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

Citation: *G. M. v. Canada Employment Insurance Commission,* 2017 SSTADEI 272

Tribunal File Number: AD-17-36

BETWEEN:

G. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: July 4, 2017

DATE OF DECISION: July 17, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On December 6, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Appellant had left his employment without just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Appellant requested leave to appeal to the Appeal Division on January 16, 2017, after having received the General Division's decision on December 19, 2016. Leave to appeal was granted on February 6, 2017.

TYPE OF HEARING

[4] The Tribunal held a teleconference hearing for the following reasons:

- the complexity of the issue(s) under appeal.
- the fact that the parties' credibility is not anticipated to be a prevailing issue.
- the information in the file, including the need for additional information.
- the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness, and natural justice permit.

[5] The Appellant attended the hearing. Susan Prud'homme represented the Respondent.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal are the following:

a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[7] The Tribunal must decide whether the General Division erred when it concluded that the Appellant did not have just cause to leave his employment pursuant to sections 29 and 30 of the Act.

SUBMISSIONS

[8] The Appellant submits the following in support of the appeal:

- He strongly disagrees with the decision that the General Division made with regards to his appeal. In the end, he thinks that, due to a lack of evidence and credibility on his part, the Member did not believe his story.

- He never stated that he did not have potential work lined up when he had quit his job at X Clothing. The Member never asked this question during the teleconference hearing held on April 21, 2016.

- He never stated that "there was no start date" to his new job. It was always maintained that the job was to start the week of October 12–16. The exact day

was never confirmed, but R. L. did confirm that the work would start October 12–16.

- He did not state or have “loose discussions” with Mr. R. L. The job date was always confirmed to be during the week of October 12–16.

- He did not give X Clothing “two weeks’ notice”–instead he informed his boss at X Clothing of his new job starting in the middle of October as soon Mr. R. L. had confirmed that he would be starting around that time.

- Out of respect for X Clothing, he would have been more than willing to work any shifts they needed him for up to his start date of the new job, but the employer did not want to keep him on for any longer than that because they knew he was leaving and so they were dedicating resources to training him.

- He never stated that this new job was unpaid. He simply mentioned that he had agreed that it would be good if he could start tagging along and learning about the business before starting work on the project.

- He was disappointed that the job had fallen through but, at the time, both he and Mr. R. L. agreed that they would keep talking to see whether there was another project that he could be a part of in the future.

- He never “changed” his statement or “made up” the job that he had with Mr. R. L. He brought it to the EI officers’ attention only when he had discovered that this had to be mentioned for him to have any hope of having the ruling overturned.

- His potential employer passed away in December 2015. Had the EI department called him in a timely manner; he would have been able to get a hold of his potential employer for more evidence of the job offer.

[9] The Respondent submits the following against the appeal:

- The General Division found that the Appellant's first statement had been made prior to his search on the Service Canada website and that he had changed his statements after discovering the reasons that constitute just cause for leaving one's employment within the Act.

- The General Division committed no error in placing more weight on the initial and spontaneous statements the Appellant had made rather than on subsequent statements the Appellant made later in response to an unfavorable decision by the Respondent.

- The Appellant initially stated the reason he voluntarily left his employment with X Clothing was because there was no flexibility allowing him to arrange appointments, conduct job search activities, or attend interviews, appointments and networking events to obtain full-time employment.

- The Appellant's allegation that he left his employment because he had reasonable assurance of another employment in the immediate future lacks credibility as to the real reason why he left his employment on September 19, 2015.

- The General Division's decision to dismiss the appeal with the finding that the Appellant had quit for personal reasons and not because of reasonable assurance of employment in the immediate future pursuant to subparagraph 29(*c*)(vi) of the Act, was a reasonable one that complies with the Act, as well as the established case law.

- There is nothing in the General Division's decision to suggest that the General Division was biased against the Appellant in any way or that it did not act impartially, nor is there any evidence showing that there was a breach of natural justice present in this case.

STANDARD OF REVIEW

[10] The Appellant made no representations regarding the applicable standard of review.

[11] The Respondent submits that the Appeal Division does not owe any deference to the General Division's conclusions with respect to questions of law, regardless of whether the error appears on the face of the record. However, for questions of mixed fact and law, as well as for questions of fact, the Appeal Division must show deference to the General Division. It can intervene only if the General Division based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it—*Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[12] The Respondent made no representations regarding the applicable standard of review.

[13] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (Attorney General) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that when the Appeal Division "acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court."

