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

Citation: *J. V. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 142

Tribunal File Number: GE-16-1068

BETWEEN:

J. V.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: August 8, 2016

DATE OF DECISION: November 2, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant and his wife, Mr. J. V. and Mrs. R. V., attended the hearing by teleconference.

INTRODUCTION

[1] The Claimant applied for employment insurance regular benefits on April 27, 2015 after having been dismissed from his employment as a Business Technician (Help Desk) on April 2, 2015 for allegedly not answering calls directed to him thus breaching the employer's Business Code of Conduct.

[2] On June 11, 2015, the Canada Employment Insurance Commission (Commission) determined that the Claimant lost his employment due to his own misconduct and imposed an indefinitely disqualification to benefits effective April 5, 2015. On June 23, 2015, the Claimant requested that the Commission reconsider its decision however; on July 27, 2015 the Commission maintained its decision. On October 26, 2015, the Claimant submitted a new application and record of employment (ROE). The Commission maintained its decision again on November 18, 215 and on February 18, 2016.

[3] On December 2, 2015, the Claimant appealed to the General Division of the Social Security Tribunal (Tribunal). The Tribunal considered the appeal late and did not grant the extension of time. The Claimant appealed to the Appeal Division of the Tribunal and on March 15, 2016 it allowed for the extension of time. The matter was returned to the General Division for a hearing on the merits of the appeal.

[4] On April 11, 2016, the employer was invited to request to be added as a party to this appeal however, no response was received (RGD3).

PRELIMINARY MATTERS

[5] The Claimant's request to move the hearing from September 8, 2016 to an earlier date was granted.

[6] On June 16, 2016, at the outset of the hearing, the Claimant stated that the issue under appeal is not that he was dismissed due to his own misconduct and is not asking for benefits from April to October, 2015. The Claimant stated that he withdrew his original appeal GE-15-3970 noting "that what happened from April to October [2015] is irrelevant" and he is not appealing the fact that he did not get benefits from April to October 26, 2015. He is presently appealing the fact that the Commission has now denied him benefits again as of October 26, 2015 onward (told verbally on November 18, 2015 and in writing on February 18, 2016) by disregarding his new application and new ROE. He did not want to go back to the Commission. The hearing was adjourned to review the issue under appeal.

[7] On June 28, 2016, the hearing was reconvened. At the outset, the Claimant was advised the hearing may proceed on the issue of misconduct however; the Member suggested that the hearing be reconvened once the Commission has responded to the following questions. This way the Claimant would have the opportunity to make submissions prior to reconvening the hearing.

[8] On June 29, 2016, under the authority of section 32 of the *Social Security Tribunal Regulations*, the Member requested that the Commission respond to the following questions (RGD4):

> "The Claimant contends that he submitted a new application for benefits and a new ROE dated October 26, 2015 that is not being considered as such by the Commission (GD7). The Claimant has indicated to the Tribunal that he is presently appealing the denial of benefits from October 26, 2015 onward (not April 4, 2015).
>
> 1. Was the application for benefits considered as a new claim?
> 2. Was the ROE dated October 26, 2015 considered? Why/Why not?
> 3. Please confirm and clarify what decision was made on November 18, 2015. The February 18, 2016 letter refers to that decision however, it does not provide reasons - why is the reconsideration decision of July 27, 2015 being maintained?"

[9] On July 7, 2016, the Commission responded indicating that (1) The Claimant submitted a renewal application for benefits on October 26, 2015, however due to a disqualifying event (misconduct), benefits were not payable to him. It also considered the application as a 'new application' however he did not have any new employment since his last application dated April

27, 2015 and the only change on the application form was the Claimant's claim that he experienced a 'shortage of work' on April 2, 2015. (2) The amended ROE does not indicate 'shortage of work'; it indicated K - other and "separation - administrative reason". The Commission concluded that as a result of a grievance, the employer agreed to change the reason for separation on the ROE and pay him severance, which does not change the reason for which the Claimant finds himself unemployed (3) The decisions of November 18, 2015 and February 18, 2016 inform the Claimant that the decision of July 27, 2015 is maintained even though the employer issued an amended ROE. The Commission maintains that the Claimant's actions caused his unemployment, not a shortage of work, and as such, his dismissal was due to his own misconduct (RGD5).

