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

[TRANSLATION]

Citation: *D. B. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 121

Tribunal File Number: GE-15-3994

BETWEEN:

D. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARING DATE: July 12, 2016

DATE OF DECISION: September 29, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The claimant, D. B., was present at the hearing by videoconference, accompanied by her daughter, I. G., who was present as an observer.

INTRODUCTION

[2] The Appellant filed a claim for EI benefits effective March 29, 2015. On June 11, 2015, the Canada Employment Insurance Commission ("the Commission") imposed an indefinite disqualification under subsection 30(1) of the Act starting on that date. The claimant was informed orally of the decision on June 11, 2015 (GD3-23), but no letter to that effect was sent to her (GD4-3). On July 20, 2015, in response to her reconsideration request, the Commission informed the claimant that the decision rendered respecting her misconduct with Sears Canada Inc. ("Sears") had been upheld. On November 23, 2015, the Commission informed the claimant that it still could not pay her benefits as a result of her own misconduct in a final event that had occurred at the employer, Sears Canada Inc., in January 2015 (GD3-63). The claimant appealed the reconsideration decision to the Canada Social Security Tribunal ("the Tribunal") on December 2, 2015.

[3] This appeal was heard by the teleconference form of hearing for the following reasons:

a) The complexity of the issue or issues;

b) The information in the file, including the need for additional information;

c) The availability of videoconferencing where the Appellant resides;

d) This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[4] The claimant is appealing the decision respecting the loss of her employment by reason of her own misconduct under sections 29 and 30 of the Act.

THE LAW

[5] Section 29 of the Act provides 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;

[6] Section 30 of the Act states:

> (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.
>
> (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.
>
> (3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

EVIDENCE

[7] The evidence in the file is as follows:

a) Claims for EI benefits (GD3-4 to GD3-17).

b) The claimant explained the circumstances of her dismissal on April 23, 2015, stating that Sears had ethics policies that she had reportedly contravened. Although she had rung up a sale for herself, she was not permitted to do so, either for herself or for anyone in her family. She met with security in 2003 and asked them to show her proof of the

transaction and where the prohibition was stated in the policies. They did not do so. She received a verbal warning. The second time, which was last year, her brother wanted to redeem his Sears points and give them to her for her birthday. She did not know she was not permitted to conduct that transaction, and she was given a verbal warning. The other event occurred in March 2015. She was interviewed regarding a sale transacted on Valentine's Day. Her co-worker had wanted to give her some earrings and the claimant should not have conducted the transaction for that co-worker but did do because the latter did not have a Sears card and the transaction would give the claimant points on her own card. A system of progressive discipline was supposed to be in place, but it was not. The claimant said she had received only verbal warnings. She also indicated that the employer had dismissed her in an unprofessional manner by making all the employees aware of the fact. She felt as though the employer was looking for a way to fire her. At the time of her dismissal, the manager used the death of her brother as a pretext to tell her she needed to stay at home and rest. She posted written comments on the Internet denouncing corruption. The security employees who helped her file a complaint are no longer employed by Sears either. The complaint was supposed to be anonymous, but the claimant said she thought that was why she was dismissed. The first time, investigators came to the office. The second time, the file was closed without an explanation. The claimant was currently negotiating with the Commission des normes du travail du Québec (CNT) [Quebec labour standards board] and said that a mediation process might be conducted in the next two months (GD3-19).

c) On May 13, 2015, the employer said that the claimant was dismissed because she had failed to comply with a policy. She had conducted a transaction on her own and that was not the first time (GD3-22).

d) A notice of termination of employment dated March 24, 2015 (GD3-26/27).

e) A letter of warning dated March 8, 2013, stating that it constituted a verbal warning (GD3-28).

f) A letter of warning dated September 23, 2014, stating that it constituted a verbal warning (GD3-29).

g) The first warning dated October 14, 2014 (GD3-30/31).

h) A notice of the withdrawal of measures taken dated December 21, 2010 (GD3-32).

i) On May 26, 2015, the employer confirmed that the reason for the delay between the final event and the dismissal was that an investigation was being conducted and the employer could not dismiss the claimant before the investigation was complete (GD3-33).

