



[TRANSLATION]

Citation: *ML v Canada Employment Insurance Commission*, 2022 SST 876

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

Decision

Appellant: M. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (454884) dated February 10, 2022 (issued by Service Canada)

Tribunal member: Normand Morin

Type of hearing: Teleconference

Hearing date: July 21, 2022

Hearing participant: Appellant

Decision date: August 26, 2022

File number: GE-22-1120

Decision

[1] The appeal is allowed. I find that the Appellant didn't lose his job because of misconduct.¹ This means that his disqualification from receiving Employment Insurance (EI) regular benefits from November 7, 2021, isn't justified.

Overview

[2] From April 26, 2014, to November 4, 2021, inclusive, the Appellant worked as an electronics technician (Lead Wind Turbine Technician) for the employer X (employer). He stopped working for that employer because it let him go. The employer says it terminated his employment for not following guidelines, falsifying documentation, and stealing company time.

[3] On December 16, 2021, the Canada Employment Insurance Commission (Commission) told him that he wasn't entitled to EI benefits from November 7, 2021, because he had stopped working for the employer on November 4, 2021, as a result of misconduct.² On February 10, 2022, after a request for reconsideration, the Commission told him that it was upholding the December 16, 2021, decision.³

[4] The Appellant says that he didn't lose his job because of misconduct. He says that the acts attributed to him are baseless accusations and just assumptions by the employer. He says that he didn't act as the employer says he did; he didn't remove wires or deactivate alarms for the turbine towers he was maintaining and repairing (for example, tripping by bypassing door sensors and alarms, multiple instances of deactivation and reactivation of sensors of alarms) so that the Systems Operations Centre (SOC) would call him to fix the issue, which meant more hours of work. He says he didn't steal company time. He says that, on several occasions, he went out to turbine towers without first getting a call from the SOC because he would get a message on an app on his cell phone saying the towers might be malfunctioning. He says that, when

¹ See sections 29 and 30 of the *Employment Insurance Act*.

² See GD3-34 and GD3-35.

³ See GD2-9, GD3-40, and GD3-41.

this happened, the employer didn't criticize him for this or tell him that he should not do this. He also says that the employer didn't tell him about the changes to procedures or guidelines, including the On Call Policy. He argues that he never got any warnings or criticism from his employer until it spoke to him on November 4, 2021, and dismissed him that same day. He points out that the employer gave him letters several times congratulating him for his work in addition to paying him a salary bonus. In the Appellant's view, the employer dismissed him because of his age to make it easier to hire younger employees. On January 31, 2022, the Appellant challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issues

[5] I have to decide whether the Appellant lost his job because of misconduct. To decide this, I have to answer the following questions:

- Why did the Appellant lose his job?
- Is the reason for the Appellant's dismissal misconduct under the *Employment Insurance Act (Act)*?

Analysis

[6] The Act doesn't define the term "misconduct." Federal Court of Appeal (Court) decisions set out the characteristics of the notion of misconduct.

[7] In one of its decisions, the Court said that, to be misconduct, "the act complained of must have been wilful or at least of such a careless or negligent nature that one could say the employee wilfully disregarded the effects his or her actions would have on job performance."⁴

⁴ The Federal Court of Appeal (Court) established this principle in *Tucker*, A-381-85.

[8] To be misconduct under the Act, the conduct has to be wilful. In other words, it has to be conscious, deliberate, or intentional.⁵ Misconduct also includes conduct that is so reckless as to “approach wilfulness,” meaning that it is almost wilful.⁶ For their behaviour to be misconduct under the Act, the claimant doesn’t have to have wrongful intent; in other words, they don’t have to mean to be doing something wrong.⁷

[9] There is misconduct if the claimant knew or should have known that their conduct could get in the way of carrying out their duties toward their employer and that there was a real possibility of being let go because of that.⁸

[10] To determine whether the misconduct can result in dismissal, there has to be a link between the claimant’s misconduct and the loss of their job. So, the misconduct has to be a breach of an express or implied duty resulting from the contract of employment.⁹

[11] The Commission has to prove that the claimant lost their job because of misconduct. The Commission has to prove this on a balance of probabilities.¹⁰ This means that it has to show that it is more likely than not that the Appellant lost his job because of misconduct.¹¹

Issue 1: Why did the Appellant lose his job?

