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

Citation: *S. M. v Canada Employment Insurance Commission*, 2019 SST 499

Tribunal File Number: AD-18-830

BETWEEN:

S. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: May 21, 2019

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The General Division erred and I have made the decision that the General Division should have made.

OVERVIEW

[2] The Appellant, S. M.(Claimant), worked in a province distant from her home province, when she voluntarily left her employment as a result of reported difficulties finding more secure accommodations, stress and anxiety, and to return home to live with her husband. She applied for Employment Insurance benefits but the Respondent, the Canada Employment Insurance Commission (Commission), denied her claim, finding that she had left her employment without just cause. The Commission maintained this decision on reconsideration.

[3] 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.

[4] The appeal is allowed. The General Division erred in law by not considering all of the relevant circumstances and failed to understand the Claimant's evidence regarding the nature and status of her marriage. I have made the decision that the General Division should have made and found that the Claimant had just cause for leaving her employment.

ISSUES

[5] Did the General Division err in law by failing to consider all the circumstances?

[6] Did the General Division err in law by requiring that the Claimant establish that her stress required her to **immediately** quit her employment before it would consider that factor?

[7] Did the General Division erroneously find that section 29(c) of the *Employment Insurance Act* (EI Act) did not apply without regard for the evidence that the Claimant and her husband were reconciled and wished to reside together?

ANALYSIS

[8] 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).

[9] 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.

Issue 1: Did the General Division err in law by failing to consider all the circumstances?

[10] According to section 29(c) of the EI Act, a Claimant can only establish just cause for leaving by showing that he or she had no reasonable alternative to leaving, having regard to all the circumstances. The necessary corollary to this is that the General Division can only determine that a claimant does not have just cause if it finds that the Claimant has some reasonable alternative but again, having regard to all the circumstances.

[11] Having determined that the Claimant's circumstances did not fall within either section 29(c)(ii) of the EI Act, which includes the obligation to accompany a spouse, or section 29(c)(iv), which concerns working conditions that constitute a danger to health and safety, the General Division turned to the Claimant's efforts to resolve marital problems. It stated that these did not meet the standard of "just cause".

[12] Marital problems, or the desire to resolve marital problems, is not one of the circumstances listed in section 29(c) of the EI Act, per se. However, the list of circumstances in section 29(c) is not intended to be exhaustive. Since one of the Claimant's reasons for leaving her employment was that she experienced difficulties as a result of separation from her husband, the General Division needs to take the Claimant's "marital problems" into consideration.

Furthermore, it must consider those problems conjunctively with any other relevant circumstances, before it can determine whether she had reasonable alternatives to leaving, having regard to all those circumstances.

[13] The General Division did not apply the section 29(c) of the EI Act to consider "all the circumstances", and it thereby erred in law under section 58(1)(b) of the DESD Act.

Issue 2: Did the General Division err in law by requiring that the Claimant establish that her stress required her to *immediately* quit her employment before it would consider that factor?

[14] Section 29(c)(iv) describes the circumstance where a claimant's working conditions constitute a danger to health or safety. The General Division's dismissal of the Claimant's work circumstances as a danger to her health was based on its conclusion that the Claimant's work circumstances were not such as to require her to immediately quit her employment.

[15] There is no legislative requirement that the danger be such as to require the Claimant to immediately leave her employment. Subsection 28(4) of the **former** *Unemployment Insurance Act* required a claimant to have no reasonable alternative to leaving immediately, but there is no requirement in the current EI Act that a claimant have no reasonable alternative to leaving immediately. . According to section 29(c), the legal test is whether the Claimant had no *reasonable* alternative to leaving. Presuming Parliament to have been acting purposefully, it would now be an error of law to interpret the current statute in such a way as to reintroduce the immediacy requirement. In fact, a requirement for immediacy would obstruct the proper consideration of "all the circumstances" as required by section 29(c) of the current EI Act; circumstances that may variously occur at different times or develop progressively, such as many medical conditions.

