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

Citation: *Canada Employment Insurance Commission v P. P.*, 2020 SST 35

Tribunal File Number: AD-19-639

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

P. P.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: January 21, 2020

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Respondent, P. P. (Claimant) lived in the city of X. He bought a house in February 2018 in the city of X because his daughter planned to attend university near X in September 2019. He expected that she would need his support because she had been in an accident and had challenges with independent living. He sold his home in X in November 2018. While he waited to take possession of his new home, he and his wife moved in with his adult son who lived nearby in X, which was still close to the Claimant's employment. The Claimant closed the purchase of his new home in X on February 13, 2019 and he quit his job on March 28, 2019 so that he could move to X.

[3] The Claimant applied for Employment Insurance benefits but the Appellant, the Canada Employment Insurance Commission (Commission), denied his claim, telling him that he voluntarily left his employment without just cause. It maintained this decision on reconsideration and the Claimant appealed to the General Division of the Social Security Tribunal.

[4] The General Division allowed his appeal, finding that he had just cause for leaving his employment. The Commission is now appealing the General Division decision to the Appeal Division.

[5] The Commission's appeal is allowed. The General Division erred in law by misapplying *Canada (Attorney General) v White*[1] and considering only the Claimant's efforts to find work before quitting.

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[1] *Canada (Attorney General) v White*, 2011 FCA 190

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[6] To allow the appeal, I must find that that the General Division made one of the types of errors described in the grounds of appeal. The "grounds of appeal" are outlined below:[2]

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

ISSUE

[7] Did the General Division err in law when it ruled out reasonable alternatives to leaving by considering only that the Claimant made efforts to find work before quitting?

ANALYSIS

[8] The General Division found that it was reasonable for the Claimant to have wanted to move to T to provide support for his daughter while she attended university. At the same time, the General Division acknowledged that this was not enough to establish just cause and that the Claimant still needed to show that he had no reasonable alternatives to leaving his employment.

[9] The Claimant's quit his job in March 2019 because he was moving to X and felt that the commute from T to his employer to be too long by transit and too far to drive. At the time that he moved, and for some time afterwards, the Claimant's wife was back and forth between X and X because his son's family needed help with a new baby.[3] His wife was no longer working but was using the family car. The Claimant's daughter had planned to start university near X. in September 2019. In the end, she remained in X with the Claimant's son and started a different university in September 2019. The university she planned to attend was not willing to give the daughter credit for her two years of college. None of these facts were in dispute.

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[2] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act.*
[3] Audio recording of General Division hearing at timestamp 00:32:40.

[10] The General Division ultimately found that the Claimant had reasonable alternatives to leaving. Although the General Division stated that it had regard to all the circumstances, its reasons suggest that the only circumstance it considered was the Claimant's efforts to find work before he left his job. It cited *White* for the proposition that, "[a] claimant has an obligation, in most cases, to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job." It said that the Claimant's decision to leave his employment met the test under the EI Act and *White*.

[11] In *White,* the Federal Court of Appeal found that it was reasonable for the Board of Referees[4] to find the claimant to have reasonable alternatives to leaving because that the claimant had not attempted to resolve her conflicts with her employer. This was the context in which the Court said that there is, "an obligation on claimants, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment", before leaving a job. *White* suggests that a claimant who fails to meet these obligations may be found to have reasonable alternatives. *White* does not mean that a claimant must be found to have **no** reasonable alternative to leaving just because he met one or both of the obligations.

[12] As the General Division noted, the question is not whether it was reasonable for the Claimant to leave his job, but whether he had no reasonable alternative to leaving. In *Canada (Attorney General) v. Murugaiah*,[5] the Federal Court of Appeal said that the Umpire should not have dismissed the appeal in that case, because the Board of Referees had failed to consider an obvious reasonable alternative to the respondent leaving his employment. The Board of Referees had overlooked the fact that the claimant could have continued to work at his employer while he was searching for another job in the city that he intended to move, instead of moving there immediately. The Court explained:

> Despite the myriad of examples provided by section 29(c) of what would constitute just cause for voluntarily leaving an employment, the primary question remains the same: did the claimant have no reasonable alternative to leaving the position or taking leave from employment?

[4] The Board of Referees is a lower-level decision making body in the former administrative appeal scheme. Appeal from the Board of Referees was to the Umpire. Appeal from the Umpire was to the Federal Court of Appeal.
[5] *Canada (Attorney General) v. Murugaiah*, 2008 FCA 10

[13] According to *Murugaiah*, it would be an error for the General Division to have failed to consider obvious reasonable alternatives, including any reasonable alternative to moving immediately. In this case, the General Division accepted that he had been seeking employment in X before he quit, and that he had exhausted this particular alternative. However, it failed to consider that there was no urgency to the Claimant's move. In that light, one obvious reasonable alternative would be for the Claimant to *continue* his job search in T until nearer to the start of his daughter's school term.