[10] On August 8, 2016, the hearing was reconvened and conducted (see testimonial evidence below).

[11] The hearing was held by teleconference for the following reasons: (a) the fact that the appellant will be the only party in attendance (b) the information in the file, including the need for additional information and (c) 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

[12] The Member must decide whether the Claimant lost his employment by reason of his own misconduct and whether an indefinite disqualification should be imposed pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

EVIDENCE

[13] On April 27, 2015, the Claimant applied for employment insurance regular benefits. He indicated on his application form that he was dismissed from his employment as a Business Technician (Help Desk) on April 2, 2015 because allegedly a customer complained that her calls were being bounced around and he was blamed. He was in the formal grievance process through his union and he filed a complaint with Canada Labour Board and the Canadian Human Rights Commission (GD3-3 to GD3-14).

[14] The ROE dated April 10, 2015, serial number W38356457, indicating that on April 2, 2015 the Claimant was dismissed, code M - misconduct, and paid vacation owed (GD3-15).

[15] The termination letter dated April 1, 2015 indicates that the Claimant was immediately dismissed as a result of his "continued unacceptable performance in the area of customer service". The employer notes that despite efforts to correct his unsatisfactory attitude and work performance, his conduct has not improved. The most recent, in March 2015, he failed to answer calls directed to him (multiple times in one day) leading to a complaint from an important customer. His conduct was deemed to be a serious breach of the Business Code of Conduct which he has read and signed on February 24, 2015 (GD3-19).

[16] Four warning letters were given to the Claimant. All indicate that failure to comply may result in further disciplinary action up to and including dismissal:

1. regarding absences in 2013 (GD3-20)
2. not adhering to the schedule and misappropriation of company time (repeatedly leaving early) in 2014 (GD3-21)
3. inappropriate behaviour towards customers (mistreatment), putting them on hold to take a personal call and for long periods of time, swearing, disconnecting and not answering calls. The Claimant was advised verbally and by this written warning on September 10, 2014, to improve the service he was providing to customers, to meet the expected standards and to address every internal and external customer in an appropriate and courteous manner (GD3-23).
4. on November 18, 2014, he was suspended with warning for 5 days for threatening violence towards another employee; his behaviour was contrary to the employer's zero tolerance policy; medical and counselling assistance was offered to the Claimant, on-line courses recommended and a special headset, subject to a medical report, to address his concern that he had difficulty dealing with background noise (GD3-24 and GD3-25).

[17] To the Commission the Claimant stated that he was dismissed because he had complained about management. He was being micromanaged by his supervisor and he was not addressing the fact that the other staff not doing their job, socializing and being very loud (GD3- 26).

[18] On June 11, 2015, the Canada Employment Insurance Commission (Commission) determined that the Claimant lost his employment due to his own misconduct and imposed an indefinitely disqualification to benefits effective April 5, 2015 (GD3-27).

[19] On June 23, 2015, the Claimant requested that the Commission reconsider its decision indicating that he was wrongfully dismissed and definitely not due to his misconduct. He was terminated for only one reason: as per the termination letter, he was dismissed for failing to answer calls that were properly directed to him (the other warnings are not relevant). He noted that he was not able to answer those calls because (a) he was not at his desk or (b) he was unable to hear the clients on the phone because of the noise and disruption from the other employees (GD3-28 to GD3-30). On July 27, 2015, the Claimant stated the same to the Commission confirming that he wilfully did not answer phone calls due to the noise in the office because he was unable to hold a conversation with the client. The Claimant denied that he refused to have a medical assessment done in order to be provided with a special headset (GD3-32).

[20] The employer stated to the Commission that although the Claimant had a history of disciplinary issues, he was terminated for failing to answer multiple calls directed to him during the month of March. The final incident was that of an irate customer complaint. The call logs confirmed that the Claimant had not answered his phone on three occasions. The employer admitted that the Claimant had complained about the noise in the workplace however he refused to have a medical exam conducted for a special headset. The employer stated that regardless of the noise, the Claimant wilfully ignored a call from a customer despite the warnings he had received in the past (GD3-31).

