



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 378

Tribunal File Number: AD-17-407

BETWEEN:

A. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: October 12, 2017

DATE OF DECISION: November 1, 2017

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On April 26, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Appellant had voluntarily left her employment without just cause pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Appellant requested leave to appeal to the Appeal Division on May 19, 2017. Leave to appeal was granted on May 31, 2017.

THE LAW

[4] 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

[5] The Tribunal must decide whether the General Division committed an error when it concluded that the Appellant did not have just cause to leave her employment pursuant to sections 29 and 30 of the Act.

STANDARD OF REVIEW

[6] The Federal Court of Appeal has determined that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the DESD Act. The Appeal Division does not exercise a superintending power similar to that exercised by a higher court– *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[7] Therefore, 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 made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

ANALYSIS

Voluntary leave

[8] The issue under appeal before the General Division was whether the Appellant had voluntarily left her employment without just cause pursuant to sections 29 and 30 of the Act.

[9] Whether one had just cause to voluntarily leave an employment depends on whether he or she had no reasonable alternative to leaving, having regard to all the circumstances, including several specific circumstances enumerated in section 29 of the Act. The burden of establishing just cause rests on the Appellant.

[10] In this case, the Appellant voluntarily left her employment while she was mid-way through a one-month approved sick leave (June 6 - July 6, 2016). On June 24, 2016, she sent an email to her manager indicating that she was voluntarily resigning from her position as file clerk, without further explanation (GD3-24). She later explained that the reason she had quit was because she was experiencing health problems (namely, depression and panic attacks) as a result of workplace stress, she felt unwanted at work and she felt that nothing would change if she returned. She also confirmed that she had made this decision on her own (GD3-36).

[11] The General Division concluded that it was the Appellant, unhappy with her working conditions, who took the initial steps to terminate her own employment—not the employer. The job was still available had she chosen to stay. There was plenty of work to do and there was no change in her duties. She was a valued employee. The General Division was not convinced that the working conditions of the Appellant were so intolerable as to leave her no option but to resign immediately.

[12] The Tribunal finds that evidence shows that the Appellant could have stayed and performed her assigned duties after her return from sick leave. She could have requested a longer sick leave from her employer if she did not feel better at the end of the authorized leave. The Appellant also could have made efforts to discuss her health situation and her dissatisfaction with her working conditions with her employer prior to leaving her employment. She admitted that she had not discussed these issues with her employer prior to leaving her job.

[13] The General Division concluded from the evidence before it that, having regard to all the circumstances, the Appellant had reasonable alternatives to leaving her employment when she did.

[14] The Tribunal finds no reason to intervene on the issue of voluntary leaving.

Natural Justice

[15] The Appellant put forward that the General Division failed to observe a principle of natural justice or procedural fairness. She submitted that, by disposing of the issues by way of teleconference, the General Division had failed to afford her an adequate opportunity to present her case. Determining just cause requires a careful assessment of the testimony and credibility of the witness, and she feels that such an assessment was not carried out in an adequate manner due to the forum in which the hearing was held.

[16] In view of the above argument of the Appellant, the Tribunal proceeded to listen to the recording of the General Division hearing.

[17] The Tribunal finds that the Appellant was given every opportunity to present her case and to defend herself, and it finds that the General Division listened to her arguments and provided all the details of her position in its decision.

[18] For the above-mentioned reasons, the Tribunal finds that the Appellant's argument has no merits and that no rules of natural justice or procedural fairness were breached in the present matter.

CONCLUSION

[19] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division