



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *C. A. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 84

Tribunal File Number: GE-15-3683

BETWEEN:

**C. A.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Claude Durand

HEARD ON: May 18, 2016

DATE OF DECISION: June 27, 2016

## REASONS AND DECISION

### PERSONS IN ATTENDANCE

[1] The Appellant, C. A., was not present at the hearing. She did not contact the Tribunal to explain her absence.

[2] The Tribunal carried out the required verifications to determine the reasons for her absence. It appears the Appellant did in fact receive her notice of hearing. The Appellant could not be reached by telephone and she had not contacted the Tribunal to request a postponement.

[3] Under subsection 12(1) of the *Social Security Tribunal Regulations*, the Tribunal may proceed in a party's absence if it is satisfied that the party received notice of the hearing.

[4] I have determined that the Appellant did not demonstrate a desire to attend the hearing.

[5] In addition to subsection 12(1) of the *Social Security Tribunal Regulations*, subsection 3 thereof gives the Tribunal a degree of latitude to proceed differently if special circumstances warrant.

### 3. (1) CONDUCT OF PROCEEDINGS

#### Informal conduct

The Tribunal

(a) must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit; and

(b) may, if there are special circumstances, vary a provision of these Regulations or dispense a party from compliance with a provision.

#### Proceeding by way of analogy

(2) if a question of procedure that is not dealt with by these Regulations arises in a proceeding, the Tribunal must proceed by way of analogy to these Regulations.

[6] In relying on section 3 and subsection 12(1) of the *Social Security Tribunal Regulations*, I have decided to maintain the hearing date of May 18, 2016, and to hear the appeal.

[7] That decision fulfils my obligation to render a decision as fairly and equitably as possible for the parties concerned and in accordance with the principles of natural justice.

## **INTRODUCTION**

[8] In this case, the Employment Insurance Commission of Canada (the Commission) determined that the Appellant had lost her employment because of her misconduct. Accordingly, disqualification was imposed effective July 12, 2015, pursuant to subsection 30(1) of the *Employment Insurance Act* (the Act).

[9] The Appellant contested that decision and made a request for reconsideration. On October 16, 2015, the Commission upheld its initial decision.

[10] The Appellant appealed to the Social Security Tribunal on November 13, 2015.

## **ISSUE**

[11] The Tribunal must decide whether the Appellant lost her employment because of her misconduct within the meaning of sections 29 and 30 of the Act.

## **THE LAW**

[12] Subsections 29(a) and (b) of the Act read as follows:

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;

[13] Subsection 30(1) of the Act provides as follows:

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.

## **EVIDENCE**

### **Evidence in the file**

[14] The Appellant had been employed as an administrative assistant for Cégep du Vieux Montréal since 1997.

[15] The evidence reveals that the Appellant was dismissed by her employer on July 9, 2015 (pages GD3-3 to 17).

[16] The Appellant was a member of the union executive. She used the union's credit card for an amount of between \$70,000 and \$90,000 in personal expenses over a three-year period.

[17] When the employer was made aware of the situation, it determined that the Appellant's actions in diverting funds from the union, i.e. dues paid by her co-workers, had permanently broken the relationship of trust. The Appellant was dismissed (pages GD3-19, 22 and 31).

[18] The Appellant acknowledged the wrongdoing and stated that she had made an agreement with the union to repay the amounts that had been diverted. However, she felt that she had not lost her employment because of her misconduct at work. She stated that the employer had nothing to reproach her for at the workplace and that she did not have a disciplinary record.

## **PARTIES' ARGUMENTS**

[19] The Appellant argued as follows:

- a) She experienced financial problems and used the credit card mostly to pay for groceries;

- b) She entered into a repayment agreement with her union, and no legal action was taken in connection with this diversion of funds;
- c) The union was not a Cégep entity but an independent incorporated identity;
- d) She was an administrative assistant for her employer and did not have to handle money;
- e) She had contested her dismissal through a grievance and her union supported her;
- f) the employer had allegedly told her that it was dismissing her because the other employees were angry and it could no longer ensure her safety.

[20] The respondent Commission's arguments were as follows:

- a) Even though the claimant had explained that the diversion of funds had nothing to do with her employer, that is not entirely true. She diverted funds from her union, to which she had been elected to perform important duties. Through her actions the claimant in fact stole from her co-workers;
- b) Moreover, the claimant remained an employee of the college even while working for the union. The claimant was able to be elected to the union because she was an employee of Cégep du Vieux Montréal;
- c) The employer confirmed that the claimant had been dismissed because the relationship of trust had been broken. She diverted funds from the union. The employer stated that safety had never been raised as a reason for her dismissal;
- d) The Commission found that the acts in question, i.e. the diversion of funds from her union, constituted misconduct within the meaning of the Act given that this conduct permanently broke the relationship of trust essential to the continuation of the employment;
- e) The claimant's actions were wilful and deliberate and therefore constituted misconduct;
- f) The Commission submitted that its decision was supported by the case law, as cited at pages GD4-4 and 5.

