



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *C. M. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 32

Tribunal File Number: GE-16-3372  
GE-16-3376

BETWEEN:

**C. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Josée Langlois

HEARD ON: March 9, 2017

DATE OF DECISION: March 13, 2017

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

[1] The Appellant, Ms. C. M., did not attend the teleconference hearing.

### **DECISION**

[2] The Tribunal concludes that the Appellant lost her employment by reason of her own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

### **INTRODUCTION**

[3] On February 21, 2016, the Appellant filed an initial claim for regular benefits with the Canada Employment Insurance Commission (Commission). The Appellant stated that she had been dismissed by reason of her own misconduct. Based on the Record of Employment provided by the employer 9285-2334 Québec Inc. (IGAX), the Appellant worked for this employer from September 29, 2014, to February 15, 2016. The employer indicated "M – Dismissal" as the reason for the Appellant's dismissal (Exhibits GD3-3 to GD3-16).

[4] On April 12, 2016, the Commission informed the Appellant that she was no longer entitled to regular benefits as of February 15, 2016, because she had stopped working for IGA X by reason of her own misconduct (Exhibit GD3-23).

[5] On May 12, 2016, the Appellant requested a reconsideration of the Commission's decision to deny her benefits because of her misconduct (Exhibits GD3-40 to GD3-42).

[6] On June 30, 2016, the Commission informed the Appellant that it was upholding the decision rendered on April 12, 2016, concerning misconduct as the cause of the Appellant's dismissal (Exhibits GD3-50 and GD3-51).

[7] On September 2, 2016, the Appellant filed a Notice of Appeal to the Employment Insurance Section of the Tribunal's General Division (Exhibits GD2-1 to GD2-13).

[8] On March 9, 2017, a hearing was held by teleconference and the Appellant did not attend. According to subsection 12(1) of the *Social Security Tribunal Regulations* (Regulations), if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing.

[9] On February 8, 2017, the Tribunal issued a notice of hearing (Exhibit GD1). The notice states that the hearing will take place on March 9, 2017, at 10 a.m. The necessary information in order to join in the teleconference is indicated in the notice. On February 14, 2017, the Appellant acknowledged receipt of the notice informing her of the hearing.

[10] The Tribunal is satisfied that the Appellant received the notice of hearing because she signed for it. The Appellant was the only party that had to attend the hearing beginning at 10 a.m. on March 9, 2017. At 10:30 a.m., the Appellant was still not there. The Tribunal held the hearing in her absence and deliberated the case.

[11] In accordance with section 13 of the Regulations, the Tribunal attached both the Appellant's files, GE-16-3372 and GE-16-3376, which raise common questions of fact and law. Indeed, the Commission informed the Tribunal that the two files opened by the Tribunal correspond to only one file at the Commission (Exhibit GD4-1). On February 8, 2017, a letter was sent to the Appellant informing her that the two files had been joined (Exhibit GD7).

#### **TYPE OF HEARING**

[12] The appeal proceeded by teleconference for the following reasons (Exhibit GD1):

- a) The complexity of the issue or issues.
- b) The fact that credibility might be a prevailing issue.
- c) The fact that the Appellant will be the only party in attendance.

- d) The information in the file, including the need for additional information.

## **ISSUE**

[13] The Tribunal must determine whether the Appellant lost her employment by reason of her own misconduct pursuant to sections 29 and 30 of the Act.

## **EVIDENCE**

[14] The evidence in the Commission's file is as follows:

- a) The Appellant submitted an initial claim for regular benefits to the Commission on February 21, 2016, in which she states that misconduct was the reason for her dismissal (Exhibits GD3-3 to GD3-15).
- b) A Record of Earnings, dated October 7, 2015, stating that the Appellant had worked for 9285-2334 Québec Inc. (IGA X) from September 29, 2014, to February 15, 2016, inclusive (Code M - Dismissal), (Exhibit GD3-16).
- c) The Appellant's statements to the Commission concerning the events leading up to her dismissal. The Appellant does not dispute the facts resulting from the employer's investigation, but she submits that they did not constitute fraud (Exhibits GD3-17 and GD3-21).
- d) A letter addressed to the Appellant from the employer informing her of the results of the investigation and of the dismissal, as well as a document addressed to the Appellant by the employer detailing a disciplinary measure (Exhibits GD3-18 to GD3-20).
- e) A Commission decision, dated April 12, 2016, informing the Appellant that she was no longer entitled to regular benefits as of February 15, 2016, because she had stopped working for the employer IGA X due to her own misconduct (Exhibit GD3-23).
- f) Documents indicating the Appellant's dismissal sent by the employer to the Commission, containing the results of the investigation as well as images from the grocery store's surveillance camera. These images show the incident that led to the dismissal, with the Appellant hiding a page of stamps under a packaging tray. These documents also include a handwritten list of warnings that had been given to the Appellant prior to the February 15, 2016, suspension. For example, the employer stated that in December 2014, it gave

the Appellant a verbal warning regarding the use of her personal Air Miles card when customers did not use theirs. The employer also reminded the Appellant of the rules to be followed (Exhibits GD3-25 to GD3-39).