[12] In this case, the employer says that it terminated the Appellant’s employment for “not following [...] guidelines, falsifying documentation and time theft.”¹²

[13] In a letter to the Appellant (“Re: Termination of Employment”) dated November 4, 2021, the employer tells him that it is terminating his employment, giving him the following explanation: “Based on the information from our investigation, we are advising

⁵ The Court established this principle in *Mishibinijima*, 2007 FCA 36.

⁶ The Court established this principle in *McKay-Eden*, A-402-96.

⁷ The Court established this principle in *Secours*, A-352-94.

⁸ The Court established this principle in *Mishibinijima*, 2007 FCA 36.

⁹ The Court established this principle in *Lemire*, 2010 FCA 314.

¹⁰ The Court established or reiterated this principle in the following decisions: *Lepretre*, 2011 FCA 30; and *Granstrom*, 2003 FCA 485.

¹¹ The Court established this principle in *Bartone*, A-369-88.

¹² See GD6-8.

you of your termination of employment for just cause effective immediately. This termination is as a result of fraudulent conduct including not following [...] guidelines, falsifying documentation and time theft. This misconduct is unacceptable and incompatible with continued employment.”¹³

[14] The employer’s statements to the Commission also provide the following information:

- a) “[T]he claimant [Tribunal’s note: the Appellant] had been dismissed not only of the incident which happened on the 25 of October, 2021. It was part of an [...] investigation. [...] [T]he employees [Tribunal’s note: the Appellant and another employee] were intentionally tripping (causing the turbine towers to fault to trigger an issue in the system) by bypassing door sensors and alarms, to trigger an SOC [...] call, so that the on call crew can take advantage of additional Overtime hours and pay. The issue is that there was a lot of speculation of foul play and no video proof of the employees[’] actions. On the day where the investigation was wrapped up and the employees were presented with the evidence and photos, and given a chance to explain, there was no explanation and no accountability for any of the actions. At this point, the company deemed that these actions went beyond the level of allowing improvement such as intentional time theft and false documentation.”¹⁴
- b) “Company policy states that any employee cannot go to site without being dispatched, especially for safety reasons. On top of that the employee [Tribunal’s note: the Appellant] had several time card notes showing inconsistency in reason for unauthorized call out and overtime hours. The only way an employee should be going to site is if the SOC (dispatch crew) tells them to go out. [W]e have log reports showing there was not [sic] call made to the X area for on call crew and they [Tribunal’s note: the Appellant and another employee] still went. [...] [S]everal times when the employee was

¹³ See GD6-8.

¹⁴ See GD3-22.

on the on call crew [...] the wires were tripped which always created [...] over time[.] [...] [O]ther employees never had that issue.”¹⁵

- c) “Timekeeping policy not followed as Technicians [Tribunal’s note: the Appellant and another employee] attended to On Call/Call Out hours without prior dispatch or authorization from the SOC ([...] [*sic*] operations center monitoring wind mills) or manager. [...] On Call Policy states On call Crew will respond per on call criteria and as dispatched (and for emergencies). In multiple cases [...] there was no dispatch call and the employees went to site on their own accord.”¹⁶
- d) “SOC (the dispatch crew) log report showing there was not [*sic*] call made to the X on call crew.”¹⁷
- e) “[E]xamples of creating unnecessary/false Overtime hours is bypassing tower door sensors and then waiting for the SOC to notice the issue and dispatch the on call technicians.”¹⁸ The examples provided refer to incidents that happened in May and June 2021.¹⁹
- f) “Complaints, pictures, and investigation notes from other peers and supervisor regarding activity noted after shifts worked by [...] [Tribunal’s note: the Appellant and another employee] – Bypassing tower door sensors by removing a wire – Multiple instances of deactivation and reactivation of sensors of alarms – Time card notes showing inconsistency in reason for call out overtime hours.”²⁰ The documents the employer provided refer to incidents that happened in May, June, and October 2021.²¹

¹⁵ See GD3-22.

¹⁶ See GD3-27.

¹⁷ See GD3-24.

¹⁸ See GD3-28.

¹⁹ See GD3-28.

²⁰ See GD3-24.

²¹ See GD3-29 to GD3-32.

