



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. K. S.*, 2018 SST 806

Tribunal File Number: AD-18-182

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

K. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Konrad von Finckenstein

DATE OF DECISION: 2018.08.13

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The Commission's reconsideration decision is restored.

OVERVIEW

[2] The Respondent, K. S. (Claimant), is a social worker. She moved to Alberta in August 2010 in hopes of finding work. She started working for the Province of Alberta on February 4, 2011, and continued to work for it until she left her employment on March 31, 2017. At the hearing before the General Division, she acknowledged that she had quit her job voluntarily. The Claimant asserted she had had just cause for leaving her employment in Alberta for the following reasons:

- a) She could not afford to stay in Alberta because the cost of living was too high;
- b) She should not have to rely on being a roommate in order to survive and afford the cost of living;
- c) She worked two jobs before leaving and tried to find affordable housing; and
- d) The crime rate in Alberta is rising, which made her feel unsafe, and therefore she had to have a dog.

[3] The General Division allowed the appeal, finding on a variety of grounds that the Claimant had had just cause to leave her employment.

[4] The Appellant, the Canada Employment Insurance Commission (Commission), sought and obtained leave to appeal. The Commission argued that the General Division made an error of law and made a perverse finding of fact.

[5] After considering the submissions of both sides, the Tribunal finds that the General Division made an error of law by not following established jurisprudence and restores the Commission's original finding.

ISSUE

[6] Did the General Division err in law when it considered that the Claimant had just cause for leaving her employment?

ANALYSIS

[7] Both sides filed complete written submissions with the Tribunal. Neither side asked for a hearing or sought to introduce additional evidence. Accordingly the Tribunal proceeded with the appeal on the basis of the written submissions filed.

The Appeal Division's mandate

[8] The Federal Court of Appeal in *Canada (Attorney General) v. Jean*, 2015 FCA 242 determined that, when the Appeal Division hears appeals pursuant to s. 58(1) of the *Department of Employment and Social Development Act* (DESDA), the mandate of the Appeals Division is conferred to it by ss. 55 to 69 of that act.

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or 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.

Submissions

[11] The Commission points out that the courts have consistently held that insufficient salary does not amount to just cause. The factors listed by the General Division, as set out below, in its opinion do not amount to just cause.

[12] The Claimant does not dispute that she left her job voluntarily. Her position is precisely summarized in the concluding paragraph of her submission where she states:

In conclusion to my submission, I want to acknowledge that I explored all avenues to make it work for me to continue living in Alberta. I stayed year after year because I am not one to quit or give up, but I also know when to make smart decisions and be realistic. I was not going to receive any more increments in my pay and rent was not getting any cheaper. I also want to acknowledge that I understand there may be several circumstances for a person to be denied as Employment Insurance should not have to bear the costs of an individual who quit their job, however, I explained in detail as to why I had no choice but to make an application for the same. I chose to move home to X as this was the most reasonable, practical and financially sound decision in order for me to move forward and have the ability to earn a livelihood.

[13] “Just cause” for voluntarily leaving one’s job is defined in s. 29(c) of the *Employment Insurance Act* (EIA). It provides:

(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.

[14] The General Division's decision made it clear that the Claimant's situation did not fall within the non-exhaustive list of circumstances set out in s. 29(c):

[63] The Tribunal is mindful that paragraph 29(c) of the Act provides a non-exhaustive list of the circumstances to be considered when determining if a claimant had just cause for leaving her employment.

[64] Having reviewed the circumstances listed in paragraph 29(c) of the Act, the Tribunal finds that these circumstances do not apply to the [Claimant].