- g) On May 12, 2016, the Appellant filed a request for reconsideration of the Commission's initial decision (Exhibits GD3-40 to GD3-42).
- h) Documents setting out the employer's code of ethics, rules and standards to be followed were sent by the employer to the Commission (Exhibits GD3-45 to GD3-47).
- i) Acknowledgement of receipt of the code of ethics, rules and standards to be followed at IGA X, signed by the Appellant on October 14, 2014 (Exhibit GD3-30).
- j) The Commission's reconsideration decision dated June 30, 2016, informing the Appellant that it was upholding the initial decision rendered on April 12, 2016 (Exhibits GD3-48 and GD3-49).

[15] On September 2, 2016, the Appellant sent the Tribunal a copy of the following documents:

- a) The Commission's reconsideration decision dated June 30, 2016, informing the Appellant that it was upholding the initial decision rendered on April 12, 2016 (Exhibits GD2-4 and GD2-5);
- b) A notice of appeal of the Commission's June 30, 2016, decision (Exhibits GD2-1 to GD2-3);
- c) Documents in support of her appeal, including a Record of Employment, a pay slip and a statement by the Appellant regarding the incidents involving her use of the pages of stamps. The Appellant states that these actions were motivated by her desire to provide outstanding service to customers and that these actions did not constitute fraud or dishonesty (Exhibits GD2-6 to GD2-13).

## **SUBMISSIONS**

[16] In her notice of appeal sent to the Tribunal on September 2, 2016, the Appellant submits the following arguments:

- a) The Appellant states that she took a customer's full page of stamps and \$5.75 in cash in order to help her buy a kettle because the customer was going on a trip and would not have been able to benefit from the promotion. The Appellant was planning to buy the kettle for the customer and not for herself. The Appellant states that she agreed to take the page of stamps as a favour for the customer and that the employer had never told her that she did not have the right to do that.
- b) The Appellant states that she took an incomplete page of stamps from another customer to help other customers that were missing stamps to complete their pages. The Appellant said that some of her coworkers asked her to give them the page of stamps, but the Appellant said that she did not have to because they were just other employees like her. The Appellant states that when she received that page of stamps, she should have given it to client services, but because she was at her packaging station, she had no time to do so. The Appellant states that as soon as the assistant manager asked her for the page of stamps, she gave it to her.
- c) The Appellant states that these actions do not constitute fraud and that she will never accept being called a fraudster or dishonest.

[17] On September 9, 2016, the Commission sent the Tribunal a written submission (Exhibits GD4-1 to GD4-6):

- a) The Commission submits that subsection 30(2) of the Act provides for the imposition of an indefinite disqualification if it is established that the claimant lost an employment because of his or her own misconduct. The Commission states that, 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 be a causal link between the misconduct and the dismissal.

- b) The Commission submits that the Appellant committed a dishonest act, that is, keeping stamps and/or pages of stamps in her pocket when she should have followed the employer's rules for this type of situation and given the pages of stamps to the appropriate person right away.
- c) The Commission states that the employer's code of ethics clearly sets out its expectations with regard to theft and fraud and states that any theft or fraud will lead to immediate dismissal.
- d) The Commission states that although the Appellant said that she did not have fraudulent intentions, the video evidence sent by the employer seems to demonstrate the opposite. The Commission submits that hiding and pocketing the page of stamps and failing to comply with her manager's request is not an example of honesty.
- e) The Commission submits that the Appellant's actions were wilful and deliberate.

## **ANALYSIS**

[18] According to subsection 30(1) of the Act, a claimant is disqualified from receiving benefits if the claimant loses an employment because of his or her own misconduct or leaves an employment without just cause.

[19] The Court has defined misconduct as follows: "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*, 1986 FCA 381).

[20] For the Tribunal to conclude that there was misconduct, it must have before it relevant facts and sufficiently detailed evidence for it to be able, first, to know how the employee behaved, and second, to decide whether such behaviour was reprehensible (*Meunier*, A-130-96; *Joseph*, A-636-85).

[21] 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—*Canada (Attorney General) v. Mishibinijima*, 2007 FCA 85 (CanLII); *Canada (Attorney General) v. Brissette*, A-1342-92).

[22] The Court also determined that the failure to meet a condition of employment stems from the misconduct and that the misconduct led to the loss of employment (*Canada (Attorney General) v. Brissette*, A-1342-92).

