



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. L. v Canada Employment Insurance Commission*, 2019 SST 1522

Tribunal File Number: GE-19-1997

BETWEEN:

K. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: June 21, 2019

DATE OF DECISION: July 6, 2019

DECISION

[1] The appeal is dismissed. The claimant will not be able to receive employment insurance benefits.

OVERVIEW

[2] The Appellant, K. L. (claimant) filed a claim for employment insurance benefits (EI). The employer stated that the claimant was dismissed because of his aggressive arguments with co-workers and a customer. The Respondent, the Canada Employment Insurance Commission (Commission) did not pay the claimant EI because his actions caused him to lose his job. The claimant disagreed because the arguments were not his fault and appealed to the *Social Security Tribunal* (Tribunal).

ISSUES

[3] Why did the claimant lose his job?

[4] Did the claimant act in an aggressive manner and argue with a customer?

[5] Did the claimant know his employer would fire him because of this behaviour?

ANALYSIS

[6] I have to decide whether the claimant lost his job because of misconduct. In order for me to decide this, I will have to consider if the claimant's behaviour was the reason he was dismissed and if he acted in a way that breached the employer/employee relationship. And if the claimant knew, he could lose his job because of his behaviour.¹

[7] If the claimant lost his job because of misconduct, then he cannot receive employment insurance benefits.²

¹ *Locke v. Canada (Attorney General)*, 2003 FCA 262, suggests that misconduct can include behaviour that is such a fundamental breach of the employer/employee relationship that any employee would know that dismissal would be likely.

² Section 30 of the *Employment Insurance Act*.

Issue 1: Why did the claimant lose his job?

[8] The office manager and the owners said the claimant was dismissed because of a history of having aggressive arguments with co-workers and the final incident when he aggressively argued with a customer.

[9] The claimant agreed there was an incident with the customer but it happened two weeks before. He stated that his co-workers were disrespectful so he retaliated.

[10] The employer told the Commission that the final incident was when the claimant damaged a customer's truck and they were shouting and swearing at each other. He said he came in the middle of it and he told the claimant to go back to work, and agreed to pay for the damage to the truck. Because of his actions, the claimant was given his two weeks' notice.

[11] I believe the employer's detailed statements of the final incident and that the claimant was provided with a two-week notice because he got into an argument with a customer. Although the claimant said he did not argue with the customer, he did admit to damaging the customer's truck. On the balance of probabilities, a shouting match did occur and it was the reason the claimant was dismissed.

Issue 2: Did the claimant act in an aggressive manner and argue with a customer?

[12] Yes, I believe the claimant acted in an aggressive manner with a customer because the employer provided believable details that the claimant argued with the customer after damaging his vehicle.

[13] I believe the employer's statements that the claimant had a history of arguing with his co-workers because the claimant admitted at the hearing that he had several arguments with several employees while he worked there. Although he said none of the arguments was his fault, he did admit that he would retaliate and argue back. Therefore, I find, it is more likely than not that when the customer was yelling and swearing at him, he would have retaliated, as stated by the employer.

[14] The claimant said a customer came into shipping and receiving with a brand new truck. He said when he was loading it, the forklift slipped and he chipped a little paint. He said the customer got upset and started swearing. He told the customer that he should not use a brand new truck for this type of work and took him to see the owner and he then walked away. He said he a couple of weeks later he was dismissed and does not know exactly the reason.

[15] The claimant said that other employees were disrespectful towards him and he retaliated. He said he did not start the arguments.

[16] The employer told the Commission the final incident occurred when an altercation took place between the claimant and a customer and he was given his two weeks' notice. The employer said the claimant damaged the customer's truck and they came to the front, it was a shouting match at each other swearing. He stated that he came in the middle of it and explained to the customer accidents happen and they would pay for the damages. He said there were witnesses to the claimant swearing at the customer. He said the swearing was so bad and they were shocked and upset the language used by the claimant.

[17] The claimant told the Commission that the incident happened outside and there was no one else there. He said the customer was swearing but he did not swear back, he went to see the owner in the front and explained the situation and left the customer to deal with the owner. He said after he was called into the office and given his notice. The Commission advised the claimant that both the owners heard the altercation and said he was yelling and swearing at the customer. The Commission advised the claimant that he lost his job because of his own wrongdoing.

Issue 3: Did the claimant know his employer would fire him because of his behaviour?

[18] Yes, the claimant should have known his employer would fire him for his behaviour because the employer had warned him that yelling and swearing was not acceptable on two occasions.

[19] The employer told the Commission that there had been five different incidents and two were the claimant got into arguments fighting and swearing with co-workers. He said they had two meetings with the claimant about his behaviour and he needed to get along with others. The claimant always said it was not the other co-workers fault.

[20] The employer told the Commission that they spoke the claimant and the other employees and explained that yelling and swearing was not acceptable.

[21] The employer told the Commission that because the claimant had already been warned to reconsider his attitude they could not let it continue. He said yelling and swearing at the customer is immediate cause for dismissal. They met with the claimant on the same day and told him his behaviour was unacceptable and he was given two weeks' notice on February 7, 2019, and his last day of work was February 22, 2019.

[22] At the hearing, the claimant agreed that his boss called him into the office and said he was being rude and disrespectful. He said he tried to tell his boss, it was not his fault. He said he was called into the office again because a co-worker was using foul language towards him and so he used it back. He said regarding the final incident, the customer was yelling and swearing at him and called him unspeakable names, so he told the customer to go to the office.

[23] The claimant told me that his employer told him to go to the back and a couple of hours later they called him into the office and discussed the details and they told him they could not have this happen and would have to let him go and they gave him his two weeks' notice. The claimant maintained he did not swear at the customer.

[24] At the hearing, the claimant said he had several arguments with several employees because they were not doing their jobs. He would tell them what to do, they would become upset with him, and he would have to retaliate.

[25] The claimant told me he was working in a very fast-paced environment and he may have made a mistake and his employer said he had a problem with getting along with others. But there was never any physical altercations. He said he felt he was not being respected and things would arise when others were not doing their jobs properly. He said that arguments would happen and the co-workers would run to the boss and tell on him.

[26] I asked the claimant if he was in a supervisory position to tell his co-workers, how to do their jobs and he replied he was not. I asked him if he felt his co-workers were not doing their jobs and he was feeling disrespected, was there anything that would have prevented him going to the employer, instead of getting into arguments. He replied no and he guessed he could have but he feels all the situations were over silly things.

[27] I believe that the claimant did know he was being dismissed when he was given his two weeks' notice because he admitted that he was called into the office after the customer incident, the employer discussed the situation, and they would no longer condone his behaviour and would have to let him go.

[28] I believe the employer's version of the final event over the claimant's because the claimant admitted to the fact that he did participate in arguments with co-workers, and that he was dismissed after the final incident with the customer. Rude and aggressive behaviour is detrimental to the employer's interests and is considered misconduct.

CONCLUSION

[29] I conclude the claimant is not entitled to receive employment insurance benefits because his own actions caused him to lose his job.

[30] I am dismissing the appeal.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	June 21, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	K. L., Appellant