



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. G. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 106

Tribunal File Number: GE-16-4411

BETWEEN:

M. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: June 20, 2017

DATE OF DECISION: July 5, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant: M. G., and her mother and representative, C. G..

DECISION

[1] The Tribunal finds that the Claimant did prove that she had just cause for voluntarily leaving her employment, pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[2] The appeal is allowed.

INTRODUCTION

[3] The Claimant was employed by a retail clothing store (employer) until June 29, 2016.

[4] On July 7, 2016, the Claimant applied for employment insurance benefits (EI benefits). In her application, the Claimant indicated that she quit her job because of shortage of work.

[5] The Canada Employment Insurance Commission (Commission) determined that the Claimant was disqualified from receiving benefits at the initial and reconsideration levels. The Commission concluded that the Claimant did not have just cause for voluntarily leaving her employment, because she had reasonable alternatives under the circumstances.

FORM OF HEARING

[6] The hearing was held by teleconference for the reasons provided in the Notice of Hearing dated April 28, 2017, including:

- a) The fact that the credibility is not anticipated to be a prevailing issue;
- b) The fact that the Claimant will be the only party in attendance;
- c) The information in the file, including the need for additional information;
- d) The fact that multiple participants, such as a witness, may be present;
- 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

[7] Did the Claimant voluntarily leave her employment without just cause?

EVIDENCE

[8] The Claimant was in the employ of a retail clothing store from February 26, 2013 to June 29, 2016.

[9] On July 7, 2016, the Claimant applied for EI benefits. In her application, the Claimant indicated that she had quit her job because of a shortage of work.

[10] On July 5, 2016, the employer issued the Claimant's record of employment (ROE) and indicated that the reason for issuing the ROE was code E, "quit". On August 3, 2016 the employer issued an amended ROE indicating the reason for leaving work was "other".

- [11] On July 16, 2016, the Claimant told the Commission that the retail store location she was working at was closing down. She said she was offered a job at a different store location and she refused the transfer due to the length of the commute. She said she would need to drive for 45 minutes as opposed to 10 minutes to her former store location. She said she had an older car and feared that it may break down and public transportation to the new store location would be about an hour.
- [12] On July 20, 2016, the Commission advised the Claimant that they had determined that she was disqualified from receiving EI benefits because they had concluded that the Claimant voluntarily left her employment without just cause, as she had reasonable alternatives under the circumstances.
- [13] On July 20, 2016 the Claimant wrote to the Commission. She said her regional manager is an aggressive bully and was abusive and intimidating and other employees had left the employment because of her conduct. She said she did not feel she had the experience or maturity for the new store location management at 19 years of age but the regional manager was dismissive of her concerns and she was the only one to report to. She testified the regional manager humiliated her in front of customers, having a tirade, throwing things and was verbally aggressive toward her.
- [14] On August 4, 2016, the Claimant filed a request for reconsideration of the Commission's July 20, 2016 decision.
- [15] On July 10, 2014, the Claimant told the Commission that her employer gave her a "*Working Notice Letter*" dated May 5, 2016 indicating the store location she was working at was to be closed down June 30, 2016. She said she was laid off from a suitable position. She said 3 weeks after receiving the May 5, 2016 letter her employer offered her a job at the alternate store location but she refused the offer due to her level of inexperience managing a store, her health condition and physical capabilities. She said she was progressively harassed by her employer in her last weeks of work and her health was negatively affected by anxiety.
- [16] The Claimant filed her employer's proposed Employment Agreement indicating a position as Store Manager commencing July 1, 2016 at the alternate store location. She also filed a note from Dr. Barkley, family physician, dated July 28, 2016 indicating she was and is unable to work due to depression and situational stress.

[17] The Claimant testified she worked at the new store location in June for about 2 or 3 shifts, but left because of health concerns, harassment by her regional manager and feeling too inexperienced to manage the flag-ship store location.

[18] On September 21, 2016 the Claimant told the Commission she had been treated for depression for about 5 years, but medication has increased over the prior 3 months. She said her doctor did not advise her to leave her employment and advised her to do what she was capable of doing, but she should not take on employment which causes medical issues.

[19] On September 22, 2016, the Commission spoke with the Claimant's employer. The employer advised that the Claimant had worked a couple shifts at the new store location, which was a bigger and busier store location and she was aware of some "drama" between the Claimant and the manager and others. The owner said the Claimant did not mention to her the longer commute to the new store location as a reason for the Claimant not accepting the new position.

[20] The Claimant filed a note from her doctor dated October 14, 2016. Dr. Barkley said that he treated the Claimant for depression since 2012 and she had an exacerbation of anxiety and depression due to stress at her job and feeling overwhelmed with her responsibilities as a manager and excessive demands placed upon her by her boss. He said the Claimant was not well enough to accept the new position offered by her employer. He said the Claimant should no longer work in a retail store environment or work in a managerial role.

SUBMISSIONS

[21] The Claimant submitted that:

- a) she was laid off work due to the closing of the store location where she had been working;
- b) she was offered an alternate store location position as store manager;

- c) she was not well enough to accept the new position due to exacerbation of anxiety and depression caused by her workplace conditions and the bullying behavior of her regional manager;
- d) she also did not accept the new position due to the significantly increased commute time.

