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

Citation: *Canada Employment Insurance Commission vs. V. S.*, 2018 SST 981

Tribunal File Number: AD-18-410

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

V. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: October 9, 2018

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed, and the reconsideration decision of the Canada Employment Insurance Commission is restored.

OVERVIEW

[2] The Respondent, V. S. (Claimant), had been working for a fast-food restaurant until August 2017, when she left to return to school. She then applied for Employment Insurance regular benefits.

[3] The Appellant, the Canada Employment Insurance Commission (Commission), denied her application for benefits because it found that she was unavailable for work, given that she was not looking for work while she was attending school. The Commission imposed an indefinite disentitlement, under s. 18(1)(*a*) of the *Employment Insurance Act*. The Commission also found that the Claimant had voluntarily left her employment without just cause under s. 29(*c*) of the *Employment Insurance Act* and that voluntarily leaving her employment was not her only reasonable alternative.[1] It then imposed an indefinite disqualification, pursuant to ss. 29 and 30 of the *Employment Insurance Act*.[2]

[4] The Claimant sought a reconsideration, claiming that she had been approved to attend the program under the province's Feepayer program.[3] On reconsideration, the Commission decided in the Claimant's favour on the issue of her availability for work because she had, in fact, received approval to attend the program.[4] However, the Commission maintained its decision that the Claimant had voluntarily left her employment; it also maintained the disqualification under s. 30 of the *Employment Insurance Act*.

[5] The Claimant appealed the Commission's reconsideration decision to the General Division. The General Division determined that the Claimant had voluntarily left her

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[1] Commission's initial decision dated October 11, 2017, at GD3-23.
[2] Representations of the Commission to the Social Security Tribunal – Employment Insurance Section, December 12, 2017, at GD4.
[3] Request for reconsideration dated October 18, 2017, at GD3-25.
[4] Commission's reconsideration decision dated November 9, 2017, at GD3-29 to 30.

employment. The General Division found that the Claimant had been referred to a course of instruction authorized by a designated authority. However, because the referral was not in place at the time when the Claimant left her employment, her decision to return to school was a personal choice and did not constitute just cause. Nevertheless, the General Division also found that because the employer was unable to accommodate the Claimant's school schedule, the Claimant had "voluntarily left her employment with just cause because, having regard to all the circumstances, she demonstrated she had no reasonable alternatives to leaving."[5] So, the General Division decided that the Commission had incorrectly applied a disqualification on the Claimant.

[6] The Commission sought leave to appeal the General Division's decision, on the ground that the General Division erred in law when it found that the Claimant had just cause to leave her employment and that she had no reasonable alternatives to leaving when she did. I granted leave to appeal because I was satisfied that the General Division may have erred in law under s. 29(*c*) of the *Employment Insurance Act* and, in particular, when it failed to explain how its findings were consistent with the jurisprudence. I must now determine whether the General Division erred in law.

[7] The appeal is allowed because the General Division erred in law by failing to properly apply s. 29(*c*) of the *Employment Insurance Act* in a manner that is consistent with the jurisprudence.

ISSUE

[8] Did the General Division fail to apply s. 29(*c*) of the *Employment Insurance Act* in a manner that is consistent with the jurisprudence?

ANALYSIS

[9] 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;

[5] General Division decision, at paragraph 1.

(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.

[10] The Commission agrees that the General Division properly cited the law regarding the issue of "just cause" under s. 29(*c*) of the *Employment Insurance Act*. In referring to *Canada (Attorney General) v. White*,[6] the General Division determined that, to establish just cause for leaving an employment under s. 29 of the *Employment Insurance Act*, the Claimant had to show that, having regard to all the circumstances, on a balance of probabilities, she had no reasonable alternative to leaving her employment.

[11] However, the Commission submits that the General Division failed to apply and follow established case law when it found that the Claimant had just cause for leaving her employment and that she had no reasonable alternatives. The Commission claims that the fact that the Claimant's employer was unable to accommodate her school schedule did not amount to just cause under the *Employment Insurance Act*. The Commission asserts that the General Division failed to consider that choosing to leave one's employment for school represents a personal choice that does not amount to just cause and that, in such circumstances, a claimant cannot impose the economic burden of their decision on contributors to the Employment Insurance fund.[7]

[12] The Commission notes that the General Division cited *Canada (Attorney General) v. Lessard*,[8] but contends that it misread and misapplied the principles set out by the Federal Court of Appeal. The Commission requests that I grant the appeal and restore the Commission's decision.

