



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. R. v Canada Employment Insurance Commission*, 2019 SST 1664

Tribunal File Number: GE-19-2097

BETWEEN:

E. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: July 4, 2019

DATE OF DECISION: July 23, 2019

DECISION

[1] The appeal is dismissed. I find that the claimant is not entitled to receive employment insurance benefits. Her actions of falsifying the document breached the employer/employee relationship that caused her dismissal.

OVERVIEW

[2] The Appellant, E. R. (claimant) applied for employment insurance benefits (EI) after being dismissed for allegedly falsifying a document. The Respondent, the Canada Employment Insurance Commission (Commission) determined that the claimant lost her employment due to her own misconduct. The claimant disagreed with the decision and appealed to the *Social Security Tribunal* (Tribunal) arguing that she was forced to redo the document.

PRELIMINARY MATTERS

[3] The claimant's representative did not attend the hearing. She stated that her representative told her she would have to explain her case herself. In addition, the claimant did not have the GD3 documents but she stated that she had been directly involved in the reconsideration stage and she knew what she had said. The claimant agreed that she was ready to proceed with the hearing without her representative and the missing documents.

ISSUES

[4] Did the claimant lose her job because of the alleged misconduct?

[5] Did the claimant commit the alleged offence?

[6] Did the alleged offence constitute misconduct?

ANALYSIS

[7] There will be misconduct where the conduct of a claimant was wilful, i.e. in the sense that the acts, which led to the dismissal, were conscious, deliberate or intentional. Put another way, 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.¹

[8] The onus lies on the Commission to establish that the loss of employment by the claimant resulted from the claimant's own misconduct.²

Issue 1: Did the claimant lose his employment because of the alleged offence?

[9] Yes, I find the claimant lost her employment because it was alleged that the claimant falsified a document. The employer issued an amended record of employment that stated the claimant was dismissed without prejudice.

[10] The claimant initially indicated on her application that she was dismissed because she was unsuitable. She later told the Commission the final incident was the issue with the green sticker that was not her fault. However, she later agreed that the final incident that caused her dismissal was when she made the changes to the document.

[11] In her application for EI benefits, the claimant stated she was dismissed because her employer found her unsuitable. The record of employment stated that the claimant quit. However, when the Commission contacted her she stated again that she had been terminated because she did not have connections. She stated they put pressure on her and gave her a letter of expectation.

[12] The claimant explained to the Commission that she was experiencing harassment from S. C. and L. J. for about four months before she was fired. She stated that in November she received a letter of expectation. S. C. told her she was under progressive discipline. She stated that she was also being blamed for mistakes that she had not done.

[13] The claimant explained that she decided to go to the Human Resources Manager (HR) and inform him of S. C. and L. J.'s behavior towards her. The HR manager told her whatever was discussed between them would be confidential. However, it was not and she was fired within two days. Prior to that, she had received a two-day suspension for a mistake that had been

¹ *Canada (AG) v. Lemier*, 2010 FCA 314; *Hastings* 2007 FCA 372

²

made with a driver regarding an expired product. The claimant stated that the employer did also not follow the company discipline policy and she believes she skipped the steps because she had gone to the HR manager. She stated she experienced emotional distress and pressure created by then.

[14] The Commission asked the claimant to explain the final incident that led to her dismissal. The claimant stated to the Commission she employed as Quality Assurance (QA) and her duties included checking the quality of food products. She stated she was accused of making a mistake and of not sampling meat on the right schedule. She stated that she did not check the meat because it was not on the schedule and she is not responsible for making the schedule. She stated she received a letter of expectations and progressive discipline, but they could not prove it was her mistake. She stated she had several warnings after that.

[15] The claimant stated to the Commission she had been suspended and sent home for the use of expired products. She explained that there were two cages of expired products, used by the truck driver. She stated it was the truck drivers fault not hers. She stated she told the employer that one cage the responsibility lay with the truck driver and the other hers. She stated she is only there on Friday until 10 PM, and the truck driver grabbed the expired meat on Monday, which was after the 72 period. She stated when the incident was discovered she was sent home and it was not her fault. She stated she was worried so she contacted the HR, who advised to write a letter. She stated the next day she was asked to come in and was terminated.

