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

Citation: *P. W. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 27

Tribunal File Number: GE-16-2617

BETWEEN:

P. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Richard Sterne

HEARD ON: December 22, 2016

DATE OF DECISION: March 3, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, P. W., attended the hearing by telephone.

INTRODUCTION

[1] The Appellant was employed by X Hyundai (employer) until April 6, 2016.

[2] On April 15, 2016, the Appellant applied for employment insurance benefits (EI benefits).

[3] On May 5, 2016, the Respondent advised the Appellant that they were unable to pay him any EI benefits because he had voluntarily left his employment with the employer on April 6, 2016, without cause within the meaning of the *Employment Insurance Act* (Act).

[4] On May 30, 2016, the Appellant filed a request for reconsideration of the Respondent's May 5, 2016 decision, which was denied on June 10, 2016.

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

a) The complexity of the issue(s) under appeal.
b) The fact that the credibility was not anticipated to be a prevailing issue.
c) The fact that the appellant would be the only party in attendance.
d) The information in the file, including the need for additional information.
e) 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

[6] Did the Appellant have just cause for voluntarily leaving his employment with the employer, pursuant to the Act?

EVIDENCE

[7] The Appellant was employed by the employer from March 16, 2016 to April 6, 2016.

[8] On April 15, 2016, the Appellant applied for EI benefits. In his application, the Appellant indicated that the reason he had quit his employment was because of discrimination, harassment, and personal conflict at work.

[9] On May 2, 2016, the employer issued the Appellant's record of employment (ROE) and indicated the reason for issuing the ROE as code E, Quit.

[10] On May 2, 2016, the employer told the Respondent that the Appellant told his manger that he quit and left the job site. The employer stated that the Appellant had never sited any conflict to HR or to any higher management. The employer stated that the Appellant could have spoken to higher management or to employee services in an attempt to find a resolution to any conflicts the Appellant might have been facing. The employer stated that they had contacted the Appellant after the event and if the Appellant would have come in, they would have attempted to rectify any issues he had to continue the employment relationship. However, they were not given the opportunity, nor was the Appellant willing to rectify the issues he had with the job. The employer stated that the Appellant simply said he did not want to deal with the employment anymore.

[11] On May 5, 2016, the Respondent advised the Appellant that they were unable to pay him any EI benefits because he had voluntarily left his employment with the employer on April 6, 2016, without cause within the meaning of the Act. The Respondent stated that they believed that voluntarily leaving his employment was not his only reasonable alternative.

[12] On May 30, 2016, the Appellant filed a request for reconsideration of the Respondent's May 5, 2016 decision.

[13] On June 10, 2016, the Appellant told the Respondent that the main reason he left his job was because he was not making any money, and was driving a distance to get to the job site to work as a salesman on commission. On top of that, his manager was stealing his customers which created a conflict between them. The Appellant said that he had spoken with

his manger's boss about the situation. The Appellant said he had been looking for employment since he was laid off the prior year and was already receiving EI benefits, so he decided to try this new employment for two weeks. The Appellant said the new job was not helping him financially,

[14] On June 10, 2016, the employer told the Respondent that the Appellant had left on his own accord on April 5, 2016 at around 3 pm, stating that he was not happy with the company. The employer stated that the Appellant's manager could not steal the Appellant's clients because as a manager he was paid by salary, he was not on commissioned sales. The employer stated that the Appellant was on 100% commission, but was on a 3 months guaranteed commission of $2,350.00 bi-weekly until June 2016.

[15] On June 10, 2016, the Respondent advised the Appellant that they had not changed their May 5, 2016 decision.

EVIDENCE from the hearing:

[16] During the hearing, the Appellant stated that unfortunately he had taken a position as a commissioned car salesman, a job he was unfamiliar with, because he had wanted to work. The Appellant said that he was only supposed to work 38 hours a week but ended up working 6 days a week for upwards to 60 hours a week. He said that he was only paid minimum wage and his cost of travelling was leaving him in a negative situation. The Appellant said that his manager was taking away his customers and asking him to perform maintenance duties. He felt that he could no longer work under these conditions, so he quit.

[17] The Appellant said that he did discuss his concerns with his manager's boss, and someone in Human Relations. The Appellant said that the two hour drive and the number of hours required by the job was exhausting. The Appellant felt he was underpaid considering the number of hours he was required to work. He said that he shouldn't have taken the job, but he took the job because he was desperate to find meaningful work. The Appellant said he didn't like the long hours and objected to being asked to do washroom duty. The Appellant said he felt had been harassed by his manager.

[18] On December 29, 2016, the Appellant submitted additional information post-hearing. The Appellant stated that the main reason he had left the position was the harassment in the workplace by his manager.

SUBMISSIONS

[19] The Appellant submitted that:

a. there was a lack of clear transparent communication from his manager.

b. his manager created a hostile environment and was the main reason he quit his job.

c. due to a shortage of sales people selling cars, he was working 6 days a week, up to 60 hours a week, whereas his contract stated 38 hours per week.

d. since he was on a fixed commission draw, his long hours meant he was only earning minimum wage.

e. he had a willingness to work and took a chance with an employer who treated him unfairly.

f. the situation caused him undue stress.