[14] Because of its apparent misreading of *White*, the General Division does not appear to have assessed the Claimant's reasonable alternatives to leaving his employment in light of all the circumstances as it is required to do under the *Employment Insurance Act*.[6] I find that the General Division erred in law by misapplying *White*. Alternatively, the General Division erred in law by failing to provide adequate reasons that explain how it found the Claimant to have no reasonable alternative to leaving.

[15] I have found that the General Division made an error of law, and that means I must consider the appropriate remedy.

REMEDY

[16] I have the authority to change the General Division decision or make the decision that the General Division should have made.[7] I could also send the matter back to the General Division to reconsider its decision. The Commission suggests that I should make the decision.

[17] I have decided to give the decision that the General Division should have given because I consider that the appeal record is complete. That means that I accept that the General Division has already considered all the issues raised by this case, and that I can make a decision based on the evidence that the General Division received.

[18] The Claimant argued that he had no reasonable alternative to leaving his job because he moved to another city. The fact that he moved does not mean that he had just cause to leave his

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[6] Section 29(c) of the EI Act.
[7] My authority is set out in section 59 of the DESD Act.

employment. The decision to move was a personal one, therefore the decision to quit was also personal.

[19] I recognize that the EI Act requires the General Division to take into consideration a Claimant's obligation to accompany a spouse or a dependent child or to care for a child or member of the immediate family. At least part of the reason that the Claimant bought his house in T and moved was that he wanted to help his daughter who could not live independently but planned to go to university near X.

[20] However, the Claimant did not move to accompany his spouse. His spouse had been working while she and the Claimant lived in X. She was not laid off until March 30, two days after the Claimant moved to X. There is no evidence that she had a job or other reason to move at that time. In fact, the Claimant's wife seemed to be living in both X and X in the period that followed the Claimant's move.

[21] The Claimant also did not have to move because he had an obligation to care for his daughter in the new location. He quit his job and moved in March 2019. The Claimant told the Commission in June 2019 that he part of his reason for moving was to accompany his daughter who would be attending university near X. He said that she was starting school in September.[8] Therefore, even if all had gone according to plan, the Claimant did not expect that his daughter would start university until September 2019.

[22] If the Claimant meant to establish that he had just cause for leaving because he believed he should move to support his daughter, he could have done so closer to when his daughter would actually need his help. The Federal Court of Appeal said in *Canada (Attorney General) v Patterson* that a claimant must quit at a time which is within reasonable proximity of the date that represents just cause.[9] In *Patterson*, there was a delay of about four months between when the claimant quit and when she moved to be with her husband. The delay between March 28, 2019 when the Claimant moved and the beginning of the university term in September is about five months. I do not accept that five months is within "reasonable proximity".

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[8] GD3-34
[9] *Canada (Attorney General) v Patterson*, A-765-95.

[23] The Claimant said that it was uncomfortable living in crowded conditions with his son, and he undoubtedly wanted to move into his new house. However, there was no reason that the Claimant needed to quit when he did. While I have no reason to interfere with the General Division's finding that the Claimant demonstrated efforts to find work before he left his job, this does not mean that he did not have reasonable alternatives to leaving. The Claimant had at least two reasonable alternatives. He could have delayed his move to his new home until he found employment in X, or he could have commuted from X until he secured other employment. If the Claimant chose to move, the Claimant could have used the family car and commuted to his previous employer. I take judicial notice that the distance from his former employer to X is approximately 100 kilometres, which would mean that his commute would likely be more than an hour. I recognize that this would have added significant commuting time to his day and some additional expense, but this would be a consequence of his personal decision to move. As the Federal Court of Appeal said in *Tanguay v Canada (Attorney General):*

> … an employee who has, voluntarily left his employment and has not found another has deliberately placed himself in a situation which enables him to compel third parties to pay him unemployment insurance benefits. He is only justified in acting in this way if, at the time he left, circumstances existed which excused him for thus taking the risk of causing others to bear the burden of his unemployment.[10]

[24] I have found that the Claimant had reasonable alternatives to leaving at the time that he quit his job. His intention to be a support for his daughter was commendable and I can appreciate he wanted to move from a crowded house to his new home. These are all good reasons, but they are not just cause within the meaning of the EI Act.

CONCLUSION

[25] The Commission's appeal is allowed.

Stephen Bergen
Member, Appeal Division

[10] *Tanguay v Canada (Attorney General)*, A-1458-84.

HEARD ON:	December 5, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. P., Appellant Angeline Fricker, Representative for the Respondent