to cover for him, and he said he asked him to help him and because he (supervisor) was from the same country, he knew what it was like and the health system in his country was very poor and if there was nobody there to speak for his Dad he could die;

c) The supervisor told him he needed to be there the next day and the Appellant stated he would be if he could and he would see what he could do but this was urgent and his Dad was very important to him and his supervisor basically told him that if he wasn't there the next day he wouldn't have a job. He stated he didn't get positive information about his Dad so he decided to go;

d) He didn't return the next day as he left for Winnipeg so he could get a flight out. He stated he tried to call but wasn't able to get a hold of anyone so he sent the HR manager

an email explaining that he had to leave and that he would provide any documentation to her upon his return;

e) When he arrived at the medical center and spoke to the doctor he was told there wasn't much that could be done for his Dad there. His Dad was not stable and still unconscious. He stated at that time he needed to make arrangements to transfer his Dad to a better medical center and then he needed to make arrangement to get better medicine. He stated that he stayed with his Dad continually for 25 days;

f) The area his Dad was in was not a safe area and that his wife was not able to be there which would allow him to leave at a later date. He stated that his wife had left Canada a couple of weeks earlier but she was also in a different province and it was not close;

g) He tried to call his employer from Columbia when he arrived but again he was in a remote area and in order to make international calls he had to travel 45 minutes to use a telephone. As well he did not have a car so he had to depend on a driver and there was no schedule so he may have had to wait days to return to the hospital. He stated that it was also expensive to call and for the ride. He stated that he didn't have a chance to try and call the employer every day;

h) He arrived back in Brandon on January 26, 2016 and he called his employer and asked to speak to a supervisor, he stated that no one answered so he called back and asked to speak to the HR manager but she wasn't available so he left a message. He stated she didn't return his call so he called back again and then sent her an email to which she responded saying that it had been a month since they heard from him and that he had been replaced. He stated he was never given an opportunity to speak to anyone and then a couple of days later he called and asked for his ROE;

i) He stated the supervisor never told him he needed to put in leave for request but again only that he didn't have anyone to replace him and that if he left he would no longer have a job;

j) He was able to get his wife to get a medical note because she was still in Columbia and that she was able to communicate with the doctor because it was local, and they could send the documentation by bus;

k) He stated in his email to the HR manager, which he states he sent on December 24, 2015 that he would provide medical documentation when he returned. He stated he believed his would be the same process as when you needed time off work for being sick the employer would request a medical note;

l) The Appellant's representative stated that he Appellant could have requested a leave sooner or provided the medical documentation because he didn't know he was going to need to leave urgently. She stated also that when the Appellant did need to leave he sent the HR manager an email which the employer never responded to;

m) He stated that he sent the email on December 24, 2015 and he was able to do so because he was still in Canada and had access to the internet;

n) He stated he never told the Commission (GD3-27) that his uncle could have cared for his Dad for three days. He stated it is true that his uncle lives in Columbia but not in the area where is Dad was and also that his uncle didn't feel safe in that area of Columbia; and

o) The Appellant's representative stated that the Appellant did not have any reasonable alternatives available to him. Under the circumstances the Appellant's father had a stroke and was in serious condition, it was not reasonable for him to wait a few days to see if things could be worked out. The Appellant was not provided with any alternatives but was told that his leave would not be approved and that if he decided to go he would not have a job.

[28] The Respondent submitted that:

a) The facts on the file appear unclear or contradictory as to whether the issue is actually a voluntary separation without just cause or a dismissal for misconduct. The Federal Court of Appeal ruled that although they may be two distinct abstract notion, both are dealt

with together with a disqualification under the same Act which is rational as they both refer to situations where the loss of employment is the result of the deliberate action(s) on the part of the employee;

b) The Appellant argues that he believes he was wrongfully terminated and did not voluntarily leave. The Commission contends that the Appellant left his employment without being approved for the leave and did not provide the employer with any proof (doctor's note) of his father's illness;

