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

Citation: *D. C. v. Canada Employment Insurance Commission,* 2017 SSTGDEI 15

Tribunal File Number: GE-16-1190

BETWEEN:

D. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: October 13, 2016

DATE OF DECISION: January 31, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant, Mr. D. C. along with his representative, Mr. Nicholas Churchman, West End Legal Services, participated in the hearing by teleconference from the same location.

The Claimant's representative, Mr. Daniel Rohde, Income Security Advocacy Centre, also participated in the hearing by teleconference from another location.

INTRODUCTION

[1] On December 14, 2015, the Claimant applied for employment insurance regular benefits after having been dismissed from his employment on November 9, 2015 due to multiple (too many) absences.

[2] On January 6, 2016, the Canada Employment Insurance Commission (Commission) concluded that the Claimant lost his employment due to his own misconduct and imposed an indefinite disqualification to benefits effective December 13, 2015 pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[3] On February 4, 2016, the Claimant requested that the Commission reconsider its decision because his absences from work were not wilful given his drug addiction. On February 23, 2016 however, the Commission upheld its decision.

[4] On March 24, 2016, the Claimant appealed to the General Division of the Social Security Tribunal. In his submissions, the Claimant indicated that "the denial of employment insurance benefits to Mr. D. C. constitutes discrimination contrary to the Canada Human Rights Act, RSC, 1985, c H-6" (GD2-5). As a result, on April 25, 2016, the Claimant and his representatives were invited by the Tribunal to attend a prehearing conference on May 26, 2016 so that the Charter challenge process could be explained (GD8). At the prehearing conference, the Claimant informed the Tribunal that he did not wish to raise a constitutional issue pursuant to paragraph 20(1)(a) of the *Social Security Tribunal Regulations* as part of this appeal. The

Tribunal advised the Claimant that the appeal will therefore proceed as a 'regular' appeal (GD9).

[5] On March 24, 2016, the Tribunal also advised the employer of the Claimant's appeal and if he wanted to be considered as an added party to these proceedings, to contact the Tribunal by April 8, 2016 (GD5). The Tribunal did not receive a response from the employer.

[6] The parties were advised to provide any supplementary evidence and/or affidavit in advance of the hearing (GD10, GD11 and GD12). Only the Claimant made further submissions (GD14 and GD15 noted below).

[7] The present hearing was held by teleconference because that Claimant and his representatives are in different locations in X and 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

[8] The Member must decide whether an indefinite disqualification to benefits should be imposed pursuant to sections 29 and 30 of the EI Act because the Claimant lost his employment due to his own misconduct.

EVIDENCE

[9] The Claimant was employed as a heavy equipment operator for a construction company from June 30, 2015 until November 9, 2015 (about 4 months) at which time he was dismissed. On December 14, 2015, he applied for employment insurance regular benefits indicating that he was dismissed due to absenteeism. He indicated that he left a message for D. W. to inform of his absence but he did not take any action to save his job after his dismissal because he was dealing with his addiction (GD3-8 and GD3-9).

[10] The employer, Mr. D. W. issued a record of employment (ROE) on November 13, 2015, indicating that the claimant was dismissed and that his last day of work was November 9, 2015 (GD3-19). He advised the Commission that the Claimant was let go for too many absences and

indicated that the Claimant was not at work on: September 17 and 18, 2015, October 14, 16, 23, 28, 29, and 30, 2015 and November 6, 10, 11, 12 and 13, 2015. Mr. D. W. advised the Commission that some of these absences may be due to no work being available. Most days however, on October 23, 28, 29, 30 and November 6, 10 to 13, 2015, he either called in to say he wasn't coming in or just didn't show up. He's sure because he was the only bulldozer/backhoe operator expected to work on site. Mr. D. W. stated that the Claimant indicated once that he was in 'rehab' although on hire, he had stated that he did not use drugs and did not have alcohol problems (GD3-21).

[11] The Claimant advised the Commission that there were only two days that he did not call into work because he had relapsed and was using again - he has a substance addiction. He stated that he does not agree with all the unexcused absence dates the employer provided i.e. October 23, 28, 29, 30 and November 6, 10 to 13, 2015 (GD3-22).

