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

Citation: M. S. v Canada Employment Insurance Commission, 2019 SST 359

Tribunal File Number: AD-18-886

BETWEEN:

M. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: April 17, 2019

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant, M. S. (Claimant), left her job because of the conflict she was experiencing in her workplace and because she was concerned that this conflict was affecting her health. Her application for Employment Insurance benefits was denied because the Respondent, the Canada Employment Insurance Commission (Commission), determined that she voluntarily left her employment without just cause. The Commission maintained this decision on reconsideration. The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed her appeal. She now appeals to the Appeal Division.

[3] The Claimant's appeal is allowed. The General Division erred in law by failing to have regard to all the circumstances as required by section 29(*c*) of the *Employment Insurance Act* (EI Act).

[4] I have made the decision the General Division should have made. The Claimant had just cause for leaving her employment and is therefore not disqualified from receiving benefits.

ISSUE(S)

[5] Did the General Division err in law by failing to consider that the Claimant left her job due to her antagonism with a supervisor?

ANALYSIS

[6] The Appeal Division may intervene in a decision of the General Division, only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in s.58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] The only grounds of appeal are as follows:

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.

Did the General Division erred in law by failing to consider that the Claimant left her job due to her antagonism with a supervisor?

[8] Section 29(*c*) of the EI Act states that a claimant will have just cause for leaving where he or she has no reasonable alternative to leaving, having regard to all the circumstances. Section 29(*c*) lists a number of circumstances that are relevant to determining just cause. The application of section 29(*c*) requires the General Division to consider any of the listed circumstances that are suggested by the facts before it.

[9] One of the listed circumstances found at section 29(*c*)(x) of the EI Act is described as "antagonism with a supervisor if the claimant is not primarily responsible for the antagonism" The General Division did not consider the applicability of this circumstance or how it affected the existence of a "reasonable alternative to leaving".

[10] I find that there was substantial evidence before the General Division of "antagonism with a supervisor". The Claimant told the Commission that she quit because of "internal conflict", a term used by her employer.[1] She also testified to the General Division that the internal conflict was with a particular supervisor,[2] and she described it as bullying, favoritism, conflict, and neglect.[3]

[11] The Claimant also produced a June 5, 2018, doctor's note to the General Division stating that the doctor had "recommended [the Claimant] quit her current employment due to conflict".[4]

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[1] GD3-44
[2] Audio recording of the General Division hearing at 22:40
[3] *Ibid.* at 22:50
[4] GD3-42

I accept that the conflict to which the note refers is the same conflict described by the Claimant in relation to her antagonism with a particular supervisor. This medical note is evidence that the Claimant was experiencing conflict at work and that she considered the conflict significant enough to relate it to her doctor. The note also implies that her doctor considered the effects of that conflict to be significant enough to justify the doctor's recommendation that she quit her job.[5]

[12] I also find that the Claimant was not primarily responsible for the antagonism. I rely on the evidence of the employer representatives that appeared at the hearing and testified that the employer was in the process of organizing a respectful workplace program to address the issues that affected the Claimant and some other staff, expressly stating that this particular problem was not unique to the Claimant.[6] The employer representatives stated that that the employer recognized that the Claimant had a right not to return to the same work environment under labour legislation[7]. They also said that the employer did not have many alternate opportunities that would not require the Claimant to return to the same department with the people that the Claimant was having problems with and "that were causing all the trauma to begin with."[8]

[13] The evidence before the General Division supported both the existence of antagonism with the Claimant's supervisor for which she was not primarily responsible, and its significance to her decision to leave her employment. However, the General Division failed to have regard to all the circumstances as required by section 29(*c*) of the EI Act, by failing to consider the antagonism circumstance. This is an error of law under section 58(1)(b) of the DESD Act.

CONCLUSION

[14] The appeal is allowed.

REMEDY

[15] Having allowed the appeal, I have the authority under section 59 of the DESD Act to give the decision that the General Division should have given, refer the matter back to the General

[5] GD3-42
[6] Audio recording of the General Division hearing at 22:00
[7] *Ibid.* at 20:43
[8] Audio recording of the General Division hearing at 21:40

Division for reconsideration, or confirm, rescind, or vary the General Division decision in whole or in part.

[16] In written submissions to the Appeal Division, the Commission acknowledged that the General Division had erred and it invited me to give the decision that the General Division should have given. The Commission also took the position that the Claimant had exhausted all reasonable alternatives prior to leaving, and that I should allow the appeal.[9] I consider the record complete and I will give the decision that the General Division should have given.

[17] The General Division determined that the Claimant had a reasonable alternative to leaving her employment and that she did not have just cause for leaving under section 29(*c*) of the EI Act.

[18] However, I accept that the Claimant experienced persistent conflict at work with a particular supervisor and that she had already taken a stress leave as a result.[10] I accept that when she returned to work after her stress leave, she discussed her difficulties related to conflict with the supervisor and that the employer acknowledged the problem. However, the employer offered no possible solution. There is no evidence that the employer offered the Claimant a position that would accommodate her concern or that it held out the prospect of such a position. An employer representative suggested that they did not have "many" alternative position that would not require her to work with the same supervisor, but the employer admitted to the Commission that it was "kind of true" that there were no other positions that would not put the Claimant under the supervisor.[11] I accept that the employer did not have any position that could accommodate the Claimant's concern. I also accept that the Claimant's doctor had recommended that she quit because of the conflict, and I infer from this that her doctor considered that it would be harmful to the Claimants' health to continue under the same circumstances.

[19] Having regard to all the circumstances, I find that the Claimant had just cause because leaving her employment was the only reasonable course of action open to her.[12] Before she quit,

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[9] AD2-4
[10] GD3-26, GD3-38, GD3-46
[11] GD3-46
[12] See *Canada (Attorney General) v Laughland,* 2003 FCA 129

she sought and took a medical leave. When she returned, she discussed her workplace conflict concerns with her employer. The employer acknowledged the substance of her complaint but could not offer any accommodation that would eliminate or mitigate the workplace conflict. The he Claimant believed her continued employment was harmful to her health and quit, and her belief was borne out by the doctor's recommendation.

[20] I find that the Claimant had just cause for leaving her employment under section 29(*c*) of the EI Act and she should not, in consequence of her leaving, be disqualified from receiving Employment Insurance benefits under section 30(1).

Stephen Bergen
Member, Appeal Division

HEARD ON:	April 11, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. S., Appellant
WRITTEN SUBMISSIONS	S. Prud'homme, Representative for the Respondent