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

Citation: *P. B. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 86

Tribunal File Number: GE-15-4021

BETWEEN:

P. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Teresa Day

HEARD ON: May 3, 2016

DATE OF DECISION: June 27, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant attended the hearing of his appeal via teleconference.

INTRODUCTION

[1] The Appellant established a renewal claim for regular employment insurance benefits (EI benefits) effective June 14, 2014. The Respondent, the Canada Employment Insurance Commission (Commission) re-examined his claim and determined that the Appellant lost his employment at Steeplejack Services (Steeplejack) for violating the drug and alcohol policy at their client's airport terminal. On June 3, 2015, the Commission advised the Appellant that it had imposed an indefinite disqualification from EI benefits effective April 26, 2014 because he had lost his job with CPR as a result of his own misconduct.

[2] On July 15, 2015, the Appellant requested the Commission reconsider its decision, explaining that there was no intended misconduct because he was unaware the drug and alcohol policy extended to the airport terminal building. The Commission maintained its original decision and, on December 3, 2015, the Appellant appealed to the General Division of the Social Security Tribunal of Canada (Tribunal).

[3] The hearing was held by teleconference because 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

[4] Whether the Appellant is disqualified from receipt of EI benefits because he lost his employment with Steeplejack by reason of his own misconduct.

THE LAW

[5] Subsection 30(1) of the *Employment Insurance Act* (EI Act) provides that 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.

[6] Subsection 30(2) of the EI Act stipulates that 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.

[7] The terms “employment” and “loss of employment” are defined in section 29 of the EI Act. Subsection 29(a) of the EI Act provides that for the purposes of sections 30 to 33, “employment” refers to any employment of the claimant within their qualifying period or their benefit period.

[8] Subsection 29(b) of the EI Act provides that for the purposes of sections 30 to 33, “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.

EVIDENCE

[9] The Appellant applied to renew a claim for EI benefits on June 11, 2014 (GD3-3 to GD3- 11), and established a renewal claim effective June 15, 2014 (GD4-1).

[10] On or about May 7, 2015, the Commission received a Record of Employment (ROE) for the Appellant from Steeplejack (GD3-12), which indicated the Appellant had accumulated 671

hours of insurable employment while employed as a scaffolder journeyman between January 22, 2015 and April 29, 2015, and gave the reason for separation as "Dismissal".

[11] On May 14, 2015, an agent of the Commission spoke with both the Appellant and a representative for the employer regarding the reason the Appellant was no longer working for Steeplejack, and documented these conversations in Supplementary Records of Claim (GD3-14 and GD3-15). The agent noted that they gave the following versions of events:

(a) The Superintendent for Steeplejack stated that the Appellant was dismissed for bringing open alcohol into a charter airport terminal that had a ban on all alcohol and drugs (GD3-14). According to the Superintendent, the Appellant was working in a Husky site and flying from a Husky charter terminal. The Appellant was well aware that he could be dismissed immediately for breaching Husky's drug and alcohol policy, which clearly state that their airport terminal is a drug and alcohol-free zone. A security guard reported that the Appellant was trying to get through airport security when he took a beer out from under his jacket and placed it in a garbage can. Husky banned the Appellant from the its site and the charter terminal due to the incident and, as the Appellant could no longer get to-and-from – or work at - the Husky site, Steeplejack dismissed him. The Superintendent further stated that the drug and alcohol policy is provided in the new hire package and covered in orientation, and that before workers fly out they are told by the Superintendent that it doesn't matter what they do on their days off but not to bring anything back with them that will get them fired.

(b) The Appellant stated that there was a misunderstanding with respect to a rule and he was not allowed only the airplane (GD3-15). According to the Appellant, he entered the airport terminal for a flight to the work site with a bottle of beer that he'd forgotten he had in his jacket pocket. He thought it was empty and had put it into his pocket because he was conscientious about recycling. The Appellant stated that he knew it was a violation to take alcohol on the plane and into the Husky camp, but he was not made aware that the terminal itself was an alcohol-free site. When he got to the airport and realized he had a full beer, he asked a girl where the washroom was, and was told that he had to go through security to get to the washroom. He thought he could dump the beer into the trash in the washroom and had no intention of violating the rules.

