Citation: *PH v Canada Employment Insurance Commission*, 2021 SST 437

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	P. H.
Representative:	David Brown
Respondent:	Canada Employment Insurance Commission

Decisions under appeal:	Canada Employment Insurance Commission reconsideration decision (407124) dated September 29, 2020 (issued by Service Canada) and Canada Employment Insurance Commission reconsideration decision (407487) dated July 6, 2020 (issued by Service Canada)

Tribunal member:	Gary Conrad
Type of hearing:	Videoconference
Hearing date:	May 26, 2021
Hearing participants:	Appellant Appellant's representative Appellant's counsel
Decision date:	June 16, 2021
File numbers:	GE 20-2180 and GE-21-277

Canada

Decision

[1] The appeal is allowed. The Canada Employment Insurance Commission (Commission) has not proven that the Claimant was suspended for misconduct, therefore he is not disentitled because of his suspension. Further, the Commission has not proven the Claimant voluntarily left his job. This means that the Claimant is not disqualified from receiving Employment Insurance (EI) benefits.[1]

Overview

[2] The Claimant's employer suspended the Claimant for two weeks starting on February 26, 2020, as they said the Claimant did not tell them about a fire that was accidently set in a suite the Claimant was working in[2].

[3] The Claimant's employer says that the Claimant never returned to work after his suspension, so they felt he abandoned his job. The employer says they tried to contact the Claimant, but he never responded[3].

[4] The Commission determined the Claimant was suspended because of his own misconduct and they disentitled the Claimant from benefits. The Commission also found the Claimant had voluntarily left his employment without just cause when he did not return to work from his suspension, so they disqualified him from benefits.

[5] The Claimant says there was no fire started in the suite, and that he asked his employer multiple times for a return to work date but, no date was ever given to him and his employer did not want to discuss any of the outstanding issues with him.

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[1] Section 30 of the *Employment Insurance Act* says that claimants who voluntarily leave their employment without just cause are disqualified from receiving benefits.
[2] GD3-19
[3] GD3-21

Matters I have to consider first

Joining of Appeals

[6] There were originally two separate appeal files for the Claimant. One dealing with the disentitlement because of being suspended for misconduct and the other for a disqualification for voluntarily leaving employment without just cause.

[7] I chose to join these two appeals[4] as they both relate to the fallout of a single incident and therefore common questions of fact arise in the appeals. I further held a joint hearing to deal with both issues.

[8] The Claimant's employer was originally a party to the appeal of the disentitlement for being suspended due to misconduct. When that file was returned to the General Division from the Appeal Division for a new hearing, I sent a letter on March 4, 2021, to the employer and their representative asking them if they wanted to remain a party to the appeal with a deadline of March 15, 2021, to respond. No response was received from them by the deadline.

[9] I then sent a letter on April 9, 2021, to all parties, including the employer and their representative, saying that I was considering removing the employer as a party to the appeal and if no submissions were received from any party by the deadline of April 16, 2021, I would take it as agreement from all parties to the remove the employer as a party.

[10] No submissions were received from any party. So, I removed the employer as a party from the appeal due to the agreement of all parties.

[11] A pre-hearing conference call was held on May 11, 2021, where it was explained to the Claimant, his representative, and his counsel, exactly what documentation I would be considering and what I would not be considering in making my decision. The Commission chose not to appear at this pre-hearing conference call and there was no

[4] Section 13 of the *Social Security Tribunal Regulations* allows this to be done.

objection from the Claimant as to the evidence and submissions I would not be considering.

[12] As the employer was removed as a party from the appeal for the misconduct file, that impacted what evidence I would be considering in making my decision. Since the employer was removed I did not listen to the recording of the previous hearing before the General Division, I did not read the previous decision of the General Division. I only considered the Claimant's notice of appeal labeled as GD2 and GD2A, the reconsideration file, labeled as GD3, the submissions of the Commission, labeled as GD4, and the additional document sent in by the Claimant before the hearing, labeled as RGD07. I also considered all the testimony and submissions at the hearing before me on May 26, 2021.

[13] As for the file relating to the voluntary leave without just cause, I considered all the information in that file as no hearing was ever previously held on that issue and the employer was not a party in that appeal.

Issues

[14] Was the Claimant suspended because of misconduct?

