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

Citation: *M. T. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 118

Tribunal File Number: GE-16-4800

BETWEEN:

M. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: June 29, 2017

DATE OF DECISION: July 20, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

M. T. (the Appellant)

INTRODUCTION

[1] The Appellant established an initial claim for Employment Insurance benefits (EI benefits) on September 25, 2016. The Appellant worked for "Burnco Manufacturing" until September 23, 2016, and left his employment. The Canada Employment Insurance Commission (Commission) determined the Appellant voluntarily left his employment without just cause and imposed an indefinite disqualification. The Appellant requested a reconsideration of the Commission's decision, which was denied, and the Appellant appealed to the Social Security Tribunal (Tribunal)

[2] The hearing was held by teleconference for the following reasons: The information in the file, including the need for additional information; and 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

[3] The issue is whether the Appellant had just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

EVIDENCE

Documentary Evidence

[4] The Appellant applied for EI benefits on October 15, 2016, and established a claim on September 25, 2016.

[5] The Appellant indicated he worked for "Burnco Manufacturing" from May 13, 2013, to September 23, 2016, and left his employment to re-locate to X, Ontario. He explained there was

no other job to transfer to in the new location. He indicated he moved to the new location on September 25, 2016, and it was too far to commute to his employer.

[6] On October 25, 2016, the employer (Mr. J. M./Controller/Burnco Manufacturing) spoke to the Commission and explained that the Appellant left his job, because he had to re-locate to a new area of residence. The employer confirmed there was no transfer available.

[7] On October 25, 2016, the Appellant spoke to the Commission and explained that he decided to re-locate as he could not afford to live in his previous residence. The Appellant confirmed that the re-location was not due to following a spouse, children, or any other dependents. The Appellant explained that he sold his property in X and moved to X. He said the usual commute from his previous residence to "Burnco Manufacturing" was 45-minutes. He explained that the commuting time would have been one-hour-and-forty-five minutes if he drove from his new residence to "Burnco Manufacturing." He indicated that he had been looking for jobs in the new area prior to leaving his employment. He said he had contacted other former employees to network and see about job opportunities. He also explained that he had been going online to apply for work. He said he did not look into living in a temporary residence around "Burnco Manufacturing" that would have allowed him to remain employed until a new employment was found around his new residence.

[8] On November 1, 2016, the Commission notified the Appellant they were unable to pay him EI benefits, because he voluntarily left his employment with "Burnco Manufacturing" on September 23, 2016, without just cause.

[9] In a request for reconsideration (date stamped by Service Canada on November 26, 2016) the Appellant wrote that he re-located for affordable housing which "anyone was entitled to do." He explained that he decided to by-pass substandard living (renting in X) and found affordable housing in X.

[10] On December 6, 2016, the Appellant spoke to the Commission and confirmed that the reason for the move was so that he could have more affordable housing than he had in Toronto.

[11] In a Notice of Appeal (received by the Tribunal on December 20, 2016) the Appellant wrote that he was faced with a decision on where to live. He indicated that he hoped

Employment Insurance (EI) had a human side that would see "real life" scenarios and not be bound by fixed rules and regulations.

Oral Evidence from the Hearing

[12] The Appellant testified that it was becoming hard to "make end's meat" in Toronto. He submitted that a lack of affordable housing should be a possible "just cause" circumstance for leaving an employment. He confirmed that prior to moving he had lived in X and commuted to work in X. He explained that the commute to work from X was approximately 35-to-40 minutes. He said the commuting time from X to "Burnco Manufacturing" would have been approximately two-hours.

[13] The Appellant explained that he had looked for work in the X area before he left his job. He said there were not many jobs in X. The Appellant confirmed that his last day working with the employer was September 23, 2016. He indicated he had sold his house in X and moved into his new house in X on October 18, 2016. He explained that he had rented in X before he moved into the new house.

[14] The Appellant further explained that he had lived in X since the 1980s. He said he did not consider a temporary rental in X until he obtained alternate employment in the X region. He explained that his job with "Burnco Manufacturing" was full-time hours. He confirmed that he did not ask for a leave of absence from the employer. He confirmed that no transfer was possible with the employer.

[15] The Appellant testified that he moved for affordable housing with the intent to seek employment in his new area. He said he was hoping for some help in the transition period and to acquire some training. He indicated that the correspondence from the Commission was "impersonal."

[16] The Appellant further explained there had been no allowance for re-training. He indicated that he had paid EI premiums and there should some allowance in section 29(c) of the EI Act for "different situations." He explained there were more factors than the job itself when leaving an employment. He said one of those factors was living expenses.

