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

Citation: *L. L. v. Canada Employment Insurance Commission,* 2017 SSTADEI 72

Tribunal File Number: AD-16-901

BETWEEN:

L. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: February 21, 2017

DATE OF DECISION: February 23, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On May 18, 2017, the General Division of the Tribunal determined that the Appellant left her employment without 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 under appeal.
- 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 and her representative, Bernie Hugues, were present at the hearing. The Respondent was represented by Suzanne Prud'homme.

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 did not have 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 employer's statement that he walked in and saw the Appellant and another co-worker in a heated discussion is not credible and is contradicted by the employer's own statement at the Employment Standards Branch;

- Contrary to the conclusions of the General Division, the Appellant was not the instigator of the altercation;

- There was a short exchange between the Appellant and a co-worker, which was instigated by the co-worker; The main altercation was between two other coworkers;

- She tried to explain her position to the employer, who refused to listen to her;

- Out of frustration, she walked out of the office, grabbed her keys, and went home to cool down and talk with her husband;

- Within 10 minutes, she called the employer from her home to ask when she could return to work. The employer had no idea she was at home;

- The employer allowed the other co-workers to leave the work site to calm down;
- Simply walking out of your workplace does not mean that you are quitting your job;
- She did not initiate the separation of employment and was told by her employer that she was "laid off for now";
- The employer settled the Appellant's claim at the Employment Standards Branch.

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

- It is not disputed that the Appellant walked out of her place of work and went home;
- Furthermore, it is submitted that whether or not the Appellant instigated the verbal altercation with the other co-worker is not germane to whether or not the Appellant had "just cause" for voluntarily leaving her employment;
- Voluntary leaving means that the claimant, and not the employer, took the initiative in terminating the employment;
- When the Appellant walked out of the meeting with the employer and left her place of employment without discussion, she voluntarily left her employment pursuant to paragraph 29(c) of the Act;
- In light of the evidence, it was reasonable for the General Division to find that when the Appellant went home, she initiated the separation from employment and this could be seen only as her having quit her job;
- In the present matter, the Appellant left her job as a result of being reprimanded by the employer for a verbal altercation with a co-worker. The Appellant argued that the employer's actions, namely yelling at her, were inappropriate and she

had had enough and walked out and went home. Based on the evidence, the Appellant failed to exhaust all reasonable alternatives prior to leaving;

- It was not unreasonable for the General Division to find that, although the Appellant was angry and needed to "cool off", she could have pursued reasonable alternatives to walking away from her employment, such as going into the lunch room, the parking lot or back to her work station to cool off;

- The General Division properly applied the legal test for "just cause" under paragraph 29(c) of the Act to the facts of this case and the General Division's findings were reasonable and based on the evidence, legislation and case law before it.

- There is nothing in the General Division's decision to suggest that it was biased against the Appellant in any way or that it did not act impartially; nor is there any evidence to show there was a breach of natural justice present in this case.

STANDARD OF REVIEW

[9] The Appellant did not make any representations regarding the applicable standard of review.

[10] The Respondent 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.

[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 "When 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:

> Not 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 "Whe[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 Appellant submits that, contrary to the conclusions of the General Division, she was not the instigator of the altercation. There was a short exchange between her and a co-worker, who instigated it. The main altercation was between other co-workers. She argues that she tried to explain her position to the employer, who refused to listen to her.

[17] Out of frustration, she walked out of the office, grabbed her keys, and went home to cool down and talk with her husband. Within 10 minutes, she called her employer from

her home to ask when she could return to work. The employer had no idea she was at home. She submitted that the employer allowed the other co-workers to leave the work site to calm down.

[18] During the appeal hearing, the Appellant put great emphasis on the fact that she was not the instigator of the altercation and that she was not part of any heated discussion that led to her being summoned into her superior's office. She was simply sitting at her work station and had nothing to do with the altercation between two other co-workers.

[19] The Tribunal finds that who started the altercation is not a determinative issue in the present case.

[20] However, the preponderant evidence demonstrates that the Appellant was in fact involved in an altercation with a co-worker. The Appellant admits that there was a short exchange between her and a co-worker. In her written statement, said co-worker states that she and the Appellant yelled at each other (GD-3-21). Another co-worker also states that they were in an argument with each other and that they could not get along on a daily basis (GD3-22). Another co-worker states that she saw a co-worker intervene to say she had had enough of the yelling and backstabbing between the two of them (GD3- 23).

[21] The evidence clearly supports the conclusion of the General Division that the work environment was one of drama between the female employees and that the Appellant was an active participant in the argument (par. 36 of the decision).

[22] That said, the only real issue the General Division had to decide was whether the Appellant had voluntarily left her employment pursuant to sections 29 and 30 of the Act. Its conclusion was that the employer had accepted the Appellant's walking out and going home as having quit her job and that she could have pursued other reasonable alternatives (par. 25 and 43 of the decision)

[23] The Appellant submits that simply walking out of your workplace to cool off does not mean that you are quitting your job. She did not initiate the separation of employment and was told by her employer that she was "laid off for now".

[24] The evidence indicates that the Appellant's separation from work was a direct consequence of her telling the employer "I'm out of here" and twice leaving the place of work. The employer did in fact see the Appellant storm out of the place of work (GD6- 4). It was therefore not the employer who initiated the separation from employment. Had she not left the premises, she would still be employed like the other co-workers who cooled down by talking with the employer's assistant (GD3-25, GD6-4).

[25] A claimant whose employment is terminated because she gave her employer notice of intention to leave employment, verbally, in writing or by her actions, must be considered as having left her employment voluntarily under the Act even if she later expresses a desire to remain in her employment and/or changes her mind.

[26] The Appellant's actions, notwithstanding her early phone calls to express her desire to come back to work for the employer, must be considered as her voluntarily leaving her employment within the meaning of sections 29 and 30 of the Act.

[27] Regarding the changes to the Record of Employment made by the employer and the settlement reached at the Employment Standards Branch, it is up to the General Division to assess the evidence and come to a decision. It is not bound by how the employer and employee or a third party might characterize the grounds on which an employment has ended – *Canada (A.G.) v. Boulton*, A-45-96.

[28] As mentioned at the appeal hearing, the Tribunal does not have the authority to retry a case or to substitute its discretion for that of the General Division. The Tribunal's jurisdiction is limited by subsection 58(1) of the DESD Act. Unless the General Division failed to observe a principle of natural justice, erred in law, or 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.

[29] The Tribunal finds that there is no evidence to support the grounds of appeal invoked or any other possible grounds of appeal. The decision of the General Division was open to it and it complies with the law and the decided cases.

CONCLUSION

[30] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division