[16] The Commission spoke the HR manager who stated the claimant was dismissed with cause for performance issues. She stated that there was not just one incident and had been given opportunities. The HR manager stated that the claimant's actions were not malicious but it was perpetual and occurred after several discussions and warnings. She stated that the final incident was due to lack of detailed orientated and missed checks. She stated the final incident was a missed check and a gap. The mischeck would have been a check that was to be performed and was not, and the gap was a three-hour period of lack of documentation. She advised that the manger, L. J. had asked the claimant about it and she rewrote the documentation without the gap, which was considered a falsified document. She stated when the claimant was asked about it she did not provide any explanation for the mischecked or gap.

[17] The HR manager stated that the claimant was expected to perform checks a certain time and in a certain manner, which she failed to do. She stated the checks are required as per the regulations of the Canadian Food Inspection Agency and Food Safety Policy. She stated a failure to perform the checks would not result in risk to the lives or health but would cause delays as the product is put on hold to do additional checks and it caused extra work and losses.

[18] The HR manager stated that the claimant had received several letters of expectation in September, November and earlier in January. She could not confirm if the failure to perform a check would result in termination because she did have the letter. She agreed to send the Commission related warnings, policy and sign off. The HR manager stated the incident with the truck driver was a separate incident and was unrelated to the final incident but another example of failing the check product. She confirmed the final incident was the falsified document. The HR manager submitted documents related to the claimant's training and disciplines.³

[19] I note there is an exception (GD3-46) that belongs to someone else and on the balance of probabilities was an error on the part of the employer. I do not find this has an adverse affect on the appeal.

[20] GD3-90 to GD3-99 0 email on what claimant was trained on, termination letter, final incident.

[21] An email dated March 14, 2019, indicated the claimant experienced 10 deviations since she was hired on June 4, 2018. There was more one instance after the last deviation where she falsified a record after she falsified a record after she had only been asked to correct it. There was no deviation written for that one (GD3-93).

[22] A letter of termination dated January 22, 2019, indicates that after several discussions, warnings, and disciplines, regarding her consistent poor performance, it was decided to terminate the employment for cause immediately.⁴

[23] The employer provided a copy of the Performance Management – Disciplinary Action Form of the final incident that led to the claimant's termination.⁵

³ GD3-36 to GD3-89

⁴ GD3-95 to GD3-96

[24] The employer provided a copy of Performance Management – Disciplinary Action Form indicating a final warning and discussion of the January 7, 2018, incident and a letter of expectation dated November 29, 2018.⁶

Issue 2: Did the claimant commit the alleged offence?

[25] Yes, I find the claimant falsified the document. I find the claimant admitted to rewriting the document. The evidence of the original and the re-written documents clearly show the claimant had written five checks (with a defect noted) during a period that the production had been shut down.

[26] The Commission contacted the claimant advising her that the employer disagreed with the final incident and informed that it was due to a falsified record she had been asked to make a correction then completely rewrote the paperwork and added in checks, which had not occurred because the production was stopped.

Issue 3: Did the alleged offence constitute misconduct?

[27] Yes, I find that the act of rewriting the document and putting in information that was not correct, would be falsifying a document, and breached the company policy – Correction of information on a form.⁷ The document clearly indicates it is strictly forbidden to falsify information on a control form. I find that the claimant's actions breached the trust of the employer/employee relationship.

[28] I find there is a causal relationship between the claimant's employment and the reason for the dismissal.⁸ The claimant admitted that she rewrote the document but claims she was forced to do by S. C..