[15] Did the Claimant voluntarily leave his employment, and, if so, did he have just cause for doing so?

Analysis

[16] To answer the question of whether the Claimant was suspended because of misconduct, I have to decide two things. First, I have to determine why the Claimant was suspended. Then, I have to determine whether the law considers that reason to be misconduct.

[17] After that, I need to consider if the Claimant voluntarily left his employment. If I find he did voluntarily leave, then I need to determine if he had just cause for his voluntary leaving.

Why was the Claimant suspended?

[18] I find the Claimant was suspended as his employer determined he had started a fire in the jobsite he was working in and failed to report it to them.

[19] The Commission says the Claimant was suspended for failing to report an incident on the job site and denying the situation ever happened[5].

[20] The Claimant testified he has no idea why he was suspended as the incident in the suite he was working in was so minor there was nothing for him to report to his employer. The Claimant further testified his employer was incorrect, there was never any fire in the unit he was working in; some debris on the top of the stove starting smoking when he accidently bumped against the stove and turned it on.

[21] I find the employer, when speaking to the Commission[6] and in the suspension letter[7] sent to the Claimant, has said the Claimant was suspended not just for the fire in the suite he was working in, but also due to the Claimant not telling them about the fire.

[22] While the Claimant says he did not start a fire, and did not feel he needed to report the incident that did happen to his employer, as it was so minor, the fact he agrees there was an incident within the suite and that he did not report it, supports that is the reason his employer suspended him.

[23] Having found the Claimant was suspended due to his employer determining he caused a fire in the unit he was working in and failed to report it to them, I now have to look to see if he committed the conduct which led to his suspension and, if he did commit that conduct, whether that conduct constitutes misconduct.

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[5] GD4-5
[6] GD3-25, GD3-31, and GD3-56
[7] GD3-36 and 37

Did the Claimant commit the conduct that resulted in his suspension?

[24] Yes, the Claimant did commit the conduct that resulted in his suspension as he did start a fire in the unit he was working in and did fail to report it to his employer.

[25] I note there is a disagreement between the Claimant, the Commission, and the Claimant's employer as to exactly what happened within the unit the Claimant was working in.

[26] The Claimant says there was some debris, either food and/or dust on the top of the stove, that starting smoking when he accidently turned the stove on by bumping into it when he was working over it. The Claimant says this created a smoky smell within the condo, which alerted him to the burning particles on top of the stove, but there was no fire.

[27] The Claimant says he quickly turned off the stove, and wiped the top of it down with a damp cloth when it had cooled; there was no damage done to anything in the unit. The Claimant says the whole incident took around 30 seconds.

[28] The Commission says the Claimant admits there was the smell of smoke caused by debris that was on the stovetop when he accidently turned on the burner. The Commission says that although the Claimant adamantly denied there was a fire, there is a statement from his co-worker, who was on site at the time of the incident, saying there was cardboard smoldering on the stovetop[8].

[29] The Commission says the co-worker states the Claimant told him not to tell anyone about the incident and to say it was food burning on the stove and not cardboard.

[8] GD4-5

[30] The Commission says that in addition to the co-worker's statement the employer provided copies of an email they received rom the building manager which included a statement from a council member who smelled the smoke[9].

[31] The Commission says that in order for there to be a smell of smoke, something had to have been smoldering or burning. While the Claimant may not consider something "smoldering" to be a fire, smoldering is considered a type of low-intensity fire even though there are no flames[10].

[32] The Claimant's employer told the Commission on multiple occasions the Claimant started a fire in the unit he was working in[11]. Further, the employer told the Commission they were told by the building manager there was a paper fire and that he could smell it[12]. The employer also provided the Commission with two emails from the building manager. One email on February 25, 2020, asks about the fire almost started in the unit the Claimant was working in[13]. The other email says that the building manager was told by other people in the building that they could smell wood burning while on the fifth floor and they traced the smell to the unit the Claimant was working in and said there was a paper fire on the stove top[14].

[33] The statement from the Claimant's co-worker[15], provided by the employer to the Commission, states that the Claimant covered the stove with cardboard and while the Claimant and co-worker were out in the hall they smelt something and went back into the unit and the cardboard was smoldering and there was smoke. The co-worker says the Claimant took care of it and told the co-worker to not tell anyone anything about burning cardboard and instead say it was burning food. The Claimant's co-worker says the Claimant stopped by his house that night and asked him what he told the employer

[9] GD4-5
[10] GD4-6
[11] GD3-25, GD3-31, and GD3-56
[12] GD3-85
[13] GD3-91
[14] GD3-91
[15] GD3-39

about the incident and the co-worker says he told the employer what the Claimant had told him to say.

