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

[TRANSLATION]

Citation: *M. B. v Canada Employment Insurance Commission*, 2018 SST 1318

Tribunal File Number: GE-18-2656
GE-18-2657

BETWEEN:

M. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: November 27, 2018

DATE OF DECISION: November 30, 2018

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant worked for X from June 6, 2010, to October 31, 2017. As explained below, the Appellant left that employment voluntarily. Shortly after, she found other employment where she worked from December 4, 2017, to April 6, 2018, when she was laid off.

[3] On May 27, 2018, the Appellant filed an initial claim for benefits. On June 4, 2018, the Appellant contacted the Commission to ask for her claim for benefits to be antedated to April 8, 2018.

[4] The Commission made two decisions. In the first, dated June 8, 2018, the Commission refused the antedate request. In the second, the Commission disqualified the Appellant from receiving benefits because it considered that the Appellant had left her employment with X voluntarily without just cause.

[5] The Appellant requested a reconsideration of both decisions. On July 12 and 13, 2018, the Commission rendered reconsideration decisions for the antedate and voluntary leaving files, respectively. The Commission upheld its original decisions in both files.

PRELIMINARY MATTERS

[6] The Tribunal finds that it is appropriate to combine both files on appeal, in accordance with section 13 of the *Social Security Tribunal Regulations*. Both files raise common facts related to the initial claim for benefits. In addition, this joining of appeals is not likely to cause injustice to the parties.

ISSUES

[7] To address the antedate file, the Tribunal must answer the following questions:

a. Did the Appellant have good cause for the delay in filing her initial claim for benefits?

b. If so, was the Appellant entitled to benefits on the earlier requested date of April 8, 2018?

[8] To address the voluntary leaving, the Tribunal must answer the following questions:

a. Did the Appellant leave her employment with X voluntarily?

b. If so, did the Appellant have just cause to voluntarily leave her employment because leaving was her only reasonable alternative?

ANALYSIS

Antedating

[9] An initial claim for benefits that is filed late can be antedated when the claimant shows that they had good cause for the delay throughout the period between the earlier date as of which the claimant asks the benefits to begin and the date on which they filed their claim (section 10(4) of the *Employment Insurance Act* (Act)). Therefore, the delay period is between April 8, 2018, and May 27, 2018.

[10] To establish good cause for the delay, a claimant must show that they did what a reasonable and prudent person would have done in the same circumstances to exercise their rights and fulfill their obligations under the Act (*Mauchel v Canada (Attorney General)*, 2012 FCA 202; *Bradford v Canada Employment Insurance Commission*, 2012 FCA 120; *Attorney General of Canada v Albrecht*, A-172-85).

Did the Appellant have good cause for filing her initial claim for benefits late?

[11] In this case, the Appellant admits that her claim was filed late. The delay is attributable to the fact that the Appellant did not know that she had an obligation to make a claim promptly because she had never filed such a claim before. She claimed that she did not know that she could make an antedate request and that it was only after a conversation with an agent of the Commission on June 4, 2018, that she knew that antedating was possible. Furthermore, the Appellant testified that she did not make the claim as soon as she was laid off because she thought she would find employment quickly. The Appellant made extensive efforts to find other employment in her field of study.

[12] The Federal Court of Appeal found that, unless exceptional circumstances exist, a reasonable person is expected to take reasonably prompt steps to determine their entitlement and their obligations under the Act (*Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Innes*, 2010 FCA 341; *Canada (Attorney General) v Somwaru*, 2010 FCA 336).

[13] The Tribunal finds that a reasonable and prudent person would not have waited as long as the Appellant did to make their initial claim or to contact the Commission for information. A person who has lost their employment and is in need of financial assistance would have taken the necessary steps to ask the Commission what to do to file a claim for benefits.

[14] The Tribunal is guided by case law from the Federal Court of Appeal, which stated that ignorance of the law does not constitute good cause (*Kaler*, 2011 FCA 266; *Innes*, 2010 FCA 34; *Somwaru*, 2010 FCA 336).

[15] In this case, the Appellant cited that she made continuous efforts to find employment and that she did not want to rely on the Employment Insurance program. The Tribunal acknowledges the Appellant's efforts to find employment promptly. However, the Tribunal finds that the circumstances for the delay do not constitute exceptional circumstances and therefore the Appellant was required to take steps, within the time allowed, to understand her entitlement to benefits and her obligations under the Act by finding out from the Commission what she needed to do to obtain benefits. As a result, the antedating of the initial claim for benefits should not be

granted because the Appellant has not shown that she had good cause for her delay between April 8, 2018, and May 27, 2018. The Tribunal therefore does not have to determine whether the Appellant was entitled to benefits on the earlier date, that of April 8, 2018, under section 10(4) of the Act.

Voluntary Leaving

[16] According to section 30(1) of the Act, a claimant is disqualified from receiving benefits if the claimant lost an employment because of their misconduct or voluntarily left any employment without just cause. However, a claimant may receive benefits if (1) the claimant has, since leaving the employment, been employed in insurable employment for the number of hours required to qualify to receive benefits, or (2) the claimant is disentitled for the reasons stated by the Act.

[17] The Act states that a claimant has just cause for voluntarily leaving an employment if the claimant had no reasonable alternative to leaving, having regard to all the circumstances (section 29(c) of the Act).

