



Citation: *EG v Canada Employment Insurance Commission*, 2022 SST 352

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

## Decision

**Appellant (Claimant):** E. G.

**Respondent (Commission):** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (447539) dated February 2, 2022 (issued by Service Canada)

---

**Tribunal member:** Gerry McCarthy

**Type of hearing:** Teleconference

**Hearing date:** April 5, 2022

**Hearing participant:** Appellant

**Decision date:** April 5, 2022

**File number:** GE-22-733

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Canada Employment Insurance Commission (Commission) hasn't proven that the Claimant lost her job because of misconduct (in other words, because she did something that caused her to lose her job). This means that the Claimant isn't disqualified from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] The Claimant lost her job. The Claimant's employer (D. S./Human Resources Business Partner) said the Claimant was let go primarily because of time theft. The Claimant says this isn't the real reason why the employer let her go. The Claimant says she wasn't sure why the employer let her go, but confirmed she was dismissed on July 9, 2021.

[4] The Commission accepted the employer's reason for the dismissal. It decided that the Claimant lost her job because of misconduct. Because of this, the Commission decided that the Claimant is disqualified from receiving EI benefits.

## Issue

[5] Did the Claimant lose her job because of misconduct?

## Analysis

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

---

<sup>1</sup> Section 30 of the *Employment Insurance Act* says that claimants who lose their job because of misconduct are disqualified from receiving benefits.

## **Why did the Claimant lose her job?**

[7] I find the Claimant lost her job because the employer (D. S.) indicated there was “time theft” by the Claimant.

[8] The Claimant and the Commission don’t agree on why the Claimant lost her job. The Commission says the reason the employer gave was the real reason for the dismissal. The employer told the Commission there were variances between the Claimant's punch-in times and when she was seen leaving work. The employer said they considered this time theft.

[9] The Claimant disagrees. The Claimant says she wasn’t sure why the employer let her go. However, the Claimant testified that a new employee at her branch filed a complaint against her sometime in May 2021 or June 2021.

[10] I find the Claimant was dismissed by the employer for alleged time theft. I realize the Claimant testified she didn’t think “time theft” was the real reason she was dismissed. Nevertheless, the employer (D. S.) stated to the Commission that the “primary reason for the dismissal was for the theft of time” (GD3-65).

## **Is the reason for the Claimant’s dismissal misconduct under the law?**

[11] The reason for the Claimant’s dismissal isn’t misconduct under the law.

[12] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>2</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>3</sup> The Claimant doesn’t have to have wrongful intent (in other words, she doesn’t have to mean to be doing something wrong) for her behaviour to be misconduct under the law.<sup>4</sup>

---

<sup>2</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>3</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>4</sup> See *Attorney General of Canada v Secours*, A-352-94.

[13] There is misconduct if the Claimant knew or should have known that her conduct could get in the way of carrying out her duties toward her employer and that there was a real possibility of being let go because of that.<sup>5</sup>

[14] The Commission has to prove that the Claimant lost her job 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 lost her job because of misconduct.<sup>6</sup>

[15] The Commission says there was misconduct, because the Claimant knew or ought to have known about her employer's policy regarding leaving work early and failing to follow the posted schedule.

[16] The Claimant says there was no misconduct, because if she had to leave work early she checked with her District Manager (M. S.) for approval.

[17] I find the Commission hasn't proven there was misconduct for the following reasons:

[18] First: I accept as credible the Claimant's testimony that she checked with her District Manager (M. S.) if she needed to leave work early. I accept the Claimant's testimony on this matter because her statements were detailed, consistent and plausible. I realize the Commission submitted that absenting oneself without requesting or receiving permission constituted misconduct. However, I prefer the Claimant's testimony that she checked with her District Manager about leaving the workplace, because she testified there were times she had to work outside schedule hours and her District Manager took this into account.

[19] Second: The Claimant had never received any previous warnings about alleged time theft until July 5, 2021, when she was placed on a three-day administrative leave. At that point, the Claimant was told about the "time variances" and asked to justify them. The Claimant testified that she justified all the time variances except three. The

---

<sup>5</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

Claimant further testified she couldn't search for additional information about the time variances, because on July 9, 2021, the employer took her cell phone (and closed her e-mail account) and walked her out the workplace. I realize the Commission submitted the Claimant's conduct was wilful. However, the Claimant was never previously warned about time theft and I simply cannot conclude her conduct had an element of wilfulness.

[20] Third: The Commission never contacted the District Manager (M. S.) in their investigation about why the Claimant was dismissed. In short, the Commission exclusively spoke with D. S. (Human Resources Business Manager) who wasn't the Claimant's supervisor and didn't interact with the Claimant on a daily basis. I realize the Commission submitted the Claimant acknowledged she lied about her hours of work, because she felt she was owed extra pay. Nevertheless, I prefer the Claimant's sworn testimony that she never lied about her hours and checked with her District Manager for approval if she had to leave work early.

### **Additional Submissions from the Commission**

[21] I realize the Commission further submitted the Claimant's action of intentionally submitting false time cards constituted misconduct, because it was a breach of rules that seriously damages the relationship of trust between the Claimant and the employer. However, I'm unable to conclude the Claimant's conduct was intentional or wilful because she checked with her District Manager if she needed to leave work. Furthermore, the Claimant had never been previously warned about a "time theft" problem in over 11-and-a-half-years as an employee.

### **So, did the Claimant lose her job because of misconduct?**

[22] Based on my findings above, I find that the Claimant didn't lose her job because of misconduct.

## **Conclusion**

[23] The Commission hasn't proven that the Claimant lost her job because of misconduct. Because of this, the Claimant isn't disqualified from receiving EI benefits.

[24] This means that the appeal is allowed.

*Gerry McCarthy*

Member, General Division – Employment Insurance Section