[16] There is also no jurisprudence (legal decisions) that would require that the danger to the Claimant's health require her to immediately leave her employment. *Chaoui v Canada (Attorney General)* stated that it was going too far to require that working conditions be intolerable before it can be said that a claimant has no reasonable alternative to leaving.[1] Similarly, imposing a

[1] *Chaoui v Canada (Attorney General),* A-255-04

requirement that the Claimant's heath be so threatened that she needed to leave her work *immediately* does not allow much leeway to consider options. It implies that she would have had to have "absolutely no alternative" to leaving, as opposed to no reasonable alternative to leaving. The Federal Court of Appeal definitively ruled in *Canada (Attorney General) v Ash* [2] that this is not the test.

[17] In this case, there was medical evidence before the General Division of the Claimant's stress and of its effect on her. The doctor who had seen the Claimant for stress while she was still employed, later provided a letter that confirmed his recommendation that she should leave the city in which she worked, "due to her medical condition and the amount of stress she has been going through in [that city]"[3] (necessarily requiring her to leave her employment). The medical evidence included a chart note from the same doctor from a month prior to the date the Claimant quit[4] evidencing a diagnosis of anxiety and stress, identifying some symptoms, and identifying the medications prescribed to treat her. The chart note does not attribute the stress to her work conditions, but a few months later the Claimant obtained another opinion from her new doctor in her home province which confirmed that she was still experiencing stress that the doctor attributed to "isolation and 15-hour days".[5] This is presumably a reference to the period and conditions of her former employment: Long days is a working condition and living away from her home in a distant work location, was also a condition of her employment, although less directly.

[18] Where the evidence supports a finding that a claimant's work circumstances have resulted in a level of stress affecting the claimant's health—regardless of whether that stress is so severe as to require the claimant to quit immediately—the work circumstances must be found to be a danger to the claimant's health. Such a finding would not necessarily mean that the claimant would have no reasonable alternative to leaving, but it would mean that section 29(c)(iv) of the EI Act would need to be considered together with the other relevant circumstances.

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[2] See *Canada (Attorney General) v Ash*, A-115-94
[3] GD2A-8.
[4] GD2-9.
[5] GD2A-7.

[19] I find that the General Division erred in law under section 58(1)(b) of the DESD Act by requiring that the Claimant's stress be such as to require her to immediately leave her employment before it could be considered a relevant circumstance.

Issue 3: Did the General Division erroneously find that section 29(c) did not apply without regard for the evidence that the Claimant and her husband were reconciled and wished to reside together?

[20] The Claimant has a husband that resides in her home province. She referred to her husband as her "now-common-law partner" at one point in her written submissions to the General Division,[6] but this is inaccurate. She and her husband were separated, but remained legally married.[7] According to the Claimant they had often talked over the years and had remained good friends. The Claimant indicated that they reconciled in early 2017.[8] Although she continued working for her employer, she returned to visit her husband in her home province in March 2017. After she returned to work, her husband came to visit her in August 2017, and she returned to see him again in October 2017. She indicated that they were both happy together but had a hard time with being apart. Her husband could not afford to come to visit her in the province in which she worked after that, so the Claimant again returned to visit him in March 2018, where they stayed together in the home that the Claimant had maintained in her home province.

[21] When the Claimant returned to work in March 2018, she stated that she was suffering from stress and anxiety, that she was lonely, and that her mind was on being home with her husband. She stated that if she had kept her job, it would have meant that she would have to give up on her relationship with her husband. At the General Division hearing, the Claimant testified that she had a choice to find a secure place to live in the city in which she worked, but this would have meant giving up her relationship with her husband.[9] As I understand it, this was stated as the alternative to leaving her employment and returning home.

[22] The General Division described the purpose of the Claimant's move as an attempt to "rekindle" the relationship. In my view, the General Division has mischaracterized the evidence.

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[6] GD2A-4
[7] GD2-5
[8] Supra note Gd2a-4
[9] Audio recording of General Division hearing at timestamp 13:30

The evidence suggests that the Claimant and her husband were married, that they had maintained their relationship as friends, and that they had restored their relationship as husband and wife beginning in March 2017, more than a year before she left her job. The Claimant left her employment to live with her husband: not in an "attempt" to rekindle their relationship.

[23] I find that the General Division erroneously found that section 29(c)(ii) of the EI Act was inapplicable based on its misunderstanding of one of the reasons that the Claimant left her job.

