



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *R. G. v Canada Employment Insurance Commission*, 2020 SST 412

Tribunal File Number: GE-20-405

BETWEEN:

**R. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Bernadette Syverin

HEARD ON: March 3, 2020

DATE OF DECISION: March 23, 2020

## **DECISION**

[0] I am dismissing the appeal. The Canada Employment Insurance Commission (Commission) demonstrated that the Appellant lost her employment because of her misconduct.

## **OVERVIEW**

[1] The Appellant asked the Commission to renew her benefit period. The Commission refused that request because it found that the Appellant had lost her employment because of her misconduct. As a result, it disqualified the Appellant from receiving benefits as of August 18, 2019. The Commission did not change its decision following a reconsideration request. Therefore, the Appellant appealed that decision to the Social Security Tribunal.

## **ISSUES**

[2] The issues are as follows:

- a) What is the Appellant alleged to have done?
- b) Did the Appellant commit the alleged act?
- c) If so, is it misconduct?

## **ANALYSIS**

[3] The *Employment Insurance Act* (Act) states that a claimant is disqualified from receiving benefits if they lost their employment because of their misconduct.<sup>1</sup>

[4] In the case of misconduct, the Commission must show that the appellant lost their employment because of misconduct.<sup>2</sup> Therefore, in this case, the Commission has the burden of proving that the Appellant lost her employment because of her misconduct. The term “burden” is used to describe which party must provide sufficient evidence in support of their position to meet

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<sup>1</sup> According to section 30 of the *Employment Insurance Act*.

<sup>2</sup> *Choinière v Canada*, A-471-95.

the legal test. The burden of proof corresponds to the balance of probabilities, which means: Is it “more likely than not” that the events occurred as described?

**a) What is the Appellant alleged to have done?**

[5] The employer says that the Appellant was dismissed because of her repeated absences. The Appellant does not deny this fact. Therefore, I find that the Appellant was dismissed because of her absenteeism.

**b) Did the Appellant commit the alleged act?**

[6] The Appellant acknowledges having committed the alleged act. She does not dispute the fact that she was absent from work on several occasions.

[7] The employer hired the Appellant as of June 3, 2019. Before starting the job, the Appellant had to complete training. But she was unable to finish it because she was absent eight times for various reasons over the course of the period from June 3 to 21, 2019.<sup>3</sup> The employer wanted to dismiss her, but the Appellant convinced the employer to give her a second chance. The employer agreed to this request and decided to give the Appellant leave until August 19, 2019, when the Appellant had to be at work for her training. But, on August 19, 2019, the Appellant told the employer that she could not come into work because there had been a fire in her apartment building.

[8] In view of the above, I find that the Appellant committed the act of absenteeism.

**c) If so, is it misconduct?**

[9] Yes, I find that it is misconduct for the following reasons.

[10] Information that the employer provided to the Commission indicates that the Appellant told her employer that she was absent for the following reasons:

- June 3, 2019: a family emergency;

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<sup>3</sup> That is what is indicated on page GD3-41 of the file.

- June 4, 2019: her father's surgery;
- June 7, 10, and 11, 2019: complications following her father's surgery;
- June 14, 2019: her grandfather passed away;
- June 18, 19, and 21, 2019: car accident;
- August 19, 2019: her apartment building caught fire.

[11] At the hearing, the Appellant told me that all the reasons for her absences provided to the employer were lies. She explained that she had lied to the employer because she had not had the courage to tell it that her absences were for mental health reasons. She said she had acted that way so she would not lose her job. I find that the Appellant's version of the facts is unconvincing because she changed it regularly.

[12] She told the Commission that she had a car accident on her way to work on August 19, 2019. She explained that that event had triggered her dismissal because she had been unable to get to work despite her willingness.<sup>4</sup> However, the Commission pointed out to her that she had told her employer that her apartment building had caught fire. To that, she added that she had had a car accident while her apartment building was on fire.<sup>5</sup> But, now, for the purposes of the appeal, she says that she did not have a car accident, and there was no fire at her apartment building.

[13] Moreover, during the hearing, she said that, during the period from June to August 19, 2019, she was experiencing mental health issues. She said she had suicidal thoughts and was unable to get up to go to work. She stated that she consulted her doctor about these issues. However, the medical certificates provided to that end were not issued until December 6, 2019, and January 28, 2020. According to those medical certificates, her doctor indicated he had seen her in October 2019. Moreover, he considered her unfit for work from August 19, 2019, to December 6, 2019.<sup>6</sup> We discussed those medical certificates during the hearing, and I told the

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<sup>4</sup> According to page GD3-17.

<sup>5</sup> According to page GD3-59.