j) On May 29, 2015, the claimant stated that she had conducted the transaction inadvertently and had not wanted to do anything wrong. She said she did nothing wrong *per se* and that she had not tried to steal from or defraud the employer. She explained that she and her co-worker had decided to buy the same pair of earrings that were on clearance for $11. When she bought her pair, it was not she who rang up her own sale. However, since her co-worker did not have the money at the time or a Sears credit card either, she paid for her co-worker's earrings using her credit card, ringing up the sale herself. She said she completed the sale at the end of the day just before closing, conducting a purchase transaction for another person, but using her own credit card. When she conducted a transaction for herself using a Sears gift card that a customer had given her, she simply had not realized she could not do it; it was not the first time a customer had given her a gift; she was very much appreciated by the customers and received all kinds of gifts; and she was warned at that time that she could not accept gifts or conduct transactions. As regards the event in September 2014, the claimant stated that the transaction was for her brother and that she had not distinguished between him and any other customer. She said that she had acted inadvertently on three occasions in 21 years, that that was not a large number, that dismissal was too severe a punishment and that a genuine system of progressive discipline was not in place since her first two warnings were verbal. She said she was in fact dismissed because she had reported fraudulent procedures and the opening of fraudulent accounts on a website for workers called Clearview. She noted that she had received assistance from security and that an investigation file was opened but that the investigation had since been closed and the security people who had helped her were no longer on the job. The investigation was closed in December, one month before the event that led to what she considered her unmerited dismissal. She had also consulted the Quebec labour standards board. She

very much enjoyed her work and was generally very comfortable there, apart from the frauds she had witnessed and other dishonest procedures she had wanted to report. She said she would have done nothing deliberately to lose her job and that she deserved to keep it. She also mentioned that her brother died in November 2014, that she had a conversation with a co-worker who had opened fraudulent accounts, that the female manager had told her to go home and that she had attributed the dispute to the fact that her brother had died rather than the fact that her co-worker was dishonest and had kept her co-worker on the job. She said that the Sears credit card accounts that were opened had generated bonuses for the employee and the store, that certain employees had duped customers by failing to provide all the information needed to persuade them to accept a credit card, even if the customer already had one, by mentioning that there would be a 30% discount on the customer's next purchase, but did not inform the customer of the other terms and conditions or the fact that the $30 discount was not offered if it was not used in the following three months. The employer was aware of the situation but took no action because it was financially advantageous, and that was largely what she had reported and the employer did not appreciate it (GD3-34).

k) On May 29, 2015, Clearview Partners explained that Sears had decided for reasons not mentioned to close the claimant's investigation file and thereby terminate the investigation (GD3-35/36).

l) On July 10, 2015, the claimant said she was given a procedures manual and code of ethics when hired in 1994. Changes had been made since that time and she never received any other papers. She said the business had a progressive discipline policy. Verbal warnings were normally given, followed by written warnings, suspensions and then dismissal. The claimant received only verbal warnings. The employer did not follow the procedure. It learned that she had filed a complaint via Clearview and made every effort to dismiss her. She was harassed and then dismissed. She filed a complaint with the Quebec labour standards board, and the case was to be heard on July 30. She said she had been unjustly dismissed and asked to be reinstated in her position but noted that the employer would not want that (GD3-42).

m) On July 17, 2015, the employer indicated that employees were entitled to a 25% discount on their purchases, and that is why they were not allowed to ring up the sales themselves. The claimant was aware of that procedure and nevertheless made several purchases by ringing them up herself (GD3-43).

n) The employer's code of business ethics (GD3-45).

o) On July 16, 2015, the employer confirmed that the claimant had received the code of ethics when she was hired and that it was reviewed every year with employees at the time of their annual evaluation. That was done with the claimant. There is no progressive discipline procedure for a violation of the code of ethics, and the employee may be dismissed immediately in such cases. In the claimant's case, she was warned verbally on two occasions for the same kind of breach before being dismissed for a third similar offence (GD3-46).

