



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *DL v Canada Employment Insurance Commission*, 2015 SSTGDEI 229

**Date: August 26, 2015**

**File number: GE-15-1110**

**GENERAL DIVISION - Employment Insurance Section**

**Between:**

**D. L.**

**Appellant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

**Decision by: Richard Sterne, Member, General Division - Employment Insurance Section**

**Heard by Teleconference on July 27, 2015**

## REASONS AND DECISION

### PERSONS IN ATTENDANCE

The Appellant, D. L., and his witness, L. B., attended the hearing by telephone.

### INTRODUCTION

[1] The Appellant was employed by X (employer1) until May 24, 2014, and by X (employer2) until May 31, 2014.

[2] On September 19, 2014, the Appellant applied for employment insurance benefits (EI benefits).

[3] On October 24, 2014, the Canada Employment Insurance Commission (Respondent) advised the Appellant that they were unable to pay him any EI benefits because he had voluntarily left his employment with employer1 and employer2, without just cause within the meaning of the *Employment Insurance Act* (Act).

[4] On November 18, 2014, the Appellant filed a request for reconsideration of the Respondent's October 24, 2014, decisions, which was denied on February 13, 2015.

[5] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue(s) under appeal.
- b) The fact that the credibility is not anticipated to be a prevailing issue.
- c) The fact that the appellant will be the only party in attendance.
- d) The information in the file, including the need for additional information.
- e) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

### ISSUE

[6] Did the Appellant prove that he had no reasonable alternatives and therefore had just cause for voluntarily leaving his employment, pursuant to the Act?

## **THE LAW**

[7] **Section 29 of the Act:**

For the purposes of sections 30 to 33,

- (a) "employment" refers to any employment of the claimant within their qualifying period or their benefit period;
- (b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;
  - (b.1) voluntarily leaving an employment includes
    - (i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,
    - (ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and
    - (iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and
- (c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:
  - (i) sexual or other harassment,

- (ii) obligation to accompany a spouse or common-law partner or a dependent child to another residence,
- (iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act,
- (iv) working conditions that constitute a danger to health or safety,
- (v) obligation to care for a child or a member of the immediate family,
- (vi) reasonable assurance of another employment in the immediate future,
- (vii) significant modification of terms and conditions respecting wages or salary,
- (viii) excessive overtime work or refusal to pay for overtime work,
- (ix) significant changes in work duties,
- (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
- (xi) practices of an employer that are contrary to law,
- (xii) discrimination with regard to employment because of membership in an association, organization or union of workers,
- (xiii) undue pressure by an employer on the claimant to leave their employment, and
- (xiv) any other reasonable circumstances that are prescribed.

(1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the "employment."

**[9] Subsection 30(2) of the Act:**

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period

**EVIDENCE**

[10] The Appellant was employed by employer1 from September 1, 2012 to May 24, 2014, and by employer2 from January 20, 2012 to May 31, 2014.

[11] On June 28, 2014, employer1 and employer2 issued the Appellant's records of employment (ROE) and indicated the reason for issuing the ROEs was code E, Quit.

[12] On September 19, 2014, the Appellant applied for EI benefits. In his application for EI benefits, the Appellant indicated that he had quit because there were illegal activities going on at work. However, he also stated that he did not quit. He said that there were issues that needed to be dealt with concerning his safety, unsafe working conditions, and non-payment of overtime. The Appellant said that he was waiting to be called back to work and at no time did he advise either employer that he had quit.

[13] On October 10, 2014, the Appellant told the Respondent that he did not quit his job. He said that he reported a criminal act to the police and had asked his employer2 to post a no trespass notice to the person who was involved in the criminal act. The next day, before he went

to work, he texted employer2 that he would be late for work as he had a meeting with the Crown Attorney regarding the employment issues. Employer2 texted him back to come in to work. However, the Appellant replied via text asking if the trespass notice was given and threatened Labour Board action. He said employer2 then left him a voice mail message advising him that there was no work at the marina so he didn't have to come to work. He said he was waiting for employer2 to let him know when to come back to work. He said that he didn't expect that they would lay him off since their season had just begun. He said that he did not contact employer2 after the voicemail message to find out if work was available.

[14] On October 15, 2014, employer2 told the Respondent that the Appellant stopped showing up for work and did not call. Employer2 stated that he had tried to reach the Appellant, but he didn't respond. Employer2 said that he wouldn't have dismissed the Appellant because he had work for him to do.

[15] On October 21, 2014, the Appellant told the Respondent that he felt he worked excessive overtime and did not get paid for the overtime.

[16] On October 24, 2014, the Respondent advised the Appellant that they were unable to pay him any EI benefits because he had voluntarily left his employment with employer1 on May 24, 2014 without just cause within the meaning of the Act. They stated that they believed that voluntarily leaving his employment was not his only reasonable alternative.

