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

Citation: *A. L. v. Canada Employment Insurance Commission,* 2017 SSTGDEI 37

Tribunal File Number: GE-16-2945

BETWEEN:

A. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

Tim Hortons

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARD ON: March 8, 2017

DATE OF DECISION: March 21, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

No one attended the hearing, which was scheduled for March 8, 2017.

The member of the Social Security Tribunal General Division, Employment Insurance Section (the "Tribunal") checked the file and was satisfied on the basis of the Canada Post confirmations in the file that the Employer had received the Notice of Hearing on January 23, 2017.

It appeared that the Appellant had not, however, received the Notice of Hearing.

The Notice of Hearing had been sent to the Appellant's address at the address provided by the Appellant at GD2. The mail had then been returned.

On January 30, 2017, on the Tribunal's instructions, a registry officer of the Social Security Tribunal attempted to contact the Appellant by telephone and the call was not answered or returned.

On January 30, 2017, the registry officer wrote to the Appellant to the email address listed by the Appellant at GD2. A follow up telephone call was also made to the Appellant on January 31, 2017.

The Notice of Hearing was then sent to the Appellant by regular mail. It too appears to have been returned as the Appellant did not sign for it at the post office.

The Tribunal determined that the Social Security Tribunal had taken all possible steps to contact the Appellant and send the Notice of Hearing to the Appellant's last known address, which had been provided by the Appellant. The Social Security Tribunal also attempted to contact the Appellant by e-mail and telephone. The Appellant did not appear to have acted diligently and he failed to update his contact information with the Social Security Tribunal.

The Tribunal, accordingly, proceeded in absence of the Employer and Appellant pursuant to subsection 12(1) of the *Social Security Tribunal Regulations* SOR/2013-60 (the "SST Regulations").

DECISION

[1] The Member of the Social Security Tribunal, General Division, Employment Insurance Section (the "Tribunal") finds that the Appellant departed his employment voluntarily.

[2] The Tribunal finds further that the Appellant did not prove that he had just cause for voluntarily departing his employment on a balance of probabilities.

[3] The appeal is, accordingly, dismissed.

INTRODUCTION

[4] The Appellant filed an initial claim for benefits on April 25, 2016 (GD3-12). The claim was established effective April 24, 2016 (GD4-1).

[5] The Canada Employment Insurance Commission (the "Commission") decided on June 13, 2016, that it could not pay the Appellant employment insurance benefits because he did not prove that he had just cause for departing his employment voluntarily.

[6] The Appellant filed a request for reconsideration. On June 17, 2016, the Commission reconsidered its original decision and decided to maintain it with respect to the Employer and the Commission overturned its decision with respect to the employment at the Other Employer (GD3-26 and 28).

[7] The Appellant filed an appeal to the Tribunal on July 26, 2016 (GD2).

[8] On July 28, 2016, the Tribunal added the Employer as a party to the appeal because it determined that the Employer had a direct interest in the outcome of the appeal pursuant to section 10 of the SST Regulations (GD5-1). No submissions were received from the Employer, notwithstanding that the Employer was provided with opportunities to file submissions.

FORM OF HEARING

[9] The hearing was scheduled to be held by teleconference for the reasons indicated in the Notice of Hearing dated January 19, 2017.

ISSUE

[10] Whether or not the Appellant voluntarily departed the employment with just cause pursuant to paragraph 29(c) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the "Act")?

EVIDENCE

Documentary Evidence:

Application for Benefits (GD3-3 to 13, April 25, 2016):

[11] The Appellant worked at [this information appears to have been redacted] (the "Other Employer") from May 3, 2015 to April 24, 2016. The Appellant was no longer working on account of illness (GD3-5 to GD3-12).

[12] The Appellant worked at "TH" (the "Employer") until April 20, 2016 and was no longer working on account of "leave of absence" and "illness".