[20] The Respondent submitted that:

a. the Appellant had left his employment without just cause within the meaning of the Act, therefore they imposed an indefinite disqualification effective April 17, 2016, pursuant to sections 29 and 30 of the Act.

ANALYSIS

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

[22] The purpose of the Act is to compensate persons whose employment has terminated involuntarily and who are without work (**Gagnon [1988] SCR 29**).

[23] Subsection 30(1) of the Act provides for an indefinite disqualification when the claimant voluntarily leaves his employment without just cause. 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.

[24] The Appellant stated that he quit his job because of his commute time to work, the long hours he was required to work meant he was only earning minimum wage, the fact that he was asked to perform menial jobs such as clean the washroom, and the harassment he felt at work from his manager.

[25] The Tribunal has sympathy for the Appellant's situation. However, the Tribunal finds that the Appellant was on a guaranteed commission plan for 3 months, but he quit after only three weeks. The Tribunal finds that the Appellant did not give this new employment a chance while he learned the job, since he had never done it before. The Tribunal finds that the Appellant made a personal decision to quit his job.

[26] Sections 29 and 30 of the Act provide an exception to the general rule that insured individuals that are not deliberately unemployed are entitled to benefits. This exception must therefore be strictly interpreted (**Goulet A-358-83**).

[27] Subsection 29(c)(i) of the Act states that 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 sexual or other harassment.

[28] The Appellant stated that the main reason he quit was because his manager was harassing him. The Appellant stated that his manager was stealing his customers, and thereby his commission. The Tribunal finds that since the manager was paid by salary, he would have no incentive to steal the Appellant's customers other than to ensure the sale was made. The manager probably intervened since the Appellant was new to the job, and the Appellant was on a guaranteed commission. The Tribunal believes that this was more of a case where the manager was a poor trainer, rather than harassment.

[29] The Tribunal finds that the Appellant did not provide any evidence of harassment that would qualify the Appellant for the exception to the general rule that insured individuals that are not deliberately unemployed are entitled to benefits, pursuant to subsection 29(c)(i) of the Act.

[30] The Federal Court of Appeal has consistently held that there is an obligation on claimants, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job.

Canada (AG) v. Campeau, 2006 FCA 376
Canada (AG) v. Murugaiah, 2008 FCA 10
Canada (AG) v. White, 2011 FCA 190

[31] The Appellant complained about the number of hours that he was being asked to work, because the employer was understaffed with sales people. The Tribunal finds that the longer hours on the job should have increased the probability of the Appellant making more sales and assist him in improving his sales techniques.

[32] The Federal Court of Appeal reaffirmed the principle that where a claimant voluntarily leaves his employment, the burden is on that claimant to prove that there was no reasonable alternative to leaving when he did.

Canada (AG) v. White, 2011 FCA 190

[33] The Tribunal finds that the Appellant did have other reasonable alternatives to quitting his job. The Appellant could have done a better job expressing his concerns about the working conditions and long hours to his manager or to someone else with greater authority.

[34] The employer stated that they had contacted the Appellant after he had quit to attempt to rectify any issues he had, in order to continue the employment relationship. The Tribunal finds that the Appellant could have returned to the job when the employer reached out to try and resolve his concerns. The Appellant could have continued working for the employer while he searched for more suitable employment.

[35] In summary, the Tribunal finds that the Appellant did not give himself an opportunity to learn the job, which was new to him, by quitting after only three weeks, considering he was on a guaranteed commission for three months.

[36] Further, sincerity and inadequate income do not constitute just cause There is a consistent line of authority that a claimant who leaves employment because it does not offer an adequate salary has not established just cause for doing so within the meaning of the Employment Insurance Act.

Canada (AG) v. Tremblay, (A-50-94)

[37] The Tribunal is sympathetic to the Appellant's situation and accepts that he had personal reasons for resigning his job. However, the Tribunal finds that the Appellant did not have just cause to voluntarily leave his employment, because he did not prove that there was no reasonable alternative to leaving when he did.

[38] The Federal Court of Appeal made a distinction between a claimant showing his/her leaving their employment was reasonable given the circumstances and that they may have had good motive to leave or reasons, but that it is not synonymous with just cause.

FCA A-1458-84 Tanguay

[39] The Tribunal finds that the Appellant did not prove that there was no reasonable alternative to leaving when he did, and therefore he did not have just cause to voluntarily leave his employment, pursuant to sections 29 and 30 of the Act.

CONCLUSION

[40] The appeal is dismissed.

Richard Sterne

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.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, 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 claimant is otherwise entitled to special benefits.

(5) If a claimant 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 claimant subsequently loses or leaves, as described in subsection (1).

(6) No hours of insurable employment in any employment that a claimant 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 claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant may be disqualified under subsection (1) even if the claimant'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.