[12] On January 6, 2016, the Commission concluded that the Claimant lost his employment due to his own misconduct and imposed an indefinite disqualification to benefits effective December 13, 2015 (GD3-23).

[13] On February 4, 2016, the Claimant requested that the Commission reconsider its decision noting that during his employment he had six absences from work. Four of the six days were excused absences in advance by his employer. The other two days, on September 21, 2015 and November 6, 2015, although not excused, were for valid medical reasons related to his drug addiction. In September the Claimant went to the hospital, was assessed, provided medication and advised to take a 3 day leave of absence from work. When he returned to work the following week, the employer did not enquire about the reasons for his absence, did not advise that it was a problem or that his job was at risk. In November, the Claimant had another relapse and when he disclosed to the employer the reasons for his absence (his addiction); he was advised to speak with the owner. He was unsuccessful in reaching him and without warning or notice, was terminated/issued an ROE (GD3-27). The Claimant provided medical evidence of hospital attendance on September 20, 2015 and November 8, 2015 (GD3-29 to GD3-32). The claimant verbally confirmed with the Commission that the second time that he missed work was on November 6, 10 to 13, 2015. He confirmed that both times, he missed

work and failed to contact the employer because of his addiction issues; he had relapsed and was high on crack cocaine (GD3-35).

[14] The Commission indicated that the employer stated, that the Claimant advised him of his addiction issues after he missed work in September 2015. The Commission notes that the employer stated that the Claimant was verbally informed that he is required to be at work for his shifts. The employer confirmed that there was no termination letter and there was no policy because the expectation to be at work is common sense. The employer confirmed that the Claimant was dismissed because he did not show up for work on November 6, 10 to 13, 2015. There is not set number of days the Claimant could miss. They could no longer trust that the Claimant would be at work (customer site) and could not employ someone who was unreliable (GD3-33).

[15] On February 23, 2016, the Commission upheld its decision of January 6, 2016 (GD3-36).

Documentary Evidence to the Tribunal

[16] On March 7, 2016, the Claimant self-referred to the X Withdrawal Management Centre (GD3-40) and was registered (GD14-205 and GD14-206).

[17] On May 18, 2016, the Claimant was reassessed again for substance use and concurrent disorder(s) and the appropriateness of a specific treatment program (GD14-201 to GD14-204).

[18] On July 30, 2016, the Claimant's representatives retained Dr. Jan Malat, Psychiatrist at the Centre for Addiction and Mental Health, X, X (GD14-39 to GD14-199). Dr. Malat provided a summary of his expertise in both mental illness and addiction (concurrent disorders), a summary of a literature review regarding the impact of (drug) addiction on voluntary decision-making and her conclusion/impressions of the Claimant's medical records and his interview with the Claimant. Dr. Malat provided a history of the Claimant's cocaine use from the age of 15 years old (presently 46 years old), his triggers, long history of ongoing relapses and untreated Posttraumatic Stress Disorder (PTSD) as a contributing risk factor, the effects on his personal life and work; and his severe relapses from September to November of 2015 (GD14-44). Dr. Malat concluded that the Claimant's situation is typical of a severe addiction and that his work absences were the result of an already severe addiction to cocaine. Dr. Malat notes:

> "He progressed to more regular and dangerous drug use (including IV use) despite serious harmful consequences to his health (Hepatitis C) and loss of significant relationships and employment. Despite repeated efforts to stop cocaine use, he has remained vulnerable to relapses, especially during periods of stress…
>
> The relapses in the Fall of 2015 which led to the work absences were typical of a severe addiction: 1) they happened very quickly, 2) during periods of significant stress (ie. during a break-up), 3) they were facilitated by access to high amounts of cash, 4) in the presence of significant cognitive deficits that impaired decision-making (in Mr. D. C.'s words: the voice of conscience is muted; nothing else matters when he uses and he does not think of the consequences). His description of feeling like "a crab who keeps trying to crawl out but keeps getting pulled back in" describes his experience of how these relapses do not feel like voluntary choices.
>
> Mr. D. C., like many addicted individuals, appeared to be highly motivated to continue working since access to money is a key component in maintaining access to the drugs. As a result, addicted individuals often try to work at all costs, including arriving to work impaired from the addiction, as Mr. D. C. did on several occasions … it is my impression from the clinical history and literature review that Mr. D. C.'s work absences in the Fall of 2015 were the result of behaviours derived from a severe addiction with significant impairments in the brain's capacity to make voluntary decisions." (GD14-45 and GD14-46)