- g) “Monday 10/25/21 [...] [Tribunal’s note: the Appellant and another employee] are ON-call, and they went to A502, from 19:19 to 19:26 for no reason. Tower was running, No call out by SOC Time card clocked 18:57 out 19:33. Explanation [*sic*] on Time sheet, [...] [Tribunal’s note: the employee working with the Appellant] (a502 was not reading wind properly) [...] [Tribunal’s note: the Appellant] (A5.02, Reset). Kind of weird. Got Sharp Data of the wind and Couple towers are following the winds and direction to match A 5.02.”²²
- h) “Instance where employee notes differentiated during same on call job: [...] [Tribunal’s note: the Appellant] said reset, [...] [Tribunal’s note: the employee working with the Appellant] said the same turbine was not reading wind properly”²³ The example refers to the October 25, 2021, incident.²⁴

[15] The Appellant, on the other hand, argues that the employer dismissed him based on assumptions about several acts that were attributed to him. He says that he didn’t do anything wrong and that he didn’t lose his job because of misconduct.²⁵ In his view, the employer dismissed him to make it easier to hire younger workers.²⁶

[16] I find that the Appellant lost his job because of the acts the employer says he committed: not following guidelines; falsifying documentation, based on its findings; and stealing company time, based on what it also indicated.

[17] Now, I have to decide whether, on a balance of probabilities, the Appellant committed the acts attributed to him and, if so, whether those acts amount to misconduct under the Act.

²² See GD3-30.

²³ See GD3-31.

²⁴ See GD3-31.

²⁵ See GD2-5 and GD3-38 to GD3-40.

²⁶ See GD3-33 and GD3-40.

Issue 2: Is the reason for the Appellant's dismissal misconduct under the Act?

[18] I find that the Appellant didn't act to deliberately lose his job. The evidence on file doesn't show that he committed acts that amount to misconduct under the Act.

[19] I find the Appellant's testimony credible and place the most weight on it. The Appellant painted a detailed picture of the circumstances that led to his employment being terminated on November 4, 2021. He didn't contradict himself. He gave specific explanations about the acts attributed to him and the employer's practices to ensure the proper operation of the turbine towers, before he was let go.

[20] The Appellant's testimony and statements indicate the following:

- a) The Appellant worked for the employer for about 10 years, including the time he worked for one of its subcontractors. As an electronics technician, he was responsible for maintaining and repairing towers for operating wind turbines (for example, broken antenna). He worked with a crewmate.²⁷
- b) To do his work, the SOC would call him when issues were detected in the towers at the employer's wind farm. On several occasions, the Appellant told his boss that the SOC didn't call him to tell him there was an issue with the towers.²⁸ He would be asked why he hadn't gone to the work site when an issue had been detected in a tower, and he had to explain that it was because the SOC hadn't called him.
- c) The employer, through someone in authority over the Appellant's boss, gave him an app on his phone that allowed him to see whether there was an issue with the towers or monitor the operation of the turbines. The employer told him that he had to call the SOC after discovering an issue using that app. Sometimes, there was no answer when he called the SOC. When he was on call and the SOC didn't call him or he could not reach it after discovering,

²⁷ See GD3-33, GD3-38, and GD3-39.

²⁸ See GD2-5, GD3-38, and GD3-39.

- through his app, that a turbine tower was malfunctioning, he and his crewmate would go the employer's wind farm to check and, if necessary, fix the issue in question.²⁹
- d) On several occasions, the Appellant and his crewmate went to the employer's site to check the towers, based on the information provided by his mobile app. The Appellant then mentioned it to his boss, who never told him that he—or his crewmate—wasn't doing the right thing.³⁰ He points out that this has happened to other co-workers who weren't let go.³¹ He says that he and his crewmate did what they could to make sure all the turbines were operational.³²
- e) On October 25, 2021, around 6:38 p.m., the Appellant discovered, through his app, that a turbine was down (tower A504) and that its wind speed reading was a lot lower than the other turbines.³³ The Appellant and his crewmate went to site to check the tower.³⁴ After reading the data shown on the screen inside the tower, they did a reset to fix the issue.³⁵ When they did this reset, the readings went back to normal. The Appellant and his crewmate then went back to the office to record the time spent on this task on their punch cards. The Appellant says that his only crime was that he didn't tell the SOC that he had gone to the wind farm to fix the issue identified in a tower and that he forgot to create a work order about it.³⁶
- f) The employer often changed guidelines or procedures and didn't tell all the employees about the changes made. The Appellant didn't sign a document

²⁹ See GD2-5.

³⁰ See GD2-5.

³¹ See GD3-8.

³² See GD2-5.

³³ See GD3-33, GD3-38, and GD3-39.

³⁴ See GD3-33.

³⁵ See GD3-38 and GD3-39.