(c) When the agent reviewed the Steeplejack Superintendent's statements with the Appellant, the Appellant stated they were a reasonable approximation of what happened. According to the Appellant, security was multi-staged and when he went through the first check point, he told security that he didn't have any alcohol or drugs with him. When he moved to the next stage (where they scan your clothes), the Appellant thought that he needed to get rid of the

> beer, so he pulled it out and put the beer into the garbage, and that was when security came and reported him. The Appellant stated that he didn't know where the bathrooms were and that the bottle of beer was not open, but that he had planned on drinking it somewhere along his trip then realized it was still in his pocket. The Appellant further stated that he probably did sign off on the drug and alcohol policy, that he did get a new hire employee package (but that it is 40-50 pages), and that the orientation is 1.5 days long and covered a lot of rules, and he cannot recall anything about the airport terminal being an alcohol-free zone.

On May 21, 2015, the agent spoke with the Steeplejack Superintendent again (see Supplementary Record of Claim at GD3-16) and noted:

> (d) The Superintendent stated that the Appellant was fully aware of the no alcohol policy in the airport because it's covered in orientation and Steeplejack reminds its employees all the time. The Superintendent also stated that there are signs all over the airport stating no alcohol is allowed. According to the Superintendent, the Appellant told the security guard that he'd meant to finish the beer before he came into the airport.

[12] The Commission advised the Appellant on June 3, 2015 that it had re-examined his claim and was unable to pay him EI benefits from April 26, 2015 because he lost his employment at Steeplejack on April 29, 2015 as a result of his own misconduct (GD3-18 to GD3-19).

[13] On July 15, 2015, the Appellant requested the Commission reconsider its decision (GD3- 20 to GD3-23), stating that he believed his termination was constructive dismissal rather than dismissal for misconduct. In a letter attached to his Request for Reconsideration (GD3-22 to GD3-23), the Appellant stated that he had two points to raise in support of his request: (1) there was no intended misconduct and (2) Steeplejack "essentially chose to lay me off, in a form of constructive dismissal". With respect to the first issue, the Appellant stated that he was aware of the Husky drug and alcohol policy and knew he could not bring alcohol onto the plane or onto the Husky site. However, the terminal is owned and staffed by Edmonton Executive Flight Centre and he was not aware that the Husky policy extended as far back as the terminal building entrance. The Appellant wrote:

> "I was wearing a coat that *(sic)* a single bottle of beer in a pocket. I had intended to leave the coat in my car in the parking lot. As soon as I was aware that I inadvertently still had the jacket and the bottle. *(sic)* II *(sic)* immediately was looking for a garbage

> can or washroom to eliminate it. Not finding either I made inquiries of the Edmonton Executive Flight Centre staff for directions to a public washroom and was told I would have to go through security first. I followed the instructions and disposed of the bottle in full view of a member of the security team BEFORE I went through the scanning process.
>
> The staff was initially confused about the extent of the policy and I was held back while they discussed the "situation". They eventually contacted Husky site security on the telephone to get clarification. They advised me that I was in violation of the policy and refused to allow me to board the airplane." (GD3-22)

The Appellant stated that "at no point in the orientation or subsequently in the 3 months that I flew back and forth was I informed of the extent of the policy" and further stated that Steeplejack should have been responsible for ensuring that the rules were actually communicated to the employees.

[14] With respect to the Appellant's second point, the Appellant wrote:

> "I was employed by Steeplejack Services and not by Husky Petroleum. I was initially engaged via the Carpenters Union dispatch system in January 2015 to work with Steeplejack at another job-site, the ConocoPhilips Surmont site. Steeplejack decided to send *(sic)* to the Husky Site instead and I cooperated. At the time of the above incident with Husky, Steeplejack had open position at the Surmount site and could have chosen to re-assign me to that site. In doing so they would have honored the original employment agreement between Steeplejack, the Carpenters Union Dispatcher and me. I know of no reason they wouldn't have done that.
>
> I am appealing the decision based on the fact that Steeplejack essentially chose to lay me off, in a form of constructive dismissal." (GD3-23)