c) The employer has stated that the Appellant came to them on December 22, 2015 that he was going to Columbia and they asked for proof to support his leave. The Commission contends that the Appellant did not leave until December 25th which gives him ample time to provide proof. The Appellant's uncle was in Columbia and so was his wife and kids, who had gone there a week earlier, they could have provided the medical proof to the Appellant to provide to the employer. The employer's request from the Appellant is reasonable when requesting leave as the employer has a business to run;

d) The Appellant could have contacted his employer from Columbia to provide the medical note as proof. The Appellant was contacted from Columbia by someone who informed him that his father was ill and since he was contacted from Columbia, there is no reason why he could not contact his employer in order to save his job upon his return. Especially in the present day with technology that his available (email);

e) The Appellant could have had his uncle help out until the Appellant made arrangements with his employer to fill out his leave request and provide the medical proof in regards to his father. This was a reasonable alternative that the Appellant did not exhaust prior to making a hasty decision to leave; and

f) The Appellant failed to exhaust all reasonable alternatives prior to leaving. A reasonable alternative to leaving would have been to abide by the employer's request to provide medical proof. The Appellant has failed to prove he left his employment with just cause within the meaning of the Act.

ANALYSIS

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

[30] 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 this is no reasonable alternative to leaving taking into account a list of enumerated circumstances including (v) obligation to care for a child or a member of the immediate family. The test to be applied, having regard to all the circumstances, is whether the claimant had a reasonable alternative to leaving his employment when he did.

[31] The Tribunal must first determine if the Appellant voluntarily left his employment.

[32] The Appellant presents the argument that he did not quit his employment but rather he was dismissed.

[33] The Respondent presents the argument that the Appellant left his employment without being approved for the leave and did not provide the employer with any proof (doctor's note) of his father's illness.

[34] The Tribunal finds that the events that followed are the source of some dispute; however there is no dispute that the Appellant made the decision to leave after his employer did not grant him the leave of absence. The evidence of the email sent to his employer on December 24, 2015 clearly indicates the Appellant's intentions.

[35] The Tribunal finds the event triggering the loss of employment was the voluntary act of the Appellant going to Columbia without the permission of the employer (*Jamieson v. Canada (Attorney General)* A-457-10).

[36] 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)).

[37] In *Rena-Astronomo* (A-141-97), which confirmed the principle established in *Tanguay* (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 (the Court) 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.”

[38] The Respondent argues that the Appellant failed to exhaust all reasonable alternatives prior to leaving.

[39] The Appellant presents the argument that this was an emergency situation as he had to return to care for his seriously ill father who had just suffered a stroke. He stated that there was nobody else that was able to care for him.

[40] The Respondent argues that the employer has stated that the Appellant came to them on December 22, 2015 that he was going to Columbia and they asked for proof to support his leave. The Commission contends that the Appellant did not leave until December 25th which gives him ample time to provide proof. The Appellant’s uncle was in Columbia and so was his wife and kids, who had gone there a week earlier, they could have provided the medical proof to the Appellant to provide to the employer. The employer’s request from the Appellant is reasonable when requesting leave as the employer has a business to run.

[41] The Tribunal finds from the Appellant’s oral evidence that his supervisor never asked him to provide any documentation or to complete a leave of absence, but rather told him that he couldn’t give him the time off and that if he made the choice to leave, he would no longer have a job.

[42] The Tribunal finds that the employer provided testimony that at the time the Appellant requested a leave of absence there was a blackout period in effect; however it was not a written policy. The employer testified that that there was leave of absence request policy and that the Appellant had been asked by the supervisor to complete and he didn’t. The employer testified that a leave of request is done through the supervisor who either allows or denies the request.

She stated that they do not have a specific policy for this specific issue but they would follow the EI policy for compassionate care and request medical proof.

[43] The Tribunal finds that the evidence supports that the Appellant did verbally ask for a leave from his supervisor as was the protocol, and he was verbally denied as there was a blackout period in effect. The Appellant testified that he told his supervisor that he would see what he could do but if he had to go, he would go. Subsequently the Appellant made the decision to go and he sent the HR manager on December 24, 2015 an email to notify them his absence.

