



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *G. D. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 93

Tribunal File Number: GE-17-95

BETWEEN:

G. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARING DATE: June 21, 2017

DATE OF DECISION: June 22, 2017

DECISION AND REASONS

OVERVIEW

Background

[1] The Appellant, G. D., stopped working for his employer X-X (XXXX) X on January 8, 2016, to be incarcerated in a federal institution for the period from January 18, 2016, to September 27, 2016. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Appellant was not entitled to benefits because he had left voluntarily without just cause within the meaning of the *Employment Insurance Act* (Act). The Appellant is challenging this decision before the Social Security Tribunal of Canada.

[2] On September 30, 2016, the Appellant filed a claim for Employment Insurance benefits effective September 25, 2016. He reported that he had worked for X-X X (XXXX) X until January 8, 2016, inclusive, and had stopped working for this employer after a voluntary departure (Exhibit GD3-3 to GD3-13).

[3] On November 4, 2016, the Commission advised the Appellant that he was not entitled to regular Employment Insurance benefits starting on September 25, 2016, because he had voluntarily stopped working for X-X X (XXXX) X on January 8, 2016, without just cause within the meaning of the Act (Exhibits GD3-17 and GD3-18).

[4] On November 15, 2016, the Appellant submitted a request for reconsideration of an Employment Insurance decision (Exhibits GD3-19 and GD3-20).

[5] On December 1, 2016, the Commission notified the Appellant that it had upheld the decision rendered in his case on October 31, 2016 (*sic*) [November 4, 2016], concerning his voluntary departure (Exhibits GD3-23 and GD3-24).

[6] On January 3, 2017, the Appellant filed a notice of appeal with the Employment Insurance Section of the Tribunal's General Division (Exhibits GD2-1 to GD2-7).

[7] In response to two requests from the Tribunal—one dated January 5, 2017, and the other dated January 17, 2017—the Appellant sent information to complete his appeal file (e.g. telephone numbers) on January 23, 2017 (Exhibit GD2B-1).

Issue

[8] The Tribunal must determine whether the Appellant had just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

Type of hearing

[9] This appeal was heard by teleconference for the following reasons:

- a) The appellant would be the only party attending the hearing; and
- b) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

Persons in attendance

[10] The Appellant participated in the telephone hearing (teleconference) held on June 21, 2017.

[11] The Commission did not attend the hearing.

Decision

[12] The Tribunal has determined that the Appellant did not have just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

EVIDENCE

[13] The evidence in the file is as follows:

- a) A Record of Employment dated January 18, 2016, indicates that the Appellant worked for X-X X (XXXX) X from February 17, 2012, to January 8, 2016, inclusive, and that he stopped working for this employer after a voluntary departure (Code E – Quit) (Exhibit GD3-14);
- b) A document entitled [translation] “Day Parole Certificate – *Corrections and Conditional Release Act*” (Correctional Service Canada) dated September 27, 2016, indicated that the Appellant obtained day parole with specific conditions, starting September 27, 2016 (Exhibit GD3-15);
- c) On December 1, 2016, X-X X (XXXX) X. stated through H. T. that the Appellant stopped reporting for work because he had been incarcerated. The employer explained that it considered the Appellant to have resigned (Exhibit GD3-22);
- d) On January 16, 2017, the Appellant sent the Tribunal a copy of a January 9, 2017, letter from Correctional Service Canada – Service correctionnel Canada (X area) stating that the Appellant had been incarcerated in a federal institution from January 18, 2016, to September 27, 2016. The document states that the Appellant was on day parole starting September 27, 2016, and that he was eligible for full parole starting March 26, 2017.

[14] The evidence submitted at the hearing is as follows:

- a) The Appellant repeated the restated that caused him to stop working for X-X X (XXXX) X on January 8, 2016, to show that his voluntary departure was justified within the meaning of the Act;
- b) He stated he returned to work on January 9, 2017.

SUBMISSIONS

[15] The Appellant made the following observations and submissions:

- a) He explained that he was forced to quit his job with X-X X (XXXX) X because he was incarcerated during the period from January 18, 2016, to September 27, 2016, (Exhibits GD2-2, GD2-5, and GD3-3 to GD3-13);
- b) The Appellant submitted that he did not stop reporting for work of his own accord. He emphasized that, if he had not been imprisoned, he would have continued working for his employer, who had nothing against him (Exhibit GD3-21);
- c) He claimed to be eligible for benefits as of September 27, 2016, (Exhibits GD2-2, GD2-5, GD3-19, and GD3-20);
- d) The Appellant said he did not understand why he could not be eligible since other people he knows who are in the same situation receive benefits (Exhibit GD3-21);
- e) He explained that, as of September 27, 2016, he was able and available to work and had actively sought work (Exhibits GD2-2, GD2-5, and GD3-21);
- f) The Appellant asserts that the Government of Canada is a much-appreciated partner and in favour of social reintegration. In the Appellant's opinion, the Commission's decision is contrary to the government's objectives in this regard (Exhibits GD2-2 and GD2-5).

[16] The Commission made the following observations and submissions:

- a) It explained that subsection 30(2) of the Act provides for an indefinite disqualification when a claimant voluntarily leaves their employment without just cause. The Commission specified that the test to be applied is whether the claimant had a reasonable alternative to leaving his employment at that time, having regard to all the circumstances (Exhibit GD4-2).