³⁶ See GD3-8 and GD3-33.

saying he had read the employer's guidelines or other instructions from the employer.

- g) The Appellant says that he didn't act as the employer says he did (for example, intentionally tripping by bypassing door sensors and alarms, removing wires of turbine entrance door sensors, or multiple instances of deactivation and reactivation of sensors of alarms) to get a call-out from the SOC so that he could take advantage of overtime hours and the associated higher pay.³⁷
- h) On October 25, 2021, when his boss questioned him about the fact that wires had been removed on the turbine entrance door sensors, he told him that he wasn't the one who committed such acts and that he didn't know who could have committed them.³⁸
- i) On November 4, 2021, the Appellant met with the employer. During that meeting, the employer mostly talked to him about the incident of October 25, 2021, when he and his crewmate went to the malfunctioning tower. The employer asked him why he and his crewmate went to that tower that day, around 8 p.m. The Appellant says that the employer didn't believe the explanations he gave it. It replied to him assuming that the system for monitoring the towers wasn't working anymore. It asked him for explanations about the work done in the tower in question, given that, in the comments section of his time sheet, he had just indicated that he had done a reset. He apologized to the employer for not completing any documentation about it.³⁹
- j) Also discussed on November 4, 2021, were incidents that happened before October 25, 2021, and that the employer refers to in the documents it provided to the Commission.⁴⁰ The employer informed the Appellant that he

³⁷ See GD2-5 and GD3-40.

³⁸ See GD2-5.

³⁹ See GD3-8 to GD3-10, GD3-33, GD3-38, and GD3-39.

⁴⁰ See GD3-24 to GD3-32.

was being investigated over those incidents (for example, triggering the tower door sensors to create more work and overtime). The employer showed him photos of disconnected wires in the turbines.⁴¹ The employer accused him of disconnecting turbine doors and removing cables or wires, saying that this had happened several times when he was the last person to be on the work site.⁴² The employer also told him that he had worked [translation] “a bunch of hours.” It accused him of [translation] “stealing [company] time.”⁴³ The Appellant told the employer that neither he nor his crewmate was behind the acts attributed to him and that other people might have committed them. The employer didn’t respond to that statement.⁴⁴ The Appellant told it that anyone could have committed such acts.⁴⁵ This was the first time the employer had talked to him about the incidents that happened before October 25, 2021. The Appellant didn’t get any warnings, whether verbal or written, about these incidents before the November 4, 2021, meeting.⁴⁶

- k) At the end of the meeting, the employer asked him to hand over his work materials (for example, keys, cell phone). Later that day, the head of human resources called him to tell him he was being let go. A dismissal letter was then sent to him.⁴⁷ The letter doesn’t give him details about the reasons for his dismissal. He learned about those details when he received his appeal record.
- l) Concerning the employer’s criticism over indicating on his time sheet that he had done a reset, the Appellant says that is what he wrote in the document most of the time because there wasn’t enough space to give more

⁴¹ See GD3-38 and GD3-39.

⁴² See GD3-8 to GD3-10 and GD3-33.

⁴³ See GD3-33.

⁴⁴ See GD3-8 to GD3-10.

⁴⁵ See GD3-33.

⁴⁶ See GD3-33.

⁴⁷ See GD3-33 and GD6-8.

information. However, he provided more details on the tasks he performed in another work order.

- m) The Appellant says that he doesn't know how the employer could have concluded that he was the one behind the acts attributed to him. According to him, these are baseless accusations and assumptions by the employer.⁴⁸ He questions how the employer can prove that he committed such acts. He points out that all employees have keys to the towers. Anyone could commit these acts. There are no surveillance cameras near the towers. The locks on the turbine tower doors weren't working properly, and the doors could open for different reasons (for example, wind, bad weather).⁴⁹
- n) The Appellant never got any warnings from the employer, whether verbal or written, about the performance of his duties before he met with the employer on November 4, 2021, to learn that he was being let go.⁵⁰ This was the first time in all his years working for the employer that it had accused him of committing acts like those it attributed to him, which he finds [translation] "unpleasant."
- o) During his annual evaluations (for example, 2017 to 2021), the employer congratulated him for his work and paid him bonuses equal to a percentage of his salary.⁵¹ He points out that he would not have risked losing his job by committing acts like those attributed to him, given the salary he had and the benefits he enjoyed with the employer.⁵²
- p) In the Appellant's view, he and his crewmate were let go given that they are older and that the employer wants to make it easier to hire younger workers.⁵³

⁴⁸ See GD3-36.