[21] On July 27, 2015 the Commission advised the Claimant that it is maintaining its initial decision (GD3-35).

[22] On October 26, 2015, the Claimant submitted a new application (renewal) indicating that he was no longer working due to a “shortage of work”. He also indicated that he has not worked since his last application (GD3-38 to GD3-49).

[23] He also submitted an amended ROE dated October 26, 2015, serial number W41731347, that indicates the reason for separation on April 2, 2015 is “K - Other” and notes “separation- administrative reason” (GD3-50).

[24] The employer (Mr. H. A.) stated to the Commission that he was legally advised to confirm the reason for separation has been amended to “administrative lay-off, not for cause” (GD3-51).

[25] The Minutes of Settlement from an arbitration hearing regarding the Claimant’s grievance, indicates that the parties agreed the Claimant was to be paid $15,000 to relinquish his rights to reinstatement, $20,000 for general damages, $5,000 legal costs and, the employer would provide an amended ROE changing the reason for issuance to “K-other” and in the comments section “separation for administrative reasons” and Mr. H. A. will act as the contact. He is to respond to inquiries and confirm that the Claimant’s termination was not for cause and that it is an “administrative layoff” (GD5).

[26] On January 8, 2016, the Claimant enquired as to why the Commission is not considering his new application and amended ROE. He indicated that he was verbally informed in November 2015 that the Commission is maintaining its decision of July 27, 2015 however he has yet to receive an explanation/letter (GD7).

[27] On February 26, 2016, the Commission formally advised the Claimant that it has re-examined his claim for benefits however; benefits are not payable as of April 5, 2015 because he lost his employment due to his own misconduct. It is confirming its decision of November 18, 2015 to maintain the reconsideration decision made on July 27, 2015 (AD1B-2).

Testimonial Evidence at the hearing

[28] The Claimant testified that he was “not dismissed” and that the employer reversed its decision and that the employer representative (referred to GD3-51) confirmed to the Commission that the reason for separation by the employer is “administrative layoff”. The Claimant stated that this means “they are making cut backs”. He stated that he indicated upon application that he was dismissed because that’s what it said on his ROE at the time. The Claimant insisted that the Commission is ignoring the amended ROE and that a discussion regarding a dismissal due to misconduct is irrelevant. The Claimant did not want to discuss or answer questions regarding a dismissal due to misconduct. The Claimant testified that he disagrees with any documentation provided by the employer regarding a dismissal at that time.

[29] The Claimant confirmed that he worked in a call centre help desk and that his responsibilities included opening trouble tickets and referring customers to the appropriate department.

[30] The Member asked the Claimant whether he failed to respond to calls. The Claimant testified that at the time, he was having difficulties performing his job because of the disruptive environment; the behaviour of others in the department. The Claimant stated he responded to calls he was able to respond to … if he was not able to do so, he had to put his calls on “not ready”. The Claimant stated that the supervisor did not like him doing that, and despite him explaining why he did so, the supervisor would not accept his reason.

[31] The Claimant was referred to his comments to the Commission (GD3-32) that he wilfully did not answer calls because of the noise in the office. The Claimant stated that “yes” putting a customer on “not ready” is a way of not responding to the call. The Claimant was asked whether he was warned not to do this. He stated that “no” he did not have a previous warning but when he did do it; his supervisor gave him a termination letter.

[32] The Claimant was referred to the termination letter and reasons provided for his termination. The Claimant stated that he was not offered training, retraining; that all the statements are false, it was not his fault and that’s why he pursued a grievance with the union and went to arbitration.

[33] The Claimant asked to put the Member on ‘hold’ during the hearing.

[34] Mrs. R. V. testified that she was there throughout the process. She stated that nothing was being done about the noisy environment and that the Claimant was treated unfairly.

[35] The Claimant was asked about the warning letters and whether he was warned about not answering calls. He stated that only one was related to call handling. The Claimant then refused to answer and questioned why this was still being considered as it is not relevant any more. He stated that the employer refused to accommodate him and he had a hard time doing his job. The Claimant stated that he did not refuse to submit to a medical assessment and that here was no such thing as noise cancelling headphones. The Claimant stated that this was not going to fix the issue of the other colleagues’ behaviour which was not being addressed.