[14] The Federal Court of Appeal further indicates that

> [n]ot only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards", for the Federal Court and the Federal Court of Appeal.

[15] The Federal Court of Appeal concludes that when the Appeal Division "hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act."

[16] The mandate of the Appeal Division of the Social Security Tribunal as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[17] In accordance with the above instructions, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

ANALYSIS

[18] A claim for benefits was established effective September 6, 2015. The Appellant advised the Respondent that he had voluntarily left employment with X Clothing on September 19, 2015.

[19] In an initial statement on October 8, 2015, the Appellant mentioned that he had quit his employment to attend interviews, appointments, networking events and job search seminars. He did not mention anything about leaving his employment because of a potential job offer.

[20] In a second interview on April 21, 2016, the Appellant stated in great detail that he had to quit his job because he wanted to find another job and this employment was preventing him from doing so. He also stated that he did not have any potential employment lined up at the time that he had quit. The Appellant stated that he had to quit this job because working for this employer was preventing him from attending employment workshops held by WorkBC and at the X Public Library. He stated that there was no set schedule of when the employment workshops/sessions would be held and that sometimes he would receive, on very short notice, notifications of a workshop being held and, because he was scheduled to work, he could not attend it. The Appellant also stated that, because of his working schedule, he could not attend interviews either.

[21] The Appellant was advised that, based on the information provided, he did not show just cause for having left his employment. The Appellant again did not mention that he had left his employment for another employment.

[22] It was only after the Appellant had been informed of the overpayment to be created due to his quitting and his receipt of benefits to which he was not entitled that the Appellant "remembered" that he had been offered a job at the time he had quit.

[23] The Tribunal finds that the General Division did not err when it gave more weight to the interviews that the Respondent had conducted, as this evidence was the Appellant's initial statements prior to him looking at the Service Canada website and asking for reconsideration on the basis that he had left his employment because he had another job. As the General Division has stated, the latest version of events leading to the Appellant leaving his job clearly lacked credibility.

[24] The jurisprudence has established that, with the exception of particularly evident circumstances, the question of credibility must be left to the General Division, which is in a better position to decide. The Tribunal will intervene only if it is clear that the General Division's position on that issue is not supported by the evidence before it.

[25] The Tribunal finds that there is no reason to intervene on the issue of credibility, as the General Division has determined, that led it to conclude that the Appellant had left his employment for personal reasons.

[26] Furthermore, the Tribunal finds that there cannot be "reasonable assurance of another employment in the immediate future" in accordance with subparagraph 29(*c*)(vi) of the Act when the undisputed evidence demonstrates that the Appellant, at the moment when he himself chose to become unemployed, did not know whether he would have employment.

[27] The Appellant stated in an interview with the Respondent that the offer of employment had fallen through, as Mr. R. L.'s business partners had decided to hire other contractors.

[28] During the Appellant's testimony before the General Division and his representations in appeal, it was clear to the Tribunal that, when the Appellant had left his job at X clothing in September 2015, the new job offer was conditional on the approval of Mr. R. L.'s business partners. The Appellant knew that he was not the only deciding partner in the future project. This is confirmed by the partners hiring another contractor to do the job.

[29] In accordance with the Federal Court of Appeal's insights in *Canada (Attorney General) c. Muhammad Imran*, 2008 FCA 17, the Tribunal finds that there cannot be "reasonable assurance of another employment" under subparagraph 29(*c*)(vi) of the Act when a job offer is conditional on other business partners' approval.

[30] Mr. R. L. did not have the authority to hire the Appellant on his own so the Appellant did not know with certainty he would have employment after leaving his job. The Appellant's hiring was conditional on the business partners' approval. This finding is also incompatible with the concept of "immediate future."

[31] A reasonable solution for the Appellant would have been to keep his job while waiting for official and unconditional confirmation that his new employer had hired him.

Natural Justice

[32] The Appellant submits that the General Division failed to observe a principle of natural justice. He argues that his claim that the General Division failed to observe a principle of natural justice is supported by the General Division Member's tone and questions during the hearing.

[33] The Tribunal listened carefully to the recording of the hearing before the General Division. The Tribunal finds that the General Division exercised its role as the trier of facts. The General Division Member's tone was always courteous and respectful during the hearing. There is no evidence that the General Division was biased against the Appellant or that it did not act impartially. The Tribunal finds that no rules of natural justice were breached in the present matter.

[34] For all the above-mentioned reasons, the appeal is dismissed.

CONCLUSION

[35] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division