⁴⁹ See GD2-5.

⁵⁰ See GD3-33.

⁵¹ See GD6-1 to GD6-7 and GD10-3.

⁵² See GD10-1 to GD10-4.

⁵³ See GD3-33 and GD3-40.

The Appellant says that, on several occasions, the employer asked him when he would retire.⁵⁴

[21] In this case, and based on the evidence, I find that the circumstances relating to the Appellant's dismissal don't show that he deliberately set himself up to lose his job. His dismissal isn't the result of deliberate actions on his part.

[22] I find that the Appellant's testimony and statements refute the employer's statements that he engaged in "fraudulent conduct" in performing his duties.

[23] In my view, the Appellant could not have foreseen that the incident of October 25, 2021, and those reported by the employer before that, would lead to his dismissal.

[24] I find that the evidence from the employer doesn't show that the Appellant lost his job because of misconduct.

[25] On this point, I find that, given the nature of the employer's allegations about the Appellant not following guidelines, "falsifying documentation," and stealing company time, its statements should be based on hard evidence to prove it, which isn't the case.

[26] I am of the view that it isn't enough to gather, over several months, evidence like a list of incidents or acts by attributing them to the Appellant without providing compelling evidence of fraudulent conduct on his part.

[27] I find that the employer's evidence (for example, complaints, photos, investigation notes from peers and supervisor regarding activity noted after shifts worked by the Appellant and his crewmate)⁵⁵ doesn't show that the Appellant intentionally committed the acts attributed to him.

⁵⁴ See GD3-38 and GD3-39.

⁵⁵ See GD3-28 to GD3-32.

[28] I want to point out that the employer's statements also indicate that there is "no video proof of the [...] actions" it attributes to the Appellant and his crewmate.⁵⁶ Additionally, I want to point out that the employer's statements also indicate that its comments relate to activity noted "after shifts worked" by the Appellant and his crewmate.⁵⁷

[29] I find that the employer's statements are also based on hearsay that doesn't provide conclusive information that could show that the Appellant committed the acts attributed to him.

[30] On the topic of following the employer's guidelines, the Appellant admits that, when he discovered that a turbine tower might be malfunctioning based on the information provided by his mobile app, he didn't always contact the SOC to see whether he had to go to the tower in question. He could take the initiative to go there with his crewmate to check and, if necessary, fix the malfunction identified in the tower (for example, do a reset).

[31] The Appellant's uncontradicted testimony indicates that, when he took this initiative, which happened several times, he would then mention it to his boss, who never told him that he wasn't doing the right thing.⁵⁸

[32] The Appellant's testimony also indicates that given that the SOC didn't always call him to tell him there was an issue with the turbine towers and that, when this happened and he didn't go to the towers in question, the employer would ask him why he hadn't gone.⁵⁹

[33] I find that, despite the existence of the On Call Policy, there was a practice in place at the employer where the Appellant could go to a turbine tower on discovering,

⁵⁶ See GD3-22.

⁵⁷ See GD3-24.

⁵⁸ See GD2-5.

⁵⁹ See GD2-5, GD3-38, and GD3-39.

through his app, that it might be malfunctioning, and then inform the employer or SOC of the initiative he had taken in connection with that.

[34] I find that, in doing so, the Appellant didn't commit a wilful or deliberate act that can be considered misconduct under the Act. I consider that this was a practice that the employer could accept.

[35] So, I don't accept the Commission's argument that the Appellant deliberately didn't follow the employer's policies or instructions by going to check a turbine tower without the SOC asking him to do so.⁶⁰

[36] I want to point out that, despite the employer's statement that, in multiple cases, the Appellant and his crewmate went to site of their own accord without prior dispatch or authorization from the SOC,⁶¹ there is no evidence that they were warned to stop. There is no evidence of the type of penalties they could have faced for this type of conduct either.

[37] I consider that it wasn't until his dismissal on November 4, 2021, that the Appellant was informed of acts he had allegedly committed before October 25, 2021, indicating that he had violated the employer's guidelines, including the On Call Policy or the timekeeping policy.

[38] Concerning the Appellant's alleged falsification of documentation, I don't find the information from the employer about this to be compelling.

[39] Although the employer noted differences between the Appellant's notes and those of his crewmate concerning the work done in the tower they went to on October 25, 2021 (tower A502), this doesn't show that the Appellant falsified a document in doing so.

