



Citation: *KC v Canada Employment Insurance Commission*, 2023 SST 1378

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

## Decision

**Appellant:** K. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (570609) dated February 16, 2023 (issued by Service Canada)

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**Tribunal member:** Susan Stapleton

**Type of hearing:** Teleconference

**Hearing date:** June 20, 2023

**Hearing participant:** Appellant

**Decision date:** July 4, 2023

**File number:** GE-23-794

## 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 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 worked as a marketing manager for a car dealership, beginning in 2018. On September 6, 2022, he was dismissed from his job.

[4] The employer says that the Appellant was let go because he refused to sign an acknowledgement of company policies. It said there was disciplinary action involving the Appellant's conduct that brought about the need for him to sign the employer's policies and code of conduct.<sup>2</sup>

[5] Even though the Appellant doesn't dispute that this happened, he says that it isn't the real reason why the employer let him go. He says his employer dismissed him to save money. He says he had an argument with his boss, and his boss asked him to sign a warning letter and the employer's code of conduct policies. He refused to sign the letter, because he disagreed with what the letter said happened on the day of the argument. He refused to sign the policies, because they said he could be dismissed for actions outside of work. This made him think the employer was looking for a way to fire him without paying him severance. He had already signed and agreed to the employer's policies when he was hired, and he didn't believe that legally, he had to sign them again. He didn't sign them and was dismissed from his job.

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

<sup>2</sup> See GD3-47.

[6] 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.

## **Issue**

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

## **Analysis**

[8] The law says that you can't get EI benefits if you lose your job because of misconduct. If you are dismissed from your job because of misconduct, you are disqualified from receiving EI benefits.<sup>3</sup>

[9] 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?**

[10] I find that the Appellant lost his job because he refused to sign a warning letter<sup>4</sup> and the employer's "Attitude and Conduct"<sup>5</sup> and "Code of Conduct"<sup>6</sup> policies.

[11] The Appellant and the Commission don't agree on why the Appellant lost his job. The Commission says that the reason the employer gave is the real reason for the dismissal.

[12] The employer's receptionist told the Commission that the Appellant was dismissed because he refused to sign off on company policies, saying he wasn't

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<sup>3</sup> See section 30 of the *Act*.

<sup>4</sup> See GD2-11.

<sup>5</sup> See GD2-12.

<sup>6</sup> See GD2-13-14.

comfortable signing them. She said the Appellant knew that if he didn't sign off on the policies, he would be dismissed from his job.<sup>7</sup>

[13] The employer's Human Resources (HR) Generalist told the Commission the Appellant was dismissed for refusing to sign off on employer documents, which was a condition of his employment. He said it was standard practice to have employees sign off on documents periodically for various reasons, such as to remind employees of the policies, or if there were updates to policies. He said he wasn't aware of any situation that led to the Appellant having to sign the documents, or why he refused to sign them. He said the Appellant was given two warnings about signing the policies before he was dismissed, so he knew that not signing them could lead to his dismissal. He said he would look into it further and call the Commission with more information.<sup>8</sup>

[14] The Commission spoke to the employer's HR Generalist again. He said that there was disciplinary action involving the Appellant's professionalism and conduct, that brought about the need for him to sign the employer's policies and code of conduct. He said it was standard practice that any time disciplinary action had to be taken, the employee involved would need to re-sign any policies and parts of the employee handbook that would be specific to that action. He said that it was not the Appellant's behaviour leading to the disciplinary action that resulted in his dismissal, but rather his refusal to sign the documents. He said if the Appellant had signed the documents, he would not have been dismissed from his employment.<sup>9</sup>

[15] The employer wrote to the Appellant on August 29, 2022. In the letter, the employer referred to the argument the Appellant had with his boss. It said the Appellant had exhibited conduct within the workplace that was unacceptable, and that he didn't adhere to the company's expectations regarding attitude and conduct. It said that the Appellant had to review and sign off on its "Attitude and Conduct" and "Code of Conduct" policies by August 30, 2022. It said if the Appellant failed to improve his

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<sup>7</sup> See GD3-20.

<sup>8</sup> See GD3-46.

<sup>9</sup> See GD3-47.

performance/productivity and conduct, further corrective action may result, up to and including termination of his employment.<sup>10</sup>

[16] The employer wrote to the Appellant on September 1, 2022. It said the Appellant had until September 6, 2022 to sign the warning letter and policies. It said that sign off was a condition of his employment, and that refusing to sign the documents would result in a temporary unpaid suspension, or termination of his employment.<sup>11</sup>

[17] The employer wrote to the Appellant on September 6, 2022, and told him that his employment was terminated, because he refused to sign off on the documents.<sup>12</sup>

[18] The Appellant agrees that the “formal reason” for his dismissal was his refusal to sign the documents.<sup>13</sup> But he told the Commission he believes the real reason he lost his job is because his boss was embarrassed about the argument they had. He says his boss came into his office and yelled at him when he was talking with another employee during his lunch break. He says his boss realized he was over-reacting and apologized to him. The Appellant thought things were fine, but then two weeks after the argument, his boss told him he was being disciplined for being aggressive on the day of the argument. But the Appellant believes he was disciplined because his boss’s “ego had been shattered for having to apologize to him.” He said he knew that refusing to sign the documents could lead to him being dismissed from his job.<sup>14</sup>

[19] The Appellant provided the following testimony:

- He had never been disciplined at work before, and had never been asked to sign company policies, other than when he was hired.
- On the day of the argument with his boss, his boss came in to his office and yelled at him. When his boss criticized people who work from home, the Appellant pointed out that it wasn’t appropriate for him to criticize working from

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<sup>10</sup> See GD2-11.