SUBMISSIONS

[17] The Appellant submitted that:

a) The lack of affordable housing should be a possible "just cause" circumstance for leaving an employment.

b) He had looked for work in the X area before he left his job, but there were not many jobs in X.

c) He moved for affordable housing with the intent to seek employment in his new area.

d) He was hoping for some help in the transition period and to acquire some training.

e) He had paid EI premiums and there should some allowance in section 29 (c) of the EI Act for "different situations."

f) He hoped Employment Insurance (EI) had a human side that would see "real life" scenarios and not be bound by fixed rules and regulations.

[18] The Respondent submitted that:

a) The Appellant did not have just cause for leaving his employment on September 23, 2016, because he failed to exhaust all reasonable alternatives prior to leaving. Considering all of the evidence, a reasonable alternative to leaving would have been to find an alternate residence that would allow him to keep his job until he found employment in the area he preferred.

b) The Record of Employment did not show any changes to the Appellant's salary and it was the Appellant's choice to purchase a new home rather than find an affordable residence (at least on a temporary basis) that would allow him to keep his job. Consequently, the Appellant failed to prove that he left his employment with just cause within the meaning of the EI Act.

ANALYSIS

[19] The relevant legislative provisions are reproduced in the Annex to this decision.

[20] The Tribunal must decide whether the Appellant had just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of EI Act.

Background circumstances

[21] The Appellant established an initial claim for EI benefits on September 25, 2016.

[22] The Tribunal finds the Appellant worked for "Burnco Manufacturing" (located in X) until September 23, 2016, and voluntary left his employment. The Tribunal realizes the Appellant lived in X and made the decision to re-locate to X.

[23] On November 1, 2016, the Commission notified the Appellant they were unable to pay him EI benefits because he voluntarily left his employment on September 23, 2016, without just cause.

Relevant Legislation and Legal Test

[24] The Tribunal realizes the Appellant left his employment in X to re-locate to X for affordable housing. During the hearing, the Appellant submitted that a lack of affordable housing should be a possible circumstance of "just cause" for leaving an employment. The Tribunal will address the Appellant's submissions in a moment, but will initially emphasize the legal test for voluntarily leaving an employment. First: First: Section 30 of the EI Act provides that a person who loses an employment because of their misconduct or voluntarily leaves their employment is disqualified from benefits unless they can establish "just cause" for leaving. Paragraph 29(c) states that just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances; the paragraph goes on to give a non-exhaustive list of specific circumstances which may constitute just cause.

[25] Second: The Federal Court of Appeal (FCA) has explained that the question of just cause for leaving employment requires an examination of whether having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to

leaving their employment. The FCA has affirmed that the burden is on the claimant to demonstrate there was no reasonable alternative to leaving their employment (*Patel v. Attorney General of Canada*, 2010 FCA 95; *White v. Attorney General of Canada*, 2011 FCA 190).

Did the Appellant have "just cause" for voluntarily leaving his employment?

[26] The Tribunal recognizes the Appellant left his employment to re-locate to another region for more affordable housing. During his oral testimony, the Appellant submitted that the lack of affordable housing should be a possible "just cause" circumstance for leaving an employment. Nevertheless, the Tribunal must apply the legal test for voluntarily leaving an employment to the evidence. In short: Did the Appellant have no reasonable alternative to leaving his employment having regard to the all the circumstances? The Tribunal will now address this matter.

[27] The Tribunal certainly recognizes the Appellant desired more affordable housing in another region. However, the Tribunal finds the Appellant had a reasonable alternative to leaving his employment for the following reasons. First: The Appellant could have remained employed with "Burnco Manufacturing" until he secured alternate employment in the X region. Second: The Appellant could have explored the possibility of a leave of absence while he looked for alternate employment in the X region.

The Appellant's further Submissions

[28] The Appellant further submitted that he had paid EI premiums and there should some allowance in section 29(c) of the EI Act for "different situations." The Tribunal realizes the Appellant desired more affordable housing and made a decision to re-locate from X to X. Perhaps the Appellant had good personal reasons for re-locating. However, the Tribunal finds this did not translate into "just cause" for leaving an employment. On this matter, the Tribunal relies for guidance from the Federal Court of Appeal (*Imran v. Attorney General*, 2008 FCA 17) which affirmed the principle that good reasons or good cause was not the same as "just cause" for leaving an employment.

[29] The Tribunal does recognize the Appellant wrote in his "Notice of Appeal" that he hoped Employment Insurance (EI) had a human side that would see "real life" scenarios and not be bound by fixed rules and regulations. The Tribunal does realize the Appellant was frustrated with

the EI Act. Nevertheless, the Tribunal must apply the legislation to the evidence. In short: The Tribunal cannot ignore, re-fashion, circumvent or re-write the EI Act even in the interest of compassion (*Knee v. Attorney General of Canada*, 2011 FCA 301).

Summary

[30] The Tribunal finds the Appellant has not established just cause for voluntarily leaving his employment pursuant to section 29 and 30 of the EI Act.

CONCLUSION

[31] The appeal is dismissed.

Gerry McCarthy
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.