



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. T. v Canada Employment Insurance Commission*, 2020 SST 589

Tribunal File Number: GE-20-677

BETWEEN:

A. T.

Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Bernadette Syverin

HEARD ON: May 5, 2020

DATE OF DECISION: May 13, 2020

DECISION

[1] The Commission has proven that the Claimant lost her job because of misconduct. This means that the Claimant is disqualified from being paid employment insurance (EI) benefits.¹

OVERVIEW

[2] The Claimant worked at a daycare centre until her employer dismissed her. Her employer said that she was dismissed because she did not wear gloves when she applied diaper cream on a baby. The Commission accepted the employer's reason for the dismissal. It decided that the Claimant lost her job because of misconduct, and disqualified her from being paid EI benefits. The Commission upheld this decision upon reconsideration. The Claimant appeals the decision to the Social Security Tribunal.

THE CLAIMANT DID NOT ATTEND THE HEARING

[3] The Claimant did not attend the hearing. A hearing is allowed to go ahead without a claimant if he or she was given the notice of the hearing.² The Claimant did not attend the hearing on March 26, 2020, and I adjourned this hearing because I was not convinced that the Claimant received the Notice of Hearing. In fact, the Claimant called the Tribunal the day after the hearing seeking information about her file and hearing date. She was informed that the hearing had already occurred and that she needs to explain why she missed it. The Claimant did not provide an explanation. Nonetheless, I adjourned the hearing.

[4] The Claimant sent her Notice of Hearing via email, thereby authorizing the Tribunal to communicate with her via email. Hence, all correspondence including the New Notice of Hearing scheduled for May 7, 2020, at 11:00 a.m., was sent via email. However, the Claimant did not attend the hearing.

[5] I am convinced that the Claimant received notice of the hearing because the email was not returned to the Tribunal. Moreover, she did not communicate a change of email address to

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

² Subsection 12(1) of the *Social Security Tribunal Regulations*.

the Tribunal; and since the filing of her appeal, she has communicated with the Tribunal while using the same email address.

[6] Considering the fact that the Claimant received the Notice of Hearing, I proceeded with the hearing in her absence.

ISSUE

[7] Did the Claimant lose her job because of misconduct? To determine this, I will first decide the reason why she lost her job.

Why did the Claimant lose her job? Did she commit the action that caused her dismissal?

[8] The Claimant's employer stated that she was dismissed in October 2019 because she applied diaper cream on a child without gloves. The Claimant does not dispute this. In fact, the Claimant admits that she applied diaper cream on a child without cream and that this action caused her dismissal. Therefore, I accept that the Claimant's dismissal is directly related to the fact that she applied diaper cream on a child without wearing gloves.

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

[9] The reason is considered misconduct under the law for the following reasons.

[10] To be misconduct under the law, the conduct has to be willful. This means that the conduct was conscious, deliberate, or intentional.³ 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.⁴

[11] The employer stated that there is medication policy indicating that all employees have to wear gloves when applying diaper cream on children. The Claimant said that she was aware of this policy, but she did not follow it because when she took her course to become a daycare provider, her teachers told her not to wear gloves when applying medication on children. By her conduct, I find that the Claimant breached her duty to comply with company policy.

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

⁴ *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36).

[12] Should the Claimant have known that her action would cause her dismissal?

[13] Yes. I find that the Claimant should have known her action would cause her dismissal given her admission that she was aware the employer's medication policy. In addition, the employer confirms that the Claimant was aware of the company's policies, which states that after three written warnings, an employee would be dismissed. The Claimant does not dispute the fact that prior to her dismissal; she had received three prior written warnings related to other incidents. She also states that she knew that she could potentially lose her job.⁵ Therefore, I find that the Claimant knew that any further violation could lead to her dismissal.

[14] Based on the foregoing, I find that the Commission has shown that misconduct led to the Claimant's dismissal. Her employer dismissed her because she violated the company's medication policy by applying diaper cream on a child without gloves and she committed that act. I find that this action was wilful and breached her duty to her employer. Moreover, since she already had three prior written warnings, she should have known that she would be dismissed if she failed to comply with the company's medication policy.

CONCLUSION

[15] I dismiss the appeal. This means that the Claimant is disqualified from being paid EI benefits.

Bernadette Syverin

Member, General Division - Employment Insurance Section

HEARD ON:	May 5, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. T., Appellant

⁵ See GD3-24.