



[TRANSLATION]

Citation: *PB v Canada Employment Insurance Commission*, 2021 SST 728

**Social Security Tribunal of Canada  
General Division – Employment Insurance Section**

**Decision**

**Appellant:** P. B.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (383042) dated January 30, 2020 (issued by Service Canada)

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**Tribunal member:** Josée Langlois  
**Type of hearing:** In person  
**Hearing date:** November 9, 2021  
**Hearing participant:** P. B., Appellant  
**Decision date:** November 11, 2021  
**File number:** GE-20-702

## **Decision**

[1] The appeal is dismissed.

[2] I find that the Appellant's employment ended because of his own misconduct.

## **Overview**

[3] The Appellant was a delivery person for X restaurant. On December 10, 2018, his employment ended because he could not drive a vehicle anymore due to his driver's licence getting revoked. When he applied for benefits, he said he had stopped working because of a shortage of work.

[4] On September 10, 2019, the Canada Employment Insurance Commission (Commission) denied the Appellant's claim because it found that his employment had ended because of his own misconduct.

[5] The Appellant argues that he didn't voluntarily leave his job, as the Record of Employment the employer provided indicates, and that his employment didn't end because of misconduct. He explains that his driver's licence was revoked for an offence he committed while he wasn't working.

[6] I have to determine whether the Appellant's employment ended because of his own misconduct.

## **Issue**

[7] Did the Appellant lose his job because of misconduct?

## **Analysis**

[8] To answer the question of whether the Appellant lost his job because of misconduct, I have to decide two things. First, I have to determine why the Appellant lost his job. Then, I have to determine whether the *Employment Insurance Act* (Act) considers that reason to be misconduct.

**Why did the Appellant lose his job?**

[9] I find that the Appellant lost his job as a delivery person because his driver's licence had been revoked.

[10] The Appellant initially told the Commission that he had stopped working because of a shortage of work, and the Record of Employment the employer provided indicates [translation] "voluntary leaving" as the reason why the Appellant was separated from his job.

[11] On December 13, 2019, the Appellant explained to the Commission that he hadn't left his job and that the employer should have put [translation] "dismissal" on the Record of Employment it issued. The Appellant says that he lost his job because he wasn't allowed to drive anymore. He explains that he needed a valid driver's licence to work, since he was hired as a delivery person.

[12] The Appellant's last day worked was November 28, 2018, but the drunk driving happened on December 10, 2018, after a Christmas party the employer had thrown.

[13] The Appellant and the Commission agree on why the Appellant lost his job; because he didn't have a valid driver's licence anymore, he could no longer perform his duties as a delivery person.

[14] The Appellant admits that he didn't have a valid driver's licence anymore and that he could no longer drive a vehicle as of December 11, 2018. I find that the Appellant's employment as a delivery person ended because his driver's licence had been revoked and that he acted as the employer says he did.

**Is the reason for the Appellant's dismissal misconduct under the law?**

[15] The reason for the Appellant's dismissal is misconduct under the law.

[16] To be misconduct, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>1</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>2</sup> The Appellant doesn't have to have wrongful intent (in other words, he doesn't have to mean to be doing something wrong) for his behaviour to be misconduct under the law.<sup>3</sup>

[17] There is misconduct if the Appellant knew or should have known that his conduct could get in the way of carrying out his duties toward his employer and that there was a real possibility of being let go because of that.<sup>4</sup>

[18] Reprehensible conduct isn't necessarily misconduct. Misconduct is a breach of such scope that its author could normally foresee that it would be likely to result in their dismissal.<sup>5</sup>

[19] The Commission has to prove, on a balance of probabilities, that the Appellant lost his job because of misconduct. This means that it has to show that it is more likely than not that the Appellant lost his job because of misconduct.<sup>6</sup>

[20] The Commission says that the Appellant was let go because he no longer satisfied an essential condition required for his job: having a valid driver's licence. It says that, when he committed the drunk driving offence, the Appellant acted wilfully and deliberately, not to mention recklessly, and that no longer having a valid driver's licence is misconduct under the Act.