[17] On October 24, 2014, the Respondent advised the Appellant that they were unable to pay him any EI benefits because he had voluntarily left his employment with employer2 on May 27, 2014 without just cause within the meaning of the Act. They stated that they believed that voluntarily leaving his employment was not his only reasonable alternative.

[18] On November 18, 2014, the Appellant filed a request for reconsideration of the Respondent's October 24, 2014, decisions.

[19] On December 15, 2014, the Appellant submitted additional information to his request for reconsideration.

[20] On December 22, 2014, employer2 left the Appellant a voicemail stating that he wasn't laid off, but that they had to let him go because he wasn't showing up for work.

[21] On February 13, 2015, the Respondent advised the Appellant that they had not changed their October 24, 2014 decisions.

## **SUBMISSIONS**

[22] The Appellant submitted that:

- a. there were several issues regarding his employment, including:
  - fraudulent records of employment (ROEs).
  - safety and illegal issues at work.
  - unreasonable amounts of overtime.
  - non-payment of overtime worked.
- b. he did not voluntarily leave his employment, but rather he was dismissed.

[23] The Respondent submitted that:

- a. the Appellant did not demonstrate just cause for voluntarily leaving his employment, and therefore, they imposed an indefinite disqualification pursuant to sections 29 and 30 of the Act, effective 13 July 2014.

## **ANALYSIS**

[24] The purpose of the Act is to compensate persons whose employment has terminated involuntarily and who are without work (**Gagnon [1988] SCR 29**).

[25] Subsection 30(1) of the Act provides for an indefinite disqualification when the claimant voluntarily leaves his employment without just cause. The test to be applied, having regard to all the circumstances, is whether the claimant had a reasonable alternative to leaving his employment when he did.

[26] During the hearing, the Appellant stated that on May 28, 2014 he had texted employer2 that he would be 30 minutes late because he had a meeting with the Crown Attorney's office,

regarding the issues he had with employer2, i.e. posting a no trespassing sign and illegal activities going on at the company. He said that employer2 replied by text to tell him that he needed him at work. The Appellant said that later employer2 left him a voicemail message that advised him to not return to work.

[27] The Appellant argued that he did not quit his job. The Appellant said that he was told by Service Canada to indicate that he had quit on his application for EI benefits, because that was what was indicated on his ROEs.

[28] The Appellant stated that there were illegal activities going on at the company. He described one incident when he had to drive the company truck because a fellow employee could not drive because he was impaired. The Appellant said that the other employees in the truck were smoking illegal drugs.

[29] The Tribunal finds that the employer had a policy that prohibited the illegal activities of drinking and smoking marijuana on the job, and therefore the Appellant's incident does not give him just cause for quitting his job and does not constitute an exception pursuant to subsection 29(c)(iv) of the Act.

[30] The Appellant argued that he was required to work overtime that he was not paid for. The Tribunal accepts that the overtime may have been an issue, but that there is no evidence that the Appellant had tried to address this issue with employer2.

[31] The Tribunal finds that the Appellant made a personal decision not to come to work after employer2 had asked him to come to work. The Tribunal understands that later employer2 left the Appellant a voice mail advising him not to come to work, but that was after the Appellant had advised employer2 of his conditions on returning to work.

[32] The Tribunal finds that even though the Appellant knew that this was employer2's busy season, the Appellant made no further attempts to contact employer2 about returning to work. The Tribunal notes that employer2 stated that he had to let the Appellant go because he did not show up for work which constitutes job abandonment, and the Appellant had made no attempt to contact employer2.



[33] The Tribunal does not accept the Appellant's argument that he did not quit, but rather was dismissed. The Appellant stated that he had gone through a similar situation in 2012 when he was dismissed for his actions. The Tribunal finds that the Appellant knew that his actions could result in his dismissal, such that he made a conscious decision to end his employment by not showing up for work or contacting employer2. Employer2 did initially state that he had no intentions of dismissing the Appellant because he had work for him to do. Employer2 later stated that he had let the Appellant go because he did not show up for work.

[34] The Tribunal finds that the Appellant did have reasonable alternatives to resigning his job. He could have reported to work when employer2 asked him to. He could have attempted to contact employer2 about returning to work. He could have tried to resolve his issues with employer2. He could have continued working for employer2 until he found more suitable employment.

[35] The Federal Court of Appeal reaffirmed the principle that where a claimant voluntarily leaves his employment, the burden is on that claimant to prove that there was no reasonable alternative to leaving when he did.

**Canada (AG) v. White, 2011 FCA 190**

[36] The Tribunal finds that the Claimant did not have just cause to voluntarily leave his employment, because he did not prove that there was no reasonable alternative to leaving when he did, pursuant to subsection 30(1) of the Act.

**CONCLUSION**

[37] The appeal is dismissed.

Richard Sterne  
Member, General Division - Employment Insurance Section