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

[TRANSLATION]

Citation: *R. L. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 29

Tribunal File Number: GE-16-3517

BETWEEN:

R. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: February 27, 2017

DATE OF DECISION: March 9, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant attended the hearing, which was held in-person.

INTRODUCTION

[1] The Appellant submitted a renewal claim for Employment Insurance benefits on May 28, 2016.

[2] On June 22, 2016, the Employment Insurance Commission of Canada (Commission) found that the Appellant was disqualified from receiving Employment Insurance benefits due to his voluntary leaving the Groupe Matériaux Godin company without just cause on May 27, 2016.

[3] On August 26, 2016, following the reconsideration of the decision, the Commission upheld its initial decision.

[4] An appeal of the reconsideration decision was filed at the Tribunal on September 16, 2016.

[5] This appeal was heard in-person for the following reasons:

a) the fact that credibility may be a determinative factor

b) the information on file, including the need for additional information

c) the availability of videoconferencing where the Appellant resides

ISSUE

[6] The Tribunal must determine whether the Appellant should be disqualified from receiving Employment Insurance benefits pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act) due to leaving without just cause.

EVIDENCE

On File

[7] The renewal claim for Employment Insurance benefits filed on May 28, 2016, specifies "voluntary leaving" as the reason for the work stoppage. (GD3-3 to 11)

[8] In a conversation between the Appellant and the Commission on June 20, 2016, the Appellant claims to have been hired at Matériaux Godin on a grant contract with the Province of Ontario. The employer was obligated to train him and hire him to drive a mobile crane, which never materialized. The employer was asking him to complete all sorts of "small jobs," but never as a truck driver. He quit because he wanted to find himself a job as a truck driver as early as possible. (GD3-14)

[9] In a conversation between the employer and the Commission on June 21, 2016, the employer specified that the Appellant had quit because he had found another job. According to the employer, the Appellant had no experience as a truck driver. He supposedly went out on the road twice with the Appellant, but the Appellant was, in his opinion, a "danger on the road." This was why he gave the Appellant other field tasks, because the Appellant could not drive a truck safely. (GD3-15)

[10] On June 22, 2016, the Commission found that the Appellant was disqualified from receiving Employment Insurance benefits as of May 27, 2016, due to voluntarily leaving the Matériaux Godin company without just cause. (GD3-17 and 18)

[11] The Record of Employment issued on June 29, 2016, specifies "voluntary leaving" as the reason. (GD3-12)

[12] In his application for a reconsideration of a decision, the Appellant mentions that he applied for a position of driver of a mobile crane, which had been announced at a job fair. After a road test with the employer, the Appellant was hired on a grant contract entered into by the employer, the Appellant and the employment service centre. The Appellant noticed that the contract mentioned that he had been hired as a delivery clerk and that he had signed the contract believing that he would eventually be promoted to mobile crane driver. In addition to performing

tasks as a delivery clerk, he claims to have been assigned certain tasks not provided for in his contract, like parking maintenance and grass cutting. After an exchange with another employee, he supposedly understood that the company did not have the intention of offering him training on the mobile crane, but rather of taking advantage of him and his grant. He claims that the employer did not provide him with work gloves or training on occupational health and safety. He claims to have left his employer after receiving a call from another potential employer, because he had had enough of false hopes. (GD2-7 and 8)

[13] The "internship and training incentive agreement," entered into from April 25 to July 3, 2016, between the Appellant, the employer and the Ontario Ministry of Training, Colleges and Universities, specifies the Appellant's main tasks as delivery clerk, namely, serving clients in the courtyard, reading invoices and putting back products sold to clients, as well as making deliveries with the truck (GD2-9 to 11).

[14] In a conversation between the Appellant and the Commission on August 26, 2016, the Appellant claims to have apprised his employer of certain health and safety items, particularly the fact that the employer does not check whether employees have had their tetanus shot. The employer supposedly told him to mind his business. The Appellant also claims to have talked to the Ministry about the fact that he was not receiving training on the mobile crane, but to no avail. However, he supposedly did not discuss with the Ministry the additional tasks that the employer was giving him and that were not specified in the employment contract. (GD3-24 and 25)

[15] On August 26, 2016, following the reconsideration of the decision, the Commission upheld its initial decision to disqualify the Appellant from receiving Employment Insurance benefits due to leaving voluntarily without just cause. (GD3-27 and 28)

[16] On his notice of appeal to the Tribunal, the Appellant claims to have been hired as a delivery clerk on a three-month grant contract from Service Ontario. A verbal agreement was also supposedly entered into with the employer, which provided that he first had to learn the provision of the materials in the company courtyard, as delivery clerk, before starting work as a mobile crane driver. The promise to train him on the mobile crane was never honoured by the employer. He supposedly discussed this situation with Service Ontario, which referred him back

to the employer. He was doing several tasks not specified in his employment contract. He evidently tried discussing them with the employer, but to no avail. He therefore allegedly quit, because the verbal and written agreements were not being honoured. (GD2-1)

At the Hearing

[17] The Appellant essentially reiterated the events described in his application for a reconsideration and in his notice of appeal to the Tribunal.

