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

Citation: *C. M. v. Canada Employment Insurance Commission*, 2018 SST 354

Tribunal File Number: GE-17-2090

BETWEEN:

C. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

VIDEOCONFERENCE ON: April 4, 2018

DATE OF DECISION: April 26, 2018

Canada

DECISION

[1] The appeal is dismissed. The claimant did not prove just cause for voluntarily leaving her employment. This caused an overpayment that must be repaid.

OVERVIEW

[2] The claimant was receiving employment insurance (EI) benefits and working part-time at a restaurant. She left her part-time employment but did not inform the Canada Employment Insurance Commission (Commission) that she was no longer working, and she continued to receive EI benefits. The claimant applied again for EI benefits and the Commission determined that the claimant's hours from her part-time employment could not be used to qualify for a new benefit period because she voluntarily left that employment without just cause. As a result, the Commission further imposed a disqualification on her previous claim causing an overpayment. The claimant disagrees that she voluntarily left her employment and is seeking to have the overpayment reduced.

ISSUE

1. Did the claimant voluntarily leave her part-time employment?
2. If so, did the claimant prove just cause for voluntarily leaving her employment?
3. Is the claimant required to repay the debt accumulated because of the disqualification from receiving EI benefits?

ANALYSIS

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

[4] A claimant is disqualified from receiving any EI benefits if they voluntarily left any employment without just cause under subsection 30(1) of *the Employment Insurance Act* (EI Act).

[5] The Commission has the burden of proving that the claimant left her employment voluntarily. The burden then shifts to the claimant to establish she had just cause for leaving (*Green v. Canada (Attorney General), 2012 FCA 313*).

1. Did the claimant voluntarily leave her employment?

[6] When determining whether the claimant voluntarily left her employment, the question to be answered is whether the claimant had a choice to stay or leave (*Canada (Attorney General) v. Peace*, 2004 FCA 56).

[7] The Tribunal finds the Commission has met its burden of proving that the claimant voluntarily left her employment.

[8] The claimant stated that she was no longer working due to a shortage of work. She explained that she did not quit and she was not officially laid off, there were just no hours. The Record of Employment dated July 8, 2017, indicates the claimant started working on December 17, 2015, and she quit on June 20, 2016. The employer stated that there was no shortage of work around the time the claimant left. The employer provided the claimant's resignation letter that states that she was leaving her employment to focus on finding a permanent position in an office environment and her final day of work would be June 29, 2016.

[9] The Tribunal accepts the claimant's statements and testimony that she should have continued working until her hours dwindled enough that she no longer had a schedule. She further stated she thought it was more honest and honourable that she quit. From this, the Tribunal finds that the claimant voluntarily left her employment even though she had the choice to stay.

2. Did the claimant prove just cause for voluntarily leaving her employment?

[10] The question of just cause for voluntarily 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 the employment (*MacNeil v. Canada (Employment Insurance Commission)*, 2009 FCA 306).

[11] An incomplete list of circumstances for the Tribunal to consider when determining whether there is just cause is set out in paragraph 29(c) of the EI Act. Having reviewed the claimant's reasons for leaving her part-time employment, the Tribunal finds that the circumstances that apply in this case are subparagraph 29(c)(ix): significant changes in work

duties; and subparagraph 29(c)(x): antagonism with a supervisor if the claimant is not primarily responsible for the antagonism.

Antagonism

[12] When a claimant is citing antagonism as a reason for leaving their employment, the obligation is on the claimant to show that the situation occurs independently from the will or participation of the claimant and is beyond their control (*Smith v. Canada (Attorney General) A-875-96*).

[13] The Tribunal finds that the claimant has not shown that there was antagonism with a supervisor and that she was not primarily responsible for the antagonism.

[14] The claimant explained that she returned to work part-time for this employer for the fourth time. She enjoyed working there because the owners were very flexible with her schedule which allowed her to continue to look for other work. However, a new manager was not willing to be as flexible and they started “to butt heads”.

[15] The claimant informed the Commission that the new manager told her that she would have a reduction in hours and eventually there would not be enough hours for her. The manager did not provide her with a reason for reducing her hours but she knew it was because the two of them did not have a good working relationship. The claimant stated that it was nothing hostile, but they just did not always see eye to eye.

[16] The claimant testified at the hearing that the manager denied saying that her hours were going to be reduced and she is unable to provide proof of the hostile environment. When asked to explain the hostile environment, the claimant stated that she had an understanding in the past about job hunting and working around her schedule to accommodate that. The new manager had no interest in that so every time she needed to leave early, she was told she “was a bad worker”, “why did you even come back”, and “how can you expect us to work around this”. The claimant further stated that the manager would hold a grudge, was rude to her at work, and would not help her on the floor. The manager would then “flip a switch” and start being nice to her but as soon as she did something to anger the manager, she would become rude again.