[36] The Claimant testified that he had sent emails to the employer about the noisy environment but the supervisor did not do anything about it. The Claimant stated that the supervisor indicated that he was trying to correct his performance with training but that was not true. The Claimant stated that he told his supervisor that he was unable to answer calls and do his job because of his disruptive colleagues, but he wouldn't do anything about it. It was not his fault so he appealed everything and he was successful in getting this all reversed in arbitration.

SUBMISSIONS

[37] The Claimant submitted that the Commission refuses to pay him employment insurance benefits despite the fact that he has provided a new application form and ROE that indicates he "was laid off from his job, not for cause" (GD2-2). The Claimant submitted that he was wrongfully dismissed from his employment and it was definitely not due to his misconduct. He was terminated for only one reason, that is, per the termination letter dated April 1, 2015, he was dismissed for failing to answer calls that were properly directed to him. He submitted that he was not able to answer the calls in question because (a) he was not at his desk or (b) he was unable to speak to clients on the phone because of the noise and disruption of other employees. The employer did not rectify the situation and did not provide a reasonable accommodation (GD3-30).

[38] The Commission submitted that the Claimant was dismissed for failing to answer calls as expected and even though he provided reasons, he admitted that he wilfully did not do so (GD3- 32). Further, the Commission submitted that although not all the warnings letters were regarding his ignoring calls, the Claimant knew or ought to have known that failure to adhere to policies could lead to his termination. It submitted that in the absence of a legitimate reason to refuse the working conditions, the Claimant was expected to conduct his work under these conditions. The Commission submitted that the Claimant's failure to answer calls from customers constituted misconduct within the meaning of the EI Act because he willfully chose to not answer the calls which is in violation of the expected behavior for an employee working in a call centre. The fact that the Claimant and the employer have reached a settlement and the reason for separation has since been amended, does not change the Commission's position, especially since the evidence on file that shows the Claimant was dismissed due to his own misconduct and there was not a shortage of work (RGD5).

ANALYSIS

[39] The relevant legislative provisions are reproduced in the Annex to this decision.

[40] The relevant legislative provisions are reproduced in the Annex to this decision.

What was the reason for separation?

[41] The Member first considered the Claimant's insistent position that the issue that he is appealing is the Commission's denial of benefits from October 26, 2015 onward (not April 1, 2015) because of its refusal to accept the amended ROE and the reason for separation as being that of an "administrative layoff" or that he "was laid off from his job, not for cause" (GD2-2 and GD7). The Member also considered that the Commission provided an explanation in its supplemental submission as to why the Claimant's benefits were considered as of April 5, 2015 and cannot be considered as of October 26, 2015. The Commission submitted that even though the Claimant and the employer reached a settlement and the reason for separation has since been amended, the evidence on file shows that the Claimant was dismissed due to his own misconduct and there was not a shortage of work (RGD5).

[42] The Member also acknowledges that as per the Minutes of Settlement the employer has amended the reason for separation on the ROE to that of "K-other" and noted "separation - administrative reason". Further, as per the agreement, the employer fulfilled its obligation to report to the Commission upon inquiry, that the Claimant's termination was not for cause and that it is an "administrative layoff" (GD3-50, GD3-51 and GD5). The Member finds however, that the Tribunal must consider the evidence and the conduct of the Claimant within the meaning of the EI Act and not what is considered 'cause' (or 'not cause') under the provisions of other legislation and/or any settlement or agreement between the employer and the Claimant. The Member's position is supported by the Federal Court of Appeal decision in the *Attorney General of Canada v. Morris* (A-291-98), a similar case as the one at hand, that stated:

> "It is the Board's function to assess the evidence and to arrive at its own conclusions. It is not bound by how the employer and employee characterize the grounds on which the employment was terminated. In the present case, there was sufficient documentary evidence available to the Commission and the Board to justify a finding of misconduct. The fact that the settlement agreement required the employer to withdraw the allegation of dismissal for cause cannot be treated as conclusive of whether there was actually misconduct for purposes of the Act. This is particularly true since the settlement