[19] The Tribunal was provided with a book of authorities for review (GD15 - 272 pages).

Testimony

[20] At the hearing, the Claimant provided details for each of the days the employer indicated he was absent. In summary:

September 17 and 18, 2015 - he knows for fact that there was no work on those days. He got paid on the 17th, on the Friday the 18th he was using; he left a message with his employer that he couldn't go in because he had started using (cocaine) again; that Sunday, September 20, 2015 he checked himself in at the hospital (GD14-33). He testified that earlier that month he was triggered by the money (pay cheque), boredom (lack of hours) and a crew member smoking up in a porta potty at work.

October 14, 16, 2015 - he was away with the flu; foreman sent him home and of which the employer was well aware.

October 23, 2015 - is the only day he did not call in - got paid the day before and was using and couldn't call/go to work

October 28, 2015 - likely a "rain day"; foreman called that day; not safe to work

October 29, 30, 2015 - he was away for personal matters (daughter was missing) and so he called D. W. and advised that he would be back on the Monday

November 6, 2015 - he was away as it was a Friday and didn't want to work unsafely;

November 10 to 13, 2015 - he called and advised D. W. on November 9, 2015 that he had been at the hospital with leg pain (November 8th; GD14-36) and won't be in the next day (10th). He also advised D. W. about his drug addiction. He was advised to speak with the owner about whether he was going to be let go since he had said that he didn't have an addiction upon hire. He attempted to call the owner without success on November 10, 11, 12 and was terminated on November 13, 2015.

[21] The Claimant testified that the employer did not discuss his absences in September or a policy, or advised of any issues with his employment until his dismissal date. The Claimant admitted that at the end of October one foreman verbally warned/tried to help him stating "D. C. you have to do something … you're not being reliable … patted my shoulder … was friendly and told me I'm better than that"

[22] The Claimant testified that he started using in September and by November his life was 'unmanageable" and "uncontrollable" and he didn't think he should go into work and put anyone in danger when he's using. Since then, he continues in rehabilitation programs and continues to grow and learn about his triggers and the root of his addiction (sexual abuse as a child).

[23] The Claimant testified that the foreman on many occasions complained about other employees who were using (drugs/alcohol) and not showing up yet he didn't dismiss them. The Claimant stated that he had to replace another backhoe operator on 8 occasions in June because that other worker was drunk and didn't call in. The foreman said "he must have been drinking again". The Claimant testified that he had to sometimes work with the "chemical crew - all cocaine addicts" and other times with the "alcohol crew - all do alcohol".

SUBMISSIONS

[24] The Claimant submitted that (GD2-5 and GD14-3 to GD14-18):

- his drug use and absences from work in September and November of 2015 were not willful because they were the result of his addiction which undermines/impacts his ability to make informed, voluntary decisions. The evidence that has been provided confirms, and shows the nature and extent of, his addiction (hospital reports, detox records and expert report, GD14-201, GD14-205 and GD14-206) and the impact that it has had on his brain's ability to make decisions (GD14-12);

- his case differs from existing case law. In those cases, none brought forth medical evidence about the impact of the addiction on their own individual actions. Here, the Claimant has not only provided expert evidence on the nature of addiction generally, but has also included medical evidence on his specific situation;

- to interpret "misconduct" under the EI Act in a manner that includes actions resulting from a disability is contrary to *Charter and Human Rights* values. Although the charter argument is not being pursued herein, the case law provided is suggestive and supplementary (submitted at the hearing);

- his absence from work did not severely undermine his employment relationship or caused harm to his employer.