- b) The Commission determined that the Appellant did not have just cause for leaving his employment on January 8, 2016, because he had failed to prove that he had exhausted all reasonable alternatives before leaving. It argued that, having regard to all the circumstances, a reasonable solution would have been to not commit the act that led to his arrest. It determined that, as a result, the Appellant had not proven that he had just cause for leaving his employment within the meaning the Act (Exhibit GD4-2).
- c) It explained that if a claimant stops reporting for work because of incarceration, the resulting loss of employment is attributable to voluntarily leaving without just cause. The Commission noted that imprisonment resulted from the wilful actions of the Appellant, who was no longer able to report to work as a result. It said that this situation does not constitute justification for a loss of employment (Exhibit GD4-2).

ANALYSIS

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

[18] In *Rena-Astronomo (A-141-97)*, which confirmed the principle established in *Tanguay (A-1458-84)* to the effect that the onus is on the claimant who has voluntarily left their employment to prove that there was no other reasonable alternative to leaving their employment at that time, the Federal Court of Appeal (Court) stated the following: “The test to be applied having regard to all the circumstances is whether, on the balance of probabilities, the claimant had no reasonable alternative to immediately leaving his or her employment.”

[19] This principle has been confirmed in other decisions of the Court (*Peace, 2004 FCA 56; Landry, A-1210-92*).

[20] In addition, the words “just cause,” as used in subsections 29(c) and 30(1) of the Act, were interpreted by the Court in *Tanguay v. U.I.C.* (A-1458-84 (October 2, 1985); (68 N.R. 154) as follows:]

[translation] In the context in which they are used these words are not synonymous with “reasons” or “motive”. An employee who has won a lottery or inherited a fortune may have an excellent reason for leaving his employment: he does not thereby have just cause within the meaning of s. 41(1). This subsection is an important provision in an Act which creates a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur. To be more precise, I would say that an employee who has, voluntarily left his employment and has not found another has deliberately placed himself in a situation which enables him to compel third parties to pay him unemployment insurance benefits. He is only justified in acting in this way if, at the time he left, circumstances existed which excused him for thus taking the risk of causing others to bear the burden of his unemployment.

[21] The Court also confirmed that it was the responsibility of the claimant who voluntarily left their employment to prove that there was no other reasonable alternative to leaving their employment at that time (*White, 2011 FCA 190*).

[22] In *Djalabi (2013 FCA 213)*, the claimant resigned while he was incarcerated and was released after signing a recognizance under article 810 of the *Criminal Code*.

[23] In that decision (*Djalabi, 2013 FCA 213*), the Court stated the following:

[translation] [...] Because the evidence shows, according to the applicable standard, that the claimant’s conduct led to his incarceration and to the loss of his employment, it follows that the Board of Referees failed to take into account the evidence in reaching the opposite conclusion and that the Umpire should have intervened. [...] For these reasons, I would allow the application for judicial review, set aside the Umpire’s decision and refer the matter back to the Chief Umpire or his designate for redetermination on the basis that the Commission’s appeal must be allowed on the grounds that the claimant voluntarily left his employment without just cause within the meaning of sections 29 and 30 of the Act.

[24] A claimant has just cause for voluntarily leaving their employment if, having regard to all the circumstances, including those enumerated in subsection 29(c) of the Act, leaving is the only reasonable alternative in their case.

[25] In this case, the Tribunal finds that the Appellant's voluntary leaving cannot be considered the only reasonable alternative in this situation, having regard to all the circumstances (*Djalabi, 2013 FCA 213; White, 2011 FCA 190; Rena-Astronomo, A-141-97; Tanguay, A-1458-84; Peace, 2004 FCA 56; Landry*).

[26] The Tribunal finds that, as a result of his actions that led to his incarceration, the Appellant voluntarily placed himself in a situation where he was prevented from holding his job (*Djalabi, 2013 FCA 213*).

[27] A reasonable alternative for the Appellant, within the meaning of the Act, would have been to not commit the actions that led to his incarceration, which would have let him continue working for his employer.

[28] The Appellant stopped working for X-X X (XXXX) X on January 8, 2016.

[29] He was then incarcerated from January 18, 2016, to September 27, 2016. As of January 18, 2016, he was therefore no longer in a position to report for work. The Appellant's imprisonment resulted from the prohibited actions he had committed.

[30] The Appellant's incarceration rendered him unable to continue working for the employer (*Djalabi, 2013 FCA 213*).

[31] The performance of services is an essential condition of the employment contract. Through his own actions, the Appellant could no longer perform the services required of him under his employment contract. The loss of his employment is entirely attributable to him.

[32] The Tribunal does not accept the Appellant's argument that he stopped reporting for work against his wishes or that he was obliged to quit his job (Exhibits GD2-2, GD2-5, GD3-3 to GD3-13, and GD3-21). The Tribunal finds that the Appellant is responsible for his incarceration.

[33] Furthermore, in his claim for benefits, the Appellant indicated that he had left voluntarily (Exhibit GD3-5).

[34] The evidence clearly shows that the Appellant's conduct led to his incarceration and the loss of his job (*Djalabi, 2013 FCA 213*).

[35] Relying on the above-mentioned case law, the Tribunal finds that the Appellant failed to demonstrate that there was no reasonable alternative to leaving his employment with X-X X (XXXX) X (*Djalabi, 2013 FCA 213; White, 2011 FCA 190; Rena-Astronomo, A-141-97; Tanguay, A-1458-84; Peace, 2004 FCA 56; Landry*).

[36] The Tribunal finds that, having regard to all the circumstances, the Appellant did not have just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

[37] The appeal is without merit on this issue.

CONCLUSION

[38] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

APPENDIX

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

(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.