



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *O. P. v Canada Employment Insurance Commission*, 2019 SST 675

Tribunal File Number: AD-19-308

BETWEEN:

**O. P.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: July 26, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal dismisses the appeal.

### **OVERVIEW**

[2] The Appellant, O. P. (Claimant), was employed as a X and X for her employer. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant did not have just cause for voluntarily leaving her employment. The Claimant explained that the housekeepers harassed her. However, the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division found that the Claimant had failed to show that she had no reasonable alternative to voluntarily leaving. It found that the Claimant had actually left because of the salary and that she should have waited for her employer to resolve the situation before resigning.

[4] The Claimant received leave to appeal. She 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.

[5] The Tribunal must decide whether the General Division erred by finding that the Claimant had voluntarily left her employment just cause [*sic*] under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

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

### **ISSUE**

[7] Did the General Division err in law by finding that the Claimant had voluntarily left her employment without just cause under sections 29 and 30 of the EI Act?

## ANALYSIS

### Appeal Division's Mandate

[8] 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*.<sup>1</sup>

[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.

[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: Did the General Division err in law by finding that the Claimant had voluntarily left her employment without just cause under sections 29 and 30 of the EI Act?**

[11] The Claimant argues that the General Division did not consider the evidence before it when making its decision. She submits that she had in fact attempted to discuss with her employer the harassment to which she had been subjected, but the employer did not do anything and did not want to acknowledge the situation. She argues that the employer did not apply its zero-tolerance policy in any way despite a physical altercation with one of the housekeepers. Rather, it chose the easiest solution, which was to dismiss her, because it did not manage to resolve the situation.

[12] The General division found that the Claimant had failed to show that she had no reasonable alternative to voluntarily leave. It found that the Claimant had actually left

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

because of the salary and that she should have waited for her employer to resolve the situation before resigning.

[13] The General Division found that the Claimant had begun the process of severing the employment relationship with her employer by resigning from her position if she did not get a pay raise. The employer then sent her a letter to show that it accepted her resignation.<sup>2</sup> The Claimant even confirmed her resignation in a response letter that she sent to her employer.<sup>3</sup> In her Employment Insurance application, she reiterates that she resigned<sup>4</sup> and indicates that she voluntarily left her employment.<sup>5</sup>

[14] Consistent case law states that a claimant whose employment is terminated because they gave notice of their intention to leave their job verbally, in writing, or by their actions must be considered as having left their employment voluntarily under the EI Act even if they later express a desire to remain in their employment or change their mind.

[15] Did the Claimant have reasonable alternatives to leaving her employment?

[16] As the General Division noted, the Claimant had an obligation to attempt to resolve workplace conflicts with the employer or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job.

[17] During an interview with the Commission, the Claimant admitted that she did not discuss the harassment situation with her employer before quitting because she mainly wanted a pay raise.<sup>6</sup>

[18] Furthermore, the General Division was not convinced that the Appellant's working conditions were so intolerable that she had no other option but to resign when

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<sup>2</sup> GD3-33.

<sup>3</sup> GD3-36.

<sup>4</sup> GD3-15.

<sup>5</sup> GD3-7.

<sup>6</sup> GD3-41.

she did. She stated on more than one occasion that she liked her work and that she would have kept her employment if her employer had granted her request for a pay raise.<sup>7</sup>

[19] The Claimant also stated that she did not look for employment before resigning from her position because she believed that she would get a pay raise from her employer.<sup>8</sup> She then submitted into the record a single job application from April 2018, which was six months before she voluntarily left. The other job applications are from after she left and cannot be considered in deciding whether she had just cause for leaving when she did.

[20] The Tribunal is of the view 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.

[21] Therefore, the appeal should be should be [*sic*] dismissed for the reasons mentioned above.

## **CONCLUSION**

[22] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division

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| HEARD ON:             | July 16, 2019    |
| METHOD OF PROCEEDING: | Teleconference   |
| APPEARANCE:           | O. P., Appellant |

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<sup>7</sup> GD3-30 and GD3-41.

<sup>8</sup> GD3-30.