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

Citation: *P. H. v. Canada Employment Insurance Commission,* 2017 SSTADEI 299

Tribunal File Number: AD-16-1208

BETWEEN:

P. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: July 11, 2017

DATE OF DECISION: August 14, 2017

Canada

DECISION

[1] The appeal is allowed. The matter will be returned to the General Division for reconsideration.

INTRODUCTION

[2] Previously, a member of the General Division dismissed the Appellant's appeal. In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[3] A teleconference hearing was held. The Commission and the Appellant each attended and made submissions.

THE LAW

[4] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

> (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.

ANALYSIS

[5] The case involves whether or not the Appellant had just cause to voluntarily leave her employment.

[6] The Appellant argues that she had just cause because she left a job where she was working approximately 22.5 hours a week on the assurance that a full-time seasonal job was

awaiting her. Unfortunately, after leaving the Appellant discovered that due to unforeseen circumstances, this full-time job was only temporary. The Appellant argues that she should not be penalized for this, and that her appeal should be allowed because she had no reasonable alternative.

[7] For their part, the Commission argues that the Appellant left her employment in an attempt to improve her circumstances and notes that this does not equate to just cause. They note that even though the Appellant may have had a very good reason for leaving her employment, she did not meet the requirements of the *Employment Insurance Act* (Act) because she had reasonable alternatives to leaving. They feel that the General Division member rendered a reasonable decision, and that the appeal should be dismissed.

[8] The Federal Court of Appeal has addressed the issue of voluntary leaving many times. In *Canada (Attorney General) v. Langlois*, 2008 FCA 18, the Court addressed a very similar factual situation to the one before me and held (at paragraphs 33 and 34) that:

> In my view, in the case of seasonal employment, the time of the voluntary separation and the remaining duration of the seasonal employment are the most important circumstances to consider in determining whether leaving was a reasonable alternative and, accordingly, whether there was just cause for it.
>
> Switching to seasonal employment late in the season when it is about to end and when it is obvious that the requirements of section 30 will clearly not be met creates a certainty of unemployment for which there can be no just cause. The employee is free to quit his non-seasonal job, but it is he alone then who must assume the risk of his voluntary leaving. How does this apply to the case at bar?

[9] In his decision, the General Division member found that the Appellant had been offered a new seasonal position prior to quitting her previous employment and noted that this position had in fact turned out to be a temporary one. Although he did not cite *Langlois* (or any other case on point), he found that the four weeks of temporary employment the Appellant received from her new employer to be insufficient to show just cause. On this basis, he dismissed her appeal.

[10] Unfortunately, in doing so the General Division member erred. Just cause, as it relates specifically to subparagraph 29(*c*)(vi) of the Act, is a subjective test. That is to say, where an appellant is found to have had a reasonable assurance of another employment in the immediate future, whether or not they had a reasonable alternative to leaving must be evaluated on the basis of that assurance, not on what job eventually manifests. This is because the Act explicitly contemplates that a claimant might leave their employment to accept a position that never materializes.

[11] Or, put a different way, just cause for voluntary leaving must be determined based upon the facts that were known at the time of the voluntary leaving. In this case, that means examining the initial job offer accepted by the Appellant.

[12] As noted above, the member failed to do so.

[13] Because of this, I find that the member failed to properly apply the jurisprudence of the Court or to consider all the relevant evidence, and thereby erred in law and breached the natural justice rights of the Appellant.

[14] To be clear, it was (and is) entirely open to the member to conclude that the job offer he found had been made to the Appellant was insufficient to satisfy the requirements of *Langlois* and establish just cause. But it is that offer that the General Division member should have considered, not the temporary position she eventually received.

[15] A new hearing is required to resolve this highly fact-dependent issue.

CONCLUSION

[16] For the above reasons, the appeal is allowed. The matter will be returned to the General Division for reconsideration.

Mark Borer

Member, Appeal Division