## **ANALYSIS**

[21] First, it is important to recall the principles set out in the Act and clarified by the case law.

[22] The purpose of the Act is to compensate a worker who is involuntarily unemployed. The loss of employment against which the person is insured must be involuntary (*Gagnon* [1988] 2 S.C.R. 29).

[23] The performance of services is an essential condition of a contract of employment. When a claimant, as a result of his or her own actions, is no longer able to perform the duties for which the claimant is responsible under the employment contract and thus loses his or her employment, the claimant “cannot force others to bear the burden of his unemployment, no more than someone who leaves the employment voluntarily” (*Wasyłka* 2004, FCA 219; *Lavallée* 2003, FCA 255; *Brissette*, A-1342-92).

### **Case law principles regarding misconduct**

[24] The construction of misconduct is a question of law, but whether a particular act or omission is misconduct is a question of fact (*Tucker* A-381-85; *Bedell* A-1716-83).

[25] For behaviour to constitute misconduct under the *Employment Insurance Act*, wrongful intent is not required. It is sufficient that the wrongdoing or omission complained of be “wilful”, that is, conscious, deliberate or intentional (*Caul* 2006, FCA 251; *Pearson* 2006, FCA 199; *Bellavance* 2005, FCA 87; *Johnson* 2004, FCA 100; *Secours*, A-352-94; *Tucker* A-381-85).

[26] Having reviewed these principles, the Tribunal will proceed to its analysis based on the facts in evidence and the arguments raised by the Appellant.

[27] I have considered the evidence provided by the employer. In this case, the evidence that has been collected is clear and leaves no room for interpretation.

[28] I reject from the outset the Appellant's claim that the employer told her that she could be the victim of retaliation by other employees and that she was dismissed because her safety could not be guaranteed. There is no evidence of this in the file. On the contrary, the employer rebutted that assertion. I accept the employer's version (pages GD3-31).

[29] I note that the employer determined on the basis of real and serious evidence that the employee displayed a lack of honesty. The letter of dismissal reads in part as follows (pages GD3-19, paras. 3 and 4):

[translation]

- a) Moreover, you have never shown any remorse for your actions. On the contrary, you seem to believe that the repayment agreement to be entered into with the CSN relieves you of your responsibility for your actions and your responsibility towards the community, the members of your union and your co-workers.
- b) Furthermore, you stated to the college that the repayment of your debt depended on its decision as to whether or not to retain you in an employment relationship, thereby shifting responsibility for financial restitution for your actions to your employer. Our investigation does not lead us to believe that you will henceforth be able to perform your duties in a working environment in which mutual trust must be present.

[30] The Appellant's defence is essentially based on the fact that she did not commit any wrongdoing against her employer or commit any misfeasance in the context of her work. She admits she diverted union funds but maintains that this matter is of no concern to the employer.

[31] I reject that claim. If the appellant had not been employed by the Cégep du Vieux Montréal, she would not have held the position of grievance officer with her union. Her employment relationship was therefore a key element of her union duties. That is the Commission's argument, and I accept it.

[32] The basis for the employer's dismissal was that the relationship of trust had been broken.

[33] We recall that a relationship of trust is based on the principle of loyalty that is essential to the maintenance of the employment relationship. The duty of loyalty is an integral part of an employment contract, and employees must avoid placing themselves in a situation in which that

principle can be called into question. It also entails a duty of probity, rectitude, honesty, good faith and fidelity.

[34] The Appellant, who had held a position as an agent of the employer's office, could not have been unaware of those principles.

[35] The case law indicates that there must be a causal link between a claimant's alleged misconduct and the claimant's employment; the misconduct must therefore constitute a breach of an express or implied duty arising from the contract of employment;

[36] I note that the Appellant deliberately committed a number of serious acts of wrongdoing over the course of several years while employed by Cégep du Vieux Montréal and that she remained an employee even when she had time off for union duties in her capacity as grievance officer for her union.

[37] The file makes the causal relationship very clear.

[38] This case clearly meets the definition of misconduct as established in the jurisprudence as a whole.

[39] The Tribunal finds that the claimant lost her employment because of her own misconduct within the meaning of sections 29 and 30 of the Act.

## CONCLUSION

[40] The appeal is dismissed.



Claude Durand  
Member, General Division – Employment Insurance Section