Record of Employment:

[13] According to the record of employment dated June 17, 2016 ("ROE"), the Appellant worked at the Employer from October 9, 2015 to June 1, 2016, and the reason for issuing the ROE was listed as Code "E". The Appellant accumulated 566 insurable hours (GD3-14).

Commission's Conversations with the Appellant

[14] The Appellant was working 12 hours a week and kept his job because it was only making coffee. The Appellant did not look for a full time job before leaving. The Appellant is looking for a job in the telecommunication industry because he is a telecommunication engineer. The Appellant became upset when the agent advised that he did not have just cause for voluntary leaving his employment with the Other Employer (Commission notes, May 17, 2016 GD3-15).

[15] The Appellant did not consult with his doctor because he had no time to see a doctor. A doctor did not recommend that the Appellant quit his employment. The Appellant quit his employment because he was having spots in his left eye because of the stress at work. There was no possibility of being transferred. The medical situation was temporary. There was a possibility of taking a leave of absence. The Employer agreed to a leave of absence (Commission notes, June 6, 2016 GD3-19).

[16] The Appellant requested the record of employment on June 1, 2016. "R" told the Appellant one week after he hurt his hand, that he would get it the last Wednesday of his shift. The Appellant quit because the job was too stressful with the Employer. The Appellant was earning $11 an hour. The Appellant's normal weekly earnings were $132 for 12 hours of work a week. The Appellant submitted pay stubs and the ROE was done on the basis of them (Commission notes, June 6 and 16, 2016 GD3-21 and 22).

[17] The Appellant refused to answer the Commission's questions regarding his voluntary leaving. The Appellant advised that he already spoke to someone at the Commission (Commission notes, June 7, 2016 GD3-23).

[18] The job was stressful and the Appellant could not handle the job. There were issues with cash payments and there were accusations of theft. The Appellant was not able to provide additional details. The Appellant requested a change to another location. The supervisor transferred the Appellant. The stress did not go away at the new location. The Appellant did not look for work elsewhere before quitting the job. The Appellant stated that by June 2016, the stress became too much for the Appellant to handle so he quit his job. The supervisor had bad manners and was not a polite person. The Appellant was not able to give specific examples. It was just a general problem with the supervisor being rude (Commission notes, June 15, 2016 GD3-24).

Commission's Conversations with the Employer:

[19] The Appellant told "R" (the owner) that the Appellant found that the job was stressful. The Appellant had difficulty using the touch screen cash register. The Appellant spoke about an altercation in his last week of May 2016 with an assistant manager. It occurred inside

theEmployer at the X Metro station. The Appellant requested a transfer to another location and he went to the street level on X and X. This was done because the Appellant did not want to work with the new manager. The Appellant quit his job the following week despite the change in the new location. The Appellant gave notice in writing via email. The Appellant came to get his record of employment on June 1, 2016 and it was marked as "quit" with an "E". The Appellant was absent a few times in May 2016 but there were no disciplinary issues related to the missed shifts (Commission notes, June 17, 2016, GD3-25).

Notice of Appeal and Request for Reconsideration (May 18, 2016, GD3-16)

[20] The Appellant injured his hand in "pizza" during working hours while the Commission approved the first claim (GD2-4).

[21] The Appellant was refused benefits in relation to leaving the job at the Other Employer even though the Appellant explained that he had a hand injury. The Commission insisted on a doctor's note. The Appellant could not continue because of sickness and the Appellant's boss had a bad manner at the store (GD3-25).

Additional Information Submitted by the Appellant:

[22] By way of email dated August 4, 2016, the Appellant wrote to "C" at "X" and advised that Mr. "S" called the police to get him to leave when he was absolutely right. "S" the director encouraged the teacher to humiliate and condemn him with the police. For about an hour, "Mr. L" and the police attacked the Appellant and he was hurt in the chest and lost consciousness. The Appellant could not recall the address of the pool thanks to the violence of the police, which the director directed (GD6-1).

