



[TRANSLATION]

Citation: *SC v Canada Employment Insurance Commission*, 2023 SST 398

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

## Decision

**Appellant:** S. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (542393) dated October 19, 2022 (issued by Service Canada)

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**Tribunal member:** Josée Langlois

**Type of hearing:** In person

**Hearing date:** April 11, 2023

**Hearing participant:** Appellant

**Decision date:** April 12, 2023

**File number:** GE-22-3842

## Decision

[1] The appeal is dismissed.

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

## Overview

[3] The Appellant lost his job. He says that on May 13, 2022, he made an unacceptable comment to his boss after drinking excessively during a conference abroad.<sup>2</sup> His employer said that he was let go because he made an inappropriate comment to his boss in the presence of three managers. Since he was on probation, he was fired on the spot.

[4] The Commission accepted the employer's reason for the dismissal. It decided that the Appellant lost his job 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. He admits making an unacceptable comment but says that this happened during a conference, not at his usual workplace. He says that he had been drinking and that he said more than he intended. He argues that he didn't expect to be let go because of that.

[6] I have to determine whether the Appellant stopped working because of misconduct and whether he can get EI benefits.

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<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.

<sup>2</sup> GD3-7.

## Issue

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

## Analysis

[8] To answer the question of whether the Appellant lost his job because of misconduct, I have to decide two things. First, I have to determine why the Appellant lost his job. Then, I have to determine whether the *Employment Insurance Act* (Act) considers that reason to be misconduct.

### Why did the Appellant lose his job?

[9] I find that the Appellant lost his job because he made an offensive comment to his manager. I don't have to reproduce his exact words in this decision. They can be found in the file, and the nature of the insult is clear.<sup>3</sup>

[10] The director of human resources (HR) at the employer said that the Appellant made the unacceptable comment to his boss in the presence of three managers.

[11] The Appellant admits that this happened.

[12] The Appellant and the Commission agree on why the Appellant lost his job.

[13] I find that the Appellant stopped working because he made an offensive comment to his manager. He acted as the employer says he did.

### Is the reason for the Appellant's dismissal misconduct under the Act?

[14] The reason for the Appellant's dismissal is misconduct under the Act. A worker who is let go because of misconduct can't receive EI benefits.

[15] To be misconduct under the Act, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>4</sup> Misconduct also includes

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<sup>3</sup> GD3-16.

<sup>4</sup> See *Mishibinijima v Attorney General of Canada*, 2007 FCA 36.

conduct that is so reckless that it is almost wilful.<sup>5</sup> The Appellant 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 Act.<sup>6</sup>

[16] There is misconduct if the Appellant 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 let go because of that.<sup>7</sup>

[17] The Commission has to prove that the Appellant lost his 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 his job because of misconduct.<sup>8</sup>

[18] The Appellant admits making an unacceptable comment to his boss in his presence. He says that he questioned his boss's expertise.<sup>9</sup> He explains that he regrets his comment and that he said more than he intended.

[19] The Appellant argues that he had been drinking and wasn't at work, so the incident should not be considered misconduct. On this point, he was in Arizona for a conference. He says that he spent the day in the sun, that he drank alcohol provided by the employer, and that the discussion went south. But, he argues that he wasn't the only one drinking when this happened; his boss and all the other employees present were drinking too.

[20] The Appellant explains that he gave his opinion on how to handle files, arguing that there should be a daily meeting of about 15 minutes. He admits that after his boss replied, he questioned his boss's expertise and made an offensive comment. But, he argues that the tone he used doesn't amount to misconduct. He explains that he meant to say, [translation] "Come on, that makes no sense." He was in the presence of not

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<sup>5</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>6</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>7</sup> See *Mishibinijima v Attorney General of Canada*, 2007 FCA 36.

<sup>8</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

<sup>9</sup> GD3-17.

only his boss but also the general manager. He says his boss fired him on the spot, not giving him a second chance to redeem himself, and he asked him to hand over his company laptop and cell phone. He says that he was surprised to be let go because of that.

[21] The Appellant says that the day after the incident, he did everything he could to keep his job. He apologized to the manager and assured him that he would not behave that way again. But, the boss didn't change his mind. The Appellant says that dismissal was too harsh a measure and that the employer didn't issue him a progressive discipline notice before letting him go.

[22] According to the director of HR at the employer, the Appellant was new and had read the employer's conduct and alcohol policy. She said that he would probably still have his job if it hadn't been for his unacceptable comment.

[23] On July 7, 2022, the general manager told the Commission that the Appellant behaved inappropriately at a cocktail party. He said that everyone was surprised when he insulted his boss. Given the nature of the insult, he was fired on the spot.<sup>10</sup>

[24] The Commission argues that the fact that he made an offensive comment to his boss amounts to misconduct under the Act, since this behaviour is the result of a wilful and reckless act on the Claimant's part.

[25] In the Commission's view, the Appellant knew straight away what effect his words would have, and he could assume that using offensive language would get him fired. The Commission says that all employees have to act with due regard in their dealings with others.

[26] I agree with the Commission. The Appellant's actions amount to misconduct under the Act for the following reasons.

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<sup>10</sup> GD3-19.

