



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v Canada Employment Insurance Commission*, 2019 SST 885

Tribunal File Number: GE-19-1889

BETWEEN:

R. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: June 14, 2019

DATE OF DECISION: July 10, 2019

DECISION

[1] I am dismissing the Claimant's appeal. This means that he is disqualified from receiving employment insurance benefits.

OVERVIEW

[2] The Claimant worked at a sports complex with an ice rink. There was a serious accident at a similar sports complex. The Claimant stopped reporting to work because he was worried there could be a similar accident at his workplace. The employer and the Claimant disagreed about the safety of the sports complex. Eventually, the Claimant returned to work. The employer gave the Claimant a warning letter explaining their expectations about following workplace safety policies. One of the employer's conditions was that the Claimant update his power engineering certificate. The Claimant did not update his certificate before the deadline and the employer fired him. The Claimant applied for employment insurance benefits. The Canada Employment Insurance Commission (Commission) decided that the Claimant lost his job because of misconduct. The Claimant asked the Commission to review its decision. The Commission did not change its decision and so the Claimant appealed to the Tribunal.

[3] It was reasonable for the employer to set a deadline for the Claimant to update his power engineer certificate. The Claimant missed the deadline because of his own actions. He knew that he could lose his job if he missed the deadline. This is misconduct. The Claimant cannot receive employment insurance benefits.

ISSUES

[4] Issue 1 – Did the Claimant miss the deadline for updating his certificate?

[5] Issue 2 – Did the employer dismiss the Claimant because he missed the deadline?

[6] Issue 3 – Did the Claimant know he was at risk of losing his job because he missed the deadline? Did he lose his job because of his misconduct?

ANALYSIS

[7] I have to decide whether the Claimant lost his job because of misconduct. This means I have to consider several questions:

- Did the Claimant act deliberately? Did he know what he was doing? Or was he so careless that it seemed like he did not care what might happen to his job?¹
- Did the Claimant know that he could lose his job because of his actions? Or would a reasonable person understand that someone would probably lose their job if they acted the same way?²

[8] If the Claimant lost his job because he did something on purpose, or because he was very careless, **and** if he knew he could probably lose his job because of his actions, then he lost his job because of misconduct.³ If the Claimant lost his job because of misconduct, then he cannot receive employment insurance benefits.⁴

Issue 1: Did the Claimant miss the deadline for updating his certificate?

[9] The Claimant missed the deadline for updating his certificate.

[10] The employer gave the Claimant a warning letter. The employer told the Claimant to update his class four power engineer certificate. The employer said that Technical Safety British Columbia (TSBC) set the requirement for the certificate. The employer gave the Claimant a deadline of December 2 to update the certificate.

¹ At paragraph 4 of its decision *Canada (Attorney General) v. Caul*, 2006 FCA 251, the Federal Court of Appeal notes that the action must be wilful. In *Canada (Attorney General) v. Tucker*, A-381-85, the Federal Court of Appeal notes that misconduct could include an action that was so reckless that it approached wilfulness.

² At paragraph 8 of its decision *Locke v. Canada (Attorney General)*, 2003 FCA 262, the Federal Court of Appeal 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.

³ At paragraphs 4 and 5 of its decision *Canada (Attorney General) v. Caul*, 2006 FCA 251, the Federal Court of Appeal defines misconduct as an act or omission, done wilfully, that the claimant should have known would be likely to result in dismissal.

⁴ Section 30 of the *Employment Insurance Act*.

[11] At the hearing, the Claimant said that he disagreed with the requirement to update the certificate. He agreed that the employer set a deadline. He had to apply online to update his certificate. He started on December 2, a Sunday, but he had problems with the registration system. He completed the process on Monday, December 3. He gave the employer a copy of his updated certificate later that day.

[12] The Claimant and the employer agree that the employer set a deadline of December 2 to update his power engineer certificate. The Claimant and the employer agree that the Claimant updated his certificate on December 3. The Claimant missed the deadline for updating his certificate.

Issue 2: Did the employer dismiss the Claimant because he missed the deadline?

[13] The employer gave several reasons for dismissing the Claimant. One reason is that the Claimant missed the deadline to update his certificate.

[14] In the termination letter, the employer says that they are firing the Claimant because of an accumulation of incidents and a breakdown in the trust relationship between the employer and the employee. The letter says they are firing the Claimant because of insubordination, non-compliance with WorkSafe BC policies and internal policies, and non-compliance and lack of honesty around the certification process.

[15] The Claimant agrees that the termination letter talks about how he missed the deadline to update his certificate. However, the Claimant argues that the employer actually fired him because of his union activities and because he complained about safety.