[15] On October 23, 2015, an agent of the Commission telephoned the Appellant regarding his request for reconsideration and documented their conversation in a Supplementary Record of Claim (GD3-24). The agent noted that the Appellant now said he ***was*** aware of the rules prohibiting alcohol in the airport terminal:

> "I asked the claimant if he was aware about the rules prohibiting alcohol in the airport terminal. He said he was. I asked him how he knew. He said there were signs up. I asked him where he noticed a sign. He said it was right behind the check-in desk. I asked him if he recalled what it said. He said the sign said no drugs or alcohol allowed. I asked the claimant if he had been to the airport many times and he said yes about four times. He knew that no drugs or alcohol were allowed in the terminal and once he realized he had beer with him in his jacket pocket he knew he had to dispose of it. The claimant said the problem was he could not find a refuse container or a bathroom to get

> rid of the beer. I asked the claimant – "did you look around for a garbage can"? He said "yes but there were no garbage cans anywhere in the airport and no bathroom that you can use until you have past *(sic)* security". I asked the claimant "why didn't you take the beer back to your car and leave it there"? The claimant said "my car was in the parking lot – I had taken a shuttle to the airport".

and

> "I asked the claimant if he knew he could be dismissed for having alcohol with him at the airport and he said yes."

The agent also noted the Appellant's statement about the sequence of events:

> "The claimant said that when he got to the check-in area he saw the signs prohibiting alcohol and remembered he had a full beer in his jacket pocket that he had forgotten to drink in the parking lot. He said he tried to dispose of the full beer but couldn't find a garbage can or bathroom and so went in through security with the beer – he said he had no choice. The beer was in his jacket pocket and when security asked him to take off his jacket so they could scan it through security, the claimant said that is when he removed the beer from his pocket and asked for a garbage can."

and

> "The claimant said he knew he had a beer in his jacket pocket and knew is (sic) was prohibited but could not find a bathroom or garbage can to dispose of the beer. I asked the claimant if he asked the staff if there was a bathroom for him to use and he said he did ask, and they said the only bathroom was located after the security scanning. He said he could not see any garbage cans. I asked him if he went outside to use a garbage can there and he said he went outside and could not find a garbage can outside either. I asked the claimant when he finally disposed of the beer and he said it was just before the security staff asked him to put his coat through the security scanning machine."

[16] Later the same day, the agent telephoned Edmonton Executive Flight Centre terminal and spoke with a customer service representative (see Supplementary Record of Claim at GD3-25). The agent noted the representative's statement that there were many garbage cans and large refuse containers immediately outside of the entrance doors of the terminal, and several refuse containers in the airport near the checking area. The agent also noted the representative's further statement that, as in every other airport in Canada, there is a booth before you go into the security lane that sets out what can be brought on to the flight and where plastic bags for liquids are dispensed, and there is a large garbage can to dispose of liquids before entering the security area inside the airport.

[17] On October 26, 2015, the agent spoke with Steeplejack's Regional Manager (see Supplementary Record of Claim at GD3-27). The agent noted the Regional Manager's statement that all employees are told they must comply with the alcohol policies for both Steeplejack and also whatever worksite Steeplejack sends them to. The agent also noted the Regional Manager's statement that the Appellant was well aware that no alcohol was permitted in the airport terminal, and that the employer considers the Appellant was trying to sneak beer into the dry Husky site. The Regional Manager then provided the Commission with:

(a) the New Hire Orientation Procedure checklist signed by the Appellant on January 22, 2015 confirming that he received orientation about the drug and alcohol policy (GD3-28); and

(b) the Security Occurrence Report prepared by terminal security (GD3-30). According to the report, the security guard at the carry-on screening machine asked the Appellant if he had any drugs, alcohol, weapons or tools, to which the Appellant replied no. Then when he asked the Appellant to put his jacket through along with his bag, the Appellant replied, "sure, just need a garbage can". When he handed the garbage can to the Appellant, the Appellant took out a bottle of Corona and threw it in. Then the security supervisor then came over and confirmed with the Appellant that the supervisor himself had asked the Appellant if he had any drugs, tools or alcohol when the Appellant was at the checked bag screening machine. The Appellant then said he planned on drinking the beer beforehand in the parking lot but ran out of time. The supervisor then informed Husky security and they denied the Appellant access to his flight.