p) On July 20, 2015, the employer indicated that the claimant was allowed to conduct the transaction for another employee, except that she was not entitled to use her own discount. That is what the claimant did. Every year at the time of her annual evaluation, the claimant signed the item indicating that the code of ethics had been reviewed. The claimant signed on March 11, 2013, in September 2013 and on March 16, 2014. The employer said that the policy on the use of discounts had not changed for at least four years. Before that, she could not say because she was not working at Sears at that time (GD3-50).

q) The employee evaluation form (GD3-51 to GD3-54).

r) On July 20, 2015, the claimant said that she purchased the same pair of earrings as her co-worker, who rang up the sale for her, and the claimant did the same for her co-worker. She said that she made the transaction at 11:30 a.m. and that her co-worker did the same for her at 11:31 a.m. She confirmed that she had initialed the code of ethics section at the time of the evaluation every year but had not checked the code updates posted to the Searsnet website (GD3-55).

s) A letter dated September 29, 2015 stating that the disciplinary letter of December 12, 2010 should not have been sent to Service Canada (GD3-60).

t) The out-of-court settlement agreement of the Quebec labour standards board states that the claimant filed a complaint for dismissal without just and sufficient cause and requested the right to be reinstated in her employment in addition to filing a monetary complaint. The complaint was settled out of court without admission or acknowledgement of liability by the parties. The employer undertook to write to Service Canada notifying it that it was withdrawing the measure of December 20, 2010 and not to appear before Service Canada's administrative tribunal (GD9).

u) A letter sent to Quebec's labour standards board (GD11).

[8] The evidence adduced at the hearing by the Appellant's testimony is as follows:

a) The Appellant said she was subjected to a dismissal disguised as a lay-off because she had made statements about what was going on at work. She said there had been harassment and a great deal of injustice and had reported that to Sears Canada and to security. She went higher up but was dismissed on false grounds.

b) The Appellant consulted the Quebec labour standards board, which found that her case was very defensible. She obtained an out-of-court settlement.

c) The Appellant realized that Sears had closed the file on the complaint she had made to Clearview.

d) The Appellant stated that she had lost her husband and her brother during the same period of time. She consulted security but was told that their hands were tied and that they could do nothing for her. In the end, she was dismissed without notice in March 2015.

e) The Appellant said that no one took action after she spoke with management. Security assisted her somewhat in filing the complaint. She said that the employer decided to dismiss her because she had filed a harassment complaint. She noted that the employer gave priority to opening accounts but that that was done dishonestly. Management closed their eyes to the situation.

f) The Appellant said that the employer had constantly tried to keep her quiet. She discussed the matter with her supervisors. She did not think things would necessarily change but did not believe she would be dismissed.

g) The Appellant was accused of having conducted transactions.

h) The Appellant indicated that the employer had used the letter from 2010, which was supposed to be destroyed, and that EI authorities had taken it into account in making its decision.

i) The events that led to the dismissal in March 2015 took place in February of that year. The Appellant said that she conducted the $11 transaction, which was paid for by her co-worker, for her co-worker in the purchase of a pair of earrings. Her co-worker then conducted the same transaction for her. She did not conduct a transaction for herself. She said she had never done that in 21 years as she would have ruined her reputation for $11. She was accused of paying for a purchase for herself. Security always checks packages at the exits.

j) According to the Sears policy, the Appellant was entitled to conduct a transaction for her co-worker and knew she could not conduct one for herself.

k) The claimant received two written warnings. She said she did not sign them because she disagreed with them. They concerned similar events.

l) In 2014, the Appellant said that her brother gave her a gift card for her birthday. She did not give him a discount and merely redeemed his points for a gift card.

m) The Appellant said that she had experienced harassment from her superiors and one co-worker in particular. She had contacted human resources, but the person dismissed her as well.

n) The Appellant paid employment insurance contributions for many years, but her claim was denied.

o) Sears paid the Appellant a certain amount of money because they felt they were at fault, even though she nevertheless could not return to work.

p) The Appellant said that she would still be at work today if she had not filed a complaint. She did not have a copy of the complaint filed. She lost the documents she had on her computer when it had to be repaired.