[25] The Commission submitted that:

- the Claimant's actions and lack of regard in contacting is employer when he was unable to work, regardless of the reasons constitute misconduct within the meaning of the EI Act;
- his issues with addiction do not absolve him from his responsibility to show up and perform the functions of his employment;
- the Claimant wilfully took the drugs which ultimately lead to the consequences and he ought to have known that his actions (consumption of drugs) could potentially lead to negative effects or activities that would have consequences and lead to his termination;
- the Claimant did undermine his employment relationship because his lack of concern and consideration for his position, and unreliability led to loss of his employer's trust and resultant termination;
- the Claimant failed to show that his denial of benefits constitutes discrimination contrary to the *Canadian Human Rights Act*;
- case law supports its position that the consumption of drugs is voluntary, the act is conscious and one is aware of the effects and consequences (Canada v. Wasylka, 2004 FCA 219).

ANALYSIS

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

[27] Section 30 of the EI Act provides for an indefinite disqualification of benefits when a claimant is dismissed by reason of his/her own misconduct.

[28] 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).

[29] The Member notes that 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, the employer advised the Commission that the Claimant was dismissed because he had "too many absences" indicating that although he was also absent in September, the Claimant definitely either called in to advise he was not coming in or just did not show up on October 23, 28, 29, 2015 and November 6, 10 to 13, 2015 (GD3-19 and GD3-21). Regardless of whether he called in just before his shift or not, the employer dismissed the Claimant because he can no longer be depended upon to show up at the customer work site, and being the only back hoe operator, they could no longer employ him because he was unreliable (GD3-33). On the other hand, the Claimant consistently stated to the Commission, that most of these days were excused absences (GD3-22 and GD3-27), and testified that there was no work on October 28, 2015 (rain day) and that on September 21, 2015 (GD3-27), October 23, 2015 and November 6, 2015 he did not call in because of valid medical reasons associated with his drug addiction. He nonetheless agrees that he was dismissed due to absenteeism (GD3-8) and that he was indeed absent on all these days for the provided reasons. The Member notes that the Claimant was employed for just over four months from June 30, 2015 until November 13, 2015. The Member finds that during this time, the parties are in agreement that the Claimant was scheduled, but was absent from work, on September 21, 2015, and October 23, 29, 30 and November 6, 10 to 13, 2015 and that these multiple absences were the cause of his dismissal.

Do the Claimant's actions amount to misconduct?

[30] The Member recognizes that the legal test to be applied in cases of misconduct is whether the act under complaint was willful, or at least of such careless or negligent nature that one could determine that the employee willfully 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).

[31] In this case, the Commission submitted that it correctly imposed an indefinite disqualification to regular benefits because the Claimant's actions of not showing up to work, regardless of the reason, demonstrates a willful or wanton disregard of his employer's interest, which amounts to misconduct under the EI Act. The Claimant knew, or ought to have known that his conduct i.e. the voluntary and wilful taking of drugs and consequential missing of work, impeded the carrying out of his obligations to his employer and that as a result, termination was a real possibility. Although sympathetic to the Claimant's drug addiction issues, the Commission contends that the Claimant's circumstances do not absolve him from being responsible for his wilful actions or excuse him from his obligation to his employer. The Commission submitted that its decision is supported by case law (*Canada (AG) v. Wasylka 2004 FCA 219*).

[32] On the other hand, the Claimant submitted that his actions do not amount to misconduct and therefore he should not be disqualified from receiving employment insurance regular benefits pursuant to section 30(1) of the EI Act. He disagrees that his absences from work severely undermined his employment relationship or caused harm to his employer. Further, he submitted that his absences from work were not willful because they were the result of his drug addiction. The Claimant submitted that he has provided medical evidence that confirms his addiction and shows that his drug addiction undermines and impacts his brain's ability to make informed, voluntary decisions. He argues that case law supports his position and notes that his case is unlike those similar to *Mishibinijima v. Canada (AG), 2007 FCA 36* and *Canada (AG) v. Bigler 2009 FCA 91*, because the medical evidence is specific to his situation.