[21] The Commission also argues that, in acting as he did, the Appellant could expect that losing his job was a possibility.

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<sup>1</sup> See *Mishibinijima v Attorney General of Canada*, 2007 FCA 36.

<sup>2</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>3</sup> As indicated in *Attorney General of Canada v Secours*, A-352-94.

<sup>4</sup> This principle is explained in *Mishibinijima v Attorney General of Canada*, 2007 FCA 36.

<sup>5</sup> See the following decisions: *Locke*, 2003 FCA 262; *Cartier*, 2001 FCA 274; *Gauthier*, A-6-98; and *Meunier*, A-130-96.

<sup>6</sup> As indicated in *Minister of Employment and Immigration v Bartone*, A-369-88.

[22] The Commission contacted the employer. The employer confirmed that the Appellant's driver's licence had been revoked and that a driver's licence was an essential condition to work as a delivery person.

[23] However, the employer explained that it had put [translation] "voluntary leaving" on the Record of Employment because it had offered the Appellant a dishwasher position, which he turned down. The employer allegedly offered him a few hours per week, with the same schedule he had had as a delivery person, but to wash the dishes. The employer explained that the pay was different because the Appellant got tips while working as a delivery person.<sup>7</sup>

[24] The employer also said that the Appellant had driven under the influence of alcohol when he left a Christmas party. The employer always offers a designated driver service, but the Appellant allegedly used his car. The employer explains that, if the Appellant still had a valid driver's licence, he would still be employed. But, it had to replace him.

[25] At the hearing, the Appellant actually said that he was the one who had contacted the employer a few times to see whether any work was available. The employer then told him that server positions were available, but he says he doesn't know why the employer stated that it had offered him a dishwasher job when that statement is false.

[26] Like he told the Commission on December 13, 2019, the Appellant testified that the employer didn't have any jobs to offer him other than as a delivery person. But, he says he could have worked as a dishwasher if the employer had suggested it to him.

[27] He admits that he [translation] "lost" his driver's licence after driving under the influence of alcohol and that he could no longer perform his duties as a delivery person.

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<sup>7</sup> GD3-23.

[28] However, he argues that he worked five hours per week as a delivery person for the restaurant and that his tasks also involved helping prepare fries or washing the dishes.

[29] The Appellant is disappointed that he has to repay the benefits he received. For one thing, he feels that the Commission agent wasn't courteous to him and that it took a long time to process his file when, for a time, he was without income, and the Commission finally asked him to repay a large overpayment.

[30] He also argues that he has received many statements of account for this overpayment to be repaid despite filing his appeal with the Tribunal and that these statements of account don't spell out why this amount is owing.

[31] Lastly, the Appellant has the impression that the Commission was biased in favour of the employer. He explains that, even though his actions may amount to misconduct, he drove his car under the influence of alcohol because a friend needed help and that his actions were well-intentioned.

[32] He argues again that he was, however, prepared to work for the employer, even as a dishwasher, but that the employer didn't give him this option; it let him go.

[33] An employee who is required, as an essential, concrete condition of their work, to have a valid driver's licence and loses it as a result of their wrongful act breaches an express condition of the employment contract.<sup>8</sup> Although the Appellant wasn't at work when this incident happened, it isn't necessary that the misconduct be committed at work, in the workplace, or in the course of the employment relationship for misconduct to be found. There needs to be a causal relationship between the claimant's alleged misconduct and the loss of employment.

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<sup>8</sup> See the following decisions: *Attorney General of Canada v Wasylika*, 2004 FCA 219 (CanLII); *Casey v Attorney General of Canada*, 2001 FCA 375 (CanLII); *Attorney General of Canada v Cartier*, 2001 FCA 274 (CanLII); and *Attorney General of Canada v Turgeon*, A-582-98.