> agreement did not include an admission by the employer, either express or implicit, that the dismissal for cause was not fully justified."
>
> (Application for leave to appeal was dismissed by the Supreme Court of Canada: Canada (AG) v. Morris, [1999] S.C.C., No. 304)

[43] Similarly, in this case, the Member finds that there is sufficient documentary evidence that confirms the reason for separation is that of 'dismissal' and not 'shortage of work' or otherwise. The Member noted that although the Claimant has indicated that the separation was due to a shortage of work (or that he was laid off), there is no evidence to support his position. Even the amended ROE and the employer's statement to the Commission (GD3-51) does not explicitly state that there was a shortage of work/layoff instead, they show that the Claimant's termination "was not for cause and it is an 'administrative layoff' (GD5). On the other hand, the documentary evidence provided throughout the file from both the employer (GD3-15, GD3-19 and GD3-31) and the Claimant (GD3-5, GD3-26, GD3-30 and GD3-32) justify a finding that the Claimant was dismissed.

[44] Further, for the reasons to follow, the Member finds that the evidence shows that the Claimant lost his employment due to his own misconduct pursuant to the EI Act.

Did the Claimant lose his employment because of the alleged offence?

[45] It must first be established that the Claimant's actions were the cause of his dismissal from employment (Luc Cartier A-168-00, Brisette A-1342-92). In this case, it is undisputed evidence that the Claimant was dismissed because he failed to answer calls that were properly directed to him. The Claimant agrees that this is the only reason (GD3-31). The employer confirmed to the Commission that although the Claimant had a history of disciplinary issues (provided copies of warning letters), he was terminated for failing to answer multiple calls directed to him during the month of March resulting in an important customer complaint (GD3-31 and GD3-19). The Member finds therefore that the Claimant was dismissed on April 1, 2015 because he allegedly failed to answer calls directed to him which was considered by the employer to be unacceptable customer service and a serious breach of its Business Code of Conduct (GD3-19). The Member finds therefore that the Claimant's actions were the cause of his dismissal.

Did the Claimant commit the alleged offense?

[46] Next, the Member considered whether in fact, the Claimant committed the alleged offense. In its termination letter and to the Commission, the employer indicated that the supervisor observed (and call logs confirmed that) the Claimant repeatedly failing to answer calls properly directed to him (GD3-19 and GD3-31). At the hearing, the Claimant was asked whether he failed to respond to calls directed to him. The Claimant testified that he responded to calls he was able to respond to, however if he was not able to do so because of the noise in the office, he put his calls on "not ready". He explained that he was having difficulties performing his job because of the disruptive environment caused by the behaviour of his colleagues. The Claimant confirmed at the hearing that putting a customer on "not ready" is a way of not responding to calls. In his request for reconsideration, he indicated that he did not answer calls either because he was not at his desk or because of the extreme noise (GD3-28). The Claimant stated the same to the Commission confirming that he (wilfully) did not answer calls directed to him due to the noise in the office (GD3-32). The Member finds therefore, that the Claimant committed the alleged offence for which he was dismissed.

Does the Claimant's conduct constitute misconduct?

[47] The Member recognizes that the legal test to be applied in cases of misconduct is whether the act under complaint was wilful, or at least of such careless or negligent nature that one could determine that the employee wilfully disregarded the effects his actions would have on job performance (McKay-Eden A-402-96, Tucker A-381-85). That is, the act that led to the dismissal was conscious, deliberate or intentional, 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 (Lassonde A-213-09, Mishibinijima A-85-06, Hastings A-592-06).

[48] Further, the Member recognizes that the onus is on the employer and the Commission to show that the Claimant, on a balance of probabilities, lost his employment due to his own misconduct (Larivee A-473-06), Falardeau A-396-85).