[22] The Respondent submitted that:

- a) the Claimant was offered a new position with her employer to take effect immediately upon closure of an existing store location so the Claimant's working relationship with the employer could have continued without cessation;
- b) the Claimant had reasonable alternatives to leaving her employment when she did;
- c) the new position offered to the Claimant was equivalent in duties and pay, and the only proposed change by the employer was the location of the Claimant's workplace;
- d) the Claimant's medical condition did not make it necessary to leave her employment, and she did not attempt to discuss her medical situation with her employer in an attempt to have them accommodate her medical issues;
- e) the Claimant could have accepted the new job to assess the actual impact on her, and if problems appeared, she could discuss further options with her employer;
- f) the Claimant could have requested a period of medical leave from her employment so as to give her time to consider other employment;
- g) the Claimant did not demonstrate just cause for voluntarily leaving her employment, and therefore an indefinite disqualification pursuant to sections 29 and 30 of the Act is warranted, effective July 3, 2016.

ANALYSIS

- [23] The purpose of the Act is to compensate persons whose employment has terminated involuntarily and who are without work (*Canada (Canada Employment and Immigration Commission) v. Gagnon*, [1988] 2 SCR 29).
- [24] Subsection 30(1) of the Act provides for an indefinite disqualification when a claimant voluntarily leaves her employment without just cause. The Commission must first establish the Claimant voluntarily left her employment, then whether she had just cause (*Canada (AG) v. Peace*, 2004 FCA 56). The onus of establishing she left voluntarily is upon the Commission and the onus of establishing just cause is upon the Claimant (*Green v. Canada(AG)*, 2012 FCA 313). Since she admits quitting her job, the onus of voluntarily leaving employment is met.
- [25] The test to be applied to determine whether a claimant has “*just cause*” under section 29 of the Act is whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving her employment when she did (*Canada (AG) v. White*, 2011 FCA 190).
- [26] Subsection 29(c) of the Act sets out a non-exhaustive list of circumstances to be considered when determining whether there is just cause. Paragraph 29(c)(i) of the Act lists sexual or other harassment.
- [27] The Federal Court of Appeal reaffirmed the principle that where a claimant voluntarily leaves her employment, the burden is on that claimant to prove that there was no reasonable alternative to leaving when she did (*Canada (AG) v. White*, 2011 FCA 190).
- [28] In written submissions and at the hearing the Claimant confirmed the retail store location she was working at was closing down and she was offered a job at a different bigger and busier flagship store location as store manager effective July 1, 2016. She worked some shifts at the new store location up to leaving work on June 29, 2016, but did not accept the new position.

- [29] The Tribunal finds the Claimant had just cause to leave her employment in June 2016, because she had no reasonable alternatives to leaving.
- [30] The Tribunal finds that the Claimant was credible during the hearing in that she was open and consistent in her comments and answers to questions, while under oath. Her evidence is consistent with Dr. Barkley's medical opinion.
- [31] The length of commute to the new store location, her level of inexperience as store manager and bullying, abusive and aggressive behavior toward her by her regional manager caused an exacerbation of her pre-existing depression and anxiety. This supports her decision to not accept the new position.
- [32] The Claimant was only 19 years of age when offered a new position with more duties, responsibility and authority, and this caused the Claimant to feel overwhelmed and added to her anxiety.
- [33] The Tribunal finds that the Claimant provided evidence that she was subjected to harassment in her work place. The harassment came from the regional manager.
- [34] The regional manager's conduct toward the Claimant amounts to abuse of the employer/employee relationship through disrespectful conduct such as humiliating the Claimant before customers by throwing a tirade in the store.
- [35] The Commission submits the Claimant's medical condition did not make it necessary to leave her employment, and she did not attempt to discuss her medical situation with her employer in an attempt to have them accommodate her medical issues; however, the regional manager was dismissive of the Claimant's concerns, was the only person the Claimant answered to and she acted abusively and aggressively toward the Claimant.
- [36] Dr. Barkley confirms a considerable exacerbation of the Claimant's depression he had treated since 2012. The Tribunal accepts his opinion regarding her anxiety and depression being made worse on account of the new position offered. She tried a few shifts at the new position and found stress at her job and felt overwhelmed with her responsibilities as a manager and excessive demands placed upon her by her boss. He said the Claimant was not well enough to accept the new position offered by her employer. He said the Claimant should no longer work in a retail store environment or work in a managerial role.

[37] The Commission submits the new position offered to the Claimant was equivalent in duties and pay, and the only proposed change by the employer was the location of the Claimant's workplace. However, the Tribunal finds the employer had higher expectations upon the Claimant given her age, the bigger, busier, store location and promotion to store manager.

[38] The Commission submits the Claimant could have accepted the new job to assess the actual impact on her, and if problems appeared, she could discuss further options with her employer. The Tribunal finds the Claimant did attempt to work as store manager at the new location, but she found the position to be overwhelming, caused a considerable exacerbation of her depression and anxiety and her boss acted abusive toward her.

[39] The Commission submits the Claimant could have requested a period of medical leave from her employment so as to give her time to consider other employment options. However, in Dr. Barkley's opinion she was unable medically to continue in a management role. He did not say she was prevented from pursuing alternate suitable employment.

[40] The Tribunal finds that the Claimant did have just cause for voluntarily leaving her employment because she had no other reasonable alternative to leaving, having regard to all the circumstances, pursuant to sections 29 and 30 of the Act.

CONCLUSION

[41] The appeal is allowed.

Glen Johnson
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

(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.