[34] The Claimant says he did tell his co-worker not to speak to people about the incident as he was trying to protect the reputation of the company and his co-worker spoke very limited English and he did not want him using the wrong words when speaking to people.

[35] The Claimant says that while he did stop by his co-worker's house that night he did it only because he had received a blistering phone call from his employer about the incident and was wondering if his co-worker had received the same. He says he never told his co-worker to lie to his employer.

[36] The Claimant also said in his statement of fact he sent to his employer that he did tell his co-worker not to tell people what happened[16].

[37] I note there appears to be a disagreement over semantics between the Claimant, employer, and Commission. The Claimant says there was smoke but no fire, as particles of dust and/or food were smoking. The Commission says that for there to be smoke something had to be burning or smoldering and smoldering is a type of low intensity fire even though no flames. The Claimant's employer has repeatedly said there was a fire.

[38] I find, that regardless of the way in which it is phrased, for something on the stovetop to start smoking, since heat was applied to it with the burner being on, it was burning, regardless of whether there was visible flame or not. I find that since something was burning it can be stated as on fire, thus the Claimant did start a fire in the unit he was working in. I further find that the starting of the fire was accidental as no party has disputed it was accidental, and I see no evidence to suggest otherwise.

[39] I further find credible the Claimant's testimony that it was food particles or debris that was burning on the stove and not cardboard or paper or anything else. I find as the unit was not stated as new construction, thus people could be using the stove, and with

[16] RGD07-21

the Claimant working right over the stove removing the ceiling, it is credible that there was food particles and/or dust on the stovetop.

[40] I further find the Claimant did fail to report it to his employer as per his testimony he did not report it.

[41] Having found the Claimant committed the conduct that led to his suspension, next I will decide whether that conduct was misconduct.

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

[42] The reason for the Claimant's suspension is not misconduct under the law.

[43] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.[17] Misconduct also includes conduct that is so reckless that it is almost wilful.[18] The Claimant 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.[19]

[44] There is misconduct if the Claimant 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 suspended because of that.[20]

[45] The Commission has to prove that the Claimant was suspended because of misconduct. The Commission has to prove this on a balance of probabilities. This means that it has to show that it is more likely than not that the Claimant was suspended because of misconduct.[21]

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[17] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[18] See *McKay-Eden v Her Majesty the Queen*, A-402-96.
[19] See *Attorney General of Canada v Secours*, A-352-94.
[20] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[21] See *Minister of Employment and Immigration v Bartone*, A-369-88.

[46] I find the Claimant's starting of the fire was not intentional and was accidental. He has always argued it was accidental, the Commission has not argued it was on purpose, his employer even told the Commission it would make no sense to accuse him of starting the fire on purpose[22] and I find there is no evidence to support the fire was started on purpose.

[47] I find that as the Claimant did not set the fire intentionally the fire itself does not rise to the level of misconduct as an action must be intentional for it to be misconduct[23].

[48] However, as I have found he was suspended for not just the fire in the unit but also for failing to report it, the fact he did not do one part of the action on purpose does not mean the entire action that led to his suspension was not intentional. So, I find I must still analyze whether the Claimant knew or out to have known his actions would result in the suspension.

[49] I find the Claimant choosing not to report the incident was intentional as he could have told his employer, but as per his testimony he chose not to.

[50] The Commission submits the Claimant ought to have known that by failing to report the incident, no matter how small, then denying that it happened, it would break the bond of trust that must exist in an employer/employee relationship[24].

[51] The Claimant says there is no misconduct. The Claimant says there was a minor workplace incident which was easily remedied, no damage was done to the property, and there was no reporting requirement given that it was so minor. The Claimant says that his employer is wrong, there was never any fire in the unit like they keep claiming.

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[22] GD3-56
[23] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[24] GD4-6

[52] The Claimant further submits the discipline policy[25], which he says he signed and was aware of, says that a major on the job mistake would start at a final written warning level of discipline and even more egregious acts, such as corruption, harassment, and workplace violence, start with a detraction of benefits level of discipline, so he would not expect to be suspended for the incident.