SUBMISSIONS OF THE PARTIES

[9] The Appellant made the following submissions:

a) The claimant states that she challenged the situation before the Quebec labour standards board and won her case. Her employer sent a notice to EI authorities but it was not taken into account.

b) The claimant contends that she was dismissed after filing a complaint alleging harassment and unfair practices on her employer's part.

c) The claimant states that she conducted the transaction for her co-worker and that her co-worker conducted a transaction for her. They purchased the same pair of earrings, one after the other. She was allowed to conduct a transaction for her co-worker.

[10] The Respondent made the following submissions:

a) Subsection 30(2) of the Act provides that an indefinite disqualification is imposed if it is established that the claimant lost the employment by reason of his or her own misconduct. For the alleged action to constitute misconduct under section 30 of the Act, it must have been wilful or deliberate or so reckless or negligent as to approach wilfulness. There must also have been a causal relationship between the misconduct and the dismissal.

b) The claimant in this case was dismissed for contravening the employer's code of ethics on three occasions. She admitted committing the acts complained of. Although the claimant argued that she had committed the acts inadvertently (GD3-34), they were in violation of the employer's code of ethics (GD3-45), which she was required every year

to acknowledge she had read and under which she was required to know her obligations and to discharge its provisions (GD3-49). Furthermore, the claimant had previously been warned in writing on two occasions (GD3-28 and GD3-29) in the 22 months preceding the last event leading to her dismissal. Consequently, the Commission is of the view that the claimant's failure to comply with the employer's code of ethics amounts to flagrant negligence.

c) Furthermore, considering that the two previous warnings (GD3-28 and GD3-29) issued to the claimant clearly stated that similar breaches in future would result in disciplinary measures that might include dismissal, the Appellant clearly knew what she could expect the next time she re-offended and was informed that she might be dismissed. In the circumstances, the claimant's last real reoffence was so careless as to suggest that she had deliberately chosen not to consider its potential repercussions.

d) The claimant alleged on numerous occasions that the employer dismissed her because she had posted a complaint against the employer to the Clearview website (GD3-19, 34, 37, 42 and 47). However, the notice of termination of employment is very clear as to the ground for dismissal (ongoing failure to comply with the corporation's policies and procedures (GD3-26)), and the employer presented evidence to the effect that the claimant had a history of non-compliance with ethical procedures. Furthermore, the employer knew nothing of the complaint that was filed with Clearview (GD3-38 and GD3-39). Lastly, despite the Commission's requests, the claimant never filed a copy of the said complaint (GD3-23, 37 and 47). There is therefore no evidence in the file to support the claimant's statement. Based on this evidence, the Commission is of the view that the statement that the claimant was dismissed as a result of a complaint filed with Clearview is not credible.

e) The claimant states in her defence that there was supposed to be a system of progressive discipline preceding dismissal for failure to comply with the code of ethics but that no such system was in place (GD3-19, 84 and 42). However, the employer states that breaches of the code of ethics are not subject to progressive discipline (GD3-46). The claimant herself submits evidence that, according to the code of ethics, every violation

of that code will be considered as a serious violation resulting in an investigation and, where appropriate, disciplinary measures that may include dismissal without notice (GD3-49), which confirms the employer's statement. The claimant thus defeats her own argument.

f) Lastly, the claimant argues that the Commission did not consider the employer's letter of October 2015 (GD2). However, the Commission did indeed consider that document, but, as it raises no new facts, the Commission already being aware of the situation (GD3-32), the document provides no basis on which to amend the existing decision.

g) At the claimant's request, the Commission rendered a decision to that effect. The Commission recalls that that decision was communicated to the claimant at the appropriate time both orally (GD3-62) and in writing (GD3-63). It is therefore false to claim that the Commission did not consider the letter of October 2015.

h) The Commission concluded that the actions in breach of the employer's code of ethics constituted misconduct within the meaning of the Act because the claimant was informed of the policy, had previously been warned in connection with similar acts and knew what the consequences of a potential reoffence would be.

