



Citation: *JP v Canada Employment Insurance Commission*, 2022 SST 704

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

Decision

Appellant: J. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (474631) dated May 19, 2022 (issued by Service Canada)

Tribunal member: Sylvie Charron

Type of hearing: Teleconference

Hearing date: June 20, 2022

Hearing participant: Appellant

Decision date: July 21, 2022

File number: GE-22-1774

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Canada Employment Insurance Commission (Commission) has proven that the Appellant lost her job because of misconduct (in other words, because she did something that caused her to lose her job). This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.¹

Overview

[3] The Appellant lost her job. The Appellant's employer said that she was let go because she was accused of stealing money from a colleague.

[4] The Appellant doesn't dispute that this happened. The Appellant says that the employer actually let her go because her action destroyed the employment relationship.

[5] The Appellant says she was working through some mental health issues at the time and this resulted in her taking money from a colleague's purse.

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

Issue

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

Analysis

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

¹ Section 30 of the *Employment Insurance Act* says that appellants who lose their job because of misconduct are disqualified from receiving benefits.

Why did the Appellant lose her job?

[9] I find that the Appellant lost her job because she was caught on video stealing money from a colleague's purse.

[10] The Appellant and the Commission agree on why the Appellant lost her job.

[11] The Appellant testified that she took \$40.00 from another employee's purse. It was a spur of the moment action; she still does not know why she took the money as she neither wanted nor needed it.

[12] She also stated she entered the office and looked around for recyclables, as that was a task she had to do when it was time for the recycling to be collected. She had no intention of taking the money. She never entered that office with the intent of taking anything but recyclables.

[13] The Appellant emphasizes that at the time of the incident, she was under much stress and this caused mental health issues. She has since been treated for her depression, sadness and anxiety. She admits there are no medical reasons that would explain the theft.

[14] The Appellant adds that the RCMP were called and she was interviewed. She admitted right away taking the \$40.00 from her colleague's purse. She will now have to appear in court.

[15] In the end, the Appellant says she has learned a valuable lesson and she has hurt her family. She admitted to the theft from the beginning and never tried to conceal it. She knows what she did was wrong and she is remorseful. She had been working there for 18 years without any issue. She considers that she has not been treated fairly as there had never been any problems with her work.

[16] At the time of the hearing, the Appellant is working and enjoys her new job. She is trusted and treated well. Although a grievance has been filed at her old place of employment to get her job back, there is no news yet.

[17] In interviews with the Commission, the employer confirmed the sequence of events. He said that the behaviour is not consistent with the workplace values, and this damaged the employment relationship beyond repair.

[18] The employer declared he was unaware of any mental health issues that the Appellant might have had at the time of the incident. Because of the severity of the situation, termination was the only option, even though the company does not have a formal policy for such occurrences.

[19] I find that the Appellant was dismissed because she stole money from a colleague's purse. The Appellant has never denied it, and I accept it as a proven fact.

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

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

[21] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.² Misconduct also includes conduct that is so reckless that it is almost wilful.³ The Appellant 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.⁴

[22] There is misconduct if the Appellant 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.⁵

[23] The Commission has to prove that the Appellant 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 Appellant lost her job because of misconduct.⁶

² See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

⁴ See *Attorney General of Canada v Secours*, A-352-94.

⁵ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

[24] The Commission says that there was misconduct because the fact that the Appellant took money from another employee's purse is a deliberate or wilful act that is wrong. It has resulted in an irreparable break in the employer's confidence in the Appellant as an employee.

[25] The Appellant says that there was no misconduct because she was under considerable stress in her private life and she does not know what made her do what she did. The conduct was not wilful.

[26] I find that the Commission has proven that there was misconduct, for the reasons that follow.

[27] The evidence is clear that the Appellant did take money from her colleague's purse. As well, the employer clearly stated that such an action has broken the trust between the employer and the employee, and there is no going back. There are no assurances that it would not happen again.

[28] The Appellant states that her conduct was not wilful; she does not know what made her do it. I find that while this is probably true from the Appellant's point of view, it is conduct so reckless as to be considered wilful.⁷ This is conduct that caused the employment contract to be broken. This is what makes it misconduct under the Act.

[29] I acknowledge that the Appellant is remorseful and understands that what she did is wrong. I sympathize with her situation. However, I cannot change the law.

So, did the Appellant lose her job because of misconduct?

[30] Based on my findings above, I find that the Appellant lost her job because of misconduct.

⁷ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

Conclusion

[31] The Commission has proven that the Appellant lost her job because of misconduct. Because of this, the Appellant is disqualified from receiving EI benefits.

[32] This means that the appeal is dismissed.

Sylvie Charron

Member, General Division – Employment Insurance Section