[44] The Tribunal finds that the evidence on the file from the employer (GD3-29) substantiates that the Appellant did come and speak to his supervisors explaining his situation, and that leave requests were probably going to be denied. The Tribunal finds the evidence also supports the Appellant's testimony that he was told that if he chose to leave without approval he would no longer have a job.

[45] The Tribunal finds the evidence provided by the employer states the Appellant was a no show on the 24th and that the Appellant didn't send the email until December 25th; however the contents of the email would reflect that the email was sent on December 24th as it references the meeting that was held "yesterday" which is earlier confirmed in the employer's notes of the meeting of December 23, 2015. The Tribunal finds the Appellant confirmed he was still in Canada had access to his email.

[46] The Tribunal finds from the employer's testimony that she confirmed this was not a copy of the original email but a copy of the contents for her notes. Thus the Tribunal finds on the balance of probabilities the email was sent on December 24, 2015.

[47] The Tribunal finds the Appellant's testimony to be credible and that he acted reasonably when he notified the employer by email on December 24th and that the supervisor had told him that there were no options and that he had no other choice to leave and return to Columbia because his father was in the hospital. The Tribunal finds the email also states the Appellant will provide any documentation required by the employer upon his return.

[48] The Tribunal finds from the employer's oral evidence that she never responded to the email to acknowledge the Appellant's decision to leave. The Tribunal finds that under the circumstances the Appellant had no reasonable alternative to leave as the evidence clearly supports the employer was not going to allow the time off.

[49] The Tribunal finds the evidence supports that the situation was urgent and that there was no way for the Appellant to obtain the medical documentation from Columbia prior to leaving and although his wife was in Columbia she was not in the immediate area and as well the Appellant testified that the area was also not safe, thus prevented both his wife and uncle to obtain the information.

[50] The Respondent argues that the Appellant could have contacted his employer from Columbia to provide the medical note as proof. The Appellant was contacted from Columbia by someone who informed him that his father was ill and since he was contacted from Columbia, there is no reason why he could not contact his employer in order to save his job upon his return. Especially in the present day with technology that his available (email).

[51] The Tribunal finds from the Appellant's oral evidence that he did try and contact his employer when he arrived in Columbia, however he was not successful and there were extenuating circumstances preventing him from making further attempts as he was in a remote area and he did not have immediate access to international calling and that that it was very costly which he did not have the money. He testified that he did not have his own transportation and needed to depend on public transportation that did not run on daily schedules so if he was to travel the 45 minutes to access a telephone it may be days before he could return. The Appellant provided oral evidence that the area did not have internet access therefore he was not able to email the employer either.

[52] The Respondent argues that the Appellant could have had his uncle help out until the Appellant made arrangements with his employer to fill out his leave request and provide the medical proof in regards to his father. This was a reasonable alternative that the Appellant did not exhaust prior to making a hasty decision to leave.

[53] The Appellant presents the argument that he never told the Commission (GD3-27) that his uncle could have cared for his Dad for three days. He stated it is true that his uncle lives in Columbia but not in the area where is Dad was and also that his uncle didn't feel safe in that area of Columbia.

[54] The Tribunal finds the Appellant to be a credible witness and that he explained that although his uncle lived in Columbia, he was not in close proximity to the hospital where the Appellant's father had been placed, in fact he stated that it was about 7 hours away. The Tribunal finds that it would not appear to be reasonable to believe the Appellant's uncle would be able to care for the Appellant's father.

[55] The Tribunal finds the medical evidence provided by the Appellant (GD2-5) substantiates the Appellant proves his father was in serious condition. The Tribunal finds the Appellant made the choice to leave and that he did what a reasonable person in his situation would do. The Tribunal finds that the Appellant's father suffered a serious stroke and he was hospitalized and it would not be reasonable in this situation for the Appellant to have waited a few days in order to get medical documentation.

[56] The Tribunal finds the Appellant did advise his employer by email of his decision to leave without an approved leave but he would return to work and he would provide documentation upon his return.