[23] Misconduct must be committed by the claimant while he or she was employed by the employer, and must constitute a breach of a duty that is expressed or implied in the contract of employment. The misconduct must cause the loss of employment, and must be an operative cause (*Canada (Attorney General) v. Brissette*, A-1342-92).

[24] The Appellant worked at IGA X as a packer for a little over a year (Exhibits GD3-16 and GD3-42). On October 14, 2014, the employer gave the Appellant the employee handbook, code of ethics, rules and standards to follow at IGA X (Exhibits GD3-46 and GD3-47). The Appellant acknowledged receipt of these documents on October 14, 2014 (Exhibits GD3-29 and GD3-30).

[25] On February 15, 2017, the Appellant was suspended by the employer during its investigation into her use of the pages of stamps (an IGA promotion). On February 18, 2017, the employer met with the Appellant to explain to her that, based on its investigation, it considered her behaviour to be dishonest. The employer then gave the Appellant a dismissal letter (Exhibits GD3-18 and GD3-19).

[26] The employer stated to the Commission that the Appellant's following actions were dishonest and constituted fraud, based on its code of conduct:

- On February 9, 2016, the Appellant received a cash amount from a customer as well as a page of stamps in order to purchase a kettle for the customer. The Appellant then put the money and page of stamps in her pocket without informing her manager.



- On February 10, 2016, a customer gave two partially full pages to another cashier to give to the Appellant and the cashier gave them to the manager.
- On February 12, 2016, a cashier gave the Appellant a page containing eight stamps to give to the courtesy desk. The Appellant then hid the page under a packaging tray with a plastic bag in her left hand, and then took the page of stamps with her right hand and put it in her pocket. Twice the Appellant's supervisor asked her to hand over the pages of stamps and twice the Appellant said that she had already returned them to the courtesy desk. Later, the supervisor firmly asked the Appellant to hand over the stamps and, at that time, the Appellant handed them over.

[27] The employer captured these events on surveillance camera and sent the images to the Commission (Exhibits GD3-33 to GD3-36).

[28] Relying on the employer's statement, the Commission submits that the Appellant lost her employment by reason of her own misconduct because she used pages of stamps in a way that did not comply with the employer's rules (Exhibit GD3-22).

[29] The Appellant does not dispute the events; however, she explains that she wanted to help customers and to offer quality service. The Appellant stated that she had refused to give the full page of stamps to an employee who was at the same level as her, but that as soon as the assistant manager asked her for them, she gave them to her. The Appellant submits that her behaviour was not dishonest and does not constitute fraud (Exhibits GD2-10 to GD2-13).

[30] The Tribunal must determine whether the Appellant's behaviour constitutes misconduct within the meaning of the Act. The Commission has the burden of proof to demonstrate, on a balance of probabilities, that the claimant lost her employment by reason of her misconduct (*Canada (Attorney General) v. Larivée*, 2007 FCA 312 (CanLII)).

[31] The Commission states that the Appellant, by hiding the page of stamps, by lying to her supervisor and by refusing to hand over the page of stamps when asked, acted deliberately and consciously because the employer's expectations in this regard are clearly defined in the code of conduct.

[32] The Appellant stated to the Commission that with regard to the last alleged incident of February 12, 2016, she did not lie to her supervisor, but that she had forgotten that the page of stamps was in her pocket.

[33] The Appellant told the Tribunal that she had refused to give the page of stamps to an employee who was at the same level as her, but that as soon as the assistant manager asked her for it, she gave them to her.

[34] The Tribunal analysed the various statements in the Commission's file as well as the Appellant's notice of appeal. The Tribunal finds that the Appellant submitted two different versions to the Commission and to the Tribunal. The Appellant first told the Commission that she had not refused to give the page of stamps to her supervisor, but that she had forgotten that she had put it in her pocket. Then, she stated in her notice of appeal that she had refused to give the stamps to an employer who was at the same level as her, but that she had given it to her assistant manager as soon as she asked for it.

[35] The employer conducted an investigation before dismissing the Appellant and the events leading to her dismissal were caught on the grocery store's surveillance camera. The evidence has shown that the Appellant hid the page of stamps under the packaging tray using a plastic bag and then put it in her pocket with the other hand. The Tribunal finds that the Appellant's actions were wilful and deliberate and that she know, or should have known, that this conduct was such as to impair the performance of the duties owed to her employer (*Canada (Attorney General) v. Tucker*, 1986 FCA 381, *Canada (Attorney General) v. Mishibinijima*, 2007 FCA 85 (CanLII)).

[36] Particularly since the Appellant acknowledged receipt of the employer's code of ethics, rules and standards on October 14, 2014. On the document, above her signature, it is indicated that the Appellant attests that she understands the content of the documents and that she knows that respecting these rules constitutes a condition of her employment (Exhibit GD3-30).

