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

Citation: *L. P. v. Canada Employment Insurance Commission*, 2018 SST 879

Tribunal File Number: AD-18-325

BETWEEN:

**L. P.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division

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DECISION BY: Janet Lew

DATE OF DECISION: September 10, 2018

Canada

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] The Appellant, L. P. (Claimant), applied for regular Employment Insurance benefits. His employer confirmed in a Record of Employment[1] that the Claimant had worked from December 2016 to August 2017 and that he had quit to return to school.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's claim for Employment Insurance benefits because it found that he had voluntarily left his employment without just cause. The Commission found that voluntarily leaving his employment was not his only reasonable alternative. The Claimant requested a reconsideration, but the Commission maintained its decision. The Claimant appealed the Commission's reconsideration decision to the General Division of the Social Security Tribunal, which in turn found that the Claimant had not proven just cause for voluntarily leaving his employment and that he was disqualified from receiving benefits.

[4] The Claimant is appealing the General Division's decision. I granted leave to appeal on the basis that the General Division may have failed to consider whether the Claimant had "reasonable insurance [*sic*] of another job in the future,"[2] because this could have constituted just cause for leaving his employment under s. 29(*c*)(vi) of the *Employment Insurance Act*. However, I indicated in my leave decision that the Claimant would have to establish that there was some evidence before the General Division of "reasonable insurance [*sic*] of another job in the future."

[5] I am dismissing this appeal because the Claimant has failed to establish that there was any evidence of a reasonable assurance of another employment in the immediate future in the proceedings before the General Division and because there was no basis for the General Division to consider the issue.

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[1] Record of Employment, at GD3-19.
[2] Application to the Appeal Division – Employment Insurance, at AD1-3.

## ISSUE

[6] Did the General Division fail to consider whether the Claimant had reasonable assurance of another employment in the immediate future?

## ANALYSIS

[7] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to 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.

[8] In his Notice of Appeal,[3] the Claimant submits that the General Division failed to consider whether he left his employment to "better [him]self" and whether his employer fully supported him in his educational pursuits. I addressed these two submissions in my leave to appeal decision. I found that the General Division had, in fact, considered both issues. The Claimant has not raised any further arguments on these two issues that would convince me to revisit them.

### Issue: Did the General Division fail to consider whether the Claimant had reasonable assurance of another employment in the immediate future?

[9] The Claimant argues that the General Division failed to consider whether he had "reasonable insurance [*sic*] of another job in the future." If the Claimant had reasonable assurance of another employment in the immediate future, this might constitute just cause for voluntarily leaving his employment under s. 29(*c*)(vi) of the *Employment Insurance Act*.

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[3]In accordance with s. 58(5) of the DESDA, the application for leave to appeal becomes the notice of appeal. The Application to the Appeal Division – Employment Insurance can be found at AD1.

[10] In my leave to appeal decision, I indicated that for the Claimant to succeed in this appeal, he would have to establish that he had adduced some evidence in the proceedings before the General Division that he had had reasonable assurances of another employment in the immediate future. In a letter dated August 1, 2018, on behalf of the Social Security Tribunal, I also asked the Claimant to locate this evidence, either by identifying the page number in the hearing file or the timestamp of the audio recording of the hearing before the General Division.[4]

[11] After initially writing on July 26, 2018, that he had no further submissions to make, the Claimant wrote to the Social Security Tribunal on August 22, 2018, that "[his] understanding from his supervisor was that [he] was a good employee and [the employer] would take [him] back to work at any time." He produced a copy of an email dated August 8, 2018,[5] in which the employer wrote: "Yes I remember [the Claimant] well and Yes [*sic*] I would hire him back."

[12] The Claimant also referred me to 14:26 of the audio recording. He claims that the audio recording proves that he had "reasonable insurance [*sic*] of another job in the future."[6] Starting at this point, the Claimant's father testified that when the employer first learned of the Claimant's availability, the employer invited the Claimant to apply for work. The Claimant's father testified that after the Claimant applied for work, he began working within a week. The Claimant's father also testified that the Claimant's supervisor was the Claimant's basketball coach at one time and the coach and the Claimant knew each other fairly well, so their association went beyond a mere employer-employee relationship.

[13] The Federal Court of Appeal has examined what constitutes a "reasonable assurance of another employment in the immediate future." In *Canada (Attorney General) v. Bordage*,[7] the Federal Court of Appeal found that there were three essential requirements under s. 29(*c*)(vi) of the *Employment Insurance Act*: at the moment when a claimant chooses to become unemployed, he must know whether he will have employment, he must know what employment he will have with what employer, and he must know at what moment in the future he will have employment.

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[4] Letter / Notice of Hearing dated August 1, 2018, at AD0.
[5] Appellant's response filed on August 24, 2018, at AD4.
[6] Appellant's letter dated August 22, 2018, at AD4-2.
[7] *Canada (Attorney General) v. Bordage*, 2005 FCA 155.

[14] In *Andrade v. Canada (Attorney General)*,[8] the Federal Court of Court described the test under s. 29(*c*)(vi) of the *Employment Insurance Act* as stringent. It wrote: "[r]easonable assurance or just cause exists when a [c]laimant has been in contact with an employer for an offer or employment, or an offer of employment has been received by the [c]laimant." The Federal Court of Appeal determined that the "mere expectation of an employment … falls short of this requirement." Furthermore, in *Canada (Attorney General) v. Sacrey*,[9] the Federal Court of Appeal determined that "the words 'reasonable assurance,' in context and in their natural meaning, imply some measurable form of guarantee."

[15] In *Canada (Attorney General) v. Lessard*,[10] the Federal Court of Appeal held that "employment which only comes into being on the expiry of a course which has not yet been started and lasts thirteen weeks is not employment 'in the immediate future.'"

[16] Given these considerations, I do not find that the evidence at 14:26 of the audio recording or the recent e-mail from the employer meets the requirements under s. 29(*c*)(vi) of the *Employment Insurance Act*. The assurance of employment must be tangible, rather than speculative, and it must have existed before the Claimant left his employment.

[17] I have reviewed the documentary record and listened to the audio recording. I am unable to find any evidence that the Claimant had reasonable assurances of another employment in the immediate future.

[18] Finally, in submissions filed on July 12, 2018, the Commission argues that the Claimant did not disclose that he had "reasonable insurance [sic] of another job in the future" to the Commission and that he did not raise it before the General Division either. I am unable to find any evidence that the Claimant raised this issue at any time before filing an application requesting leave to appeal to the Appeal Division. As I have noted above, evidence of reasonable assurance was lacking before the General Division. The General Division member cannot possibly have made an error by failing to consider an issue when it was not raised and there was no evidence before her to suggest that there was such an issue.

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[8] *Andrade v. Canada (Attorney General)*, 2014 FCA 93.
[9] *Canada (Attorney General) v. Sacrey*, 2003 FCA 377.
[10] *Canada (Attorney General) v. Lessard*, 2002 FCA 469.

[19] Accordingly, I am not convinced that the General Division erred in law by failing to consider whether s. 29(*c*)(vi) of the *Employment Insurance Act* applied or that it based its decision on an erroneous finding of fact that it made without regard for the fact that the Claimant had reasonable assurance of another employment in the immediate future.

**CONCLUSION**

[20] The appeal is dismissed.

Janet Lew
Member, Appeal Division

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| METHOD OF PROCEEDING: | Questions and answers |
| APPEARANCES: | L. P., Appellant<br><br>S. Prud'Homme, Representative for the Respondent |