[34] Having a valid driver's licence was an essential condition of the Appellant's employment contract and, though he didn't commit the misconduct while at work, the causal relationship (having a valid driver's licence to drive and make deliveries) is established.<sup>9</sup>

[35] The Appellant is suffering the consequences of losing his driver's licence, since he could not perform his work duties as of December 11, 2018. On December 13, 2019, he also told the Commission that he knew he needed a valid driver's licence to perform his duties as a delivery person for the restaurant.<sup>10</sup>

[36] To establish misconduct, it is enough that the reprehensible act complained of against the Appellant be made "wilfully," that is, consciously, deliberately, or intentionally.<sup>11</sup>

[37] Although the Appellant says he was available to work on other tasks and that the employer didn't offer him another position like it told the Commission, his employment ended precisely because he had lost the privileges of a valid driver's licence, even though he wasn't working when he committed the offence that led to his driver's licence getting revoked.

[38] The Appellant was able to understand the nature and consequences of his actions, which is why the drunk driving is considered a wilful act. He was let go because he didn't have a valid driver's licence anymore and could no longer perform his work duties.

[39] As mentioned, there needs to be a relationship between the misconduct (the committed offence that led to the driver's licence getting revoked) [sic] and cause the

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<sup>9</sup> Above; *Brissette*; and *Attorney General of Canada v Thibault*, 2005 FCA 369.

<sup>10</sup> GD3-21.

<sup>11</sup> *Caul*, 2006 FCA 251; *Bellavance*, 2005 FCA 87; *Johnson*, 2004 FCA 100; *Secours*, A-352-94; and, in this case, see *Attorney General of Canada v Thibault*, 2005 FCA 369.

loss of employment (the Appellant can't work as a delivery person anymore because he isn't allowed to drive a vehicle).<sup>12</sup> That is precisely the case.

[40] The Appellant admits his guilt for the offence committed, but he asks [for leniency] because his intention was to help a friend in need.

[41] While I understand that the Appellant made an effort by participating in therapy to stop drinking and that the outcome of events has unfortunate consequences for him—such as the loss of his driver's licence, the loss of his job at X restaurant, an overpayment to pay back to the Commission, and some financial difficulties—when a claimant's employment ends because of misconduct, the claimant can't get benefits.

[42] The Appellant also says that he could have worked with the breathalyzer he had installed in his vehicle. However, as the Appellant explained, he received the order saying that he was authorized to operate a vehicle equipped with an alcohol ignition interlock device in September 2019 and, according to him, he had it installed three months later.

[43] As of December 11, 2018, the Appellant could no longer perform his work duties, and the employer had to hire another delivery person.

[44] Even though the Appellant could work to help with other tasks while waiting for deliveries, the Appellant was hired as a delivery person and, on December 11, 2018, he could no longer work at his job, since his driver's licence had been revoked.

[45] The Appellant's employment ended because he could not use his driver's licence anymore and because this condition was essential for his work as a delivery person for the employer.

[46] Since he worked at that job part-time, the Appellant is disappointed that he has to repay the overpayment because he accumulated insurable hours of employment largely

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<sup>12</sup> *Attorney General of Canada v Brissette*, A-1342-92.



thanks to the seasonal job, but which he held full-time, with the Ministère des Transports [Quebec's ministry of transportation].

[47] However, employees who put themselves in a position of losing their jobs by committing offences that make them lose their driving privileges, when this is required for their jobs, are subject to a disqualification under section 30 of the Act.<sup>13</sup> As a result, the Appellant is disqualified from receiving benefits for the claim for benefits made on October 24, 2018.

[48] Concerning the statements of account that were sent to the Appellant, it would be appropriate for the Commission to send him a detailed, up-to-date statement of account showing what amounts need repaying to clear up some confusion, since the Appellant also repaid a penalty and/or a benefit overpayment in another file.<sup>14</sup>

[49] In not having a valid driver's licence, the Appellant could normally foresee that there was a possibility of being let go. This is misconduct under the Act.

## **Conclusion**

[50] The Appellant's employment ended because of misconduct.

[51] The appeal is dismissed.

Josée Langlois

Member, General Division – Employment Insurance Section

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<sup>13</sup> *Smith v Attorney General of Canada*, A-875-96.

<sup>14</sup> GD3-33.