



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SS v Canada Employment Insurance Commission*, 2019 SST 1726

Tribunal File Number: GE-19-2866

BETWEEN:

S. S.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Solange Losier

HEARD ON: September 18, 2019

DATE OF DECISION: September 19, 2019

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Claimant was dismissed from her employment for two incidents of misconduct involving a colleague and a customer over a six month period. She applied for employment insurance regular benefits, but the Commission decided that she was not entitled to receive these benefits because she lost her employment due to her own misconduct. The Claimant appealed that decision to the Social Security Tribunal.

PRELIMINARY MATTERS

[3] This teleconference took place on September 18, 2019. The Claimant disconnected from the conference at 12:53pm without warning and did not call back. I waited on the line until 1:10pm. While I was on the telephone line waiting for the Claimant, I asked a tribunal agent to call the Claimant at the phone number on file. A voicemail message was left asking for a return call. A second attempt to reach her was made by email on the same date. The Claimant did not reply to the tribunal's telephone message or email by the date of this decision.

ANALYSIS

[4] Claimants are disqualified from receiving benefits where they lose their employment because of misconduct.¹ Misconduct is not defined in the Act, however misconduct must "be conscious, deliberate or intentional".² The Commission must prove that the Claimant lost his employment due to her misconduct.³

Issue 1: Was the Claimant dismissed from her employment?

[5] Yes, the Claimant agrees that she was dismissed from her employment on May 7, 2018. She received a termination letter on the same date (GD3-30 to GD3-31). Her record of

¹ Section 30 of the Act

² *Canada (Attorney General) v. Lemire*, 2010 FCA 314

³ *Minister of Employment and Immigration v. Bartone*, A-369-88

employment also identifies that she was dismissed and her last day of work was May 7, 2018 (GD3-24).

Issue 2: Why was the Claimant dismissed from her employment on May 7, 2018?

[6] I find that the Claimant was dismissed from her employment on May 7, 2018 because she swore to a customer on the telephone on May 4, 2018. This was the second incident of her misconduct.

[7] The employer submitted a copy of the termination letter given the Claimant (GD3-31 to GD3-32). It references two specific incidents, on December 7, 2017 involving a colleague and May 4, 2018 involving a customer. The employer noted that the decision to dismiss her was based on these two events occurring over the last six months which they say demonstrates her ongoing inappropriate and disrespectful behaviour to her colleague and a customer.

[8] The Claimant agreed that an incident occurred in December 2017 involving her colleague. She recalled a meeting with her employer and receiving a document, possibly a warning letter. She and the colleague both exchanged inappropriate words. She disputes that she told others to “shut up” because there were no witnesses to their conversation.

[9] The Claimant agreed that an incident occurred on May 4, 2018 involving a customer. She confirmed that she called the customer an “(swear word removed) damn idiot” but that she said it under her breath and was not even sure that the customer heard. She also characterized this incident as a miscommunication involving a customer.

[10] I find it more likely that not, that the Claimant committed the conduct on December 7, 2017 as described by the employer. The warning letter identifies that there were other witnesses to the incident involving her colleague. The Claimant said something personal about her colleague. This resulted in a harassment complaint being against her. While the Claimant said she could not remember the details of what exactly was said, she acknowledged receiving a letter from the employer. I find it more probable that the warning letter labelled as “record of harassment complaint” dated on December 8, 2017 and submitted by the employer was the document she received (GD3-30).

[11] I accept that the Claimant committed the conduct as described by the employer on May 4, 2018 involving a customer. At the hearing, the Claimant did not dispute that she used that language, but said that she was entitled to her opinion. While the Claimant is entitled to her opinion, her disrespectful remarks are abusive and it loud enough for the customer to hear.

[12] For the reasons above, I am satisfied that the Claimant committed the conduct on December 7, 2017 and May 4, 2018. I now have to consider whether her conduct is misconduct.

Issue 3: Is the Claimant's conduct misconduct?

[13] Yes, I am satisfied that her conduct is misconduct based on the Act for the following reasons.

[14] I disagree with the Claimant's description of both incidents as miscommunication. I find that telling people to shut up, confronting a colleague and disclosing a personal issue about that person and swearing at a customer is not miscommunication, but rather it is a conscious and deliberate action. This is not appropriate or respectful at the workplace.

[15] I was not persuaded that the Claimant did not know she would be dismissed for her conduct because the warning letter issued says that a "second occurrence of this type will/may lead to termination of employment" (GD3-30).

[16] The Claimant agreed that she had participated in mandatory government training which included sessions in the company board room with quizzes and online training. While she could not recall exactly which training sessions she completed, the warning letter issued said that she has already completed "Bill 168" training. I note that this is training on violence and harassment in the workplace.

[17] The employer's policy on the "Standards of Conduct: Workplace Violence, Harassment and Sexual Harassment Prevention Policy and Program" (policy) was submitted. The policy states that the employer will not tolerate any form of workplace harassment by any worker, employee, member of management or third party, including clients or visitors" (GD3-41).

[18] Workplace harassment is defined in their policy as engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome (GD3-42 to GD3-43).

[19] The policy states that “Verbal/Emotional/Psychological Abuse can be a form of workplace harassment and/or violence, and is a pattern of behaviour that makes someone feel worthless, flawed, unloved, or endangered. Like other forms of abuse, it is based on power and control. Examples include: swearing, put-downs/name calling over a period of time, labelling the victim in a derogatory way such as stupid, crazy or irrational, acts of humiliation, extreme jealous behaviour, or attacking the victim’s self-esteem in other ways. It can also include harming pets and damaging property” (GD3-43).

[20] I find that the Claimant knew or ought to have known that she could be dismissed for her conduct because her conduct was abusive and unwelcome. She was previously warned by the employer and had completed workplace training. She breached the employer’s policies. The court has also found that verbal menaces and abuse constitute misconduct.⁴

[21] While the Claimant did not testify about this at the hearing, I will consider the remarks she made to the Commission about the toxic workplace, stress from customers and harassment from her manager. The workplace policy identifies that an employee has an obligation to report harassment. There was no evidence in the file identifying the dates of the incidents, details about what happened and whether she reported it to anyone at the workplace. Therefore, I was not satisfied that she was being harassed at work, or that the work environment was stressful or toxic.

CONCLUSION

[22] The appeal is dismissed. This means that the Claimant remains disqualified from benefits from May 6, 2018.

Solange Losier
Member, General Division - Employment Insurance Section

⁴ *Forgues v. Muckal*, 2006 FCA 120

HEARD ON:	September 18, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. S., Appellant (Claimant)