[15] The General Division further cited the relevant jurisprudence and observed:

The Tribunal is also guided by the Federal Court of Appeal in *Canada (Attorney General) v. Langlois*, 2008 FCA 18, where the Court wrote:

While it is legitimate for a worker to want to improve his life by changing employers or the nature of his work, she cannot expect those who contribute to the employment insurance fund to bear the cost of that

legitimate desire. This applies equally to those who decide to go back to school to further their education or start a business and to those who simply wish to earn more money: see *Canada (Attorney General) v. Tremblay (F.C.A.)*, [1994] F.C.J. no. 896; *Astronomo v. Canada (Attorney General)*, [1998] F.C.J. no. 1025; *Canada (Attorney General) v. Martel (F.C.A.)*, [1994] F.C.J. no. 1458. In the words of this Court in *Campeau, supra*, at paragraph 21, “... **sincerity and inadequate income do not constitute just cause under section 30 of the Act**, allowing [the claimant] to leave her employment and making the employment insurance system bear the cost of supporting her.” [Emphasis in original]

[16] Despite these findings, the General Division came to the conclusion that the Claimant had just cause to leave her employment. It gave the following reasons:

[67] Considering all of the circumstances, the Tribunal finds that no reasonable alternatives existed at the time she left her employment, for the following reasons:

- a) even with the increase in her wages to \$3,600 a month, she was not earning enough to consistently cover the cost of living in X;
- b) there is no requirement under the Act of [a claimant] to work two jobs, as the [Claimant] had done for most of the time she lived in Alberta;
- c) she tried to reduce her expenses by having a roommate but, her experience demonstrated that maintaining a roommate was not a long-term solution to her financial situation;
- d) she tried to reduce her expenses by lowering her student loan payment;
- e) at the time she moved she knew she was going to have to find yet another roommate;
- f) she demonstrated efforts to seek alternative employment before she left her employment; and
- g) she took steps to make sure she was employable in Nova Scotia months before she moved.

[17] When these reasons are examined in detail, it is obvious that reasons a), c), and d) all relate to financial need. The jurisprudence is abundantly clear that financial need is not a factor.¹

[18] Reasons b) and e) further illustrate the Claimant's financial plight. By themselves or in conjunction with the Claimant's financial need, they do not establish that she had no reasonable alternative to leaving her job

[19] Reason f) lacks a connection to the concept of having no reasonable alternative. The Claimant is to be commended for looking for alternative employment to better her situation, but merely looking for alternative jobs to improve one's financial position and not finding one does not causally lead to the conclusion there is no other reasonable alternative to quitting one's job.

[20] Finally reason g) refers to the fact that the Claimant applied for registration with X and was registered in January 2017. This fact would only be relevant if the General Division was trying to rely on s. 29(c) of the EIA. However paragraph 64 quoted above points out that the General Division did not rely on s. 29(c). Accordingly this act of registration is not relevant when establishing whether there was no reasonable alternative.

[21] In summary, the General Division while correctly quoting the law and jurisprudence justified its decision on the basis of seven. Reasons a) to e) directly or indirectly relate to financial needs. As established by *Tremblay, supra*, financial needs are not sufficient grounds for holding that the Claimant had no other reasonable alternative.

[22] Reasons f) and g) serve to demonstrate the Claimant's good faith and her sincere efforts to find another job, but they do not establish that the Claimant had no other reasonable alternative.

[23] Accordingly, the General Division made an error of law when finding that financial needs coupled with the seven factors it mentioned amount to circumstances allowing it to conclude that the Claimant had no reasonable alternative. This is basically still a case of where the Claimant

¹ see *Canada (Attorney General) v. Tremblay (F.C.A.)*, [1994] F.C.J. no. 896.

voluntarily gave up her job for financial reasons. It is well established that insufficient salary does not constitute just cause for voluntarily leaving employment.²

CONCLUSION

The appeal is allowed. As there is no dispute concerning the evidence, there is no point in sending this case back to the General Division for reconsideration. Using its powers under s. 59(1) of the DESDA (to give the decision the General Division should have given), the Tribunal sets aside the General Division's decision and dismisses the Claimant's appeal. The Commission's reconsideration decision is restored.

Konrad von Finckenstein
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
Submissions:	Canada Employment Insurance Commission, Appellant Carol Robillard, Representative for the Appellant K. S., Respondent

² *Canada (Attorney General) v. Campeau* 2006 FCA376.; *Canada (Attorney General) v. Richard*, 2009 FCA 122