[27] To begin with, some qualification is necessary. First, the Appellant suggests that the fact that the incident took place on the eve of a conference and not at his usual workplace affects the seriousness of his actions. On this point, it was part of his duties to meet with colleagues and/or superiors in the context of a conference outside his usual workplace. This type of meeting was generally meant to improve his knowledge and professional network. He participated in this activity as part of his duties. He even explained that the company provided the alcohol to participants all day.

[28] At the hearing, the Appellant indicated that he had read the employer's conduct policy. So, respect and courtesy that are appropriate in the workplace are values that he could assume he had to uphold even while participating in the conference. The meaning of his words casts no doubt on his insult.

[29] The Appellant candidly said what he was thinking and questioned his manager's expertise in the general manager's presence.<sup>11</sup> Although he says he was too honest because he had been drinking, he had previously read the employer's conduct and alcohol policy. Comments about a co-worker or superior that are intended to undermine, discredit, or ridicule a colleague are reprehensible acts, even during a conference. Such an attitude is likely to create an unhealthy work environment.

[30] Even though the Appellant says that he didn't expect to be let go for giving his opinion to his superior, he had nevertheless read the company's conduct policy. While I understand that he made his comment spontaneously during an event that takes place sporadically or annually and that he regrets it, I note that to find misconduct, it isn't necessary that the incident take place at the person's usual workplace. Respect and courtesy are values to be upheld in any workplace, especially since the employer had a clear policy about this.

[31] The Appellant admits that he insulted his manager and that his comment discredited him. It is commendable that he regrets how things went and that he didn't intend to behave that way again. But, the general manager considered that the

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<sup>11</sup> GD3-17.

relationship of trust had been broken and, because the Appellant was still on probation, fired him on the spot. As I explained at the hearing, my role isn't to determine whether the dismissal was an appropriate measure in this case.

[32] The words the Appellant used with and said to his manager in front of other people and the general manager are insults. Even if he had been drinking, that doesn't make his actions any less wilful. It is true that the employer provided the alcoholic beverages, but the Appellant drank wilfully. Wilful drinking doesn't justify the comment he made.

[33] I accept the Appellant's admission that he was too honest. But, the facts show that he wasn't just honest—he insulted his boss and used offensive language. This language was meant to denigrate and discredit.

[34] In a workplace, an employee who insults another employee in front of their colleagues, or who adopts an attitude that is intended to discredit a colleague, has a reprehensible attitude. In the Appellant's specific case, he insulted his boss in front of the company's general manager. He considered his manager inexperienced and decided to speak his mind to him.

[35] Reacting to a situation or provocation is normal. This isn't about accepting everything or accepting the unacceptable. As the Appellant mentioned, the conduct policy—including the alcohol policy—applies to all employees. Expressing displeasure, disappointment, or disagreement is acceptable. But, what is in issue here is the way the Appellant went about expressing his displeasure or disappointment. Insulting your manager using foul and offensive language isn't acceptable. Discrediting a boss or colleague isn't acceptable. And I say this realizing that it wasn't a typical meeting.

[36] It may have surprised the Appellant that his boss didn't change his mind and maintained the dismissal. The Appellant had been told about the employer's policy, and while I understand that he regrets and is disappointed that he didn't get a second chance, my role isn't to determine whether the employer acted properly, whether the

dismissal was an appropriate measure, or whether the employer should have applied progressive discipline. That is for another forum to determine.

[37] In my view, the Appellant could assume that he could lose his job if he discredited his boss by insulting him with foul language. Even if he was somewhat disinhibited by alcohol, the offensive nature of his words is what amounts to misconduct, not the fact that he was too honest or more extraverted than usual. Such an attitude on his part amounts to misconduct under the Act.

[38] So, the Appellant says that apart from this incident, his boss was satisfied with his work and that he didn't commit professional misconduct. The misconduct in question is misconduct under the Act, and the fact that he made an offensive comment to discredit his boss amounts to misconduct under the Act. Even the Appellant mentioned that he had committed verbal misconduct when he made his claim for benefits.<sup>12</sup>

[39] The Appellant knew that he had to act respectfully. Even though he downplays things because of the conference that took place abroad, the fact is that he participated in that conference as part of his duties. It is more likely than not that he knew that he had to be respectful and that dismissal was a possibility if he had an offensive attitude.

[40] Although I understand the financial impact that the employer's decision may have had when it chose to fire him on the spot after this incident, I have to apply the Act in making my decision. After weighing all the statements, I find that the Appellant's actions amount to misconduct.

[41] The Appellant was disrespectful to his manager by making an offensive comment that was meant to denigrate him, and this act goes against the employer's rules. This wilful act on his part amounts to misconduct.

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<sup>12</sup> GD3-8.



**So, did the Appellant lose his job because of misconduct?**

[42] As I said, I don't have to determine whether the dismissal was an appropriate penalty. Instead, I have to determine whether the Appellant's actions amount to misconduct.

[43] Based on my findings above, I find that the Appellant lost his job because of misconduct. He acted as the employer says he did, and insulting his manager the way he did amounts to misconduct under the Act.

**Conclusion**

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

[45] This means that the appeal is dismissed.

Josée Langlois

Member, General Division – Employment Insurance Section