[13] The Claimant did not file any submissions.[9]

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[6] *Canada (Attorney General) v. White*, 2011 FCA 190.
[7] *Canada (Attorney General) v. Beaulieu*, 2008 FCA 133 and *Canada (Attorney General) v. Côté*, 2006 FCA 219.
[8] *Canada (Attorney General) v. Lessard*, 2002 FCA 469.
[9] Claimant's email of August 6, 2018, states that she did not have any submissions to file.

[14] As noted above, the Claimant had been referred to a course of instruction authorized by a designed authority, but this did not occur until after she had already left her employment, and this, therefore, was an irrelevant consideration because the General Division could consider only the circumstances that existed when the Claimant left her employment in determining whether the leave was justified.[10]

[15] The General Division determined that the Claimant's decision to return to school might constitute good cause but found that "it was not synonymous with the requirements to prove just cause for leaving employment and causing others to bear the burden of [her] unemployment."[11] In citing *Lessard*, the General Division then examined whether, "having regard to all the circumstances,"[12] the Claimant "had no reasonable alternatives to leaving."[13] The General Division found that the employer was unable to accommodate the Claimant's school schedule and that the Claimant, therefore, had no reasonable alternative to leaving her employment.

[16] In *Lessard*, the Federal Court of Appeal held that it is unnecessary for claimants who wish to rely on s. 29(*c*) of the *Employment Insurance Act* to show that they are in one of the circumstances listed in that paragraph. The Court stated that the list is "in fact only by way of illustration (the paragraph reads 'including') of the general rule that a claimant can present evidence that 'having regard to all the circumstances' he 'had no reasonable alternative to leaving'." The Court set out the general rule as follows:

> It is settled law in this Court that the fact of a claimant leaving employment voluntarily to go back to school or to take a training course is not just cause within the meaning of section 28 of the old *Unemployment Insurance Act* or section 29 of the *Employment Insurance Act* unless he has been authorized to do so by the Commission.

[17] In this case, however, the General Division failed to explain how it applied the general rule set out in *Lessard* or, for that matter, the well-established line of authorities that have consistently held that voluntarily leaving an employment to go to school or to enrol in training

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[10] *Lessard*, *supra*.
[11] General Division decision, at paragraph 13.
[12] General Division decision, at paragraph 1.
[13] *Ibid*.

does not constitute "just cause" within the meaning of s. 29 of the *Employment Insurance Act.*[14] The General Division did not have any discretion to deviate from the jurisprudence. Given the evidence before it, the General Division should have determined that the Claimant did not have just cause to leave her employment under s. 29(*c*) of the *Employment Insurance Act*. The General Division failed to apply s. 29(*c*) of the *Employment Insurance Act* in a manner that is consistent with the jurisprudence, and it erred in law in this regard.

CONCLUSION

[18] For the above reasons, the appeal is allowed. The General Division erred in law by failing to properly apply s. 29(*c*) of the *Employment Insurance Act* when it determined that the Claimant had just cause for voluntarily leaving her employment to return to school before she had obtained authorization by a designated authority. It was irrelevant that her employer was unable to accommodate the Claimant's school schedule. The General Division should have applied the general rule that by voluntarily leaving her employment to return to school without obtaining prior approval from a designated authority, the Claimant did not prove that she had just cause under s. 29(*c*) of the *Employment Insurance Act.*

[19] Under s. 59(1) of the DESDA, the Appeal Division may dismiss the appeal; give the decision that the General Division should have given; refer the matter back to the General Division for reconsideration (in accordance with any directions that the Appeal Division considers appropriate); or confirm, rescind, or vary the decision of the General Division in whole or in part.

[14] *Canada (Attorney General) v. King*, 2011 FCA 29; *Canada (Attorney General) v. MacLeod*, 2010 FCA 301; *Canada (Attorney General) v. Caron*, 2007 FCA 204; *Canada(Attorney General) v. Bois*, 2001 FCA 175; *Beaulieu*, *supra*; and *Côté*, *supra*.

[20] Accordingly, pursuant to s. 59(1) of the DESDA, the decision of the General Division is rescinded, and the Commission's reconsideration decision is restored.

Janet Lew
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	Rachel Paquette, Representative for the Appellant V. S., Respondent