[23] By way of email dated August 2, 2016, "SD" wrote that there is a report with respect to the Appellant's failing. The candidate did not want to sign the paper. They asked the witnesses present to attest that the information had been well transmitted. On the second page are the candidate's comments (GD6-1).

[24] On letterhead entitled “lifesaving society” and report of a “situation d’echec” dated August 2, 2016, at J. C. The course was bronze cross. The candidate failed for the two situations mentioned: 1) item 8 hypothermia and 2) lifesaving 1-2 victims. The report provides hat the Appellant did not know the signs and symptoms of hypothermia and did not know the differences between light and severe hypothermia (pages 8-26) (GD6-2).

[25] The Appellant did not see the victims and did not know the treatments. The Appellant could not imitate the victims because he did not know the signs or symptoms (chapter 8)(GD6- 2).

[26] The Appellant had to read chapter 8 and know the signs and symptoms well and the treatments and all of the cases seen in class. (stroke, heart attack, hypothermic shock, external hemorrhage, non swimmer and swimmer fatigue). The Appellant did not want to sign the report. Some witnesses signed the report (GD6-2).

[27] The Appellant wrote that 1) hypothermia was losing heat and consciousness; and, 2) the victom stopped and his brain was not working. You had to stay and wait for an ambulance to arrive. We don’t have to be doctors and give medicine. The Appellant was not in agreement with the report (GD6-3).

[28] By way of email dated August 6, 2016, the Appellant wrote to public affairs unit and the Tribunal and advised “would you please consider the justice” (GD7-1).

Testimony at the Hearing:

[29] No testimony was provided at the hearing.

SUBMISSIONS

[30] The **Appellant** submitted as follows:

a) The Appellant had just cause for his voluntary departure (GD2, GD3);

b) The Appellant left the employment voluntarily because of stress (GD2, GD3); and,

c) The Appellant left the employment voluntarily because his supervisor was rude and had a bad manner/manners (GD2, GD3).

[31] The **Respondent** submitted as follows:

a) Subsection 30(2) of the Act provides for an indefinite disqualification when the claimant voluntarily leaves his or her employment without just cause. The test to be applied, having regard to all of the circumstances, is whether the claimant had a reasonable alternative to leaving her employment when s/he did. The Appellant had the burden to prove that there was no reasonable alternative (*White* 2011 FCA 190, GD4-3 to 4-5);

b) The Appellant mentioned that he had problems with his supervisor and a stress issue. The Appellant also quit after only one week in the new location. A reasonable alternative to leaving would have been to have remained employment until an alternate job had been secured (GD4-3);

c) With respect to the stress issue, the Appellant did not attempt to provide medical evidence or request time off for medical reasons (GD4-3);

d) The Appellant did not demonstrate that he had just cause to quit due to health issues (*Green* 2012 FCA 313).

e) The Appellant also did not demonstrate that the situation was so intolerable that he had no other option than to leave when he did (GD4-3); and,

f) Consequently, the Appellant did not prove that he had just cause or that he exhausted all reasonable alternatives before quitting (GD4-4).

ANALYSIS

[32] It is a general rule of employment insurance law that employees who voluntarily terminate the employment relationship are not entitled to employment insurance benefits.

[33] An exception exists to the general rule, where a claimant can prove on balance of probabilities that the Appellant had “just cause” for the voluntary departure.

[34] Both the general rule and the exception have been codified in subsection 30(1) of the Act.

[35] The rationale for the general rule of disqualification is that the Act is in essence "insurance" against involuntary unemployment and that an essential rule of insurance is that an "assured shall not deliberately create or increase the risk" (*Crewe* (1982) 2 All E.R. 745 per Lords Donaldson and Denning.) (*Tanguay* A-1458-84).

[36] The test for "just cause" is also intricately connected to this rationale. To prove just cause, the jurisprudence/case law and the Act (section 29) both require the claimant to prove that s/he had no reasonable alternative than to place "himself on the roles of the unemployed for insurance purposes" (*Tanguay* A-1458-84, Pratte J.).