[37] The code of ethics provides that it is not permitted to use *discount coupons without personally purchasing the products subject to the promotion. (...) Any theft or fraud toward the grocery store or another employee or a customer would lead to immediate dismissal* (Exhibits GD3-46 and GD3-47).

[38] The Tribunal is of the view that by being dishonest and misusing the employer's pages of stamps, the Appellant disrespected an explicit contract condition (*Canada (Attorney General) v. Brissette*, A-1342-92).

[39] Especially since the employer stated that it had warned the Appellant in December 2014 regarding the use of her personal Air Miles card for customer's purchases and, at that time, had reminded her of the rules to be followed at IGA X.

[40] The Appellant signed a disciplinary measure on February 15, 2016, when she had been suspended during the employer's investigation concerning her use of several pages of stamps. The results of that investigation were communicated to the Appellant on February 18, 2016. The employer informed the Appellant during a meeting and by letter that her actions were dishonest and constituted fraud. The employer noted that the acts had been filmed by the store's surveillance camera. As a result of the investigation, the employer dismissed the Appellant (Exhibit GD3-18 and GD3-19).

[41] The Tribunal understands that the Appellant is uncomfortable with the employer calling her a "fraudster." The Tribunal also heard the Appellant's version indicating that although her use of the stamps was not consistent with the employer's rules, it was intended to help certain customers, which is commendable. However, the Tribunal finds that the Appellant lacked transparency in her actions and that she failed to respect the employer's rules set out in the code of ethics.

[42] The Commission demonstrated that the employer has a clear policy concerning the employees' use of stamps, coupons and promotions. The Appellant signed for the code of ethics on October 14, 2014. Therefore, the Tribunal can only conclude that the Appellant knew the employer's rules regarding the use of stamps given to customer's during a promotion (Exhibits GD3-26 et GD3-29).

[43] The Tribunal finds that the Appellant knew the employer's rules and is of the view that the evidence on file demonstrates that the dismissal was a direct consequence of the Appellant's failure to respect an obligation set out in her contract of employment (Exhibits GD3-30 and GD3- 39), (*Canada (Attorney General) v. Brissette*, A-1342-92).

[44] The Commission demonstrated that the Appellant's actions were wilful and deliberate. The evidence shows that on February 12, 2016, the Appellant concealed a page of stamps and put it in her pocket and then lied to her supervisor when the supervisor asked her for the stamps. As the Court has held, there must be a direct connection between the act committed and the dismissal.

[45] The Tribunal finds that the Appellant could have presumed that her actions (concealing the pages of stamps) were such as to impair the performance of the duties owed to her employer and that, as a result, dismissal was a real possibility (*Mishibinijima v. Canada (Attorney General)*, 2007 FCA 85 (CanLII)).

[46] In cases of misconduct, the Court has stated that the Tribunal's role is not to determine whether the dismissal or penalty was justified (*Fakhari*, A-732-95). It must instead determine whether the claimant's action constituted misconduct under the Act (*Marion*, 2002 FCA 185). In this case, the evidence on file clearly shows that the Appellant's action (hiding a page of stamps and putting it in her pocket) was "wilful or deliberate or so reckless as to approach wilfulness."

[47] The Tribunal finds that the disentitlement imposed on the Appellant due to her own misconduct under sections 29 and 30 of the Act is justified.

## **CONCLUSION**

[48] Having weighed the evidence and the parties' arguments, the Tribunal finds that the Appellant lost her job by reason of her own misconduct, under sections 29 and 30 of the Act.

[49] The appeal is dismissed.

Josée Langlois  
Member, General Division – Employment Insurance Section

## ANNEX

### THE LAW

#### Employment Insurance Act

**30 (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.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:

(a) hours of insurable employment from that or any other employment before the employment was lost or left; and

(b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.

[29] 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;

**b.1)** voluntarily leaving an employment includes

**(i)** the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

**(ii)** the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

**(iii)** the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

**c)** just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

**(i)** sexual or other harassment;

**(ii)** obligation to accompany a spouse or common-law partner or a dependent child to another residence;

**(iii)** discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act;

**(iv)** working conditions that constitute a danger to health or safety;

**(v)** obligation to care for a child or a member of the immediate family;

**(vi)** reasonable assurance of another employment in the immediate future;

**(vii)** significant modification of terms and conditions respecting wages or salary;

**(viii)** excessive overtime work or refusal to pay for overtime work;

**(ix)** significant changes in work duties;

**(x)** antagonism with a supervisor if the claimant is not primarily responsible for the antagonism;

- (xi) practices of an employer that are contrary to law,
- (xii) discrimination with regard to employment because of membership in an association, organization or union of workers;
- (xiii) undue pressure by an employer on the claimant to leave their employment; and
- (xiv) any other reasonable circumstances that are prescribed.