[17] The Tribunal is not convinced that there was antagonism with a supervisor or that the claimant was not primarily responsible for the antagonism. The claimant was expecting the new manager to treat her in the same way that previous managers had when it came to her schedule. The new manager was unwilling to be as flexible, but this does not automatically translate into antagonism. Even if the Tribunal could find that there was antagonism, the Tribunal would be unable to conclude that the claimant was not primarily responsible because it was her requests to leave early or to have a flexible schedule that caused the issues with her manager. Therefore, the Tribunal concludes that the alleged hostile environment was not outside of the claimant's control.

Modification to duties

[18] It is the claimant's responsibility to show that there were significant changes in her work duties (*Canada (Attorney General) v. White*, 2011 FCA 190).

[19] The Tribunal finds that the claimant has not demonstrated that there were significant changes in her work duties. The claimant stated that her manager told her that there would be a reduction in hours and eventually there would not be enough hours for her. However, the claimant informed the Commission that at the time she handed in her resignation, there had not been a reduction in hours. She further confirmed that she did not have a reduction in her hours from the point of handing in her resignation letter and her last day of work. She stated that she was generally working three days per week and that mostly stayed the same.

[20] The claimant testified that she was hired part-time and there was no expectation that she would work full-time. She stated that in February 2016, a slow period in the restaurant business, she only worked two shifts. When things got busier, she was working five shifts a week; however, when she started "to clash" with her manager, she went to three shifts a week. She stated that she was not clear about that on the phone calls with the Commission because she had been working three shifts a week for a while, so nothing had really changed. She added that she did have more hours prior and then she dramatically lost hours.

[21] The Commission spoke with the claimant's manager. The manager denied ever telling the claimant that she was going to reduce her hours and confirmed there was no change in the claimant's hours. The manager stated that they had a good working relationship.

[22] The Tribunal is not convinced that the claimant's hours were reduced to point that she was left with no choice but to leave her job. The claimant was hired for part-time work and three shifts a week can be classified as part-time. It is not unreasonable for an employer to provide more shifts to a part-time employee when operations require it and then reduce those hours when no longer required. Furthermore, the claimant is arguing, on the one hand, that the new manager did not want to be flexible with her schedule so she could find another job, but on the other hand, there was a dramatic loss of hours. From this, the Tribunal finds that the claimant has not proven that working three shifts a week represents a significant modification to her duties.

Reasonable alternatives

[23] To prove just cause for voluntarily leaving employment, the claimant must demonstrate that she had no reasonable alternative but to leave her employment when she did. The claimant has an obligation to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job (*Canada (Attorney General) v. White*, 2011 FCA 190).

[24] The Tribunal finds that the claimant had reasonable alternatives available. The claimant could have discussed her concerns with her employer in an attempt to resolve her workplace conflict with her manager. Further, she could have remained employed until she secured another job. Additionally, if the claimant's hours were eventually reduced, she could have remained employed and simply reported zero hours on her claimant's reports and her entitlement to EI benefits would not have been affected.

[25] The claimant stated that she did not go to the owner of the business about her hours or the relationship with the manager because the owners had opened another restaurant and were not around a lot. She further stated that she does not like confrontation, so she did not want to get the owners involved. The claimant testified that she did not bring her concerns to her employer because she had such a good relationship with every other person that worked there and she just hoped it would go away. While the Tribunal understands that the claimant found it difficult to complain about a manager, it is the claimant who has an obligation to attempt to resolve workplace conflicts with an employer. She did not do so.

[26] The Tribunal accepts the claimant's statements and testimony that she was always looking for work but had not received a job offer before she quit. The Tribunal concludes that the claimant had reasonable alternatives available to her; therefore, she has not proven just cause to voluntarily leave her employment under subsection 29(c) of the EI Act.

3. Is the claimant required to repay the debt accumulated because of the disqualification from receiving EI benefits?

[27] A claimant is liable to repay an amount paid by the Commission to the claimant as benefits for any period for which the claimant is disqualified under paragraph 43(a) of the EI Act.

[28] The Tribunal finds that the claimant is required to repay any overpayment caused by the disqualification imposed on her because she voluntarily left her employment without just cause. The claimant did not report to the Commission that she had left her employment. Had she done so, the Commission would have investigated and her EI benefits would have likely ended at that time. This would have prevented the overpayment from occurring in the first place.

[29] The claimant submitted that she is asking for mercy as the overpayment is one quarter of her annual salary. She testified that even if the debt was reduced, this would help her greatly as she does not make a lot of money and she is going back to school. While the Tribunal understands the claimant's situation, she received EI benefits while she was disqualified and, according to the EI Act, she is required to repay the amount of the overpayment. The Tribunal is not permitted to rewrite the legislation or interpret it in a manner contrary to its plain meaning (*Canada (Attorney General) v. Knee*, 2011 FCA 301).

CONCLUSION

[30] The Tribunal concludes that, on a balance of probabilities, the claimant has not proven just cause for voluntarily leaving her employment on June 20, 2016, under subsection 29(c) of the EI Act. The Commission has appropriately imposed an indefinite disqualification to EI benefits pursuant to subsection 30(1) of the EI Act starting June 26, 2016. Consequently, the EI benefits the claimant received following the disqualification must be repaid according to subsection 43(b) of the EI Act.

[31] The appeal is dismissed.

K. Wallocha

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.