[29] The employer provided copies of the original and changed GSP Raw Material Inspection that was changed by the claimant.⁹

⁵ GD3-97

⁶ GD3-98 to GD3-99

⁷ GD3-89

⁸ Canada (Attorney General) v. Nolet, FCA A-517- 91

⁹ GD3-154 to GD3-155

[30] The Commission advised the claimant that the document regarding the “correction of information on a form” is very clear. In addition, how the correction is to be completed, and what is and is not acceptable. The claimant stated she was very stressed and she had been given the blame of the truck driver and suspended. She stated she followed the employer’s instruction the best she could.

[31] The claimant stated that the form was not falsified because she had previously indicated production had stopped and she could not do the checks because she was not there. She stated checks were missed and she rewrote them because S. C. asked her to and she put in the checks that never happened for time production was stopped.

[32] The Commission asked the claimant if she was being asked to do something wrong, why she did not report it. The claimant stated that she was confusing her and threatening her. She stated her performance had been in question and she had been given expectations. She stated that she had reported previous concerns over feeling she would be fired.

[33] The Commission contacted L. J., the QA manager. She stated the claimant was dismissed for falsifying documents. She stated the final incident was after information was changed on a document. She stated the claimant was asked by S. C. to correct the information on a document. She explained that there was a gap and the claimant needed to provide an explanation for it. She stated if there was incorrect information that needs to be corrected, it needs to be crossed out with a simple line, changes made and initialed. If you did a check and forgot to write down your findings, you would write an explanation and why it was not there.

[34] L. J. stated that the claimant returned the form and put in checks during the gap that could not have occurred because the production had been shut down. She asked the claimant if she was confused or if she copied the information from a different date. She stated the claimant was used to doing checks at certain times and it was not taken from a different day.

[35] L. J. stated that they use post-its on forms whenever there is something that needs to be done and the one on this indicated, “comment for time gap”. She stated that the claimant had been spoken to on the 15th and she was told if she had any questions or was unsure, to ask. She stated the claimant never spoke to her regarding the final incident until after. She stated at the

time the only explanation provided was that she knows she does checks every day and knows she does them and she might be confused. L. J. stated she looked into it in case she had recopied the wrong information but that was not the case and she filled in checks that she had not been done production shut down. She stated they only talked when they found the issue, and the claimant was quite upset.

[36] L. J. stated the final incident occurred within a few days after the claimant had received a disciplinary action following the incident with the green sticker and that she had not done actually inspected the product. She stated she was given a final warning. She stated that the claimant did not agree that she had not done the check properly and kept saying they were too hard on her and she felt the separation was a personal grudge. She stated the claimant refused to sign the disciplinary forms.

[37] The claimant made a request for reconsideration stating she never received any warning letters from her employer but rather they were issues on procedures or protocol. She stated that she was asked by S. C. to rewrite the papers but they already had the correct ones. She stated it was just a mistake and she reiterated her version of the events.

[38] The Commission contacted L. J. who reiterated the details of the final incident. She confirmed with the Commission that the previous incident that had occurred with the truck driver was in fact the truck drivers fault, but the claimant had covered up for him.

[39] The Commission contacted the claimant asking her about the inspection reports. The claimant stated that she had been given the report to change by a co-worker and not a supervisor. She reiterated she was stressed and it had been made clear to her that when she returned from her suspension she could be terminated at any time.

[40] The claimant stated that when she was told to amend the report it was not out of the norm for them to be completely rewritten and other staff do it all the time. She reiterated it was an error; she confused the report of January 15, 2019, with a report from the day before. She stated it was not her intention to falsify a report.

[41] The Commission spoke to the claimant who stated that she did not falsify the document. She stated she completed the inspection report on January 15, 2019, and the employer came back

to her three days after the fact and asked her to redo the document. She stated they are to come back, the next day, not three days later. She stated S. C. asked her to amend the report and to include comments pertaining to the stoppage of production in the area. She stated she was stressed and admitted she made a mistake when she rewrote the documents several days later.

[42] The claimant stated that she spoke to HR after the incident on Monday, which would have been around January 21st, and gave her a letter that she was feeling they were trying to fire her and put mistakes on her. She stated that she had not received any prior warnings about falsifying a document. The Commission advised her that the employer had stated she received a warning for proving a green sticker without checking, she replied that she had been suspended for it but had not received the final warning until Monday, just before she was fired. She stated it was the same day, she went to HR and they did not bother to print the form or have her sign it.