[53] I find the Commission has not shown there was any reporting policy that would make it clear the Claimant ought to report what happened or know that failing to report what happened would result in a suspension.

[54] The employer told the Commission the Claimant should have reported the fire as per policy[26] and on another occasion said that there should be something about reporting policies in the employee handbook[27]. I find no such reporting policy was ever provided as evidence.

[55] As noted by the Federal Court of Appeal:

> "A finding of misconduct, with the grave consequences it carries, can only be made on the basis of clear evidence and not merely of speculation and suppositions, and it is for the Commission to convince the [Tribunal]…of the presence of such evidence irrespective of the opinion of the employer."[28]

[56] I find that without such a reporting policy the Claimant could not have known he was supposed to report such an incident or that he could be suspended for failing to report such an incident.

[57] I further find that even having read the disciplinary policy the Claimant would not have known his failure to report the incident would result in a suspension as there is nothing in the discipline policy that says what would happen with failing to report an on the job mistake, it merely talks about an on the job mistake in general.

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[25] RGD07-34 to 36
[26] GD3-25
[27] GD3-56
[28] *Crichlow v Canada (Attorney General)*, A-562-97

[58] I further find the discipline policy speaking about on the job major mistakes does not mean the Claimant knew or ought to have known he could be suspended for not reporting the incident.

[59] I find the discipline policy states that discipline for on the job major mistakes starts at stage five, and stage five is stated to be a final written warning. I find the Claimant, in reading such a discipline policy, would expect that if he were to be disciplined for such an action it would be with a final written warning.

[60] The discipline policy outlines a clause to not limit itself to only performing discipline in the exact stages listed. The clause says the employer has a right to modify the policy in any other legal or reasonable way as each case demands. I find this clause would not change the Claimant's expectations as to what would occur with failing to report the incident.

[61] The Claimant says he did not consider the fire to be a major issue as there was zero damage to the unit. I accept there was no damage done to the unit as there is insufficient evidence to support any damage was done, nor has the Commission argued as such. I note the employer did not say there was damage to the unit either.

[62] The discipline policy says "on-the-job major mistakes" result in starting at stage five discipline procedures; the Claimant said he felt it was a minor incident since there was no damage. I find having read this the Claimant would still not expect any discipline for not reporting the incident as to him it was not a major on the job mistake. I further find that even if he did believe he could be disciplined for not reporting the incident due to the discipline policy speaking about major on the job mistakes, at most he would imagine discipline starting at stage five, which is not a suspension.

[63] I find such expectations would be further reinforced by reading the next section of the disciplinary policy. The next section states that even for actions such as workplace violence, embezzlement, or harassment, discipline starts at stage six, which is only a detraction of benefits. I find that with actions considered more severe than what occurred with the Claimant, and discipline still not starting at suspension, the Claimant

could not have known, nor should he ought to have known, he would be suspended for failing to report the incident.

[64] I also find that even ignoring the lack of a reporting policy and what was written in the discipline policy the Claimant would not have known, nor should he ought to have known, that failing to reporting an incident in which zero damage was done to any part of the unit, or any property of his employer, nor was any extra cleanup or repair required to deal with the incident, would irreparably harm the employee/employer relationship and lead to a suspension.

[65] Finally, I find the Claimant's discussions with his co-worker do not show the Claimant was trying to hide what happened as he was worried about getting in trouble.

[66] The Claimant testified that he did tell his co-worker not to talk to people about what happened as he was worried about the company's reputation and his co-worker did not speak English well so he was worried about him using the wrong words when talking to people. The Claimant says he never told his co-worker to lie about what happened.

[67] In the co-workers statement[29] he says the Claimant told him not to tell anyone anything, as it was his problem. The co-worker says that night when they arrived back at the office the building manager texted the Claimant about there possibly being food burning on the stove. The co-worker says the Claimant said to stick together and say it was food burning. The co-worker says the next day the Claimant spoke to him and told him to tell the manager it was burning food and that the Claimant stopped by that night to ask him what he told the manager.

