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

[TRANSLATION]

Citation: *C. G. v. Canada Employment Insurance Commission*, 2018 SST 560

Tribunal File Number: AD-17-868

BETWEEN:

C. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 23, 2018

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, C. G. (Claimant), made an initial application for Employment Insurance benefits. Upon review of her application, the Respondent, the Employment Insurance Commission of Canada (Commission), informed her that she was not entitled to Employment Insurance benefits because she lost her employment due to her own misconduct. The Commission found that the actions of the Claimant—who missed three consecutive days of work without contacting the employer or requesting time off—constituted acts of misconduct under the *Employment Insurance Act* (Act). The Claimant requested a reconsideration of that decision. The Commission advised the Claimant that it was upholding its initial decision. The Claimant appealed the decision to the General Division.

[3] The General Division found that the Claimant had deliberately chosen to delay providing a medical note until her appointment with a medical specialist without reaching a prior agreement to this effect with her employer. The General Division found that the Claimant should have consulted another doctor in order to obtain a medical note justifying her absence, which she had not done. Based on the evidence, the General Division found that the Claimant had been reckless and that she should have known that she would be dismissed.

[4] The Tribunal granted leave to appeal. The Claimant submits that the General Division erred by not considering that she had submitted various medical documents and that she had contacted the hospital in order to obtain the requested note, but it was impossible for the hospital to give her a medical note within the timeframe established by the employer.

[5] The Tribunal must decide whether the General Division erred by finding that the Claimant's actions constituted misconduct in spite of the fact that she was incapable of providing the requested medical note within the allotted time.

[6] The Tribunal dismisses the Claimant's appeal.

ISSUE

[7] Did the General Division err by finding that the Claimant's actions constituted misconduct despite the fact that she was unable to provide the note that the employer had requested within the allotted time?

ANALYSIS

Appeal Division's Mandate

[8] The Federal Court of Appeal has determined that the mandate of the Appeal Division is conferred to it by ss. 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

PRELIMINARY MATTERS

[11] The appeal hearing was held in French at the Claimant's request. The decision has also been prepared in French in order to ensure a certain level of consistency in the case, even if some of the documents are in English.

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[1] *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

ISSUE: Did the General Division err by finding that the Claimant's actions constituted misconduct despite the fact that she was unable to provide the note that the employer had requested within the allotted time?

[12] The General Division's role is to determine whether the employee's conduct amounted to misconduct within the meaning of the Act and not whether the severity of the penalty imposed by the employer was justified or whether the employee's conduct was a valid ground for dismissal.[2]

[13] On the other hand, the notion of misconduct does not imply that it is necessary that the breach of conduct be the result of a wrongful intent; it is sufficient that the misconduct be conscious, deliberate, or intentional. In other words, 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 his or her performance.[3]

[14] The Tribunal notes that the General Division did consider in its decision the undisputed evidence that the Claimant had deliberately chosen to miss work and to delay submitting a medical note until her appointment with the medical specialist without any prior agreement to this effect with her employer. The General Division found that the Claimant should have consulted another doctor in order to obtain a medical note justifying her absence, which she had not done. Based on the evidence, the General Division found that the Claimant had been reckless and that she should have known that she would be dismissed.

[15] The Tribunal is of the opinion that that the General Division did not commit an error when it determined, based on the evidence brought to its attention, that the Claimant's employment had been terminated because she missed work without obtaining

[2] *Canada (Attorney General) v. Lemire*, 2010 FCA 314.
[3] *Canada (Attorney General) v. Hastings*, 2007 FCA 372; *Tucker*, A-381-85; *Mishibinijima*, A-85-06.

prior permission from her employer.[4] There is no doubt that doing so constitutes misconduct.

[16] As the General Division emphasized, the Claimant should have taken the necessary steps to comply with the employer's legitimate request and to obtain a medical note justifying her absence from work.

[17] At the hearing of this appeal, the Claimant tried to justify the absence of a medical note with her intention to not pointlessly congest the hospital's emergency room and with the fact that the emergency room doctors were not familiar with her medical history. However, the Claimant had previously given her employer a medical note from the emergency services of X X Hospital.[5] Furthermore, without commenting on its admissibility on appeal, the Tribunal finds that the document from the hospital showed that it was possible for the Claimant to obtain a medical note within a period of one to five working days.[6]

[18] As the General Division emphasized, the Tribunal does not clearly explain why the Claimant resisted the employer's request to obtain a medical note from another doctor to the point of putting her job at risk, especially when she had previously requested part-time work so that she could reflect on her career plan, which raises a number of questions about her health.

[19] The Tribunal therefore finds that the General Division considered the Claimant's arguments, that its decision rests on the evidence submitted before it, and that this decision complies with the legislation provisions and with the jurisprudence.

[20] For the above-mentioned reasons, it is appropriate to dismiss the appeal.

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[4] GD 3-46, GD3-47.
[5] GD3-42.
[6] AD2-1.

CONCLUSION

[21] The Tribunal dismisses the appeal.

Pierre Lafontaine

Member, Appeal Division

HEARD ON:	May 17, 2018
METHOD OF PROCEEDING:	Teleconference
PERSONS IN ATTENDANCE:	C. G., Appellant Manon Richardson, Respondent's representative