[18] The Commission maintained its original decision of June 3, 2015 that the Appellant was disqualified from receipt of EI benefits because he had lost his employment as a result of his own misconduct (GD3-31 to GD3-32).

At the Hearing

[19] The Appellant testified that he never intended to violate the Steeplejack and Husky drug and alcohol policies and that his conduct in bringing a bottle of beer into the charter terminal merely amounted to a "procedural discrepancy" and was not deliberate, willful or reckless.

[20] The Appellant stated that contrary to the employer's statement at GD3-14, the beer he brought in to the terminal was not "open alcohol". The Appellant also stated that the advice he received at the terminal, namely that he had to go through security to get to a washroom (as he described at GD3-24), was also incorrect. After he was barred from his scheduled flight, the Appellant found out as he was leaving the terminal that there was a washroom at the entrance of the airport that he passed on his way in that he could have gone back to, but he didn't know it at the time because the security area was marked as a one-way door with no access back to the entrance.

[21] The Appellant disputed the statement by the customer service representative for Edmonton Executive Flight Centre Terminal that there was a booth before entering security in which there were bags for liquids and a large garbage can (GD3-25). The Appellant testified that this station "just wasn't there" and that there were no garbage containers "obvious to me".

According to the Appellant, when he flew back to the Husky site to retrieve his tools, he had a look around the terminal and noted that the nearest garbage container was in the smoking area outside of the terminal, about 80m away from the entrance.

[22] The Appellant stated that the orientation checklist at GD3-28 only lists the topics and doesn't prove Steeplejack had specifically covered the situation he found himself in on May 6, 2015. The Appellant further stated that he went through the new hire orientation when he was re-hired by Steeplejack in July 2015 and that his situation was not covered then either.

[23] The Appellant denied that he deliberately misled security when he failed to mention the beer in his jacket pocket. The Appellant testified that had to check his bags for the flight, and had textbooks in them, so his mind was on the weight restrictions as he was entering the airport. This caused him to forget about the beer and when he remembered it, he was embarrassed.

[24] The Appellant did not agree with the employer's opinion that he was trying to sneak beer into the Husky site (GD3-27). The Appellant stated that the Steeplejack and Husky drug and alcohol policies are in place for safety reasons, and further stated that one (1) bottle of beer didn't affect anyone's safety, would not cause him to become intoxicated and would not harm anybody else.

[25] Finally, the Appellant testified that he was employed by Steeplejack, after being dispatched by his union to a job for Steeplejack at "CNRL". However, Steeplejack redirected him to the Husky site, which he did not dispute or take issue with. According to the Appellant, after the incident at the charter terminal on May 6, 2015, he did everything he thought he needed to do "to communicate the situation to my employer" and he knew Steeplejack had the option to re-assign him to a job at the original site, because jobs were open there. The Appellant stated that Steeplejack didn't respond to him about his enquiries and "those opportunities came and went". According to the Appellant, he saw postings between May 9th and May 12th at the "CNRL site", but they "vanished" after that, and he didn't hear from Steeplejack at all until mid- May when he learned he had been dismissed. The Appellant stated that the employer's failure to place him on another job site after the Husky ban was extremely prejudicial to him and amounted to constructive dismissal.

SUBMISSIONS

[26] The Appellant submitted that:

(a) he knew he couldn't have alcohol on the plane or at the work site, but did not know he couldn't bring alcohol into the terminal or that he wouldn't be able to dispose of it there. Therefore, he was not dismissed for cause and there was no deliberate, willful or reckless intent that would make what happened at the terminal "misconduct" for purposes of the EI Act.

(b) After the Appellant was banned by Husky, Steeplejack could have reassigned him to another job site, and their failure to do so was constructive dismissal.

[27] The Commission submitted that the Appellant's actions of taking alcohol into the airport terminal, and compounding this by not declaring the alcohol at the security checkpoints, were

willful and/or so negligent as to approach willfulness. They were in direct violation of the site policy and the Appellant reasonably should have known they would result in dismissal. As such, the Appellant's actions constitute misconduct for purposes of the EI Act.

ANALYSIS

[28] Section 30 of the EI Act disqualifies a claimant from receiving benefits if the claimant has lost their employment as a result of misconduct.