[68] I accept the Claimant's testimony that his co-worker struggles with English. The composition of the co-worker's statement, with its broken English, supports that conclusion. Based on that, I find I accept the Claimant's testimony that when he told his co-worker at the site to not speak to anyone about the incident it was due to his concern

[29] GD3-39

about his co-worker telling random people in the building incorrect information due to his struggles with English. I note even in the co-worker's statement he says he was speaking to people about the incident in the hallway, which supports the Claimant's statement that is what he was trying to prevent, the co-worker from providing incorrect information about what happened when the Claimant told him not to speak with anyone at the scene.

[69] I note that in the co-worker's statement the co-worker says the Claimant told him that he would handle the incident and when speaking to the manager to tell the manager it was burning food. I find this supports the Claimant was not trying to hide the incident from his employer as it would make no sense to tell his co-worker to tell the manager about the incident and say burning food, rather it would make more sense, if the Claimant was trying to cover up the incident completely, that he tell his co-worker to tell the manager nothing happened.

[70] I therefore find the Claimant was not trying to cover up the incident completely, so his actions with his co-worker do not show the Claimant was trying to hide what happened as he was worried about getting in trouble if it was found out. I find the Claimant's actions with his co-worker instead support the Claimant was worried about the co-worker passing on incorrect information about the incident.

[71] In summary, I find the Claimant's actions do not rise to the level of misconduct as he did not know, nor should he ought to have known, that not reporting the incident in the unit he was working on would result in his suspension.

Did the Claimant voluntarily leave his employment?

[72] No, the Claimant did not voluntarily leave his employment. While there was work available for him, and he wanted to continue working, he was never given a return to work date from his employer and after his suspension had elapsed and there was nothing concrete from his employer about returning to work, he thought his employment had been ended. So, he did not return to work as he thought there was no work to return to; in his mind there was no choice to return.

[73] To determine whether the Claimant voluntarily left his employment the question to be asked is whether the he had a choice to stay or leave[30].

[74] The Commission submits the Claimant's assertions that he did not know when to return to work as the employer failed to provide a return to work date and time despite his numerous requests for this information defies logic.

[75] The Commission says the Claimant received a suspension letter indicating a two week suspension as well as a Record of Employment (ROE) indicating a two week suspension. The Commission says that it is common knowledge that two weeks is equal to 14 days. The Commission submits that it is therefore logical to conclude that the end of the suspension would be 14 days following the first day on which the Claimant was barred from work. The Commission says this means the Claimant would have an expected return to work date of March 12, 2020.

[76] The Commission submits the true reason the Claimant failed to return to work was because he was upset about the suspension and the employer was unable or unwilling to meet to discuss the issues surrounding the suspension in person. The evidence shows the employer offered to meet by phone however, the Claimant rejected this.

[77] The Claimant says he did not voluntarily leave his employment.

[78] The Claimant says he emailed multiple letters to his employer asking for a return to work date and even printed them off and hand delivered them to his employer, but never got any response.

[79] The Claimant says he thought his employment was terminated and there was no job to return to. The Claimant says he thought this due to the lack of a return to work date from his employer, the fact he was told by the office manager when he went to pick

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[30] *Canada (Attorney General) v Peace*, 2004 FCA 56.

up his ROE that he would not be back, and the fact his ROE had no return to work date on it.

[80] The Claimant's witness testified that he went with the Claimant on March 6, 2020, to the employer to pick up various documents. The witness testified that when the lady sitting behind the counter handed the Claimant an envelope she said something to the effect of the Claimant would not be coming back.

[81] I accept the testimony of the Claimant's witness as to the general effect of what was said to the Claimant on March 6, 2020. I accept the testimony as the witness was not present at the entirety of the hearing, he only came in to testify so, could not be influenced by the Claimant's testimony or submissions. Further, the written statement[31] he provided, dated September 11, 2020, provides the same information, which being closer to the actual incident, further supports the credibility of his testimony.

[82] Further, I respectfully disagree with the Commission's submissions the Claimant not knowing when to return to work defies logic as he should know to come back 14 days following the first day in which he was barred from work since it was a two week suspension. To me, if the situation was that simple, then surely the employer could have done the simple calculation and put a return to work date on the Claimant's ROE[32] in the expected date of recall box, yet, the return to work date was never completed and instead says "unknown". This points to the employer not thinking the Claimant's return to work was as simple as the Commission argues it is.