[16] The employer's termination letter makes it clear that there are several reasons for the Claimant's termination. However, it is not necessary for me to look at each individual reason in the termination letter and decide whether it is misconduct. Instead, if the Claimant did one of the actions, and if the employer fired him for this action, then I can consider whether that action was misconduct. In other words, I do not have to look at every single reason listed in the termination

letter. If there is a link between one of the reasons listed in the termination letter, and the Claimant's firing, then I can consider whether that one reason amounts to misconduct.⁵

[17] Even though the termination letter lists several reasons for the Claimant's firing, it clearly talks about how the Claimant missed the deadline to update his certificate. It says that this is one of the reasons for firing him.

[18] The employer fired the Claimant on December 17, about two weeks after he missed the deadline to update his certificate. Because the termination letter clearly talks about the certificate deadline, and because the employer fired the Claimant soon after he missed the deadline, I accept that there is a direct link between the Claimant's actions and his firing.

[19] The employer fired the Claimant for many reasons, but one of the reasons was because he missed the deadline to update his certificate.

Issue 3: Did the Claimant know he was at risk of losing his job because he missed the deadline? Did he lose his job because of his misconduct?

[20] The Claimant knew that he could lose his job if he did not update his certificate before the deadline. He acted deliberately when he delayed updating his certificate. He lost his job because of misconduct.

[21] The employer gave the Claimant a warning letter on November 19. The letter says that the updated power engineer certificate is a requirement from TSBC. The letter also says that the employer talked about the requirement to update the certificate with the Claimant many times before setting the deadline. The letter says that they will fire the Claimant if he does not update his certificate by December 2. The Claimant argues that he did not accept the terms in the warning letter. However, he agrees that the employer gave him the warning letter.

⁵ I am guided by the Federal Court of Appeal's decision in *Davlut v. Canada (Attorney General)*, A-241-82. In this decision, the Court acknowledges that there can be several reasons for a dismissal. Some of the reasons for dismissal may be misconduct, and others may not be misconduct. However, the Court also states that no one should benefit from a dismissal if they lost their job due to misconduct. Similarly, in *Canada (Attorney General) v. Brisette*, A-1342-92, the Federal Court of Appeal noted that it not necessary for the action that caused the dismissal to be the "only operative cause of the dismissal." I interpret this to mean that, if one of the reasons for dismissal amounts to misconduct, even if the other reasons may not be misconduct, then a disqualification from employment insurance benefits is appropriate.

[22] The Claimant said that he waited until December 2 to start the online process to update his certificate. He argues that he was allowed to wait until the deadline. He argues that he had unexpected problems with the online registration process that stopped him from completing the process on December 2.

[23] The Claimant argues that the certification process was a “cash grab” and that it was not necessary for him to do his job. However, the Claimant agrees that TSBC set the requirement for the certificate. There was always supposed to be at least one person in the building with the certificate.

[24] I understand that the Claimant did not agree that he had to update his certificate. However, it was reasonable for the employer to demand that the Claimant follow TSBC policy and update his power engineer certificate. Even if other people at the Claimant’s workplace had the updated certificate, it was reasonable for the employer to require the Claimant to update his certificate as well. It was also reasonable for the employer to set a deadline for the Claimant to complete the online process to update the certificate, especially since the employer spoke to the Claimant about the certificate several times before setting the deadline. The employer’s expectations about updating the certificate were not arbitrary.

[25] The employer clearly warned the Claimant that they would fire him if he did not update his certificate by the deadline. By waiting until the last day, the Claimant acted deliberately and recklessly. I accept that that the Claimant had unexpected problems with the online registration process, but he created that risk when he deliberately waited until the last day to update his certificate.

[26] I do not have to decide whether the employer acted too harshly by dismissing the Claimant. I do not have to decide whether the employer wrongfully dismissed the Claimant.⁶ I only have to decide whether he lost his job because of misconduct. Is there a direct link between

⁶ In *Canada (Attorney General) v. McNamara*, 2007 FCA 107, at paragraphs 22 and 23, the Federal Court of Appeal explains that the employee’s behaviour, not the employer’s behaviour, is the issue. The question is whether the employee lost their employment because of misconduct, not whether the employer wrongfully dismissed the employee.

his actions and his dismissal? Did he act deliberately? Did he know, or should he have known, that his actions put him at risk of losing his job?

[27] The Claimant knew that he could lose his job if he did not update his certificate before the deadline. He missed the deadline because of his own deliberate actions. This means that the Claimant lost his job because of his own misconduct.

CONCLUSION

[28] I am dismissing the Claimant's appeal.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	June 14, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	R. B., Appellant