[43] The claimant included a letter she submitted to the head office HR department regarding her dismissal which she believed, to be unfair. The claimant provided her version of the November 29th and January 7th, and January 22nd, events and she does not feel that the proper procedures were followed in the administration of punishment. The claimant included the correspondence between herself her Community Advocate.

[44] The claimant provided letter from L. T. who worked at the company providing support that L. J. and S. C. created a toxic work environment. She stated she was in a position of confidentiality but would provide names of co-workers who could attest S. C.'s behaviour.

[45] The Commission contacted the corporate HR manager, who confirmed the ROE had been amended to reflect the claimant had not quit, but was dismissed. The HR manager confirmed the claimant had been in contact with them following her termination alleging she had been bullied and harassed. She stated they are currently investigating the allegations.

[46] The claimant testified several times throughout the hearing that she was forced to re-do the document by S. C. and she did what S. C. wanted her to do. She stated that normally you make any corrections, the next day but this time they brought her the documents to change five days later. She stated they had the original document that was correct and she felt something was up. She stated she changed the documents in good faith.

[47] The claimant testified regarding the issue that led to her suspension. It was found that the green stickers were not her fault but rather the fault of the driver. She stated that she had made her checks on the day she was supposed to but the truck driver took the expired product. She said she was called into a meeting and they told her she was on her last chance, she stated she was terrified.

[48] The claimant testified that after the green sticker incident she went to HR and made a complaint about how she was being treated by S. C. and L. J.. She stated she was called into a closed-door meeting with S. C. and L. J. asking her, what was wrong. She stated she felt they did not like her because she was Russian. She stated this is not based on anything but that was just the way she felt.

[49] The claimant testified that her employer also falsified the ROE because they changed it, first saying she quit, then dismissed without prejudice. She stated that she made a complaint to head office HR and they are still investigating. She stated that she does not know where the investigation is at and they told her she would only get a final report.

[50] The claimant testified that the employer also included a warning letter in the information they sent to the Commission that was not her name and they included backdated warnings that were put in after her suspension. She stated that the information on the file is related to job performance and they are not, warnings. She stated that she never saw some of these letters until after she had left and her lawyer had requested the information.

[51] The claimant testified that the letter of support she provided proves that S. C. cannot be trusted.

[52] I asked the claimant if she was aware of the policy that she was to put a line across the mistake, initial it and provide an explanation. She stated that she changed it in good faith. She was confused and stressed. She stated that she thought they were trying to help her. She stated that they let people rewrite all the time and she thought it was normal. She stated that S. C. had favorite people and they were not punished.

[53] I asked the claimant again, if she was aware of the policy, and she answered, not if they ask you to rewrite it. She was doing it in good faith and she knew she had to do it.

[54] The claimant agreed that she was given the original document back but it was five days later and she believed they had plans for her.

[55] I considered the claimant's argument that she was forced to rewrite the document. However, I am not convinced that she was because she provided contradictory testimony in that she never spoke to S. C. but rather her co-worker, provided her, the original document with a yellow sticky note asking her to provide an explanation for the gap.

[56] The claimant stated to the Commission that S. C. set her up. She stated that she did not have the exact date but it was about a week before she was terminated. She stated that the S. C. asked her to falsify the document and that S. C. herself had falsified documents. She stated that a conversation occurred and S. C. told her to write the document. She stated that S. C. asked her "Why are you giving me those checks they were missed?" She replied that she could not because those checks never happened and she refused to sign it. She stated that she was terrified of S. C.. She stated that she told her she was on her last chance and that she needed to cover her ass. She stated she then sent the forms because she felt pressure to rewrite them or she would lose her job.

[57] The hearing, I asked the claimant about the statements made by L. J. where she stated that she was asked by S. C. to correct the information. The claimant testified that this was a lie, she never spoke to S. C. and they had the original document. She testified that a co-worker gave her the original document with a yellow sticker on it. She testified that S. C. put the question to change the information on the yellow sticker but he never spoke to her.