[83] Again, if it was such a simple matter why would the employer not respond to the emails the Claimant sent on February 26, 2020[33], March 2, 2020[34], and March 4, 2020[35], which asked for a return to work date? The employer agrees they received

[31] GD14-29 from file GE-20-2180
[32] GD14-30 from file GE-20-2180
[33] GD14-23 from file GE-20-2180
[34] GD14-19 from file GE-20-2180
[35] GD14-22 from file GE-20-2180

them, stating the general manager had read them[36], yet there is no evidence they responded to them and provided the Claimant with a return to work date.

[84] While there is a text message from the employer to the Claimant on March 9, 2020[37], asking the Claimant if he is available for work tomorrow, the Claimant says this was sent to his work phone, which he returned to his employer when he was suspended, so he never got that text message.

[85] I accept the Claimant never got the March 9, 2020, text message asking him to return to work. The text message says it is directed to "P.H. Hcr Cell Jan2019". I accept this refers to the Claimant's company phone as Hcr is an abbreviation for the employer's name. Further, there is a signed receipt from the Claimant's employer saying they accepted the return of the company phone on February 27, 2020[38]. While this receipt is not on company letterhead, the name of the person who signed it is mentioned in an email of the employer[39]. This supports the Claimant returned his work phone and his employer received it on February 27, 2020. Thus, the Claimant could not have gotten the March 9, 2020, text.

[86] I find that the Claimant felt he no longer had a job with his employer. I find when the circumstances of no response to his multiple emails asking for a return to work date, no return to work date on his ROE, another employee telling him he would not be back, and his employer never getting around to meeting him about his concerns, are considered together the Claimant felt he no longer had a job at his employer. I note the Claimant even mentions his concern about still having a job in an email to his employer on March 4, 2020[40], yet the employer does not bother to respond to allay his fears. Yet more fuel to support the Claimant's belief he had no job to return to.

[87] I further find that while the Claimant did receive a text on March 12, 2020[41], where the employer asked him if he was coming back to work, no exact date is given for

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[36] GD03-26 from file GE-20-2180
[37] GD03-42 from file GE-20-2180
[38] GD03-40 from file GE-20-2180
[39] GD03-50 from file GE-20-2180
[40] GD14-22 from file GE-20-2180
[41] GD03-57 from file GE-20-2180

a return to work and the Claimant does not refuse to return to work at all. He says that he needs to meet with the employer to resolve outstanding issues. The Claimant asks to confirm a date and time and he will try to be available. The Claimant says the meeting never happened, the employer told the Commission the meeting never happened[42]. I find that while this text may seem to ease the fears of the Claimant about whether he has a job with his employer, the lack of a return to work date, or any meeting date being set, or any meeting happening, would bring those fears back to the fore and confirm them.

[88] I find that a misunderstanding between the Claimant and the employer, where the Claimant believes he has no job to return to and the employer believes the Claimant quit, does not automatically mean it is a voluntary leaving on the part of the Claimant simply because he misunderstood whether he had a job to come back too[43].

[89] I find that since the Claimant did not refuse to return to work, as he thought he had no work to return to, he did not voluntarily leave his employment. It was not his choice to leave because he did not think he had a choice to return to work. He believed his employment was ended by his employer.

[90] I find that as the Claimant did not voluntarily leave his employment there is no need for me to consider whether he had just cause for his voluntary leaving.

Summary

[91] In summary, I find the Claimant should not be disentitled for misconduct due to his two week suspension. I find that while there was a fire in the unit the Claimant was working on and he did fail to report it, the fire was accidental and the Claimant did not know, nor ought to have known, that failing to report the fire would result in a suspension. As such, his actions do not rise to the level of misconduct.

[92] I further find the Claimant did not voluntarily leave his employment since he did not believe he had a choice to return to his employment. This is because he thought he

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[42] GD03-26 from file GE-20-2180
[43] *Bedard v Canada (Attorney General)*, 2001 FCA 76

no longer had a job. Since he did not voluntarily leave, he cannot be disqualified for voluntarily leaving his employment.

Conclusion

[93] The appeal is allowed. The Commission has not proven that the Claimant was suspended for misconduct or that the Claimant voluntarily left his job. This means that the Claimant is not disentitled from benefits for the suspension or disqualified from receiving EI benefits for voluntarily leaving.

Gary Conrad
Member, General Division – Employment Insurance Section