[33] Having considered the parties submissions, evidence and case law, the Member finds that the Claimant, on a balance of probabilities, did not lose his employment as result of his own misconduct for two reasons (1) he was unable to make informed, voluntary decisions because of the effects of his drug addiction on his brain's cognitive ability at the time of his dismissal and (2) given the work environment, the Claimant could not have foreseen or known that his actions would lead to his termination.

Were the Claimant's actions willful, voluntary or conscious?

[34] First, the Member agrees with the Claimant that the expert medical evidence not only provides a general opinion about the effects of drugs on those addicted, but also provides expert findings regarding the Claimant's specific situation and how it contributed to his absences from work. The expert medical evidence speaks to the involuntariness of his actions specific to his circumstances that lead to his dismissal. The Member notes that Dr. Malat's report confirms the Claimant's statements to the Commission and testimony that his absences from work, and his inability to contact his employer, were the result of his long-time cocaine addiction. In Dr. Malat's opinion the Claimant's severe addiction makes him vulnerable to relapses despite the serious harmful consequences to his health, relationships and employment. The Claimant's relapses in the fall of 2015 that lead to the work absences are typical of a severe addiction that occurred "in the presence of significant cognitive deficits that impaired decision-making". It is Dr. Malat's opinion that the Claimant's work absences were "… the result of behaviours derived from a severe addiction with significant impairments in the brain's capacity to make voluntary decisions." (GD14-45 and GD14-46). The Member finds therefore, that because of the severe drug addiction, the Claimant did not consciously and wilfully miss work and, he did not have the cognitive ability to foresee that his absenteeism would likely result in his dismissal.

[35] The Member considered, and agrees with the Commission, that cases such as the one in the Federal Court of Appeal decision *Canada (AG) v. Wasylka 2004 FCA 219*, support the principle that the consumption of drugs or alcohol by a claimant is voluntary in the sense that the acts are conscious and that the claimant was aware of the effects of that consumption and the possible consequences.

[36] Further, the Member also considered and agrees with the Commission that the Claimant's inability to report to work, because of his consumption of drugs, meant that he was unable to meet a fundamental obligation of his employment. That is, by not being present at work and by not performing the agreed upon services, the Claimant breached his employer's trust and their employee/employer contract. The Member also understands that according to the Courts, where a claimant, through their own actions, including the voluntary consumption of drugs or alcohol, can no longer perform the services required from them under the employment

contract and as a result loses their employment, that claimant "cannot force others to bear the burden of his unemployment, no more than someone who leaves the employment voluntarily" (Wasylka 2004 FCA 219; Lavallée 2003 FCA 255; Brissette A-1342-92).

[37] The Member finds however, that unlike these cases, the medical evidence provided herein supports a finding that, in the Claimant's case, his consumption of alcohol was not voluntary, and he was not cognitively aware of the effects of that consumption and/or the consequences which may or may not result. In his report, Dr. Malat noted that the literature indicates that "although the initial decision to take a drug is typically voluntary, with repeated use a person's ability to exercise self-control can become seriously impaired … this impairment in self-control is one of the hallmarks of addiction" (GD14-40). Dr. Malat concluded that in the Claimant's case, his severe addiction impaired his brain's capacity to make voluntary decisions (GD14-45). The Member finds therefore, that although the Claimant was unable to meet a fundamental obligation to his employer and as a result, breached their employer/employee trust/contract, he did not do so consciously or willfully.

[38] The Member also acknowledges that in *Canada (AG) v. Wasylka 2004 FCA 219*, the Court held that it was an error of law for an Umpire (now the Appeal Division) to conclude that a claimant's absence from work was not willful because of a drug addiction.

[39] The Member's considerations and findings however are supported in *Mishibinijima v. Canada (AG) 2007 FCA36* where the Court held that a different conclusion could be reached if sufficient evidence was adduced regarding a claimant's inability to make a conscious or deliberate decision, which would likely include medical evidence. Similarly, in *Canada (AG) v. Bigler 2009 FCA 91*, the Court states that "When an employee has been dismissed for alcoholism-related misconduct, he or she will not be disqualified from receiving unemployment benefits pursuant to subsection 30(1), if both the fact of the alcoholism and the involuntariness of the conduct in question are established."