<sup>6</sup> According to GD2-5 and 6.

Appellant that they do not support her testimony indicating that she consulted her doctor about her issues during the period in dispute. Therefore, she provided other medical evidence after the hearing.

[14] What of this new medical evidence? It demonstrates that the Appellant had consulted a doctor about her mental health issues, but not during the period in dispute.

[15] The medical certificates show that, during the period from June to August 2019, the Appellant consulted a doctor for reasons other than her mental health issues. The medical certificate from July 11, 2019, indicates that the Appellant had undergone a sexually transmitted disease screening test; there was also a diagnosis of acute otitis media, and the doctor renewed her prescriptions.<sup>7</sup> She saw her doctor again 10 days before her return to work, on August 9, 2019. According to the notes from this consultation, she talked about nausea, dizziness, occasional cramping, and the fact that she had been constipated for several days and that her pregnancy test was negative.<sup>8</sup> Therefore, I accept that the Appellant did not discuss her suicidal thoughts or her incapacity to work with her doctor between June and August 2019.

[16] The Appellant lost her employment on August 19, 2019, following her absenteeism. The evidence shows that it was on October 16, 2019, that she talked to her doctor about her plan to commit suicide, and the doctor diagnosed her with borderline personality disorder.<sup>9</sup> Moreover, on October 21, 2019, the doctor took steps to make sure she was taken care of.<sup>10</sup> Other medical notes from October 23, 2019, indicate that the Appellant did not show up for her appointment and denied having suicidal thoughts. The notes also indicate that the Appellant has a facial deformity that makes her social integration and intimate life difficult.<sup>11</sup> Finally, a medical note from October 24, 2019, indicates that the Appellant was taken to her father, who had advised police to go with him to take her to a crisis centre.<sup>12</sup>

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<sup>7</sup> According to GD8-2.

<sup>8</sup> According to GD8-3 and 4.

<sup>9</sup> According to GD7-7.

<sup>10</sup> According to GD7-5.

<sup>11</sup> According to GD7-4.

<sup>12</sup> According to GD7-3.

[17] Given the medical certificates, I appreciate the mental health issues the Appellant reported as of the month of October 2019. However, providing new medical information for the month of October 2019 is not relevant to her absenteeism that occurred in August 2019. Moreover, from the time she filed her application to renew her benefits to the time of the hearing, the Appellant's statements and testimony were full of inconsistencies, contradictions, and half-truths. She embellished the evidence with new facts, which contradict the facts she presented earlier. I therefore find that the evidence presented is insufficient to attribute the Appellant's absenteeism to her mental illness.

[18] Case law teaches that misconduct is a breach of such scope that its author could normally expect that it would be likely to result in their dismissal.<sup>13</sup>

[19] In this file, the employer was ready to dismiss the Appellant in June 2019 following her repeated absences. But, she convinced her employer to give her a second chance. The employer gave her a second chance, telling her that she would be dismissed if she was absent again. That is clear from the email indicating [translation] "we reserve the right to terminate your employment without notice and without monetary compensation if the absences continue."<sup>14</sup> Knowing all that, the Appellant was still absent on August 19, 2019. Therefore, I find that the Appellant knew that, in acting as she did, she risked losing her employment.

[20] There is a consistent body of case law wherein claimants were found to have committed misconduct on account of their unauthorized absences. Unauthorized absences amount to misconduct because they are tantamount to an absolute refusal or failure to perform the services for which an employee is hired.<sup>15</sup> The absences and tardiness, despite numerous warnings, constitute misconduct because they show a lack of concern with respect to the employer.<sup>16</sup> I am bound by these principles, and I must apply them in the Appellant's case.

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<sup>13</sup> *Locke*, 2003 FCA 262; *Cartier*, 2001 FCA 274.

<sup>14</sup> According to GD3-30.

<sup>15</sup> *Maher*, 2014 FCA 22; *Okafor*, A-648-94; *Locke*, A-799- 95; *Parsons*, 2005 FCA 248; *Murray*, A-245-96; *Bigler*, 2009 FCA 91; *Karelia*, 2012 FCA 140; *Bergeron*, 2011 FCA 284.

<sup>16</sup> *Parsons*, 2005 FCA 248; *Murray*, A-245-96.

[21] For all these reasons, I find that the Appellant lost her employment because of her misconduct.

**CONCLUSION**

[22] In conclusion, the evidence demonstrates that the Appellant lost her employment because of her misconduct. As a result, the Commission's decision to disqualify her from receiving Employment Insurance benefits is justified in the circumstances.

[23] I dismiss the appeal.

Bernadette Syverin  
Member, General Division – Employment Insurance Section

HEARD ON:	March 3, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	R. G., Appellant