



Citation: *Canada Employment Insurance Commission v RC*, 2023 SST 37

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Melanie Allen

Respondent: R. C.

Decision under appeal: General Division decision dated October 3, 2022
(GE-22-1775)

Tribunal member: Charlotte McQuade

Type of hearing: Teleconference

Hearing date: January 11, 2023

Hearing participants: Appellant's representative
Respondent

Decision date: January 13, 2023

File number: AD-22-762

Decision

[1] The appeal is allowed.

[2] The General Division made an error of law.

[3] I have substituted my decision for that of the General Division. The Claimant has not shown just cause for leaving her employment.

Overview

[4] R. C. is the Claimant. She left her employment to relocate to another province to begin living with a partner. The Canada Employment Insurance Commission (Commission) decided that the Claimant did not have just cause for quitting her job because she made a personal decision to relocate, and she could have secured work in the new province prior to leaving her job.

[5] The Claimant appealed this decision to the Tribunal's General Division. The General Division decided the Claimant had shown just cause as she pursued the reasonable alternative of trying to find work in the new province before she quit.

[6] The Commission appealed the General Division's decision to the Appeal Division. The Commission argues that the General Division misapplied the legal test for just cause and did not meaningfully analyze the evidence concerning whether the Claimant had no reasonable alternatives to leaving her job, having regard to the personal circumstances in which she left her employment.

[7] The General Division misapplied the legal test for just cause. I have substituted my decision for that of the General Division.

[8] I find that the Claimant has not shown just cause for leaving her job. She made a personal decision to relocate to another province to begin residing with her partner. In those circumstances, the Claimant had the reasonable alternative of securing employment in the new province, prior to leaving her job.

Issues

[9] The issues in this appeal are:

- a) Did the General Division misapply the legal test for just cause?
- b) Did the General Division fail to meaningfully analyze the evidence concerning whether the Claimant had no reasonable alternatives to leaving her job, having regard to the personal circumstances in which the Claimant left her job?

Analysis

The General Division made an error of law

[10] The Commission had disqualified the Claimant from benefits because the Commission decided the Claimant had not shown just cause for voluntarily leaving her job.

[11] The Claimant appealed that decision to the General Division.

[12] There was no dispute that the Claimant had voluntarily left her job. The General Division had to decide whether the Claimant had just cause for leaving her job.

[13] The *Employment Insurance Act* (EI Act) says a claimant is disqualified from benefits if the claimant voluntarily left their employment without just cause.¹

[14] “Just cause” exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances, including any of the circumstances set out in the law.²

[15] The onus is on a claimant to show, it is more likely than not that they had just cause for leaving their job.

¹ Section 30 of the *Employment Insurance Act* (EI Act) explains this.

² Section 29(c) of the EI Act describes the test for “just cause.”

[16] The Claimant had been in a long-distance relationship. She and her partner had decided to begin residing together. The Claimant's partner could not move to her province as he had to care for an adult child. The Claimant quit her job on January 19, 2022, to move to her partner's province to begin residing with him.³

[17] One of the circumstances set out in the law is where a claimant has an "obligation to accompany a spouse, common-law partner or dependent child to another residence."⁴

[18] The General Division decided that circumstance didn't apply in the Claimant's situation because to be considered a "common-law partner" the Claimant must have cohabited with her partner for a period of at least one year and that was not the case.⁵

[19] So, the General Division concluded the Claimant did not have an obligation to follow a spouse or common-law partner to another residence when she left her employment. Rather, her circumstance of leaving was to relocate to another province to begin residing with her partner.⁶

[20] The General Division noted that the Claimant had asked her employer, whom she had worked with for 25 years, for a leave of absence but was refused. A transfer was not possible as the employer did not operate in the province that the Claimant was moving to.

[21] The General Division considered that the Claimant had been on vacation in the new province from December 23, 2021, to January 19, 2022. The town she was moving to was very small, with several other towns nearby. There were no major industries located nearby. It was primarily a fishing and tourism area.

[22] The General Division found as a fact the Claimant had looked for work after she arrived, having looked at the local store, the grocery store, and the drug store. She also

³ See paragraph 19 of the General Division decision.

⁴ See section 29(c)(ii) of the EI Act.

⁵ See section 2(1) of the EI Act and paragraph 24 of the General Division decision.

⁶ See paragraph 24 of the General Division decision.

spoke to relatives who told her about a position at a restaurant, but when she looked into it the position was filled.

[23] The General Division referred to the principle set out in the law that in most cases a claimant has an obligation to show efforts to seek alternative employment before taking a unilateral decision to quit a job.⁷

[24] The General Division concluded that the obligation is to seek employment, not to secure employment. The General Division noted that, the fact the Claimant was not successful in getting employment was not determinative of the matter.

[25] The General Division decided the Claimant exhausted the reasonable alternative of seeking other employment prior to leaving her position because she demonstrated that she looked for work in the new province prior to her employment ending. So, the General Division concluded the Claimant had shown just cause for voluntarily leave employment.

[26] The Commission submits that the General Division stated the correct legal test. However, the Commission maintains the General Division misapplied the legal test. The Commission submits that rather than considering whether, having regard to the circumstances, the Claimant had no reasonable alternatives to leaving, the General Division only considered that the Claimant pursued the reasonable alternative of looking for work before quitting.

[27] The Commission argues the General Division did not meaningfully analyze the evidence concerning whether the claimant had no reasonable alternatives to leaving, having regard to all of the circumstances, which were a personal decision to relocate. Instead, the General Division focused on what could possibly support the Claimant's decision to leave.