[58] I asked the claimant if what L. J. had stated that the yellow sticker said, "Comment for time gap, missing production, please explain," was on the sticker. The claimant would not answer my question directly but stated that she felt she was being set up.

[59] I found L. J.'s statements on the procedure of how changes were to be made, credible, and that it was S. C. who wrote the sticky note. As the claimant did not dispute that they did not specify her to rewrite the note, nor did she dispute that she was not aware of the policy.

[60] I find on the balance of probabilities, because the claimant would not directly answer my question as to whether she was aware of the policy of making changes to a document that she

was aware of the policy and there was nothing that would have prevented her from simply making the changes in the original document.

[61] I considered the claimant's argument that she was stressed and confused as she had been told she was on her last chance. I am of the view that if this was the case, it would have been reasonable for the claimant to make sure, she was following the policies and if she felt, she was being asked to something that was not right to have brought it to the attention of a higher manager.

[62] I considered the claimant's argument that the employer had the correct document and she was given the document to change five days later. However, I find her statement of the time frame contradictory because she initially told the Commission she was given the document three days later. In addition, if the original document were correct, it would have been reasonable for her keep the same check times.

[63] I find that the claimant's testimony contained several inconsistencies, as she maintained that she had not received any warnings, however, the employer's evidence supports otherwise.

[64] I considered the claimant's argument that she had been suspended for the issue of the green sticker that was not her fault. I acknowledge that L. J. confirmed that it was the actions of the truck driver taking the outdated product, but they maintained it was still the responsibility of the claimant to look after the product. However, this action was not the cause of the dismissal.

[65] The claimant provided additional documents requesting the Tribunal to consider the employer changed the ROE to reflect she was dismissed without cause.¹⁰

[66] The claimant provided additional documentation of the settlement agreement.¹¹

[67] The claimant provided a copy of the amended ROE that indicates the claimant was dismissed without just cause, she received her vacation pay and pay in lieu of notice and severance pay.¹²

¹⁰ GD6-1 to GD6-3

¹¹ GD8-1 to GD8-9

¹² GD9-1 to GD0-3

[68] The claimant provide correspondence indicating head office had appointed an outside agency to perform an investigation.¹³

[69] The claimant provided correspondence with her claim with Employment Standards.¹⁴

[70] The claimant provided correspondence between her representative and the employer requesting entitlement under the Alberta Employment Standards Act.

[71] I acknowledge the claimant's statements that she felt she was being bullied and harassed. In addition, L. J. and S. C. did not like her because she was Russian. However, I find this reason relevant to her rewriting the documents. I find from the claimant's own testimony that she had no basis for her accusations, but rather that was just how she felt.

[72] I considered the claimant's additional information and that she is disputing her dismissal with her employer as it relates to Employment Standards. However, I am not bound by the Employment Standards legislation and I must apply the EI legislation and how the legal test will apply in the claimant's case.

[73] I do not find that there is any evidence provided by the employer following the dismissal that they have changed their position and determined that the claimant did not falsify the documents. The claimant admitted that although there was an investigation in process there had been no final outcome, and she was not being informed of the progress, she will only be advised of the outcome.

[74] I considered the claimant's argument that she made a mistake and I do sympathize with her. The notion of wilful 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. A lapse of judgement is of no relevance to whether her conduct constitutes misconduct.¹⁵

¹³ GD9-1 to GD9-11

¹⁴ GD13-1 to GD13-11

¹⁵ *Canada (AG) v. Hastings*, 2007 FCA 372.

[75] I find that the evidence is undisputed. The claimant admits to rewriting the document and she did it on her own free will. I find that the claimant's actions were wilful and deliberate and that she knew or ought to have known her actions could lead to her dismissal.¹⁶

CONCLUSION

[76] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	July 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. R., Appellant

¹⁶ *Mishibinijima*, 2007 FCA 36