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

Citation: *Canada Employment Insurance Commission v L. S.*, 2019 SST 969

Tribunal File Number: AD-19-413

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

L. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: September 13, 2019

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed. I am giving the decision that the General Division should have given.

OVERVIEW

[2] The Appellant, the Canada Employment Insurance Commission (Commission), is appealing the General Division's decision dated May 20, 2019. The General Division found that the Respondent, L. S. (Claimant) had just cause to leave her employment when she did because, having regard to all the circumstances, she demonstrated that she had no reasonable alternatives to leaving. The Commission argues that the General Division erred in law and based its decision on an erroneous finding of fact when it found that the Claimant had just cause. I have to decide whether the General Division erred.

[3] I find that the General Division misinterpreted sections 25 and 29 of the *Employment Insurance Act*. I am therefore allowing the appeal and giving the decision that the General Division should have given.

BACKGROUND FACTS

[4] The Respondent, L. S., left her short-term contract position on December 31, 2018 to attend a practical nursing program. The Claimant had been on a lengthy waiting list to enter the nursing program locally in New Brunswick, but she was accepted into a nursing program that was to start in January 2019 on Prince Edward Island. The Claimant did not want to miss this opportunity, so she left her job before the contract expired. Because it was a short-term contract position covering an employee's maternity leave, a leave of absence was unavailable.

[5] The Claimant applied to the New Brunswick-Employment Insurance Connect Program on December 21, 2018, before she left her employment. The program offers eligible individuals the opportunity to continue to receive regular Employment Insurance benefits. When she completed the application form for the NB-EI Connect Program, the Claimant agreed that if she voluntarily left her employment to return to school, she would not be eligible for NB-EI

Connect.[1] The Claimant did not speak with an employment counsellor with the NB-EI Connect Program until after she left her employment. She did not receive approval to participate in training until sometime after she left her employment.

[6] The Claimant applied for Employment Insurance regular benefits in January 2019, disclosing that she had quit her job to go to school. The Commission disqualified her from receiving Employment Insurance benefits because it found that she had voluntarily left her employment on December 31, 2018 without just cause and that voluntarily leaving was not her only reasonable alternative.[2] The Commission did not change its decision on reconsideration.[3]

[7] The Claimant appealed the Commission's reconsideration decision to the General Division, on the ground that she had made a prudent decision to improve her employment prospects. She also argued that Employment Insurance benefits would enable her to continue her studies. Otherwise, she might have to consider abandoning her studies because of the high costs of education and living expenses.[4]

[8] The General Division examined whether, having regard to all the circumstances, the Claimant demonstrated that she did not have any reasonable alternatives to leaving. The General Division found that the Claimant had applied to the NB-EI Connect Program before she left her employment. The General Division also found that the Claimant did not receive approval for training until after she left her employment. It also found that had it not been for the holiday season, the Claimant likely would have received approval before she left her employment. On this basis, the General Division found that the Claimant had no reasonable alternatives and that she had therefore proven that she had just cause for leaving her employment.

[9] The Commission argues that the General Division erred in law and based its decision on an erroneous finding of fact without regard for the material before it.

[1] See New Brunswick Employment Insurance (NB-EI) Connect Program Client Agreement signed on December 17, 2018, at GD6-6.
[2] See Commission's letter dated February 18, 2019, at GD3-32 to GD3-33.
[3] See Commission's reconsideration decision dated March 20, 2019, at GD3-41 to GD3-42.
[4] See Notice of Appeal, at GD2.

ISSUE

[10] Did the General Division err in law or 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 when it determined that the Claimant had just cause for voluntarily leaving her employment?

ANALYSIS

[11] The Commission argues that the General Division failed to follow or properly apply the law and that it ignored key pieces of evidence.

Section 25 of the *Employment Insurance Act*

[12] The Commission argues that the General Division erred in law by failing to analyze the evidence in a meaningful way and, in particular, by failing to consider that the Claimant's agreed with the NB-EI Connect Program that, "If [she] voluntarily [left her] employment to return to school, [she would] not be eligible for NB-EI."

[13] The Commission also argues that the General Division based its decision on an erroneous finding of fact that it made without regard for the material before it when it concluded that the Claimant had just cause to leave her employment for training to which she had been referred under section 25 of the *Employment Insurance Act*. Although the Claimant applied to the program on December 21, 2018 and met a counsellor after she left her employment, she had yet to obtain approval or a referral for training under section 25 off the *Employment Insurance Act*.

[14] The Commission also argues that the referral to training became invalid because she did not meet the terms and conditions of the NB-EI Connect Program.

[15] Simply put, the Commission is arguing that the Claimant failed to meet the requirements under section 25 of the *Employment Insurance Act*.

[16] The Claimant on the other hand argues that she reasonably expected that she would qualify for the NB-EI Connect Program because she met all the criteria. However, there was a delay in obtaining the necessary referral or approval because of seasonal holidays. The Claimant argues that had the NB-EI Connect Program processed her application in a timely manner, she

would have secured the necessary referral to meet the formal requirements of section 25 of the *Employment Insurance Act*. She argues that I should accept that she met the requirements because ultimately the designated authority referred her to the nursing program.

