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

[TRANSLATION]

Citation: *L. C. v. Canada Employment Insurance Commission,* 2017 SSTADEI 435

Tribunal File Number: AD-17-275

BETWEEN:

L. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

H. Notaire

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: December 7, 2017

DATE OF DECISION: December 13, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On March 3, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Appellant had voluntarily left her employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Appellant is deemed to have filed an application for leave to appeal to the Appeal Division on March 31, 2017. Leave to appeal was granted on May 3, 2017.

TYPE OF HEARING

[4] The Tribunal determined that the hearing of this appeal would be conducted by teleconference for the following reasons:

- The complexity of the issue or issues;
- The fact that the parties' credibility would probably not 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 quickly as circumstances, fairness, and natural justice permit.

[5] The Appellant attended the hearing. The Respondent was represented by Manon Richardson. The Added Party was represented by M. H.

THE LAW

[6] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA), 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 for voluntarily leaving her employment pursuant to sections 29 and 30 of the Act.

STANDARDS OF REVIEW

[8] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the DESDA. The Appeal Division cannot exercise the review and superintending powers reserved for higher courts [*Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274].

[9] 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

Position of the Parties

[10] The Appellant states that the decision rendered by the General Division contains facts that were misapplied, distorted, or incomplete, and that such a decision—one based on inaccurate facts—cannot be fair. She refers to paragraph 58(1)(*c*) of the DESDA, namely, that 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.

[11] The Appellant also submits that she was in a trial period and that the job was not suitable because it did not match her qualifications.

[12] The Respondent and the Added Party are of the opinion that the General Division did not err in law or in fact and that it properly exercised its jurisdiction. The Appellant did not have just cause for leaving her employment. She chose to leave her employment instead of exploring her alternatives. It was not the only reasonable alternative in her case.

The General Division Decision

[13] The General Division considered the evidence that the Appellant was not happy in her new job and that she felt that this job was not suitable for her. However, it noted that the situation in question spanned May 2 to May 17, 2016, which is a relatively short period to assess a very new situation and apply solutions.

[14] The General Division found that the Appellant had reasonable alternatives to leaving her job. Based on the evidence, it found that the Appellant could have continued to work for the Added Party until she obtained another job, like she wanted to, that better met her expectations or suited her interests. Also, the Appellant conducted job searches that got results quickly, since she started a new job on June 20, 2016.

Did the General Division err when it concluded that the Appellant did not have just cause for voluntarily leaving her employment pursuant to sections 29 and 30 of the Act?

[15] The facts on file are simple and undisputed.

[16] The Appellant is of the view that she was hired to work at reception in her office and that she was also supposed to have a few related tasks. Ultimately, it turned out that she had to open new files all day long, following up as needed to complete the missing information in these files, while answering a high volume of telephone calls and welcoming visitors, who had appointments every half hour.

[17] The Added Party is of the opinion that the position accepted by the Appellant corresponded to the description provided at the time of hiring. The Appellant had been hired as a legal assistant, not simply at receptionist.

[18] Following this misunderstanding, the parties discussed the situation together but did not agree on the tasks related to the Appellant's position. Therefore, the Appellant decided to leave her job and offered to the Added Party to stay for two weeks so she could find a replacement. The Added Party accepted the Appellant's offer. The parties therefore mutually agreed that the Appellant would stop working on June 3, 2017.

[19] It is clear to the Tribunal that the evidence before the General Division indicated that it was the Appellant, and not the employer, who initiated the loss of employment, because the work she was being asked to do was not, in her opinion, representative of the tasks originally specified. The Appellant also offered to stay for two weeks so that the Added Party could replace her.

[20] However, as the General Division found, the Appellant could have kept her job while she was waiting to find another job that was more in line with her expectations. She also started another job a few weeks later, after conducting searches while working for the Added Party.

[21] In addition, based on the evidence on file, the Tribunal is not convinced that the Appellant's working conditions were so intolerable that she had no reasonable alternative to resigning after only two weeks of work.

[22] The Appellant submits that she was in a trial period and that the job was not suitable for her because it did not match her qualifications. Therefore, she would like the Tribunal to conclude that suitability of employment constitutes just cause for leaving within the meaning of section 30 of the Act.

[23] Nothing in the evidence before the General Division supports the Appellant's assertion that she was in a trial period for the position she had obtained and for which she had been hired full time.

[24] In addition, the Federal Court of Appeal has previously refused to consider a form of just cause for leaving an employment that would depend on a claimant's assessment of what constitutes suitable employment for him or her. Thus, the good cause for failing to accept suitable employment under section 27 of the Act is not just cause for leaving under section 30 [*Campeau v. Canada (Attorney General)*, 2006 FCA 376].

[25] For the above-mentioned reasons, the Tribunal finds that the General Division's decision was made based on the evidence submitted before it, and that it complies with both the legislative provisions and the case law.

[26] There is no basis for intervention by the Tribunal.

CONCLUSION

[27] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division