⁷ The General Division referred to the case of *Canada (Attorney General) v White*, 2011 FCA 190.

[28] The Commission submits that the case law from the Federal Court of Appeal has said leaving a job for personal reasons does not constitute just cause and the General Division did not consider that case law.⁸

[29] The Claimant disagrees. She submits that the General Division properly applied the law. She says she pursued all reasonable alternatives, as she asked her employer for a leave of absence, which wasn't possible, and she looked for work before she quit.

[30] Respectfully, I find the General Division made an error of law. While the General Division stated the correct legal test for "just cause," the General Division misapplied the legal test.

[31] The General Division focused on the fact the Claimant had pursued the reasonable alternative to leaving her job of looking for work, as opposed to considering, having regard to the personal circumstances in which the Claimant left her job, whether the Claimant had "no" reasonable alternative to leaving.⁹

[32] Since the General Division has made an error of law, I can intervene in the decision.¹⁰

Remedy

[33] To remedy the error, I can send the appeal back to the General Division for reconsideration or give the decision the General Division should have.¹¹

[34] The Claimant said at her hearing that she wanted me to substitute my decision for that of the General Division. She wants me to dismiss the appeal. She says she has just cause for leaving her job.

[35] The Claimant submits that she exhausted all reasonable alternatives because she looked for work in the new province while on vacation there, but she had to return to sell her home. She asked her employer for a leave, but the employer wouldn't allow

⁸ The Commission refers to, for example, *Canada (Attorney General) v Lapointe*, 2009 FCA 147 (CanLII).

⁹ This is the test set out in section 29(c) of the EI Act.

¹⁰ See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

¹¹ See section 59(1) of the DESD Act.

that, and the employer did not operate in the province she was moving to. So, a transfer was not possible.

[36] The Commission also wants me to substitute my decision for that of the General Division. The Commission wants me to allow the appeal.

[37] The Commission says leaving a job for personal reasons does not amount to just cause. The Commission maintains that, given the personal reason in which the Claimant left her job, she had the reasonable alternative of remaining employed until she found new employment in the province she was moving to.

[38] I find this is an appropriate case for me to substitute my decision. The parties had a full and fair hearing before the General Division and the essential facts are not in dispute.

Substituted decision

[39] The General Division decided that the Claimant did not have an “obligation to accompany a spouse, common-law partner or dependent child to another residence” because to be considered a “common-law partner” the Claimant must have cohabited with her partner for a period of at least one year and that was not the case.¹²

[40] I agree with that finding. The evidence was the Claimant had not cohabited with her partner for at least a year.

[41] I find the circumstance in which the Claimant left her job was the personal decision to move to another province to begin residing with her partner.

[42] The General Division said the law only obligates a claimant to seek employment before quitting their job and the failure to obtain employment is not determinative. The General Division cited a case from the Federal Court of Appeal in support of that position.

¹² See section 29(c)(ii) of the EI Act; See section 2(1) of the EI Act for the definition of “common-law partner.”

[43] The case cited by the General Division says there is an obligation on claimants to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job. I agree with the General Division that the case doesn't specifically say a job has to be secured.¹³ I note, however, the facts of that case did not involve a purely personal reason for leaving employment. The facts involved a claimant quitting due to a change in work duties.

[44] More recent case law from the Federal Court of Appeal has confirmed that leaving a job for personal reasons does not amount to just cause.¹⁴

[45] Having regard to that case law and the Claimant's personal reason for leaving her job, I find the Claimant has not shown just cause for voluntarily leaving her employment. The Claimant had the reasonable alternative of remaining employed until she secured new employment.

[46] Even if I were to accept that the Claimant was not required to obtain employment, only to search for it, I find the Claimant had the reasonable alternative available to her of having remained employed until she had engaged in a more active and sustained search for work in the new province.

[47] The Claimant did ask her employer for a leave of absence and made some attempt to find work while on vacation between December 23, 2021, to January 19, 2022. Specifically, the General Division found as a fact that the Claimant had asked for work at three retail outlets and looked into a position at a restaurant.¹⁵

[48] I recognize the Claimant was moving to a small town with limited employment opportunities. However, her attempts to find work before quitting were extremely limited. The Claimant only looked for work briefly from December 23, 2021, to January 19, 2022, while on vacation. She admittedly told the General Division that she didn't look at any websites to find work and she didn't check any bulletin boards. She said that she

¹³ The General Division referred to the case of *Canada (Attorney General) v White*, 2011 FCA 190 (CanLII).

¹⁴ See *Andrade v Canada (Attorney General)*, 2014 FCA 93 (CanLII).

¹⁵ See paragraph 21 of the General Division decision.

thought she would get EI and then would start the process of finding a job as she was in the middle of a house move and that was on her mind.¹⁶

[49] Engaging in an active and sustained job search for work in the new province was a reasonable alternative, given there did not appear to be any urgency to the Claimant's decision to quit her job and given the personal nature of the Claimant's decision to quit and move.

[50] There is no doubt the Claimant had a good personal reason for leaving her job. However, a good reason is not the same as showing "just cause" under the EI Act. Since the Claimant had reasonable alternatives available to her, having regard to the circumstances in which she quit, the Claimant has not shown just cause for leaving her job.

Conclusion

[51] The appeal is allowed. The General Division made an error of law. I have substituted my decision to find the Claimant has not shown she has just cause for voluntarily leaving her employment.

Charlotte McQuade
Member, Appeal Division

¹⁶ I heard this from the audio recording of the General Division hearing at approximately 0:31:00 to 0:39:00.