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

Citation: *Canada Employment Insurance Commission v. M. M.,* 2017 SSTADEI 32

Tribunal File Number: AD-16-982

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

M. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: January 24, 2017

DATE OF DECISION: January 26, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is granted, the decision of the General Division dated July 12, 2016, is rescinded, and the appeal of the Respondent before the General Division is dismissed.

INTRODUCTION

[2] On July 12, 2016, the General Division of the Tribunal determined that the Respondent left her employment with just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* (Act).

TYPE OF HEARING

[3] The Tribunal held a telephone hearing for the following reasons:

- The complexity of the issue(s) under appeal.
- The fact that the credibility of the parties is not anticipated to be a prevailing issue.
- The information in the file, including the need for additional information.
- The requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[4] The Appellant was represented by Louise Laviolette. The Respondent was also present at the hearing.

THE LAW

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal are the following:

a. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

b. The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

c. The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[6] The Tribunal must decide if the General Division erred when it concluded that the Respondent had just cause to leave her employment pursuant to sections 29 and 30 of the Act.

ARGUMENTS

[7] The Appellant submits the following arguments in support of the appeal:

- The Respondent's testimony at the hearing was that the minimum rent she could find in and around X was $795 per month, without groceries and utilities, and her take-home pay was approximately $2,000 per month;

- The evidence does not support that the Respondent would have been unable to pay her living costs by renting an apartment in X;

- The Federal Court of Appeal has upheld the principle that leaving employment for financial reasons does not constitute just cause for voluntarily leaving employment;

- As for a reasonable alternative to leaving her employment, while it may not have been feasible to travel to X to attend interviews as described by the Respondent at the hearing, electronic job searching and telephone interviewing was a reasonable alternative available to her;

- In addition, while the Appellant acknowledges the Respondent's desire to relocate to be with her family and reduce her expenses and personal debt, she was under no obligation to do so, and had the reasonable alternative of remaining in X until her situation permitted her to relocate to X, if she so desired;

- The Respondent made a personal decision to leave her employment and the Employment Insurance (EI) fund should not bear the burden of her legitimate desire;

- A proper application of the legal test for just cause under paragraph 29(*c*) of the Act to the facts of this case leads to the reasonable conclusion that the Respondent made a personal decision to leave her employment and has not shown that she had no reasonable alternative to do so;

- The Appellant respectfully requests that the Appeal Division render the decision that the General Division should have given in accordance with subsection 59(1) of the DESD Act.

[8] The Respondent submits the following arguments in support of the appeal:

- X is well known for local hiring only;

- Living in X while looking for work in X was not logical;

- It is unreasonable to expect an employer to put up with an employee requesting last minute time off to go up island for an interview. This constant interruption in the business would not have been tolerated by her employer;

- She could not afford the total costs of living alone without her family in X especially since she has a very large debt to pay off;

- If she had been in a relationship with a man or woman, she would have been entitled to EI benefits. She has lived with her sister and brother-in-law for six years in a partnership to help each other get into a better situation.

STANDARD OF REVIEW

[9] The Appellant submits that the Appeal Division does not owe any deference to the conclusions of the General Division with respect to questions of law, whether or not the error appears on the face of the record. However, for questions of mixed fact and law and questions of fact, the Appeal Division must show deference to the General Division. It can intervene only if the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it - *Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[10] The Respondent did not make any representations regarding the applicable standard of review.

[11] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (A.G.) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that "[w]hen it acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court".

[12] The Federal Court of Appeal further indicated that:

> [n]ot only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards", for the Federal Court and the Federal Court of Appeal.

[13] The Court concluded that "[w]he[n] it hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act."

[14] The mandate of the Appeal Division of the Social Security Tribunal as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (A.G.)*, 2015 FCA 274.

[15] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

ANALYSIS

[16] The facts of this case are not in dispute.

[17] The Respondent lived with her sister and brother-in-law and left her employment because her family was relocating to X, where her brother-in-law secured work. She explained that her sister and brother-in-law are the only family she has, that they always lived in the same community, and have been living together for the last six years in an attempt to better their situation. Her brother-in-law obtained work in X, and the couple was able to purchase a house there. The Respondent did apply for jobs in X before she moved and had a phone interview, but was unable to secure work prior to leaving X.

[18] Whether one had just cause to voluntarily leave an employment depends on whether they had no reasonable alternative to leaving, having regard to all the circumstances, including several specific circumstances enumerated in section 29 of the Act. The burden of establishing just cause rests on the Respondent.

[19] The evidence before the General Division does not support the position that the Respondent had an obligation to leave her employment. The Respondent wanted to follow her sister and brother-in-law to X since they had been living in a partnership for six years to better their situation.

[20] However commendable the Respondent's intentions may have been, the General Division erred in relying on them to reverse the Appellant's decision. Consistent jurisprudence has long established that leaving one's employment because of problems related to accommodation and other personal reasons not related to employment does not constitute just cause pursuant to the Act. : *Canada (A.G.) v. Graham*, 2011 FCA 311; *Canada (A.G.) v. Richard*, 2009 FCA 122; *Canada (A.G.) v. Campeau*, 2006 FCA 376; *Canada (A.G.) v. Murugaiah*, 2008 FCA 10; *Canada (A.G.) v. McCarthy*, A-600- 93.

[21] While the decision to leave her employment might have been a good personal choice for the Respondent, it is not sufficient to establish just cause within the meaning of section 29 of the Act.

CONCLUSION

[22] The appeal is granted, the decision of the General Division dated July 12, 2016, is rescinded, and the appeal of the Respondent before the General Division is dismissed.

Pierre Lafontaine
Member, Appeal Division