[18] The Respondent has the burden of proving that the leaving was voluntary, and the Appellant must show that she had just cause for leaving her employment (*Green v Canada (Attorney General)*, 2012 FCA 313).

Did the Appellant leave her employment with X voluntarily?

[19] The Appellant openly admits that she resigned from her employment with X. The employer confirmed it in the Record of Employment, which states that she quit. The Tribunal finds that the Appellant left her employment voluntarily.

Did the Appellant have just cause (within the meaning of the Act) for voluntarily leaving her employment and was it the only reasonable alternative?

[20] The Federal Court of Appeal confirmed in the decision *Canada (Attorney General) v White*, 2011 FCA 190, that the claimant who has voluntarily left their employment must prove that they had no reasonable alternative to leaving their employment.

[21] In this case, the Appellant claims that she had just cause for leaving her employment for three reasons and that there were no other reasonable alternatives:

1. Health reasons;

2. Difficult working conditions;

3. The desire to find employment in her field of study.

[22] For the reasons explained below, the Tribunal finds that the Appellant did not have just cause for leaving her employment because she had reasonable alternatives to leaving in the circumstances.

[23] The evidence on record shows that the X department closed about two weeks after the Appellant left. The employees in the department had the opportunity of working in customer service positions. The Appellant, who had finished a bachelor's degree in business administration, was not interested in customer service work. She indicated that it [translation] "was time to look for something else."

Leaving for health reasons

[24] The Appellant stated that she left X because the working environment in her department was unhealthy. She testified that she did not feel well at work and that she had lost interest in her work. The Appellant worked in the X department in X. The employer had informed the employees that the department would close in the near future. Many employees left. The Appellant alleged that, in October 2018, the department's staff fell from 12 employees to 4 or 5 employees. The Appellant claimed that the result of that downsizing was overworking and the difficult work environment where she often worked alone. The Appellant stated that she saw that the holidays were approaching and she could no longer tolerate being at work. She testified that she really was unwell and that she had to leave to preserve her health.

[25] Despite the Appellant's statements that she was not well at work, she confirmed that she did not speak to a physician about her health issues and that she did not discuss her health issues with her employer. Furthermore, the Appellant confirmed that she chose to leave the

employment at the end of October not because of a specific health-related event, but because she saw the holidays approaching and she did not want to work for X during that time.

[26] After reviewing the evidence on this point, the Tribunal finds that the Appellant has not satisfied the requirements of the Act and has not shown that the work environment had a harmful effect on her health to the point that she had no reasonable alternative to voluntarily leaving her employment.

Leaving because of difficult working conditions

[27] The Appellant also argued that her leaving was caused by difficult conditions in the X department. The Appellant submitted that she was overworked. Based on the evidence on file, the employer indicated that the workload did not change despite the fact that there was high demand for assistance with online orders. The employer submitted that there were two other X departments, in Edmonton and the city of Québec, which also answered customers' calls.

[28] The Tribunal finds that there was not enough evidence to support the Appellant's claims that the deteriorating conditions in the workplace were just cause for her voluntary leaving. The Appellant has not satisfied the Tribunal that the changes in the working conditions were significant. The Appellant completed the same tasks in the X department, and her schedule had not changed. Furthermore, the employer had offered all X employees the opportunity to transfer to the customer service department.

[29] The Tribunal finds that the facts do not support the Appellant's position that she had just cause for voluntarily leaving her employment because of the working conditions. The Appellant could have chosen employment in the customer service department.

Leaving because of the desire to find employment in her field of study

[30] The Appellant also argued that she needed to leave the company because she wanted to find work in her field since she had obtained her bachelor's degree. She explained that the only position her employer offered was a customer service position. In the Appellant's view, the position was not interesting to her, given her education.

[31] Although leaving her employment for employment in her field of expertise seems like a good reason, it does not mean that the Appellant had just cause within the meaning of the Act and according to the definition given by the case law (*Imran*, 2008 FCA 17). The case law is clear that a claimant does not have a valid reason within the meaning of the Act when the claimant leaves their employment to find better employment (*Canada (Attorney General) v Mills*, A-189-98). In the Tribunal's view, the Appellant could have continued working at X until she found employment in her field of study. In summary, the Appellant's choice may seem reasonable in the circumstances, but the case law has established that it is not enough for someone to show that they acted reasonably in leaving their employment; they must show that they had no reasonable alternative to leaving, having regard to all the circumstances.

[32] The Tribunal finds that the Appellant voluntarily left her employment with X on October 31, 2017. However, the Appellant did not have just cause for leaving her employment, because she failed to show that she had no reasonable alternative to leaving, having regard to all the circumstances. The Appellant did not have just cause for voluntarily leaving her employment, even when all the circumstances are considered as a whole.

CONCLUSION

[33] The antedate request is refused because the Appellant has failed to prove that she had good cause for her delay and because she did not act as a reasonable person would have in the circumstances.

[34] The Appellant did not have just cause for voluntarily leaving her employment because she has failed to show that she had no reasonable alternative to leaving, having regard to all the circumstances.

[35] The appeal is dismissed.

Christianna Scott
Member, General Division – Employment Insurance Section

HEARD ON:	November 27, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	M. B., Appellant