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

Citation: *M. E. v. Canada Employment Insurance Commission*, 2018 SST 1132

Tribunal File Number: AD-18-620

BETWEEN:

M. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: November 2, 2018

Canada

DECISION

[1] The Tribunal allows the appeal.

OVERVIEW

[2] The Appellant, M. E. (Claimant), filed a claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), denied his claim because he had voluntarily left his employment without just cause. The Claimant put forward that he had not voluntarily left his employment and that, if he had, he had had no other reasonable solution but to leave because he was the victim of harassment at work. The Claimant requested a reconsideration of the Commission's initial decision. The Commission upheld its decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant had left his employment voluntarily because he had the choice to stay, as long as he provided his employer with a medical clearance that he could return to work. It also found that the Claimant had reasonable alternatives to quitting—namely, looking for another job before leaving or getting help from the employee assistance program.

[4] The Claimant was granted leave to appeal to the Appeal Division. He submits that the General Division erred in law by ignoring evidence and in applying the legal test for voluntary leave, because he had just cause to leave his employment under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[5] The Tribunal must decide whether the General Division erred in law by ignoring evidence and in applying the legal test for voluntary leave.

[6] The Tribunal allows the appeal.

ISSUE

[7] Did the General Division err in law by ignoring evidence and in applying the legal test for voluntary leave under sections 29 and 30 of the EI Act?

ANALYSIS

Appeal Division's Mandate

[8] The Federal Court of Appeal has determined that, when the Appeal Division hears appeals as per section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is granted to it by sections 55 to 69 of the DESD Act.[1]

[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.[2]

[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.

Issue 1: Did the General Division err in law by ignoring the Claimant's evidence and in applying the legal test for voluntary leave under sections 29 and 30 of the EI Act?

[11] The appeal is allowed.

[12] The Claimant puts forward that the General Division erred because he had no reasonable alternatives to leaving his job. The workplace was not healthy and safe, and the employer was not taking his harassment complaint seriously and denied any wrongdoing by its staff.

[13] The Claimant argues that the employer accused him of having a medical condition he did not have in order to stop him from returning to work. The employer's medical request was unwarranted because the Claimant did not have a medical condition preventing him from working.

[14] Furthermore, the Claimant submits that the General Division erred when it concluded he had other reasonable solutions. Seeing a doctor was not a remedy to harassment. The "help line"

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[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.
[2] *Ibid*.

was a “stress help line” that did not assist employees with matters concerning workplace health and safety due to harassment.

[15] Finally, the Claimant submits that the General Division ignored the medical evidence that he had to leave his employment.[3]

[16] The Commission agrees that the General Division erred in law under section 58(1)(b) of the DESD Act by misinterpreting and ignoring evidence. Specifically, the medical certificate specifies that the Claimant “was clearly not feeling safe in his work environment and was justified in leaving on this basis.”

[17] Furthermore, based on this evidence, it is the Commission’s position that the Claimant has shown that, given all the circumstances in this matter, he had no reasonable alternative to leaving when he did.

[18] Therefore, the Commission is conceding the appeal and requests that the Appeal Division allow the Claimant’s appeal.

[19] The Tribunal notes that the Commission’s representations before the Appeal Division are contrary to the position it had taken before the General Division.

[20] The Tribunal finds that the General Division erred in law when it ignored the Claimant’s medical evidence that he “was clearly not feeling safe in his work environment and was justified in leaving on this basis.”

[21] This evidence could not be set aside simply because the employer had requested that the Claimant provide a medical note to return to work. The Claimant had duly informed the employer that his doctor could not supply the requested medical note because it was not a medical issue but rather a harassment issue.

[22] Furthermore, the employer’s request for a medical note was clearly unwarranted because the employer brought forward no evidence to support its position that the Claimant was

[3] GD2-27 to 28.

incapable of performing his work duties. The employer imposed this “fitness to work evaluation” on the Claimant only when he was filing his harassment complaint.

[23] The Tribunal also finds that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner. The Tribunal could not find from the evidence before it that the Claimant’s harassment claim was “curious” because he had experienced identical harassment in other workplaces.[4]

[24] In view of these errors, the Tribunal is justified to intervene and render the decision that the General Division should have made.

[25] The preponderant evidence shows that the employer did not provide the Claimant with a harassment-free work environment. The Claimant’s medical evidence supports his position that he was not feeling safe at work. The employer’s medical request was unwarranted because the Claimant did not have a medical condition preventing him from working. The Claimant could find no comfort in talking to a “stress help line” because he was the subject of harassment.

[26] The Claimant respected his employment agreement and took the necessary steps to act according to that agreement. He tried to discuss the situation with his immediate boss and with someone with more authority, but this did not help. He requested a transfer to another workstation to be able to perform his work, but this transfer request was denied. He also applied to several job offers while employed with the employer without any success.

[27] In view of the above facts, the Tribunal finds that the Claimant has shown that, given all the circumstances in this matter, he had no reasonable alternative to leaving when he did.

[28] After reviewing the appeal file and the General Division decision, the Tribunal agrees with the submissions of the parties and allows the Claimant’s appeal.

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[4] Par. 13 of the General Division decision.

CONCLUSION

[29] The Tribunal allows the appeal.

Pierre Lafontaine
Member, Appeal Division

METHOD OF PROCEEDING:	On the record