



[TRANSLATION]

Citation: *SS v Canada Employment Insurance Commission*, 2023 SST 913

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: S. S.
Appellant's witness: K. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (527936) dated
September 20, 2022 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: Videoconference
Hearing date: March 22, 2023
Hearing participants: Appellant
Appellant's witness

Decision date: April 24, 2023
File number: GE-22-3436

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Claimant lost his job. The Claimant's employer said that he was let go because he threatened two of his supervisors.

[4] The Claimant says that he didn't threaten his supervisors. He says he was trying to resolve his partner's situation. She wasn't getting the documents she needed for her preventive withdrawal, so she wasn't getting paid. The Claimant has described a number of situations that happened at his employer.

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

[6] The Claimant disagrees with this decision. He says that the employer was non-compliant in several areas, as shown by the labour standards complaint.

Issue

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

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

Analysis

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

Why did the Claimant lose his job?

[9] I find that the Claimant lost his job because he gave his employer an ultimatum.

[10] The Claimant and the Commission don't agree on why the Claimant lost his job. The Commission says that the reason the employer gave is the real reason for the dismissal. The employer told the Commission that the Claimant was let go for threatening his supervisors.

[11] The Claimant disagrees. He says that his employer wasn't giving his partner—who worked for the same employer—the documents she needed to benefit from her preventive withdrawal. He says that he didn't threaten his supervisors. He has described several ways in which his employer was non-compliant in terms of, among other things, pay, safety, equipment maintenance, and his tasks.

[12] I note that the Claimant initially told the Commission that he resigned with two weeks' notice.² He confirmed that he handed in his resignation via text message on February 17, 2022.³

[13] The Claimant sent a text message saying that he would quit and make a labour standards complaint if his partner didn't get the amount owing by 11 a.m. The employer responded by immediately terminating his employment.⁴

² See the Commission's Supplementary Record of Claim (GD3-15).

³ See the Claimant's November 15, 2022, email (GD10-1).

⁴ See the text messages (GD3-52).

[14] In the Claimant's view, it wasn't a threat. He says that he made several attempts to reach out to his employer.

[15] For the purposes of the *Employment Insurance Act (Act)*, loss of employment due to misconduct or voluntarily leaving without just cause requires the same analysis under section 30(1) of the Act to determine whether a claimant is disqualified from receiving benefits.⁵

[16] So, even though the Claimant says he handed in his resignation before being let go, the question remains the same: Is the Claimant disqualified from receiving EI benefits?

[17] I note that at the hearing, the Claimant felt that giving his employer two weeks' notice made a difference in terms of his decision to quit. For the purposes of the Act, that isn't the case. The Claimant initially told his employer that he was quitting, then the employer let him go. The issue before me is what caused the end of the employment relationship.

[18] Even though the Claimant is of the opinion that he didn't threaten his employer, I note that he gave it an ultimatum: If it didn't pay his partner by 11 a.m., he was going to quit. The choice to terminate his employment before he was able to work the full two-week notice period was up to the employer.

[19] I find that giving this ultimatum is what caused the end of the Claimant's employment.

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

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

⁵ The Court of Appeal made it clear that "dismissal for misconduct" and "voluntarily leaving without just cause" are two notions rationally linked together because they both refer to situations where loss of employment results from a deliberate action of the employee. In the end, since the legal issue is a disqualification under section 30(1) of the Act, the finding can be based on any of the two grounds for disqualification as long as it is supported by the evidence. See *Canada (Attorney General) v Easson*, 1994 FCA A-1598-92.

[21] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.⁶ Misconduct also includes conduct that is so reckless that it is almost wilful.⁷ The Claimant 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 law.⁸

[22] There is misconduct if the Claimant 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.⁹

[23] The Commission has to prove that the Claimant 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 Claimant lost his job because of misconduct.¹⁰

[24] The Commission says that there was misconduct because the Claimant sent his employer a text message demanding a deposit by 11 a.m., or else he would not show up for work anymore. So, he took the risk of terminating his employment as of 11 a.m. that very day if the employer didn't comply with this demand. When he made that choice, he knew that he wasn't going to go back to work if his employer didn't comply. If he wanted to leave his job, he could have waited until he had reasonable assurance of another job to replace the one he was putting at risk. In the Commission's view, he acted knowingly and deliberately jeopardized his continued employment. The Commission also found that his disrespectful conduct and the threats he made against his supervisors were acts of misconduct under the Act, so he should reasonably have known that he might lose his job if he talked to his supervisors that way. On February 17, 2022, he even announced he was quitting by giving the employer two

⁶ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

⁸ See *Attorney General of Canada v Secours*, A-352-94.

⁹ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹⁰ See *Minister of Employment and Immigration v Bartone*, A-369-88.

weeks' notice. He wanted to quit because of the pay errors and because his partner wasn't getting what she was owed.

[25] I agree with the Commission. Even though the Claimant says he didn't threaten his supervisors, he gave them an ultimatum. He had other avenues available to him if he and his partner weren't getting the amounts owing. He pursued those avenues after his employment ended.

[26] The Claimant has mentioned several instances where, in his view, his employer was non-compliant. But, I note that most of his allegations against his employer are related to the situation with his partner, who worked with him. In addition, there are other avenues to take when an employer is non-compliant both on a monetary level and in terms of safety. The Claimant went the labour standards route, and he went to the right place.¹¹

[27] I don't dispute that the Claimant's employer owed him money. The evidence shows that he wasn't paid for the weeks of February 7, 2022, and February 14, 2022, the weeks during which his employment was interrupted.¹² But, unlike his partner, he had received all the amounts owing before the events that led to his dismissal. He clearly explained that he was upset mainly because his partner was without an income given that the employer wasn't providing her with the documents she needed for her leave. But, even though it affected him directly, the situation was between the employer and another employee.

[28] The Claimant also says he thought he would use the two-week notice period to find a job. That is why he didn't look for another job before quitting. I can't interfere with the employer's decision to let him go before he had served the two-week notice period.

[29] This is because the Court has stated that "[t]he question submitted to the Board of Referees was not whether the employer was guilty of misconduct by dismissing the

¹¹ See the documents of the Commission des normes, de l'équité, de la santé et de la sécurité du travail [Quebec's labour standards commission] (CNESST) (GD13).

¹² See the CNESST claim breakdown (GD13-18).

applicant such that this would constitute unjust dismissal, but whether the applicant was guilty of misconduct and whether this misconduct resulted in his losing his employment.¹³

[30] I find that the Commission has proven that there was misconduct because it has shown that it was the Claimant who initiated the severance of the employment relationship. He handed in his resignation before being let go. He gave his employer an ultimatum so that his partner's situation could get resolved. The employer felt threatened and ended the employment relationship by immediately dismissing the Claimant.

[31] Despite his good reasons for doing so concerning his partner, the Claimant could not have been unaware that he was jeopardizing his employment relationship with the employer.¹⁴ He and his partner had other avenues available to them, such as filing a labour standards complaint, which he did after his employment ended.

So, did the Claimant lose his job because of misconduct?

[32] Based on my findings above, I find that the Claimant lost his job because of misconduct.

Conclusion

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

[34] This means that the appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section

¹³ See *Fleming v Canada (Attorney General)*, 2006 FCA 16.

¹⁴ The concept of "just cause" under section 29 of the Act isn't synonymous with "reason" or "cause." It isn't enough for the claimant to prove that they were reasonable in leaving their job. Reasonableness can amount to "good cause" without necessarily amounting to "just cause" within the meaning of the Act. See *Tanguay v Unemployment Insurance Commission*, FCA A-1458-84.