[29] The onus is on the Commission to show that the claimant, on the balance of probabilities, lost his employment due to his own misconduct (*Larivee A-473-06, Falardeau A-396-85*).

[30] In order to prove misconduct, it must be shown that the employee behaved in a way other than he should have and that he did so willfully, deliberately, or so recklessly as to approach willfulness*: Eden A-402-96*. For an act to be characterized as misconduct, it must be demonstrated that the employee knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility: *Lassonde A-213-09, Mishibinijima A-85-06, Hastings A-592-06, Lock 2003 FCA 262*; and that the conduct will affect the employee's job performance, or will be detrimental to the interests of the employer or will harm, irreparably, the employer-employee relationship: *CUB 73528*.

What is the conduct that led to the Appellant's dismissal?

[31] The Commission's evidence, obtained from the employer, is that the Appellant lost his job at Steeplejack because he brought alcohol into the airport charter terminal on May 6, 2015 prior to his flight to the Husky job site, contrary to the zero-tolerance drug and alcohol policies of both Steeplejack and its client, Husky.

[32] The Appellant does not dispute that he lost his job because he took alcohol into the airport terminal, contrary to the drug and alcohol policies. While he provides a number of explanations for why this happened and submits that his violation of the policies was

inadvertent, he nonetheless acknowledged that he did breach the policies, and that it was his breach of these policies that led to his dismissal.

[33] The Tribunal therefore finds that the Appellant lost his job at Steeplejack because he took alcohol into the airport terminal, contrary to the zero-tolerance drug and alcohol policies of Steeplejack and their client, Husky.

Does that conduct constitute "misconduct" within the meaning of the EI Act?

[34] Having found that the Appellant violated Steeplejack and Husky's drug and alcohol policies, the Tribunal must now determine if that violation is misconduct for purposes of the EI Act.

[35] The Tribunal considered the consistent and unequivocal statements by the employer's representatives regarding the absolute nature of the zero-tolerance drug and alcohol policies. The Tribunal notes that the language used by the employer was very clear:

> *a ban on all alcohol* and drugs in the airport terminal (GD3-14);
>
> *immediate dismissal* for breaching Husky's drug and alcohol policy (GD3-14);
>
> workers warned not to bring anything with them that will *get them fired* (GD3-14); signs all over the airport stating *no alcohol is allowed* (GD3-16);
>
> the *dry* Husky site (GD3-27)

The Tribunal accepts the employer's evidence that the importance of strict adherence to the drug and alcohol policies was made clear to the Appellant in the detailed new hire orientation sessions and the printed policy materials provided to him (GD3-14, GD3-16, GD3-28); and in prominent signage at the airport itself warning that no alcohol or drugs are permitted in the terminal (GD3- 16 and GD3-27).

[36] The Tribunal finds the Appellant's statements that he did not know the drug and alcohol policies extended to the terminal to be unpersuasive. The Tribunal notes that the Appellant had

only started his job on January 22, 2015 (GD3-12) and could reasonably have been expected to recall the information about the drug and alcohol policy from his orientation at the time of the incident, less than four (4) months later, on May 6, 2015. Additionally, the Tribunal gives great weight to the Appellant's statements to the Commission on October 23, 2015 (at GD3-24), namely that he was aware of the rules prohibiting alcohol in the terminal (which he previously described as "zero tolerance in the terminal" – see GD3-15) from the signs posted in the terminal, including the sign at check-in that said no drugs or alcohol allowed, and that he had flown out of the terminal four (4) times previously. It is simply not plausible that the Appellant didn't know that the terminal was included in the drug and alcohol policies, as clearly the Appellant had seen the terminal signs before and been through the questioning at security a number of times. The Tribunal therefore finds that the Appellant knew that the zero-tolerance drug and alcohol policies extended to the airport terminal.

[37] The Appellant's admission that he knew he could be dismissed for having alcohol with him at the airport (GD3-24) is also compelling and, in light of all of the factors set out in paragraphs 35 and 36 above, the Tribunal finds that the Appellant knew, or ought to have known, that dismissal was a real possibility for violating the zero-tolerance drug and alcohol policies by bringing a bottle of beer into the airport terminal.

