



[TRANSLATION]

Citation: *NL v Canada Employment Insurance Commission*, 2023 SST 231

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

Decision

Appellant: N. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (0) dated November 25, 2022
(issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: Teleconference

Hearing date: February 16, 2023

Hearing participant: Appellant

Decision date: February 17, 2023

File number: GE-22-3799

Decision

[1] The appeal is allowed.

[2] The Canada Employment Insurance Commission (Commission) hasn't proven that the Appellant stopped working because of misconduct (in other words, it hasn't proven that the Appellant acted as the employer says she did). This means that the Appellant isn't disqualified from receiving Employment Insurance (EI) benefits.¹

Overview

[3] The Appellant was an administrative officer working in the medical archives at the X integrated health and social services centre (CISSS). The employer suspended her on December 15, 2021, and then let her go on February 11, 2022, for breaching confidentiality. After an internal investigation, the employer accused the Appellant of accessing her mother's medical records without permission.

[4] The Commission accepted the employer's reason for the suspension and dismissal. It decided that the Appellant stopped working because of misconduct. Because of this, the Commission decided that the Appellant is disqualified from receiving EI benefits.

[5] The Appellant disagrees with the Commission's decision. She says that she didn't commit misconduct and that she didn't access her mother's medical records. She says that the employer hasn't given her any proof of its allegations against her and that the person who conducted the internal investigation doesn't understand how the system works.

[6] I have to determine whether the Appellant was suspended and then let go because of misconduct.

¹ Sections 30 and 31 of the *Employment Insurance Act* say that a claimant who stops working because of their misconduct isn't entitled to receive Employment Insurance (EI) benefits.

Issues

[7] Did the Appellant access her mother's medical records without permission?

[8] If so, does this amount to misconduct?

Analysis

[9] 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 whether the Appellant committed the acts attributed to her. Then, I have to determine whether the *Employment Insurance Act* (Act) considers that reason to be misconduct.

Did the Appellant access her mother's medical records without permission?

[10] I find that the employer suspended the Appellant and let her go because it believes that she accessed her mother's medical records without permission. But, in my view, the evidence doesn't support that the Appellant acted as the employer says she did, for the reasons that follow.

[11] The Commission says that the Appellant was told about the confidentiality requirements and knew there might be consequences if she didn't follow the employer's directions. It argues that she likely accessed her mother's medical records, given that she knew privileged information about her mother's file. It says that the Appellant acted as the employer says she did.

[12] The Appellant testified that she had had a new boss for about two years. Despite usually doing different tasks in rotation, she systematically focused on database-related tasks after the new supervisor took over.

[13] When she testified, she explained that, at the time, she was going through a family conflict over the care of her sick mother. She says that her brother lives with her mother and didn't want her to move back in because she was sick. According to the Appellant, out of anger, he filed a complaint against her with a social worker who looks

after her mother. He was convinced that the Appellant had influenced the hospital's decision to discharge her mother. Since the Appellant had some information about her mother's medical file, the social worker who met with her had concerns related to her brother's allegations, and the Appellant's boss at the CISSS was informed of the situation.

[14] On December 15, 2021, the Appellant was suspended. She was asked to attend a meeting on December 23, 2021, and she was told that an internal investigation was underway.

[15] The Commission contacted the employer's head of labour relations, who explained that she conducted the internal investigation that led to the Appellant's dismissal. She said that concerns were raised and that anomalies were noted. Apparently, the investigation found that, between 2014 and 2021, the Appellant's user ID had been used 27 times to access her mother's records without permission. She then told a Commission employee that there was no investigation report but that all the details were in the dismissal letter.²

[16] At the hearing, the Appellant said that the person in charge of the investigation contacted her several times. She mentioned having to explain in detail how the databases worked because she didn't fully understand how they worked or what their purpose was.

[17] Despite the Appellant's explanations, after the investigation, the employer concluded that the Appellant had accessed her father's medical records as well as her mother's medical records 27 times between 2014 and 2021. On February 11, 2022, the Appellant was let go.

[18] At the hearing, the Appellant said that she knew the procedure and knew she needed the archivist's permission to access records. She also provided an example of a record access [request] she had submitted for her father's medical records.³ She says

² GD3-26 to GD3-28.

³ GD2-10.

that she contacted the employer to object to the outcome of the internal investigation. In light of her explanations, the employer told her that it was withdrawing its allegations about accessing her father's records without permission, but not its allegations about accessing her mother's medical records.

[19] The Appellant has filed a grievance and is challenging her dismissal before another tribunal. In addition, there is a letter in the record from her union representative indicating that the union supports the Appellant and believes in her case.

[20] At the hearing, the Appellant explained in detail the procedure for accessing medical records. She said that she had to use an authorization code personally assigned to her to identify her and that her code appeared whenever she accessed records.

[21] The Appellant says that she searches for a user using their health card number or date of birth. When a date of birth is entered, the records of all users with that date of birth are displayed. All the records are then marked as accessed. So, her code appeared 27 times from 2014 onward because she had entered her mother's date of birth. But, she argues that she never looked at her mother's records and that the employer can verify that.

[22] When she was let go, the Appellant asked the employer for such proof—proof that she actually accessed her mother's records, not just of a search using her mother's date of birth. She says that the employer hasn't been able to give her proof.

[23] As she told the Commission in April 2022, the Appellant says that she didn't act as the employer says she did, and she argues that the person in charge of the investigation concluded as she did because she was unfamiliar with the access procedure.

[24] I understand that the matter is before another tribunal. But, under the Act, before even determining whether her actions amount to misconduct, I have to find that it is

more likely than not that the Appellant accessed her mother's medical records as the employer says.

[25] The Appellant's testimony seemed credible to me. She gave detailed explanations of how to consult databases, and they were plausible, especially since she works in medical archives and accesses many records every day. On this point, the employer wasn't there to argue its position. And, in deciding this issue, I have to consider that it hasn't complied with the Appellant's request for proof that she specifically accessed her mother's medical records rather than a record using a date of birth, which is what her work boils down to. I have to decide this issue on the facts in the record and on a balance of probabilities.

[26] So, I place the most weight on the fact that there is no evidence in the record that the Appellant actually accessed her mother's medical records.

[27] Moreover, I find that the Appellant's union supports her case. Even though this support doesn't guarantee an outcome, the fact is that the Appellant raised important points at the hearing, and her concerns need to be addressed given the significant impact the outcome of the investigation has had on her personal and professional lives.

[28] Given the evidence before the Tribunal, I find that the Appellant didn't act as the employer says she did. Because of this, I don't have to look at the next criterion.

Conclusion

[29] The Commission hasn't proven that the Appellant acted as the employer says she did. So, the Appellant didn't stop working because of misconduct.

[30] This means that the appeal is allowed.

Josée Langlois

Member, General Division – Employment Insurance Section