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

[TRANSLATION]

Citation: *E. S. v Canada Employment Insurance Commission*, 2019 SST 299

Tribunal File Number: AD-18-661

BETWEEN:

E. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 21, 2019

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, E. S. (Claimant), applied for regular benefits. She stated that she had left her employment to be better able to take care of her children. The Canada Employment Insurance Commission determined that the Claimant's decision to voluntarily leave her employment was a personal choice and not her only reasonable alternative. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant had left her employment voluntarily and that leaving was not her only reasonable alternative. It determined that the Claimant did not have reasonable assurance of another employment before leaving her full-time employment and that she did not have just cause, within the meaning of the *Employment Insurance Act* (EI Act), to leave her employment to care for her children.

[4] The Tribunal granted leave to appeal. The Claimant argues that the General Division erred in law in its interpretation of sections 29 and 30 of the EI Act about voluntary leaving and that it 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.

[5] The Tribunal must decide whether 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 and whether it erred in finding that the Claimant had left her employment without just cause within the meaning of the EI Act.

[6] The Tribunal dismisses the Claimant's appeal.

ISSUES

[7] Did the General Division base 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] Did the General Division err by finding that the Claimant had left her employment without just cause within the meaning of the EI Act?

ANALYSIS

Appeal Division's Mandate

[9] The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

[10] 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.

[11] 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.

ISSUES:

Did the General Division base 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?

Did the General Division err by finding that the Claimant had left her employment without just cause within the meaning of the EI Act?

[12] The Claimant's appeal is without merit.

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

[13] The Claimant argues that 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. She submits that she did not leave her employment for financial reasons, but to care for her children. She submits that the General Division made errors of fact and law in considering the supporting facts as reasons for her leaving her employment.

[14] The facts on file are undisputed. After serious financial difficulties, the Claimant was forced to move into her late father's home in X in August 2017. She had secured the estate's approval earlier. She began her employment with her employer in X on July 24, 2017. She left her employment on October 14, 2017, because she had to take care of her children by herself as a result of her partner's depression. She no longer had access to the day-care centre because her account was overdue, and she had no close relatives to help her. Before leaving her employment in X, she found a job in X as a part-time X teacher. At the time, she thought that she would find alternatives quickly, which was not the case. Therefore, she applied for benefits on November 5, 2017.

[15] The employer in X stated that the Claimant had never discussed a schedule change and that it would have been possible. The Claimant informed the employer only that she was leaving because she had found a new job.

[16] The X employer stated that it was impossible to offer the Claimant full-time employment because the school year had already started when she was hired in October 2017. Indeed, she worked only 87 hours since she was hired.

[17] The Claimant argues that the General Division failed to consider the evidence before it. She also argues that the General Division erred by failing to consider section 29(c)(v) of the EI Act, namely that she had left her employment to care for her children.

[18] The issue under appeal before the General Division was whether the Claimant had voluntarily left her employment without just cause under sections 29 and 30 of the EI Act.

[19] Firstly, based on the evidence, the General Division found that the Claimant did not have reasonable assurance of another employment in the immediate future, within the meaning of section 29(c)(vi) of the EI Act. It considered the evidence that the Claimant had left a permanent job for a part-time job. Furthermore, the employer confirmed that the Claimant could not secure full-time employment when she was hired because the school year had started.

[20] Settled case law has long established that leaving a permanent job for a higher paying job, but without any guarantee of it being permanent or full-time, is not just cause within the meaning of the EI Act.

[21] Secondly, the General Division considered the Claimant's argument about her obligation to care for her children, within the meaning of section 29(c)(v) of the EI Act. It found that the Claimant had not demonstrated that her employer could not grant her leave or temporarily adjust her work schedule because she had an obligation to care for her children.

[22] The employer confirmed that the Claimant had never discussed her day-care service problem or the distance from her home to her work. The employer also confirmed that the Claimant might have had to work extra hours at the end of the month, but again, the Claimant did not attempt to find an alterative with her employer to see whether it could make accommodations for her, even temporarily.

[23] As the General Division pointed out, the Claimant was required to discuss her working conditions with her employer and to explore the possibility that the nature or the conditions of her work could be altered to address her concerns about her children. Furthermore, the evidence shows that the Claimant was able to get financial assistance from her family to pay the overdue day-care costs.[2]

[2] GD3-22.

[24] Based on the evidence, the General Division found that the Claimant had not demonstrated that voluntarily leaving to care for her children was the only reasonable alternative.

[25] Finally, settled case law has also long established that leaving one's employment for personal reasons not related to employment, such as a move to another residential area, transportation difficulties, or financial difficulties, does not constitute just cause for leaving one's employment under the EI Act.

[26] In light of the evidence submitted, the General Division found that the Claimant did not have just cause for voluntarily leaving her employment because the decision to leave her employment at that time was not her only reasonable alternative.

[27] The Tribunal recognizes that the Claimant was in a difficult situation. Still, she was required to try to reach an agreement with the employer to accommodate her needs regarding her children and to look for another equivalent employment before leaving the one she had.

[28] The Tribunal is of the view that that the General Division did not make an error when it found, based on the evidence before it, that the Claimant had reasonable alternatives to leaving her employment when she did.

CONCLUSION

[29] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	February 28, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. S., Appellant Yvan Bousquet, Representative for the Appellant Manon Richardson, Representative for the Respondent