i) The Commission submits that its decision is supported by the case law. The Federal Court of Appeal has confirmed the principle that there will be misconduct where the conduct of a claimant was wilful, i.e. in the sense that the acts which led to the dismissal were conscious, deliberate or intentional (*Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36).

j) The Federal Court of Appeal defined the legal notion of misconduct for the purposes of subsection 30(1) of the Act as wilful misconduct, where the claimant knew or ought to have known that her conduct was such that it would result in dismissal. To determine whether the misconduct could result in dismissal, there must be a causal link between the claimant's misconduct and her employment; the misconduct must therefore constitute a breach of an express or implied duty resulting from the contract of employment. (*Canada (AG) v. Lemire*, 2010 FCA 314)

k) The Commission confirms that all the documents on which the decision was based are in the file (GD12).

ANALYSIS

[11] Subsection 30(2) of the Act provides that an indefinite disqualification is imposed if it is established that the claimant lost the employment by reason of his or her own misconduct.

[12] Misconduct as such is not defined in the Act. Nevertheless, the case law has established that, "in order to constitute misconduct the act complained of must have been willful or at least of such a careless or negligent nature that one could say the employee willfully disregarded the effects his or her actions would have on job performance" (*Canada (Attorney General) v. Tucker* (A-381-85)).

[13] In *Mishibinijima*, the Federal Court of Appeal noted on the subject of misconduct: "... there will be misconduct where the conduct of a claimant was wilful, i.e. in the sense that the acts which led to the dismissal were conscious, deliberate or intentional. Put another way, there will be misconduct where the claimant 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." (*Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36)

[14] In *Pearson*, the Court confirmed the principle that "wrongful intent was not a necessary element of misconduct. He indicated that to the extent that the act or omission, relied upon by the employer in dismissing an employee, is willful, i.e. a conscious, deliberate or intentional act or omission, misconduct has been shown." (*Canada (Attorney General) v. Pearson*, 2006 FCA 199).

[15] The claimant maintains that the employer dismissed her as a result of the complaint that she filed respecting harassment and injustice in the workplace. She says the employer complains that she did not comply with its code of ethics.

[16] The Commission is of the view that the claimant's failure to comply with the employer's code of ethics constitutes flagrant negligence. Considering that the two previous warnings (GD3-28 and GD3-29) issued to the claimant clearly state that any similar breaches in future

will result in disciplinary measures that may include dismissal, she clearly knew what to expect the next time she reoffended and was informed that she might be dismissed. In the circumstances, the claimant's final reoffence was so careless that one might say she deliberately chose to ignore its potential repercussions.

[17] The onus is on the Commission and/or the employer to prove that the claimant lost his employment by reason of his own misconduct (*Canada (Minister of Employment and Immigration) v. Bartone*, FCA, A-369-88).

[18] The claimant explains that she and her co-worker decided to purchase the same pair of earrings that were on clearance for $11. When she purchased her pair, it was not she who conducted the transaction. However, since her co-worker did not have the money at the time or her Sears credit card, it was the customer who paid for the pair of earrings for her co-worker using her credit card, and she conducted the transaction herself (GD3-34).

[19] At the hearing, the claimant indicated that she had rung up the $11 sale, which was paid for by her co-worker for her co-worker for the purchase of a pair of earrings. Her co-worker then conducted the same transaction for her. She did not conduct the transaction for herself. She said she had never done that in 21 years and that she would have ruined her reputation for $11 as a result. She was accused of paying for a purchase for herself. Furthermore, security always checks packages at the exits.

[20] In *Crichlow*, the Federal Court of Appeal stated:

> A finding of misconduct, with the grave consequences it carries, can only be made on the basis of clear evidence and not merely of speculation and suppositions, and it is for the Commission to convince the Board, the pivotal body in the resolution of unemployment insurance disputes, of the presence of such evidence irrespective of the opinion of the employer. (*Crichlow v. Canada (Attorney General)*, A-562-97)

[21] Although the employer states that no complaint other than that filed with the Quebec labour standards board appears in the claimant's file, the Tribunal notes that the Clearview

organization confirmed that the claimant filed the complaint but was unable to provide details. Clearview also confirmed that the employer had closed the complaint investigation.