[18] Concerning the telephone received from another employer mentioned in his application for a reconsideration of a decision, the Appellant specified that he had started the selection process with another employer, but that he had not received a firm job offer or a guarantee of any such job before leaving Groupe Matériaux Godin. He started for his new employer about two months after leaving the Groupe Matériaux Godin.

[19] With respect to the concerns about occupational health and safety mentioned in the file, the Appellant claims to have discussed with his employer the fact that the work gloves were not provided, the necessity of ensuring that all the employees have had the tetanus shot, as well as certain missing equipment. The Appellant affirms that the employer was not receptive to all his concerns: only to some of them.

[20] Concerning the additional tasks that the employer was asking him to do, the Appellant mentions that he had to sweep, empty the garbage and use the whipper snipper. These tasks were requested by the employer in order to keep the employees busy during the slower periods and they were added to the Appellant's regular tasks as delivery clerk. During the discussions that he allegedly had with his employer about these additional tasks, the employer supposedly told him that if he was not happy, he could stay home.

[21] With respect to his leaving the company, the Appellant confirmed having voluntarily left the company. He claims that the trigger was when he spoke to another employee and realized that he would never be trained to drive the mobile crane, despite the verbal agreement to that

effect that he had entered into with the foreman. He had therefore lost the desire for showing up at work, and he quit the company.

[22] He supposedly talked with the staff at the Ministry of Training, Colleges and Universities about the lack of training on the mobile crane, and he was allegedly referred back to his employer. He evidently did not talk to the Ministry about the additional tasks that the employer was asking him to do and that were not mentioned in the employment contract.

PARTIES' ARGUMENTS

The Appellant argues that:

[23] After signing his employment contract, the employer did not honour the verbal agreement that he had entered into with him. He did not give him training for driving the mobile crane and did not allow him to perform his job as a mobile crane driver, as he had agreed to. He attempted to talk about it to his employer and with the Ministry of Training, Colleges and Universities, but to no avail.

[24] He wanted to be trained to drive the mobile crane—not to work in the courtyard and do maintenance tasks. This is why he left his employer.

The Respondent argues that:

[25] Even if the Appellant wanted to become a mobile crane driver, he made a personal choice in signing the hiring contract as a delivery clerk.

[26] The Appellant did not make an effort to carry out the tasks that had been assigned to him, and he was not patient. He quit after only 5 weeks, on a contract of about 10 weeks.

[27] The Appellant did not have just cause in quitting his job on May 27, 2016, because he had failed to exhaust all reasonable alternatives. He could have continued working for his employer until he had found another job. He should have talked with the Ministry of Training, Colleges and Universities if he felt that the employer was neglecting to honour the terms of the grant contract, which was not done.

ANALYSIS

[28] The relevant legislative provisions are reproduced in an appendix to this decision.

[29] Section 30 of the *Employment Insurance Act* (Act) provides for a disqualification from receiving Employment Insurance benefits if a claimant loses their employment due to their own misconduct of if they leave that employment without just cause. Subsection 29(c) of the Act provides that an employee will have just cause for leaving a job if, having regard to all the circumstances, their leaving constitutes the only reasonable alternative in their case. A list of specific conditions that justify leaving voluntarily appears in subsection 29(c).

[30] It is incumbent upon the Commission to prove that the leaving was voluntary, and it is incumbent upon the Appellant to show that they had just cause in leaving their job. (*Green v. Canada (Attorney General)*, 2012 FCA 313)

[31] As specified by the Supreme Court in *Canada (Employment and Immigration Commission of Canada) v. Gagnon*, (1988) 2 SCR 29, the purpose of the Act is to compensate individuals who have lost their job involuntarily and who have no employment.

[32] At the hearing, the Appellant confirmed that he had left his job voluntarily. This corresponds with the sum of the documentary evidence, which shows that the Appellant voluntarily left the Groupe Matériaux Godin company.

[33] Concerning the justification for leaving voluntarily, the Federal Court of Appeal confirmed in its decision *Canada (Attorney General) v. White*, 2011 FCA 190, that it is incumbent upon the claimant having voluntarily left their job to prove that there was no other reasonable alternative to leaving their job when they did.

[34] The Appellant has argued that his voluntary leaving was essentially tied to his dissatisfaction with the employer generally and because the latter had lured him with the opportunity of being trained and of working as a mobile crane driver, which never materialized. Instead, he was assigned to do delivery clerk tasks and general maintenance tasks for the company.

[35] In order to support his justification for leaving voluntarily, the Appellant mentioned some elements that must be addressed by the Tribunal.

