



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. C. v Canada Employment Insurance Commission*, 2019 SST 1599

Tribunal File Number: GE-19-2703

BETWEEN:

D. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Melanie Petrunia

HEARD ON: August 28, 2019

DATE OF DECISION: September 30, 2019

DECISION

[1] The Commission has proven that the Claimant was suspended from his job because of misconduct. This means that the Claimant is disentitled from being paid benefits.¹

OVERVIEW

[2] The Claimant lost his job. The Claimant's employer said that he was dismissed because he was found to have acted inappropriately toward his supervisor, damaged company property and refused to provide relief for breaks. The Claimant disputes that he acted inappropriately toward his supervisor and says that he did provide relief for breaks. He acknowledged that he threw a hard hat on the ground and broke it out of frustration but denies that this behaviour constituted misconduct. He states that he did not believe that he could lose his job because of this.

[3] The Commission accepted the employer's reason for the dismissal. It decided that the Claimant lost his job because of misconduct, and disqualified him from being paid employment insurance (EI) benefits. Before the hearing, the Claimant submitted to the Tribunal a copy of a Last Chance Agreement signed by the Claimant and the employer on August 6, 2019 reinstating him to his employment as of that date. The Commission made further representations arguing that the misconduct resulted in the Claimant's suspension and therefore the appeal should be dismissed and the disqualification amended to a disentitlement for the period of the suspension.² The Claimant maintains that his behaviour did not amount to misconduct and that he only signed the agreement because he needed to return to work.

ISSUE

[4] Was the Claimant suspended from his job because of misconduct? To determine this, I will first decide the reason why the Claimant lost his job.

¹ Section 30 of the *Employment Insurance Act* disqualifies claimants who lose their employment because of misconduct from being paid benefits.

² Section 31 of the *Employment Insurance Act* disentitles claimants who are suspended from their employment because of misconduct from being paid benefits.

ANALYSIS

Why was the Claimant suspended from his job?

[5] The Claimant was employed at a building material manufacturing plant. He lost his job because, during a shift on February 28, 2019, the employer stated that he acted in an inappropriate manner toward his supervisor, caused an upset condition on the line, damaged company property and refused to provide relief for breaks. The Claimant acknowledges breaking a hardhat and therefore damaging company property but denies the other allegations. He states that he did provide for relief for a breaks but was unable to do so, or to empty a bin as requested, after he broke his hard hat as it is required that he be wearing one and he had to go and get a new one.

[6] The Claimant testified that, on February 28, 2019, he was providing relief for another employee working the spline on a lumber production line. He testified that he is not trained on spline set up but could run it during the other employee's breaks. On that day there appeared to be something wrong with the set up. The Claimant stated that many boards were having to be let go, which meant that they are directed into a bin rather than continuing along the line. Once the bin is full it must be emptied or it could cause the production line to shut down. The Claimant testified that he continued to report the trouble that he was having with the spline set up each time he worked it while covering another employee's break. The Claimant stated that he was finding this very stressful and also indicated in his Notice of Appeal that he struggles with significant anxiety.

[7] The Claimant stated that he continued to report the problems he was experiencing to his supervisor who agreed but did nothing to fix it. During the other employee's break, the Claimant was working the spline chair and having to send more boards into the bin. He testified that each time this happens the board costs the company \$30. The Claimant stated that the bin was full and that he had to shut the line off or there would have been a mess in the plant. He then threw his hardhat on the concrete out of frustration, breaking it. He told his supervisor he wasn't doing well and asked him to find someone else to empty the bin. He also needed to get another hardhat

in order to empty the bin and had to go retrieve one that was not broken. The Claimant was put on administrative leave and notified a few days later that his employment was being terminated.

[8] The Claimant's union grieved the termination. A Last Chance Agreement was entered into by the Claimant and the employer on August 6, 2019, reinstating the Claimant, stating the employer had just cause to terminate and that the time off work was considered a disciplinary suspension. The Claimant testified that he did not agree with those terms but he needed to return to work and so he signed the agreement.

[9] The employer told an agent of Service Canada that the Claimant had had previous violations of company policy, including a suspension for smoking in a prohibited area. These previous warnings and violations were outlined in a letter to the Claimant dated March 4, 2019. This letter is also attached to the Last Chance Agreement.

[10] The Tribunal finds that the Claimant lost his job, which he was later reinstated to, because he broke company property and the employer felt his manner was inappropriate. The employer also relied on previous behaviours and violations of company policies.

Is the reason for the Claimant's suspension misconduct under the law?

[11] The reason for the Claimant's suspension is considered misconduct under the law.

[12] To be misconduct under the law, the conduct has to be willful. This means that the conduct was conscious, deliberate, or intentional.³ Misconduct also includes conduct that is so reckless that it approaches willfulness.⁴ The Claimant does not have to have a wrongful intent for his behavior to be misconduct under the law.⁵

[13] There is misconduct if the Claimant knew or ought to have known that his conduct could impair the performance of the Claimant's duties owed to his employer and, as a result, that dismissal was a real possibility.⁶

³ *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁴ *McKay-Eden v Her Majesty the Queen*, A-402-96.

⁵ *Attorney General of Canada v Secours*, A-352-94.

⁶ *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

[14] The Commission has to prove that it is more likely than not⁷ that the Claimant lost his job because of misconduct.⁸

[15] The Commission says that there was misconduct because the Claimant had previous violations of company policy. He broke a hard hat which was property of the employer and he was aware of plant rules which state that destruction of company property will not be tolerated. The Commission also relies on the company policy which states that various disciplinary procedures may be followed, depending on the nature of the offence, including suspension and discharge. The Commission also notes that the Claimant was advised when he was suspended for smoking and when he was coached for absenteeism that further violations of company policy could lead to his termination.

[16] The Claimant says that there was no misconduct because he was justified in shutting down the production line when the bin became full. He denies being disrespectful to his supervisor or refusing to provide reliefs for breaks. He stated that he did break the hard hat out of frustration. He testified that he did not think that he would be terminated for this because he was aware of other employees committing more serious infractions and not being terminated. He also went through the list of previous violations listed in the letter to him of March 4, 2019. He stated that most of the alleged violations were very minor, he received no written warnings and was just spoken to briefly.

[17] I find that the Commission has proven that there was misconduct, because the Claimant's actions in throwing his hard hat and breaking company property was intentional. While it may be understandable that he was frustrated given the circumstances, he knowingly damaged company property which was a violation of company policy. The previous infractions may have been minor but were, nonetheless, also infractions. The Claimant was advised after he was suspended for smoking in a prohibited area that further violations could result in his suspension. He may not have expected such a severe consequence, but I find that he ought to have known that his conduct could impair the performance of the Claimant's duties owed to his employer and, as a result, that dismissal was a real possibility.

⁷ The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

⁸ *The Minister of Employment and Immigration v Bartone*, A-369-88.

[18] Unfortunately, it is not up to the Tribunal to question whether the dismissal was the appropriate disciplinary action for the alleged misconduct.⁹ While the consequences in these circumstances may have been harsh, the role of the Tribunal is not to determine whether the dismissal was justified or the appropriate sanction in the circumstances.¹⁰

CONCLUSION

[19] The appeal is denied. This means that the Claimant is disentitled from being paid EI benefits during the period of suspension from his employment.

Melanie Petrunia
Member, General Division - Employment Insurance Section

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| HEARD ON: | August 28, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | D. C., Appellant No one appeared for the Respondent |

⁹ *Auclair v. Canada (Attorney General)*, 2007 FCA 19

¹⁰ *Canada (AG) v. Caul*, 2006 FCA 251