Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *R. C. v Canada Employment Insurance Commission and X*, 2020 SST 388

Tribunal File Number: GE-20-559

BETWEEN:

R. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: March 30, 2020

DATE OF DECISION: March 30, 2020

Canada

DECISION

[1] The appeal is allowed. I find that the Appellant did not stop working because of his own misconduct.

OVERVIEW

[2] The Appellant was a supervisor at X in Portugal. The employer dismissed the Appellant on August 8, 2019, due to his poor judgement because he shared information with X's client. The Appellant states that he had filed a complaint against a co-worker who was harassing him and that the employer did not dismiss him for the reason given.

[3] On June 17, 2019, the Canada Employment Insurance Commission (Commission) denied the Appellant's claim, and it found that he had stopped working because of his own misconduct. I must determine whether the Appellant stopped working because of his own misconduct.

ISSUES

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

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

ANALYSIS

Did the Appellant commit the acts the employer alleges?

[6] On October 28, 2019, C. L., employee in charge, explained to the Commission that the Appellant behaved inappropriately with clients and co-workers and that he shared information that was not within his [translation] "authority."

[7] The letter of dismissal sent to the Appellant indicates that the employer terminated the Appellant's employment because of his behaviour with clients and co-workers and because he allegedly shared information that was not within his authority with X's client.

[8] The employee in charge states that, if the Appellant had not told the client that his co-worker would be leaving his position and had not asked it to forward the documents directly to him from then on, the employer would not have dismissed the Appellant.

[9] The Appellant admits to telling a client that his co-worker was going to leave his position at X and that it could send the documents to him. He explains that he gave that information following a question from the client and given the work context in Portugal: The Appellant indicates that the team was made up of only three people working overseas for the employer.

[10] The Commission claims that the Appellant was not dismissed due to the altercation he had with his co-worker because the employer would have taken steps to resolve that situation. It argues that the Appellant was dismissed for telling a client that his co-worker would be dismissed when that was not true.

[11] The Appellant was dismissed for telling one of X's clients that his co-worker was going to leave his position and that it had to send the documents to him from then on. I find that the Appellant did commit the acts the employer alleges.

Do the Appellant's acts constitute misconduct?

[12] A claimant cannot receive Employment Insurance benefits if they stop working because of their misconduct.[1]

[13] A person can commit misconduct even if they did not intend to cause harm to their employer.

[14] I also note that reprehensible conduct does not necessarily constitute misconduct. Misconduct is an act an employee committed even though they knew they could be dismissed by acting in that way.[2]

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[1] *Employment Insurance Act* (Act), s 30(1).
[2] This principle is applied in the following decisions: *Locke v Canada (Attorney General)*, 2003 FCA 262; *Canada (Attorney General) v Cartier*, 2001 FCA 274; *Gauthier*, A-6-98; *Meunier*, A-130-96.

[15] The Appellant admits to telling the company's client that his co-worker was going to stop working for the company and that it could send the documents to him, but he explains that he was only answering the client's questions.

[16] He says that the event must be viewed in an overseas-work context where the employer is not present at the workplace and that there was only him, his co-worker, and another person on the work team. The Appellant claims that he experienced harassment in the workplace, and he does not agree with the employer's version about the reason for the termination of employment.

[17] He explains that the employer wanted to [translation] "duck the issue" in light of a harassment complaint he filed. He also argues that what he did was not prohibited and that he did not intend to do wrong either. For the Appellant, it is clear that the employer used the situation as a reason for dismissal and that the real reason is obscured given his harassment complaint.[3]

[18] The Appellant explains that, during his 40-year career, he has never experienced such an intense situation. He reports that his co-worker and boss used coarse language and that the work environment was challenging every day. The terms his co-worker used when addressing him were offensive, and the Appellant experienced considerable pressure at work. He explains that the employer did not take concrete action when it denounced this situation.

[19] The Appellant argues that the Commission officer who handled his file did not try to understand the situation; he considered the employer's statement to be the valid one without checking the information provided. He explains that neither his co-worker nor his director were questioned and that, although the employee in charge was aware of the file, she was not present at the workplace.

[20] The employee in charge told the Commission that the Appellant had filed a harassment complaint concerning his co-worker. The employer had told the Appellant that it would act on the situation, but there were no plans to dismiss the co-worker. The employer states that its investigation shows that the Appellant was not harassed by his co-worker.

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[3] GD3-40 and subsequent documents.