CONCLUSION

[24] The Claimant has established grounds for appeal under section 58(1) of the DESD Act. I will now consider the appropriate remedy.

REMEDY

[25] 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 Division with or without directions, or confirm, rescind or vary the General Division decision in whole or in part.

[26] I consider that the appeal record is complete and that I may therefore give the decision that the General Division should have given.

[27] The Claimant gave three reasons for leaving her employment:

a) She wanted to be reunited with her husband.
b) She felt unsafe in her rental accommodations and could not afford to move.
c) She was suffering from anxiety and stress.

[28] These circumstances are interrelated. According to the Claimant, being separated from her husband was lonely and stressful. She felt unsafe and insecure partly because she lived alone. Living alone. Her insecurity increased her anxiety and stress.

[29] I have already found that the General Division erred in finding that section 29(c)(iv) of the EI Act did not apply. I also found that the Claimant misunderstood the evidence before it where it found that the Claimant's "marital problems" were not just cause for leaving her employment, and that her "marital problems", if that is what they were, should have been

considered with the other relevant circumstances. I also found that the General Division failed to consider all the evidence in assessing whether section 29(c)(ii) was applicable.

[30] I have considered the evidence relevant to section 29(c)(ii) of the EI Act, namely; the history in paragraphs 21 and 22 above, and I find that section 29(c)(ii) also applies, which allows that a claimant may have "an obligation to accompany a spouse … to another residence".

[31] In the Federal Court of Appeal in *Canada (AG) v. Rust*[10] confirmed a decision of the Umpire (the decision maker of the former Canadian Umpire Benefit tribunal) that had suggested that the "obligation to accompany" can arise from the simple fact of the marital relationship:

> "… in the particular circumstances in this appeal and perhaps taking a liberal rather than a literal interpretation of the statute, I find the claimant acted as any loving, intelligent spouse would have acted. Obligation is defined in the same Oxford Dictionary as Inter Alia 'binding agreement, written contract or bond, a duty."

[32] The Federal Court of Appeal also held in *Canada (Attorney General) v Mullin*[11] that there was no requirement that the other spouse whom the claimant accompanies must have moved to obtain employment. Furthermore, for the purposes of section 29(c)(ii) of the EI Act, "accompany" does not require both spouses to move *together* or even that the spouse, that the claimant accompanies, must have moved at all. In *Canada (Attorney General v. Kuntz),*[12] the claimant quit her job to move to her husband's home community where her husband resided permanently. The Federal Court of appeal considered the claimant to have "accompanied" her spouse.

[33] Finally, the Claimant does not need to meet any cohabitation requirement. She left her employment to be with her legal *spouse*. The fact that they had been separated for a number of years and could only see each other periodically once they were reconciled, does not nullify the spousal relationship.

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[10] *Canada (Attorney General) v Rust* A-650-95
[11] *Canada (Attorney General) v Mullin,* A-466-95
[12] *Canada (Attorney General) v Kuntz,* A-1485-92

[34] The Claimant and her husband had been reconciled as husband and wife for about a year at the time that the Claimant moved. However, the Claimant and her husband had difficulty maintaining their renewed relationship because they could afford to travel across the country to see one another very often. When this situation became intolerable to the Claimant, she quit her job so that she could move to her home province, where she shares a residence with her spouse.

[35] I do not consider the circumstances to be different in any material way from those of *Kuntz*, where a bride moved to join her recent husband. I find that the circumstance described in section 29(c)(ii) is applicable to the Claimant.

[36] I have considered all the circumstances including the claimant's loneliness and insecurity in her accommodations, and those circumstances that section 29(c) specifically directs me to consider (including how the working conditions were affecting her health as well as her obligation to accompany her spouse). I have also considered how these circumstances are interrelated to some degree. I find that the Claimant had no reasonable alternative but to leave her employment, and therefore had just cause for leaving.

[37] The Claimant is therefore not disqualified from receiving benefits under section 30 of the EI Act for having voluntarily left her employment.

Stephen Bergen
Member, Appeal Division

HEARD ON:	May 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. M., Appellant