[22] The Tribunal finds that the code of ethics provides that a co-worker may not conduct a transaction or authorize a price reduction in his or her own interest or that of a person with whom he or she has a direct personal or professional relationship (GD3-45).

[23] The employer indicated that there was no system of progressive discipline in such cases but that the claimant had received verbal warnings on two occasions for similar breaches.

[24] The Tribunal finds that a settlement agreement was reached at the Quebec labour standards board since the claimant had filed a complaint for dismissal without just and sufficient cause.

[25] The Tribunal finds that, although the employer claims there was an investigation, no result of that investigation was disclosed.

[26] The Tribunal finds that the letter of dismissal states that the employer terminated the employment for "ongoing non-compliance with the Corporation's policies and procedures." The employer adds that, on January 20, 2015, the claimant conducted a transaction for herself at the cash (GD3-26). Furthermore, the employer initially told the Commission that the claimant had "conducted a transaction herself and that was not the first time." (GD3-22) The employer confirmed that the claimant made "several purchases for herself." (GD3-43) The employer then explained that the claimant could conduct the transaction for another employee, except that she was not entitled to use that person's discount. That is what the claimant did (GD3-50).

[27] The Tribunal finds that the actions of which the claimant is accused in her letter of dismissal and those reported by telephone are not the same. First, she is accused of conducting a transaction for herself. Then the employer states that the claimant conducted several transactions for herself. Lastly, she is accused of having used her own discount in a transaction for another employee.

[28] The Tribunal also takes into consideration the fact that the Commission refers to the receipt of an "information sheet for the code of ethics and a letter stating that the claimant conducted the transaction for another employee but that it was she who signed for the purchase, obtained the discount and used her employee number." (GD3-47)

[29] The Commission confirmed that all the documents that were used to render the decision are in the file.

[30] The Tribunal notes that the letter to which the Commission refers is a letter from the claimant (GD3-48 and GD11) in which the claimant states:

> [Translation]
>
> A third "breach," according to Sears, concerns a transaction conducted by one of my co-workers for the purchase of earrings in which I used the employee discount, using my employee number and adding my signature, as requested by our employer. (GD3-48) [emphasis added]

[31] However, the Tribunal is of the view that this is not an admission by the claimant since she indicates that this is Sears' position. Furthermore, the Tribunal notes that this letter was addressed to the Quebec labour standards board for the purpose of filing a complaint. The Tribunal also notes that the claimant alleges workplace harassment.

[32] As noted above, the Federal Court of Appeal defined the legal notion of misconduct for the purposes of subsection 30(1) of the Act as wilful misconduct, where the claimant knew or ought to have known that her conduct was such that it would result in dismissal. To determine whether the misconduct could result in dismissal, there must be a causal link between the claimant's misconduct and her employment; the misconduct must therefore constitute a breach of an express or implied duty resulting from the contract of employment. (*Canada (AG) v. Lemire*, 2010 FCA 314).

[33] The Tribunal also finds that the issue in this instance is not merely whether there was misconduct. It is also necessary to base a finding on clear evidence. However, the central issue here is the fact that the claimant conducted a transaction in her own name as stated in the letter

of dismissal. Nevertheless, the employer subsequently stated that it was a transaction conducted for a co-worker.

[34] Consequently, based on the evidence and the observations submitted by the parties, the Tribunal finds that it was not shown that the claimant committed the acts of which she is accused. The claimant stated that she conducted a transaction for her co-worker and that it was paid for by her co-worker in accordance with the employer's code of ethics. The Tribunal finds that the claimant consistently repeated on numerous occasions that she had suffered harassment and filed a harassment complaint against her employer.

CONCLUSION

[35] Consequently, based on the evidence and observations presented by the parties, the Tribunal finds, on the balance of probabilities, that the Commission did not show that the claimant's actions constituted misconduct and that the Tribunal cannot find that there was misconduct within the meaning of the *Employment Insurance Act*.

[36] The appeal is allowed.

Charline Bourque
Member, General Division - Employment Insurance Section