[36] Firstly, the Appellant mentions the additional tasks that the employer was asking him to complete in addition to his functions as a delivery clerk. Although it is true that the tasks in question were not explicitly indicated in the "internship and training incentive agreement," this agreement specifies also that the tasks that are mentioned therein are "main functions of the internship or job," and this is therefore not an exhaustive list. Furthermore, the Appellant mentioned that these tasks were requested by the employer in a low season, in order to keep the employees busy. The Tribunal does not believe that it was unreasonable for the employer to ask the Appellant to carry out certain functions of general maintenance at the company over the course of the off-peak period, even if those tasks were not explicitly mentioned in the employee's employment contract.

[37] If the Appellant was uncomfortable with these additional tasks or if he believed that these tasks did not honour his employment contract, the Appellant still had the option of discussing the issue with the staff of the Ministry of Training, Colleges and Universities, with whom the grant contract for his job had been entered into, which was not done. The Tribunal is of the opinion that the Appellant's additional tasks did not constitute a significant change in his functions as a delivery clerk. The Appellant therefore does not meet the criteria of subparagraph 29(*c*)(ix) of the Act making it possible to justify leaving voluntarily due to a significant change in functions.

[38] Second, the Appellant claims to have apprised his employer of specific concerns about occupational health and safety. The Appellant was supposedly received favourably in some cases and was told to "mind his own business" in other cases. In light of the Appellant's testimony at the hearing, it seemed to the Tribunal, however, that these concerns are additional factors having

contributed to the Appellant's overall dissatisfaction with regard to his employer, but that they are not directly at the heart of his leaving the company. Furthermore, although the Appellant's concerns were potentially legitimate, he has not shown that they originated in work conditions that were dangerous to health and safety. The Appellant therefore does not meet the criteria under subparagraph 29(*c*)(iv) making it possible to justify leaving voluntarily due to conditions dangerous to health and safety.

[39] Third, in his application for reconsideration, the Appellant claims also to have been contacted by another potential employer before leaving the Groupe Matériaux Godin. The specifications that the Appellant brought to the hearing indicate however that he was only at the selection process stage with this potential employer. He had not received any job guarantee or offer and had therefore not had the reasonable assurance of another job in the immediate future before his leaving the Groupe Matériaux Godin. Subparagraph 29(*c*)(vi) of the Act provides that it is possible for a claimant to justify leaving voluntarily if they have the reasonable assurance of obtaining another job in the immediate future. As mentioned in *Lessard*, this subparagraph supposes the existence of three elements: a "reasonable assurance," "another job," and an "immediate future." The Appellant does not meet the criteria for this test, because he had no reasonable assurance of being hired by a new employer when he left the Groupe Matériaux Godin.

[40] The Appellant therefore meets none of the circumstances listed in subsection 29(c) of the Act. *Lessard* established that this listing is done illustratively and that the Appellant is not bound to show that he finds himself in one of those circumstances or another. In this way, at this stage, the Tribunal must ask whether the Appellant showed that, given all the circumstances, his leaving constituted the only reasonable alternative in his case.

[41] The employer confirmed to the Commission that he had explained to the Appellant, before his hiring and during his hiring, about the possibility of training him on a mobile crane in the future. However, the employer also mentioned that the Appellant did not have experience and that he could not drive a mobile crane safely. No precise timeframe had been discussed concerning the training, and the employment contract signed by the Appellant does not mention any training on the mobile crane. Although the Tribunal does not doubt the Appellant's version

of events, there is nothing in the evidence that he has submitted that compelled the employer to give him the desired training within a prescribed timeframe. In sum, everything indicates that providing the Appellant with training on driving the mobile crane was at the employer's discretion.

[42] The Appellant worked for Groupe Matériaux Godin for only 5 weeks, on a contract of about 10 weeks in total. The Tribunal is of the opinion that the Appellant's leaving was hastened. Even if the Appellant believed that he would not be trained as a mobile crane driver, nothing forced him to quit his job right away. The circumstances mentioned by the Appellant in the context of his appeal do not show that leaving the company was the only reasonable alternative.

[43] The Tribunal notes that the Appellant was disappointed for not receiving training and for not getting the job of mobile crane driver, by which he had been lured before being hired as a delivery clerk. However, the Tribunal is of the opinion that leaving the company did not constitute the only reasonable alternative, to the Appellant's disappointment. For example, the Appellant could have finished his employment contract, for which there remained five weeks, or he could have continued to work for that employer until he had found another job.

[44] The Appellant himself created his own situation of unemployment, which goes against the purpose of the Act.

[45] The Tribunal finds that the Appellant voluntarily left the Groupe Matériaux Godin company. The Appellant has not shown the Tribunal that, given all the circumstances, his leaving constituted the only reasonable alternative.

[46] The Appellant is disqualified from receiving Employment Insurance benefits due to his voluntarily leaving without just cause.

CONCLUSION

[47] The appeal is dismissed.

Yoan Marier
Member, General Division—Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

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 employment; and

(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.