[57] The Tribunal finds there is conflicting evidence on whether the Appellant contacted the employer upon his return on January 26, 2016 when he returned to Canada, or it was the employer who contacted him first on January 27, 2016; however the Tribunal finds the employer's evidence (GD3-29) is a time line of events the Appellant's response does indicate that he had had tried to call her by phone. The Tribunal finds the Appellant's version of events that he called and left a message for the employer with the receptionist prior to the employer's email would have prompted the employer to send the email. The employer testified that she could not recall if the receptionist had given her the message or not; therefore based on the balance of probabilities the Tribunal finds the Appellant's testimony that he tried to contact his employer on the 26th to be credible and forthcoming.

[58] The Federal Court Decision (#A-734-95 – *Canada (A.G) v. Chafe*) states:

> *28.(4) For the purposes of this section, "just cause" for voluntarily leaving an employment exists where, having regard to all the circumstances, including any of the following circumstances, the claimant had no reasonable alternative to leaving the employment:*
>
> *The learned Umpire was alive to this possibility and he grounded his decision on paragraph 28(4)(e) of the Act which reads:*
>
> *(e) obligation to care for a child or a member of the immediate family*
>
> *This is how he expressed it:*
>
> *It is clear in her mind and in any reasonable interpretation of the evidence it was necessary for her to care for her father, which I say brought her clearly within s.28(4)(e) of the Act.*
>
> *We are satisfied in particular that the learned Umpire did not neglect the opening words of subsection 28(4), including the requirement that the respondent had no reasonable alternative to leaving her employment in British Columbia.*

[59] The Tribunal finds from the Appellant was placed in a situation which was beyond his control. His employer would not allow him a leave of absence to attend to his father, who was critically ill; he was alone and with no other family members able to care for him. The Tribunal finds the Appellant had no reasonable alternative but to leave his employment when he did and meets the requirement of 29(c)(v) obligation to care for a child or a member of the immediate family,

[60] The Tribunal relies on (*Landry* A-1210-92) where the Court concluded that it is not sufficient for the claimant to prove she was reasonable in leaving her employment, but rather the claimant must prove that after considering all of the circumstances she had no reasonable alternative but to leave her employment.

[61] The Respondent argues that the facts on the file appear unclear or contradictory as to whether the issue is actually a voluntary separation without just cause or a dismissal for misconduct. The Federal Court of Appeal ruled that although they may be two distinct abstract notion, both are dealt with together with a disqualification under the same Act which is rational as they both refer to situations where the loss of employment is the result of the deliberate action(s) on the part of the employee;

[62] Under subsection 30(1) of the Act, an employee is disqualified for receiving EI benefits if he loses his job as a result of misconduct, or voluntarily leaves his job without just cause.

[63] The Tribunal finds that the legal issue at stake is a disqualification under subsection 30(1) of the Act which states a claimant will be disqualified from benefits if he lost his employment by his own misconduct or voluntarily left his employment without just cause (*Canada (Attorney General) v. Desson*, 2004 FCA 303 (CanLII)).

[64] 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).

[65] The Tribunal finds an indefinite disqualification should not be imposed because the Appellant proved he had no reasonable alternative to voluntarily leave his employment pursuant to sections 29 and 30 of the Act.

CONCLUSION

[66] The appeal is allowed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

ANNEX

THE LAW

29 For the purposes of sections 30 to 33,

(a) *employment* refers to any employment of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

(i) sexual or other harassment,

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,

(iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,

(iv) working conditions that constitute a danger to health or safety,

(v) obligation to care for a child or a member of the immediate family,

(vi) reasonable assurance of another employment in the immediate future,

(vii) significant modification of terms and conditions respecting wages or salary,

(viii) excessive overtime work or refusal to pay for overtime work,

(ix) significant changes in work duties,

(x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,

(xi) practices of an employer that are contrary to law,

(xii) discrimination with regard to employment because of membership in an association, organization or union of workers,

(xiii) undue pressure by an employer on the claimant to leave their employment, and

(xiv) any other reasonable circumstances that are prescribed.

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

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

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

(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.