⁶⁰ See GD4-4.

⁶¹ See GD3-27.

[40] I find that this isn't supported by the employer's finding it "weird"⁶² how, in a service note, the Appellant just indicated that he had done a "reset" without giving more details in the note, while his crewmate wrote that the turbine "was not reading wind properly."⁶³

[41] I accept the Appellant's explanation that he indicated on his time sheet that he had done a reset, which is what he wrote in the document most of the time because there wasn't enough space to give more information, but that he provided more details in another work order to describe the tasks he had performed. I also want to point out his repeated statements that he went to a turbine tower on October 25, 2021, on discovering, through his app, that there was an issue with the wind speed readings for that tower.

[42] The employer's evidence doesn't show that the Appellant falsified documentation.

[43] Also, I don't find persuasive the employer's statements that the Appellant [translation] "stole [company] time" through actions aimed at intentionally tripping by bypassing turbine tower door sensors and alarms.⁶⁴ According to the employer, this caused the towers to fault to trigger an issue in the system to then trigger an SOC call, which meant that the Appellant could take advantage of additional overtime hours and pay.⁶⁵

[44] I find that the employer's statements and evidence don't show that the Appellant intentionally stole company time.⁶⁶

[45] In summary, I find that the Appellant didn't commit acts that were conscious, deliberate, or intentional and that can be considered misconduct.

⁶² See GD3-30.

⁶³ See GD3-30.

⁶⁴ See GD3-22.

⁶⁵ See GD3-22.

⁶⁶ See GD3-22.

[46] In my view, the Appellant didn't consciously choose to ignore the standards of behaviour that the employer had a right to expect of him. He didn't breach an express or implied fundamental duty resulting from the contract of employment.

[47] I find that the employer gathered information and documents on actions it has attributed to the Appellant since May 2021, according to the evidence it provided to the Commission. After the investigation the employer says it conducted into the Appellant, it waited until November 4, 2021—following an incident on October 25, 2021, for which it also holds him responsible—to dismiss him.

[48] I find that the Appellant could not have known that his conduct was a breach of his duties toward his employer and that there was a real possibility of being let go for the acts attributed to him.

[49] In my view, the Appellant's actions weren't of such scope that he could normally foresee that they could result in his dismissal. On this point, I consider that the Appellant didn't get any notice or warning from the employer before November 4, 2021, about the acts he had allegedly committed since May 2021. The employer's statements don't contradict the Appellant's statement on this point.

[50] The Commission hasn't proven that the Appellant intentionally lost his job. I am of the view that, in this case, the Commission hasn't met its burden of proving whether the Appellant's actions amount to misconduct.

[51] The Court tells us that the Commission has to prove the existence of evidence showing a claimant's misconduct.⁶⁷

[52] In my view, the Commission's evidence is inadequate and not detailed enough to find, on a balance of probabilities, that the Appellant lost his job because of misconduct.

⁶⁷ The Court established this principle in *Mishibinijima*, 2007 FCA 36.

[53] I find that the Commission didn't consider the Appellant's side of the story, including his credible, specific, and detailed testimony, concerning the acts attributed to him and the circumstances that led to his dismissal.

[54] I am of the view that the Commission was quick to accept the employer's statements in finding that the Appellant had lost his job because of misconduct.

[55] I find that the Commission hasn't explained how, based on the evidence it gathered, it was able to conclude that the Appellant may have falsified documentation or intentionally stolen company time.

[56] In my view, the evidence on file doesn't show that the Appellant committed such acts.

[57] The Court also tells us that it has to be established that the claimant was let go because of misconduct.⁶⁸

[58] I find that the Appellant wasn't let go because of acts he committed wilfully and deliberately.

[59] The reason for the Appellant's dismissal isn't misconduct under the Act.

Conclusion

[60] The Appellant didn't lose his job because of misconduct.

[61] As a result, the Commission's decision to disqualify him from receiving EI regular benefits from November 7, 2021, isn't justified.

[62] This means that the appeal is allowed.

Normand Morin

Member, General Division – Employment Insurance Section

⁶⁸ The Court established or reiterated this principle in the following decisions: *Bartone*, A-369-88; *Davlut*, A-241-82; *Crichlow*, A-562-97; *Meunier*, A-130-96; *Joseph*, A-636-85; *Lepretre*, 2011 FCA 30; and *Granstrom*, 2003 FCA 485.