[38] The Tribunal notes that the Federal Court of Appeal has held that violation of a workplace policy can constitute misconduct (*Vo 2013 CAF 235*), including the violation of a policy regarding alcohol and drugs (*Canada (A.G.) v. Coulombe 2008 FCA 292*); and that such behavior can be "misconduct" within the meaning of the EI Act if the conduct is reckless and shows a lack of concern with respect to the employer (*Parsons 2005 FCA 248; Murray A-245-96*).

[39] The Tribunal then considered the explanation the Appellant provided for the violation, namely that he knew that no drugs or alcohol were allowed in the terminal, but had forgotten he had a beer in his jacket pocket and when he realized it was there, he was unable to dispose of it (GD3-24). The Tribunal finds it impossible to believe that anyone could wear a jacket (as the Appellant said he was – see GD3-22) and not know there was a full, unopened bottle of beer in it. Such a weighty, glass object simply would not go unnoticed. At a minimum, the Appellant

would have known after only a few steps that the bottle of beer was in his pocket and he could easily have returned it to his car and left it there. He could also have looked for garbage containers at the shuttle station (well before he even got to the terminal), or at the entrance to the terminal – where he could easily have walked to the smoking area and deposited the beer in the garbage container there before entering the terminal. It is more likely that, as the Appellant stated to the security guard at the terminal, the Appellant planned on drinking the beer at some point before his flight but ran out of time (see GD3-15 and GD3-30).

[40] For these reasons, the Tribunal finds that the Appellant deliberately elected to enter the terminal with a full bottle of beer, even though he knew that doing so was a violation of the zero tolerance drug and alcohol policy in the terminal. The Tribunal further finds that the Appellant's conduct was highly reckless in the circumstances, and constitutes misconduct for purposes of the EI Act.

[41] The Tribunal is supported in its analysis by the Federal Court's ruling that it is not necessary for there to be wrongful intent for behavior to amount to misconduct under the EI Act. It is sufficient that the act or omission complained of be made "willfully", i.e. consciously, deliberately or intentionally: *Caul 2006 FCA 251; Pearson 2006 FCA 199; Bellavance 2005 FCA 87, Johnson 2004 FCA 100; Secours A-352-94; and Tucker A-381-85*.

[42] Similarly, the Federal Court of Appeal has held that it is not the role of the Tribunal to determine whether a dismissal by the employer was justified or was the appropriate sanction (*Caul 2006 FCA 251*), but rather whether the conduct amounted to misconduct within the meaning of the EI Act (*Marion 2002 FCA 185*). The common law action for damages against an employer for constructive dismissal has not been abolished by the EI Act and, as a result, it is open to the Appellant to pursue such an action against Steeplejack if he wishes. The question of whether he is entitled to benefits under the EI Act and whether he has been constructively dismissed and is entitled to sue his employer are two different issues: *Sulaiman A-737-93; Peace 2004 FCA 56).*

[43] In the present case, the Tribunal finds that the Appellant's knowledge of the zero-tolerance drug and alcohol policies of Steeplejack and Husky made his violation of that policy at the airport terminal so reckless as to approach willfulness; that given the critical importance

of the drug and alcohol policies to the Appellant's position and, in particular his clearance to fly to and work at the Husky site, it irreparably harmed the employer-employee relationship; and that the Appellant ought to have known this could lead to his dismissal. The Tribunal therefore finds that the Appellant's conduct in breaching the drug and alcohol policies on May 6, 2015 was misconduct within the meaning of subsection 30(1) of the EI Act.

[44] As a final matter, the Tribunal agrees with the Commission's submissions regarding the effective date of the disqualification (GD4-5) and finds that, since the date of the incident was May 6, 2015, that disqualification from benefits should be effective as of May 3, 2015 (the start of the week of the incident leading to the dismissal).

CONCLUSION

[45] The Tribunal finds that the Appellant lost his employment at Steeplejack by reason of his own misconduct. The Tribunal therefore finds that the Appellant is subject to an indefinite disqualification from EI benefits as of May 3, 2015, pursuant to section 30 of the EI Act.

[46] The appeal is dismissed.

Teresa M. Day
Member, General Division - Employment Insurance Section