[37] According to the jurisprudence/case law, the Commission first has to prove that the claimant voluntarily departed from his or her employment on a balance of probabilities. Once the voluntary separation has been established, the burden then shifts to the claimant to prove just cause on a balance of probabilities.

[38] To prove just cause, the claimant has to prove, that having regard to all of the circumstances, s/he had no reasonable alternative to leaving the employment when s/he did (*White* 2011 FCA 190; *Patel* 2010 FCA 95).

Findings of Fact:

[39] The Tribunal finds as a fact that the Commission has proven on a balance of probabilities that the Appellant left his employment voluntarily.

[40] This fact was admitted by the Appellant (GD2, GD3, GD3-21).

Did the Appellant have Just Cause and no Reasonable Alternatives?

[41] After reviewing the evidence in the file and the submissions of the parties in the file, the Tribunal finds that the Appellant did not prove on a balance of probabilities that he voluntarily departed his employment with just cause.

[42] The Appellant advised at GD2, GD3-21 and 25 that he departed the employment because of the stress of his employment situation and because his manager was rude and had bad manners and was impolite.

[43] With respect to the issue of the Appellant's stress, the Appellant advised that he did not have a doctor's note demonstrating that he was advised by a medical health practitioner to leave his employment on account of health reasons. The Appellant advised the Commission that he did not obtain a doctor's note because he did not have time to do this (GD3-19).

[44] The Tribunal finds that the Appellant did not prove on a balance of probabilities that he left the employment on account of working conditions that constitute a danger to the Appellant's health and safety pursuant to paragraph 29(c)(iv) of the Act because the Appellant did not provide sufficient evidence with respect to his health or work situation, including, a medical certificate to attest to the situation and his doctor's recommendation.

[45] The Tribunal also finds that the Appellant's explanation to the Commission for his failure to provide a doctor's note was not credible since the Appellant only appeared to have been working 12 hours a week at the time of his departure and should have had sufficient time to visit a doctor.

[46] With respect to the Appellant's submission that he left his employment on account that his supervisor or manager was rude and had a bad manner or was generally impolite, the Tribunal finds that the Appellant was only at the new location for approximately one week in duration (GD3-24 and 25) and that the Appellant did not tender any evidence or provide any examples or illustrations of the manager or supervisor's conduct to prove just cause on this basis.

[47] In this circumstances, the Tribunal finds that the Appellant did not advance sufficient evidence or arguments to support his voluntary departure and that the law is clear that the employment insurance scheme is not intended to be used to subsidize employees who depart voluntarily for personal reasons and create risks for reasons which do not amount to just cause (*Bois* 2001 FCA 175).

[48] Even if the Tribunal were to have found that the Appellant had proven that his decision to depart voluntarily was reasonable (which for greater certainty, the Tribunal has been unable to find), the Appellant failed to prove that he had just cause on balance of probabilities because the Appellant failed to prove that he had no reasonable alternative than to have departed from the employment.

[49] The Tribunal agrees with the Commission's submissions that there were many alternatives, which appeared reasonable and which were open to the Appellant.

[50] The Appellant could have waited to see if the manager or supervisor changed his behaviour, the Appellant could have discussed the situation with the manager or supervisor, the Appellant could have consulted his doctor, the Appellant could have looked for other employment (which the Appellant admitted that he did not do GD3-24), the Appellant could have remained in the employment situation until he secured alternative employment (*Murugaiah* 2008 FCA 10, *Hernandez* 2007 FCA 320, *Campeau* 2006 FCA 376).

[51] For these reasons, the Tribunal does not find that the Appellant had just cause when he voluntarily departed his employment (*White* 2011 FCA 190).

CONCLUSION

[52] The appeal is, accordingly, dismissed.

Alyssa Yufe

Member, General Division - Employment Insurance Section

ANNEX

THE LAW

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.

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.