



[TRANSLATION]

Citation: *BC v Canada Employment Insurance Commission*, 2023 SST 1372

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

**Decision**

**Appellant:** B. C.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (570176) dated March 15,  
2023 (issued by Service Canada)

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**Tribunal member:** Manon Sauvé  
**Type of hearing:** In person  
**Hearing date:** June 6, 2023  
**Hearing participant:** Appellant  
**Decision date:** July 10, 2023  
**File number:** GE 23-1044

## Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) has proven that the Appellant lost his job because of misconduct, so the Appellant is disqualified from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] For several years, the Appellant worked as a designer for the employer.

[4] On September 24, 2021, the employer set up a mixed work schedule between working from home and being at the office. The Appellant has to work at the office on Monday, Tuesday, Wednesday, and Thursday, and from home on Friday.

[5] The employer says that the Appellant didn't go to work several times, saying he had back pain and mechanical problems with his car. At first, the employer gave him a warning to show up for work. It then suspended him for one day and then for three days. Finally, it let the Appellant go for his unauthorized absences.

[6] The Appellant applied for EI benefits. After an investigation, the Commission refused to pay him benefits because he lost his job because of misconduct. He must have known that, by being absent from work without authorization and just cause, he would be let go.

[7] The Appellant disagrees with the Commission's decision. He didn't know he was being let go for his absences. The employer knew that he had health problems and problems with his car. He was authorized to be absent.

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

## **Matter I have to consider first**

[8] On June 6, 2023, the Appellant sent the Tribunal an additional argument by email. I notified the Commission that it had until June 14, 2023, to respond. It didn't respond.

## **Issue**

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

## **Analysis**

[10] 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 law considers that reason to be misconduct.

## **Why did the Appellant lose his job?**

[11] I note that the Appellant worked as a designer for the employer for four years. In September 2021, the employer told the Appellant that he had to work at the office four days a week and one day from home.

[12] The Appellant didn't go to work because of back pain and car problems. He told his employer about the situation. He testified that he was authorized to be away from the office.

[13] The employer says that it tolerated the Appellant's absences until October 10, 2022. It asked him to go to the office on October 11, 2022, or there could be disciplinary action. He didn't go to the office and was suspended for one day. He then received a notice he was suspended for three days because he had still not gone to the office.

[14] The Appellant didn't go to the office. On October 21, 2022, the employer sent him a termination letter by mail and to his personal email.

[15] The Appellant acknowledges that the employer let him go for his absences, but he disagrees with the findings of the employer and the Commission about his misconduct.

[16] I find that the Appellant lost his job because he was away from the office without his employer's authorization.

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

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

[18] 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>5</sup>

[19] 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>6</sup>

[20] The Appellant says that, although the employer let him go because of his absences, that isn't misconduct. First, he got authorization from the supervisor to work from home. He had back pain and then his car had mechanical problems.

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<sup>2</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

<sup>4</sup> See *Attorney General v Secours*, A-352-94.

<sup>5</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

[21] I understand from the Appellant's testimony that he worked at the office on September 26 and 27, 2022. He was absent for two days because of his back pain. On October 3, 2022, his car had mechanical problems. He worked from home.

[22] On October 5, 2022, he got a warning to go to the office on October 11, 2022, or he would risk being let go. He understood that he was let go and didn't need to go to the office on October 11, 2022.

[23] He says that he was unaware that he was suspended from his job on October 14, 2022, because he didn't go to work.

[24] He told his employer by email that he could return to work after getting his car fixed. He didn't read the emails sent to his office address.

[25] The Appellant explains that he didn't open his emails as of October 11, 2021, because he felt that going to the office would result in him being let go for being absent.

[26] He received the termination letter on October 21, 2022. He applied for benefits on October 28, 2022.

[27] The Appellant disagrees with the date when he applied for EI benefits.

[28] After the hearing, the Appellant indicated that, according to DGD3-1, the initial claim began on October 9, 2022.

[29] It is true that the initial claim starts on October 9, 2022. But, the evidence on file indicates that the Appellant applied electronically at 12:40 p.m. on October 28, 2022.<sup>7</sup>

[30] The initial claim starts on October 9, 2022, because the last day the Appellant worked was October 11, 2022. He was let go on October 21, 2022, for absences from the office, but the interruption of earnings occurred on October 11, 2022. So, the period

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<sup>7</sup> GD3-14.

starts on the Sunday of the week when the interruption of earnings occurs, which is October 9, 2022.<sup>8</sup>

[31] The Appellant argues that the emails were modified by the employer. He says that he was authorized to work from his home. The supervisor later changed her mind.

[32] The Commission, on the other hand, says that the Appellant must have known or should have known that he would be let go because he stopped going to the office on October 11, 2022, without just cause. He had to go to the office or provide proof to justify his absences, which he didn't do. His action caused him to be let go.

[33] After reviewing the record, hearing the Appellant, and considering the parties' submissions, I am of the view that the Appellant's repeated absences constitute misconduct.

[34] I give little weight to the Appellant's testimony. His explanations are unrealistic and aren't supported by the evidence on file. He tends to speculate or second-guess motives or question what is on the record without justification. So, he claims that the employer changed the email exchanges between him and the employer. But the evidence doesn't show what he is claiming. An example of this is the date of the initial claim for benefits. For this reason, I responded to the Appellant's claims on this point.

[35] I am of the view that the evidence shows the Appellant didn't go to the office like his employer asked. If, like he claims, he didn't check the emails after October 11, 2022, because he knew he was being let go, then he knew the consequences of his action—he would be let go.

[36] He also said at the hearing that he hadn't opened his emails after October 11, 2022, and that he hadn't gone to the office, to avoid being let go. So, he deliberately

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<sup>8</sup> Section 10(1) of the *Employment Insurance Act*, says that, on the "[b]eginning of a benefit period," that "[a]

benefit period begins on the later of the Sunday of the week in which the interruption of earnings occurs, and the Sunday of the week in which the initial claim for benefits is made."

refused to go to the office and to open his emails. He knew the consequences of his action—being let go.

[37] I find that the Commission has proven that the Appellant's repeated absences constitute misconduct.

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

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

**Conclusion**

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

[40] This means that the appeal is dismissed.

Manon Sauvé

Member, General Division – Employment Insurance Section