[49] In this case, by his own admission, the Claimant testified that he consciously did not respond to calls directed to him (put them on 'not ready') when he felt that he couldn't do his job because of the noise and disruptive behaviour of his colleagues. The employer stated to the

Commission, that although it acknowledges that the Claimant had indicated to them that he found it to be noisy in the workplace; he was not justified in wilfully ignoring calls, especially considering that he was warned in the past for similar behaviour (GD3-31). Doing so, was a serious breach of their Business Code of Conduct. In support of its position, the employer submitted copies of warning letters (GD3-19 to GD3-25). The Member notes that one warning letter, six month prior to his termination, indicates to the Claimant that he may be dismissed if he continued to not respond to calls directed to him (disconnect, abort; take personal calls instead) and not meet the expected customer service standards in an appropriate and courteous manner (GD3-22). The Commission submitted that even though the Claimant provided reasons for not answering calls, he willfully chose to not answer the calls, which is in violation of the expected behavior for an employee working in a call centre. Further, it submitted that although not all the warnings letters were regarding is issue, the Claimant knew or ought to have known that failure to adhere to policies could lead to his termination. On the other hand, the Claimant testified that it was not his fault; that when he failed to answer calls, it was because the employer did not provide a reasonable accommodation and as a result, he was unable to do his job properly due to the noise level.

[50] The Member also considered, and agrees with the Commission, that the evidence does not support a finding that the Claimant unconsciously missed calls due to the noisy work environment. In fact, both the documentary evidence and the Claimant's testimony support a finding that the Claimant chose, and deliberately put customers on "not ready" when he thought it was too noisy and/or his colleagues were being disruptive. Further, the Member considered that the Claimant was warned six months prior to his termination, both verbally and in writing by his supervisor, that similar behaviour may result in further disciplinary action, including termination, yet the Claimant consciously and deliberately, continued to not respond to calls. The Claimant testified that he worked in a call centre help desk and that his responsibilities included opening trouble tickets and referring customers to the appropriate department. The Member therefore also agrees with the Commission that as a Business Technician (Help Desk) for a telephone company, by not answering calls, the Claimant's conduct was such that he breached the fundamental duties owed to his employer. The Member further finds that the Claimant chose to, and deliberately, did not answer calls despite being warned that he may be dismissed for this reason. The Member finds therefore, that the Claimant's actions were

conscious and deliberate and he 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.

[51] The Member understands the Claimant's contention that he worked in a noisy environment that he felt that he could not do his job and that despite his complaints to the employer, he was not provided with a 'reasonable' accommodation. He therefore feels justified in not responding to the calls. The Member finds however that the legislation is clear, that when determining whether a Claimant's actions amount to misconduct, it is the actions of the Claimant that are to be considered, and not those of the employer. The Tribunal's jurisdiction is not to comment on whether the sanctions of the employer were appropriate; nor can it comment on the manner or behaviour of the employer. The question is not whether the employer was guilty of misconduct by dismissing the claimant such that this would constitute unjust dismissal, but whether the claimant was guilty of misconduct and whether this misconduct resulted in losing their employment (McNamara 2007 FCA 107; Fleming 2006 FCA 16). The Federal Court is clear:

> "… In the interpretation and application of section 30 of the Act, the focus is clearly not on the behaviour of the employer, but rather on the behaviour of the employee. This appears neatly from the words "if the claimant lost any employment because of their misconduct". There are, available to an employee wrongfully dismissed, remedies to sanction the behaviour of an employer other than transferring the costs of that behaviour to the Canadian taxpayers by way of unemployment benefits." (McNamara A-239-06)

[52] The Member finds therefore, that by consciously and deliberately not to respond to calls directed to him, knowing that he may be terminated for this reason, the Claimant's actions constituted misconduct under the EI Act. The Member finds that the Commission met the onus of showing, that on a balance of probabilities, the Claimant lost his employment as result of his own misconduct and an indefinite disqualification must be imposed effective April 5, 2015 pursuant to section 29 and 30 of the EI Act.

CONCLUSION

[53] The appeal is dismissed.

Eleni Palantzas
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Subsection 29(a) of the EI Act stipulates 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.

Subsection 29(b) of the EI Act stipulates 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.

Subsection 30(1) of the EI Act stipulates 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.

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.

Section 32 of the *Social Security Tribunal Regulations* stipulates that the Employment Insurance Section (of the Tribunal) may, at any time prior to its decision, refer any question arising in relation to a claim for benefits to the Commission for investigation and report.