



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. S. v Canada Employment Insurance Commission*, 2019 SST 813

Tribunal File Number: GE-19-2073

BETWEEN:

M. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

DATE OF DECISION: June 27, 2019

REASONS AND DECISION

OVERVIEW

[1] The Appellant worked for X from September 2016 to February 2019. She first stopped working for health reasons and then was dismissed on April 23, 2019. The employer refused to disclose the circumstances of the termination of the Appellant's employment, indicating that her file was confidential and that it did not want to comment. However, the employer confirmed that April 23, 2019, was indeed a dismissal.

[2] In the absence of additional evidence, the Employment Insurance Commission (Commission) found that the Appellant had not lost her employment because of misconduct. As a result, the Commission allowed the Appellant's claim for Employment Insurance benefits. Despite this, the Appellant challenged the Commission's decision. She expressed her disagreement with the information the employer provided and would like the records of employment to be amended. She would also like to challenge her dismissal, which she qualifies as a [translation] "constructive dismissal" by the employer.

ISSUE

[3] The Tribunal must decide whether the Appellant's appeal must be summarily dismissed.

ANALYSIS

[4] Section 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[5] In this case, the Tribunal is of the view that M. S.'s appeal has no reasonable chance of success.

[6] According to section 22 of the *Social Security Tribunal Regulations*, before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions. The Tribunal did so by

sending the Appellant a letter on June 12, 2019, to inform her of its intention to summarily dismiss the appeal and to give her the opportunity to make her submissions to the Tribunal.

[7] The Appellant responded with her submissions on June 13, 2019.

[8] According to section 113 of the *Employment Insurance Act* (Act), the Tribunal is authorized to hear appeals concerning decisions the Commission has previously reconsidered, in accordance with section 112 of the Act. The particular fact of this appeal is that the decision previously reconsidered in accordance with section 113 of the Act is in the Appellant's favour. The Commission decided to pay the Appellant Employment Insurance benefits.

[9] In this case, the Appellant indicated that she had difficulty getting her Record of Employment from the employer and asked the Commission to help her with that. The Appellant also expressed her disagreement with the reasons for the termination of employment the employer indicated on the records of employment. The Commission contacted the employer for more information on the circumstances of the termination of employment. The employer indicated that it did not want to give the details on the Appellant's file because it wants to maintain the confidentiality of the information. Despite this, the Commission succeeded in confirming that the Appellant should be considered on suspension between January 10, 2018, and April 22, 2019, and not on authorized leave as the employer indicated on the Record of Employment. The Commission therefore amended the reason on the Record of Employment. It also confirmed that the Appellant had been dismissed effective April 23, 2019, and it therefore finds that the Record of Employment must reflect that. The Commission is satisfied that it can amend the reasons on the records of employment with the new information obtained without requiring the employer to issue new records. Furthermore, the Appellant was officially informed of these changes to the records of employment in a letter dated May 14, 2019.

[10] During its investigation, the Commission therefore noted that the Appellant had first been suspended and then dismissed by her employer. The Commission wanted to know whether the Appellant had been suspended and dismissed for misconduct, which would have made her disentitled to benefits. However, in the absence of evidence from the employer, the Commission was not able to find that the Appellant had committed misconduct. Since the burden of proving

misconduct rests with the Commission and the employer,¹ the Commission could not meet its burden. It therefore decided that the Appellant was eligible to receive benefits and proceeded with payment.

[11] The Tribunal is puzzled by the Appellant's grounds of appeal because the decision is in her favour. However, the Tribunal seems to understand that the Appellant is frustrated with her former employer and that she would actually like to challenge the dismissal. Unfortunately, the Social Security Tribunal is not the right forum for this type of challenge. The Appellant will have to exercise her labour law remedies with the relevant bodies. The decision to dismiss the Appellant is not one of the Commission's decisions that can be brought before the Tribunal. Hearing this issue would be acting beyond the Tribunal's jurisdiction and, as a result, would be an error of law.

[12] Finally, in her notice of appeal and her response to the Tribunal's intention to summarily dismiss her appeal, the Appellant wrote at length on her dissatisfaction with the treatment she received from Service Canada employees. Once again, the Tribunal is not the appropriate forum for this type of complaint or request. Those comments offer no evidence that could suggest that the appeal has reasonable chances of success.

CONCLUSION

[13] The Tribunal finds that the appeal has no reasonable chance of success; therefore, the appeal is summarily dismissed.

Lucie Leduc
Member, General Division – Employment Insurance Section

¹ *Lepretre v Canada (Attorney General)*, 2011 FCA 30; *Canada (Attorney General) v Granstrom*, 2003 FCA 485; *Crichlow*, A-562-97.