[21] However, there was allegedly an alteration between the two employees, and afterwards the Appellant took the initiative to inform the employer's client that his co-worker would be leaving his position and that it should send the documents to him, instead of his co-worker. According to the employer, this is a serious matter because it was not within the Appellant's discretion to convey that information.

[22] Since the Appellant was working in Portugal, the employer was informed of these events by the team working there. The employer recognizes that the Appellant did not agree with its decision to dismiss him for this reason.

[23] According to the employer, the Appellant had a history of undesirable behaviour and a lack of judgment. However, the Commission's file shows that the employee in charge first stated that there were no warnings or notes in the Appellant's file. On October 30, 2019, the employee in charge contacted the Commission to say that the Appellant had previously gotten angry with the company's client's doctors when he had to have medical tests and that that behaviour went against the company's code of conduct.[4]

[24] At the hearing, the employee in charge explained that the Appellant had not been dismissed for violating the company's code of conduct and that, even if there had been some adverse events in the past, the Appellant had been dismissed for telling the employer's client that his co-worker was going to be dismissed and that it should send the documents to him from then on.

[25] The Commission says that the Appellant was indeed dismissed for the reason the employer gave and that providing that information to the client constituted a lack of judgment and slander that fuels rumours. It states that the employer's version of events is more credible than the Appellant's and that he was informed of the reasons for his dismissal.

[26] The Commission acknowledges that the Appellant may have experienced harassment, but it argues that he should use the appropriate remedies rather than spreading falsities. It relies on

[4] GD3-31.

the employer's statement that an investigation carried out found no harassment. The Commission argues that the alleged acts constitute misconduct.

[27] First, I note that reprehensible conduct is not necessarily misconduct. As mentioned, misconduct is a breach of such scope that its author could normally foresee that it would be likely to result in their dismissal, and I am of the view that this is not the case here.[5]

[28] The Appellant testified that he did not think that he could be dismissed because of his acts and that it was common to talk to clients every day while he worked abroad. He explained that he answered the client's questions about what was going on.

[29] In this context, although the Appellant's conduct is not desirable, there is no clear directive on interactions or communications with a client in such a work setting that says what the Appellant could or could not do, and I find that the Appellant did not know that he would be dismissed if he gave that information to the client.

[30] Furthermore, the Appellant argues that he had not been dismissed for the reason the employer gave, and the events surrounding the Appellant's termination of employment are also part of the context that explains the absence of the Appellant's co-worker and the information the Appellant provided to the client. It is true that the Commission's file does not show any interviews with the people involved in that conflict.

[31] Yes, the Appellant provided the client with information. The facts also show that there was a conflict at the workplace, that the Appellant thought that he would end up working alone, and that he acted spontaneously because he was a contact person in Portugal. In the absence of clear rules in this context, the Appellant gave the client information that did not concern it, and he may not have shown the restraint his employer expected. This behaviour is reprehensible, but, given the circumstances, I cannot find that it constitutes misconduct.

[32] *Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces willful or wanton disregard of*

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[5] *Locke v Canada (Attorney General)*, 2003 FCA 262; *Canada (Attorney General) v Cartier*, 2001 FCA 274; *Gauthier*, A-6-98; *Meunier*, A-130-96.

employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees […].[6]

[33] The employee in charge explained that the harassment complaint the Appellant filed had been considered and that a letter had been sent to the Appellant asking him not to take any action. However, I find that that warning is not enough and that the Appellant could not foresee that he would be dismissed when he provided the client with information in these circumstances.

[34] Also, even though the employer had told of an event that happened during a deployment to Mongolia, during the first interview with the Commission, the employee in charge said that there were no warnings in the Appellant's file, and it was therefore clear to the employer that it would not have dismissed the Appellant if he had not given the information to the client.

[35] In the absence of evidence showing that the Appellant could have known that, by talking to the client and giving it the information, dismissal was a possibility, I cannot find that the Appellant committed misconduct by acting in this way. The facts presented show that the Appellant could not foresee that dismissal was a possibility.[7]

[36] I find that the Appellant's acts do not constitute misconduct within the meaning of the *Employment Insurance Act*.[8]

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[6] This passage is from *Tucker*, A-381-85.
[7] As applied in *Locke v Canada (Attorney General)*, 2003 FCA 262; *Canada (Attorney General) v Cartier*, 2001 FCA 274; *Gauthier*, A-6-98; *Meunier*, A-130-96.
[8] Act, s 30.

CONCLUSION

[37] The appeal is allowed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	March 30, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. C., Appellant C. L., Employee in charge at X