[40] The Member finds that unlike the *Mishibinijima and Bilger* cases, the Claimant was able to adduce expert medical evidence that speaks specifically to the Claimant's inability to make conscious or voluntary decisions. The medical evidence confirmed both the Claimant's long

standing severe drug addiction and explained how his addiction undermined his cognitive ability to make voluntary decisions including the (initial) consumption of alcohol.

[41] Although not binding on the Member, the Tribunal has consistently come to the same conclusion as the Member in this case. In the Appeal Division's decisions of *Canada Employment Insurance Commission v. B. K., 2014 SSTAD 27* and *Canada Employment Insurance Commission v. S. C., 2016 SSTADEI 159*, both the alcoholism and the involuntariness of those claimants' conduct were not established and thus, misconduct was found to be the cause of their dismissal.

Could the Claimant have foreseen or known that his actions would lead to his termination?

[42] In addition to the medical reasons noted above, the Member considered whether the Claimant would have otherwise foreseen or known that his actions would lead to his termination. For several reasons, the Member finds that given the work environment, the Claimant could not have foreseen, or would not have known that his absences from work would lead to his termination. The Claimant testified that work crews were nicknamed according to their substance use/abuse i.e. the "chemical" or "alcohol" crews and that the foreman knew of other employees' use of alcohol or drugs and not showing up for work as result, yet he did not dismiss them. The Claimant had advised the Commission that when he relapsed in September (2015) and did not go to work, the employer did not enquire about his reason for his absence, did not express a concern or inform him that his job was at risk. He was not told anything until he had his second unexcused absence on November 6, 2015 and was then dismissed (GD3-27 and GD3- 35). The Claimant testified that other than a foreman showing concern and advising him that he was not being reliable; he was not warned or advised of any issues until the time of his dismissal. The Member notes that it is undisputed evidence that the Claimant was not provided with any warnings, a termination letter, there was no absenteeism policy and the employer confirmed that there was no set number of days that one can be absent before being terminated (GD3-21and GD3-33). The Member finds therefore that the use of impairing substances by employees and absenteeism appear to be commonplace, and to a great extent tolerated by this employer. The Member acknowledges and agrees with both the Commission

and the employer (GD3-33) that even in the absence of a policy, there's a basic expectation that an employee be at work when expected. The Member finds however, that in this case, the Claimant consistently submitted that all his absences, with the exception of two/three, were excused (he called in). The Member finds that without a policy regarding absenteeism, or at minimum, clear expectations set in some other manner (warnings or common/established practice), the Claimant could not have deliberately and consciously violated that expectation or have foreseen that dismissal was a real possibility.

[43] The Member is supported by a similar case, where the Court found that in the absence of a clear policy coupled with the knowledge that other employees had not been dismissed for the same behaviour (in that case, smoking marijuana on the employer's premises after work), it is not unreasonable to conclude that the Claimant didn't know/expect that he would be terminated (Canada (AG) v. Locke 2003 FCA262).

[44] Finally, the Member considered the Claimant's submission that to interpret 'misconduct' under the EI Act in a manner that includes actions resulting from a disability is contrary to *Charter* and Human Right values. The Commission contends that the Claimant failed to show that the denial of employment insurance benefits constitutes discrimination contrary to the *Canadian Human Rights Act.* The Member is of the opinion that even if evidence was brought forth, neither consideration nor a finding in this regard was required in order to evaluate the evidence and draw a conclusion of whether or not the Claimant was dismissed due to his own misconduct as defined in the EI Act.

[45] The Member concludes that the Claimant's absences from work that led to his dismissal were not conscious, deliberate or intentional, where the Claimant knew 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.

[46] The Member therefore finds that the Claimant, on a balance of probabilities, did not lose his employment as result of his own misconduct. The Claimant therefore should not be disqualified from receiving employment insurance regular benefits pursuant to sections 29 and 30 of the EI Act.

CONCLUSION

[47] The appeal is allowed.

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.