



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. P. v Canada Employment Insurance Commission*, 2019 SST 807

Tribunal File Number: GE-19-2736

BETWEEN:

D. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: August 23, 2019

DATE OF DECISION: August 23, 2019

DECISION

[1] The appeal is dismissed. I find that the Appellant stopped working because of her own misconduct.

OVERVIEW

[2] The Appellant was an administrative technician at X. She stated that she was dismissed because, posing as her employer, she had written a letter addressed to her sister who was harassing her. The Appellant's desire in doing so was to end her sister's behaviour, and she regrets that her employer did not fulfill its obligations. On June 25, 2019, the Canada Employment Insurance Commission (Commission) denied the Appellant's claim because it found that she had stopped working because of her own misconduct. I must decide whether the Appellant stopped working because of her own misconduct.

ISSUES

[3] Did the Appellant commit the acts the employer alleges?

[4] If so, do the Appellant's acts constitute misconduct?

ANALYSIS

Did the Appellant commit the acts the employer alleges?

[5] The Appellant stated that, posing as her employer, X, she wrote a letter addressed to her sister whom the Appellant claims was harassing her.

[6] Although she admits having written that letter, the Appellant believes that the employer did not help her when she was being harassed at work and in her personal life. The Appellant stated that she had no other choice but to send that letter.

[7] The Appellant wrote and signed a letter, posing as the employer, and I find that she committed the act the employer alleges.

Do the Appellant's acts constitute misconduct?

[8] When determining whether acts constitute misconduct, wrongful intent is not a key element. To the extent that the act or omission relied upon by the employer in dismissing an employee is wilful, that is, a conscious, deliberate or intentional act or omission, misconduct has been shown.¹

[9] I also note that reprehensible conduct does not necessarily constitute misconduct. Misconduct is a breach of such scope that its author could normally foresee that it would be likely to result in dismissal.²

[10] On November 8, 2018, the employer gave the Appellant a letter telling her that, following inappropriate behaviour brought to its attention, she was suspended with pay during an internal investigation.³

[11] On November 28, 2018, the employer sent the Appellant a letter of dismissal. That letter explains that, on October 10, 2018, the Appellant wrote a letter, posing as X, and asked that the psychological harassment of an employee stop. The letter explains that the Appellant admitted the facts and that she explained to the employer at a meeting that her family was harassing her. The Appellant is alleged to have told the employer that that situation was happening outside the organization.

[12] In that letter, the employer specified that, at the time of the meeting, the Appellant showed no remorse for drafting the letter and wondered whether she could have a little peace. The Appellant allegedly explained that she thought about other ways of stopping the harassment but that drafting the letter was the only option. The employer indicates that the Appellant holds a position that requires a high level of trust and that her act is serious and highly reprehensible. The Appellant was dismissed because, without authorization, she used the organization's identity for personal purposes, which constitutes creation of a false document. The employer closes by

¹ *Canada (Attorney General) v Pearson*, 2006 FCA 199.

² *Locke*, 2003 FCA 262; *Cartier*, 2001 FCA 274; *Gauthier*, A-6-98; *Meunier*, A-130-96.

³ GD3-30.

saying that this behaviour violates the Appellant's duties of honesty, integrity, and loyalty to her employer.

[13] The Commission states that the Appellant drafted a letter, claiming to be X management, and that she knew that she was not making good use of the employer's resources by acting in that way. The Commission argues that using the organization's identity for personal purposes without its authorization constitutes misconduct. It argues that the employer's anti-harassment policy applies to situations that arise in the workplace and could not be applied to the Appellant's case.

[14] The Appellant explained that, in September 2018, she informed the coordinator that she was experiencing workplace harassment. The Appellant argues that she was receiving emails and voicemail messages. On October 19, 2018, the Appellant admitted to the coordinator that she had done something [translation] "wrong" because, posing as X, she had sent a letter to her sister so that the harassment she was experiencing would stop. The Appellant explained that she had contacted the police department but that the officer had not wanted to take her complaint.

[15] The Appellant stated that the problems with her sister related to the care of her parents. She states that it was difficult to do her work in that context, and she felt that she had reached an impasse because her employer had not done anything to that point. The Appellant argues that, even though her sister did not work at the X, the Appellant was being harassed by a third party and the employer had obligations to her. Her only other option besides writing that letter would have been to ask for sick leave, but she thought that she would then be penalized.

[16] As stated, wrongful intent is not necessary for behaviour to amount to misconduct. It is sufficient that the reprehensible act or omission complained of be made "wilfully," that is, consciously, deliberately, or intentionally.⁴

[17] I understand that the Appellant had personal difficulties that had repercussions at work. The Appellant was unionized, and blocking undesirable emails and unsolicited telephone numbers was possible. The Appellant testified that she had blocked her sister's emails.

⁴ *Caul*, 2006 FCA 251; *Pearson*, 2006 FCA 199; *Bellavance*, 2005 FCA 87; *Johnson*, 2004 FCA 100; *Secours*, A-352-94; *Tucker*, A-381-85.

[18] I understand the Appellant's explanations that she was having difficulties and that she would have liked the employer to protect her. She would have liked the employer to change her email address or voicemail.

[19] Despite the situation, the Appellant committed the act. She reflected before writing the letter, and she admits that she chose that option because she thought that it was the best solution. The Appellant explained that she was transparent and apologized to the employer, saying that such a situation would never happen again. However, and even though I understand that the Appellant was having a difficult time, she committed the act. Although I understand that, in hindsight, she regrets the act, that intentional and deliberate act constitutes misconduct.

[20] I understand the Appellant's context and explanation, and she had other recourse besides sending a letter in her employer's name. In that regard, the Appellant stated that she was unionized at her workplace and, in terms of her personal life, she explained that, accompanied by a lawyer, she met her brothers and sisters in November 2018. Be that as it may, in posing as her employer and writing a letter, the Appellant could normally have foreseen that her dismissal was a possibility.⁵

[21] I find that the Appellant's behaviour, that is posing as X and writing a letter to her sister, is an act deemed [translation] "wilful or deliberate, or so reckless as to approach wilfulness."⁶

[22] I find that the Appellant stopped working because of her own misconduct.

⁵ *Locke*, 2003 FCA 262; *Cartier*, 2001 FCA 274; *Gauthier*, A-6-98; *Meunier*, A-130-96.

⁶ *Tucker*, A-381-85.

CONCLUSION

[23] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	August 23, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	D. P., Appellant