



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. D. v Canada Employment Insurance Commission*, 2019 SST 1425

Tribunal File Number: GE-19-3083

BETWEEN:

M. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Manon Sauvé

HEARD ON: October 21, 2019

DATE OF DECISION: November 18, 2019

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant started working for X as a maintenance employee in January 2012. On April 6, 2019, he was dismissed.

[3] The Appellant filed a claim for Employment Insurance benefits. The Commission denied the Appellant benefits because he had lost his employment due to his misconduct.

[4] According to the employer, the Appellant was informed that he could not sell drugs in his workplace, even though cannabis use had been legalized. However, the Appellant completed drug deals at work and used drugs during his work hours. He was dismissed for these reasons.

[5] According to the Appellant, he did not complete drug deals at work or use drugs during his work hours. He sold a television and was paid in cash. The Commission has not proven that the Appellant committed the alleged acts.

ISSUES

1. What are the Appellant's alleged acts?
2. Did the Appellant commit the alleged acts?
3. Do the Appellant's alleged acts constitute misconduct?

ANALYSIS

[6] I must decide whether the Appellant lost his employment because of his misconduct and should therefore be disqualified from receiving benefits under sections 29 and 30 of the *Employment Insurance Act* (Act).

[7] My role is not to determine whether the dismissal was justified or the appropriate action.¹ I must determine what the Appellant's alleged acts are, whether the Appellant committed those acts, and whether they amount to misconduct under the Act.

[8] The Commission must prove on a balance of probabilities that there was misconduct.² The expression "balance of probabilities" means that the Commission must show that it is more likely than not that the Appellant was dismissed because of his misconduct.

[9] I must therefore be satisfied that the misconduct was the reason for the dismissal and not the excuse for it, and this requirement obliges me to make a determination after weighing all of the evidence.³

[10] There must be a causal relationship between the alleged misconduct and the loss of employment. The misconduct must cause the loss of employment and must be an operative cause. In addition to the causal relationship, the misconduct must be committed by the Appellant while employed by the employer, and must constitute a breach of a duty that is express or implied in the contract of employment.⁴

Issue 1: What are the Appellant's alleged acts?

[11] I note that the employer accuses the Appellant of selling drugs to tenants and co-workers. The Appellant also worked under the influence of drugs.

[12] It is accepted that these are the acts of which the employer has accused the Appellant.

Issue 2: Did the Appellant commit the alleged acts?

[13] I note that the Appellant worked for his employer for several years. On March 20, 2019, the Appellant was suspended because of serious allegations concerning the sale of narcotics to tenants. After an investigation, the Appellant was dismissed on April 6, 2019.

¹ *Canada (Attorney General) v Caul*, 2006 FCA 251.

² *Bartone*, A-369-88.

³ *Bartone*, A-369-88; *Davlut*, A-241-82.

⁴ *Canada (Attorney General) v Cartier*, 2001 FCA 274.

[14] According to the employer, the Appellant sold narcotics to tenants. He had been warned not to sell or use cannabis, even though the use of that substance had been legalized.

[15] The Appellant denies committing the alleged acts. He did not sell or use narcotics at work. The employer did not give him the evidence. He was not able to consult the videos or the testimonies the employer obtained.

[16] According to the Appellant, there was not enough evidence to prove that the Appellant committed the alleged acts. The employer's assertions alone cannot be relied on to find that the acts were committed. Because of the serious consequences for the Appellant, the Commission must not base its decision on the employer's speculations.⁵

[17] According to the Commission, the Appellant committed the alleged acts because the employer has videos showing the alleged acts—namely drug sales—and it has four (4) testimonies. The Appellant was aware of the employer's policy on the use and sale of narcotics.

[18] The Commission must show that the Appellant committed the acts. Given the serious consequences associated with a finding of misconduct, the Commission must rely on clear evidence, not merely on the employer's speculation. I am of the view, however, that the Commission has not shown, on a balance of probabilities, that the Appellant committed the acts. In fact, the employer has not submitted any evidence. The Commission accepted the employer's allegations without the employer providing evidence.⁶ In addition, the Appellant was not able to view that evidence so that he could respond to the employer's allegations.

[19] I note that, since the beginning of the process with the Commission, the Appellant has denied having committed the alleged acts. He has not contradicted himself, and his testimony at the hearing was credible. Furthermore, his explanations of the circumstances in which he may have exchanged money are plausible: he completed a transaction for the sale of a television. In addition, he knew that there were surveillance cameras.

⁵ *Meunier v Canada (Employment and Immigration Commission)*, 1996 CanLII 3983 (FCA).

⁶ *Crichlow v Attorney General of Canada*, A-562-97.

[20] In this context, I find that the evidence on file does not support the finding that the Appellant committed the alleged acts. As a result, I do not need to decide whether the alleged acts constitute misconduct.

CONCLUSION

[21] The Tribunal finds that the Appellant should not be disqualified from receiving benefits, because he did not lose his employment due to his misconduct under sections 29 and 30 of the Act.

[22] The appeal is allowed.

Manon Sauvé
Member, General Division – Employment Insurance Section

HEARD ON:	October 21, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	M. D., Appellant Sylvain Calouette, Representative for the Appellant