[17] Generally, claimants are disqualified from receiving any Employment Insurance benefits if they leave their work to go to school or to take training. This is so because they are considered unavailable for work. However, section 25 of the *Employment Insurance Act* allows a claimant who is attending a course or program of instruction or training to receive Employment Insurance benefits. A claimant is considered unemployed and capable of and available for work when they meet the requirements under the section, namely, that they are attending a course or program of instruction or training to which the Commission or a designated authority has referred the claimant.

[18] The wording of section 25 of the *Employment Insurance Act* indicates that a claimant has to secure referral to a program before actually starting the program. The wording says that while a claimant "is attending a course or program" to which the Commission … has referred." The act of referring had to have taken place already. In other words, a claimant has to wait until the Commission or its designated authority program actually approves the program or course, even if a claimant fully expects and ultimately gets that approval or referral. The General Division erred in its interpretation of the section, when it decided that the Claimant could get referral to training after she had already started the program.

[19] In this case, the Claimant does not dispute the fact that she got a referral to the nursing program after she had already started it. Because the Claimant received a referral after she already started training, she cannot avail herself of section 25 of the *Employment Insurance Act* and be considered unemployed and capable of and available for work while she attended and continues to attend the nursing program.

Section 29 of the *Employment Insurance Act*

[20] The Claimant relies on section 29 of the *Employment Insurance Act.* The section states that just cause for voluntarily leaving an employment exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances.

[21] The Claimant argues that she had just cause for voluntarily leaving her employment and that she did not have any reasonable alternatives to leaving her employment, having regard to all the circumstances. She explains that she was unable to attend the nursing program and work on a full-time basis in New Brunswick at the same time. She had been on a lengthy waiting list for the nursing program at a nearby college—indeed, she was at number 70 to 75 on the waitlist as recently as August 2, 2019—so did what she felt any reasonable person would have done under similar circumstances. She accepted the offer that became available immediately, rather than wait indefinitely for an offer from the nearby college.

[22] The Commission argues that the Claimant did not have just cause, as contemplated by section 29 or the legal jurisprudence. The Commission asserts that the Claimant made a personal decision to leave her employment and while it was certainly a good decision for personal reasons, it did not qualify as just cause. The Commission noted that the courts have consistently held that a claimant who voluntarily leaves their employment to go back to school or to take a training course is not just cause within the meaning of section 29 of the *Employment Insurance Act* unless they have been authorized to do so by the Commission.[5]

[23] The Commission argues that I have to consider the facts and circumstances as they existed at the time the Claimant left her job.[6] When she left her job, the Claimant had yet to be referred to the training program under section 25 of the *Employment Insurance Act*.

[24] I am bound to follow decisions of the Federal Court of Appeal. As the Federal Court of Appeal also held in *Canada (Attorney General) v. Lessard*,[7] it is settled law that returning to school or taking a training course is not just cause, unless the Commission authorizes the training. The Federal Court of Appeal quoted Desjardins J.A. in *Canada (Attorney General) v. Martel*:[8]

> An employee who voluntarily leaves his employment to take a training course that is not authorized by the Commission certainly has an excellent reason for doing so in personal

[5] The Commission referred to *Canada (Attorney General) v. Lamonde*, 2006 FCA 44, where the Federal Court of Appeal wrote that, "except for programs authorized by the Employment Commission (the Commission), a return to school does not constitute justification under paragraph 29(c).
[6] See *Attorney General of Canada v. Furey*, A-819-95, July 2, 1996 (F.C.A.)
[7] See *Attorney General of Canada v. Lessard*, 2002 FCA 469.
[8] See *Attorney General v. Martel* (1994), 175 N.R. 275 at para. 12.

> terms; but we feel it is contrary to the very principles underlying the unemployment Insurance System for that employee to be able to impose the economic burden of his decision on contributors to the fund.

[25] I do not see anything in the record that would allow me to make an exception to the rule. I find that the General Division erred in its interpretation of subsection 29(c) of the *Employment Insurance Act* and when it failed to follow the jurisprudence and settled principles of law.

REMEDY

[26] The Commission urges me to give the decision that the General Division should have given under section 29(c) of the *Employment Insurance Act.* I agree that this is appropriate because the evidence is uncontested and there are no gaps in the evidentiary record.

[27] I find that the Claimant did not have just cause for voluntarily leaving her employment having regard to all the circumstances because she had yet to secure the necessary referral or approval from the Commission or its designated authority before she left her employment and started her training. Although the Claimant expected and subsequently obtained this referral, the case law makes it clear that she had to obtain the referral or approval before leaving her employment and starting the program. The case law also makes it clear that while the Claimant certainly had an excellent reason for leaving her employment, this does not constitute just cause under the *Employment Insurance Act*.

CONCLUSION

[28] The appeal is allowed. Under section 59 of the *Department of Employment and Social Development Act*, I am giving the decision that the General Division should have given.

Janet Lew
Member, Appeal Division

HEARD ON:	September 6, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Louise LaViolette and Angèle Fricker Representatives for the Appellant A. S., Representative for the Respondent