<sup>11</sup> See GD2-15.

<sup>12</sup> See GD2-16.

<sup>13</sup> See GD3-9.

<sup>14</sup> See GD3-27.

home, because he himself had travelled to Africa for a few months and worked from there. His boss then relented and apologized to him. He also apologized to his boss, and they shook hands.

- For two weeks after the argument, he thought everything was fine. He went to work each day with no issues.
- His boss approached him two weeks after the argument, and said he was giving him a warning for inappropriate behaviour on the day of the argument. His boss asked him to sign a warning letter and some company policies about conduct in the workplace. His boss also told him he could no longer work from home, which he had been doing since he started working for the employer, and which was provided for in his contract.
- The warning letter said the Appellant had exhibited unacceptable conduct on the day of the argument. But he didn't yell or swear that day. His boss was doing the yelling. He was confused and hurt by the letter, because a week or two had gone by, and he thought things were fine.
- He told his boss he wasn't comfortable signing the documents, because the letter didn't accurately reflect what happened, and the policies said he could be fired for things unrelated to work that the employer felt could compromise the integrity of the company. The Appellant felt that this meant the employer could fire him for anything, for example who he voted for.
- He told his boss if the employer changed the language in the policy, he would sign it. His boss told him he didn't have to agree with the letter and the policies, but he had to sign to acknowledge that he had read them. The Appellant didn't sign the documents.
- His boss called him on August 31, 2022, and told him that he was suspended effectively immediately, and that if he didn't sign the documents, he would be fired. The Appellant asked his boss to send him this warning in writing, which he

did. He was suspended with pay, but took vacation days so the employer couldn't say he wasn't working.

- He was given a letter on September 6, 2022, advising him that his employment was terminated.
- The employer fired him for not signing the warning letter and company policies, after he had been given a verbal warning about inappropriate conduct in the workplace.
- He didn't think his employer would go through with firing him, because he didn't think they could legally fire him when he hadn't done anything wrong. He says that verbally, his boss kept threatening him with an unpaid suspension, so he was surprised when he was terminated.

[20] I find that the Appellant was dismissed because he refused to sign the warning letter and policies that the employer asked him to sign. This is supported by:

- The timing of the Appellant's dismissal. His boss told him in a phone call on August 31, 2022 that he would be fired if he didn't sign the documents. The employer followed up that warning with a letter on September 1, 2022, which said that the Appellant could be suspended or dismissed if he didn't sign the documents by September 6, 2022. The Appellant was then dismissed on September 6, 2022, when he didn't sign the documents.
- The employer's warnings. The employer warned the Appellant, verbally and in writing, that refusing to sign the documents could affect his employment status. The employer told the Commission that the Appellant would not have been dismissed if he had signed the documents.
- The termination letter. The employer stated in the letter that the Appellant was terminated because he refused to sign the documents.

[21] I find that the evidence supports that the employer asked the Appellant to sign off on a warning letter and company policies. The Appellant refused to sign the documents, and was dismissed from his job as a result.

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

[22] I find that the reason for the Appellant's dismissal is misconduct under the law. This is because he understood his actions and knew that the employer might dismiss him if he refused to sign the documents it asked him to sign.

[23] The Act doesn't say what misconduct means. But case law (decisions from courts and tribunals) shows us how to determine whether the Appellant's dismissal is misconduct under the Act. It sets out the legal test for misconduct—the questions and criteria to consider when examining the issue of misconduct.

[24] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>15</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>16</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>17</sup>

[25] 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>18</sup>

[26] I only have the power to decide questions under the Act. I can't make any decisions about whether the Appellant has other options under other laws. And it isn't for me to decide whether his employer wrongfully let him go.<sup>19</sup> I can consider only one thing: whether what the Appellant did or failed to do is misconduct under the Act.

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<sup>15</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>16</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>17</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>18</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>19</sup> See *Canada (Attorney General) v McNamara*, 2007 FCA 107.



[27] 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>20</sup>

[28] The Commission says that there was misconduct because:

- The Appellant's contract of employment says that the Appellant must comply with the policies, and that they are subject to change. The Appellant knew that the employer's policies could change and that he would have to comply with them.
- The Appellant was aware that if he failed to sign the company policies, it would lead to his dismissal.
- The Appellant made a conscious choice to refuse to sign the policies.
- The Appellant lost his job due to his refusal to sign company policies and his dismissal would not have taken place otherwise.<sup>21</sup>

[29] The Appellant says that there was no misconduct because:

- The employer illegally dismissed him to save money.
- He was disciplined because his boss's "ego had been shattered for having to apologize to him" when they had the argument.
- The warning letter from the employer didn't accurately portray what happened on the day of the argument he had with his boss.
- The employer tried to force him to sign a new document saying "anything you say outside of work that doesn't fit into the views of (the employer) is cause for being fired for cause."

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<sup>20</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

<sup>21</sup> See GD4-3-4.

- He signed the employee handbook when he was hired, and to sign anything else was redundant and not part of his job.
- He didn't think the employer could legally fire him, because he didn't do anything wrong.

[30] I find that the Commission has proven that there was misconduct, because:

- The Appellant was aware that the employer required him to sign the warning letter and policies acknowledging them. He chose not to sign the documents. This means that he made a deliberate choice not to acknowledge the documents.
- The employer told the Appellant that if he didn't acknowledge the documents, he would be suspended or let go from his job. This would mean that he couldn't carry out his job duties.
- The Appellant agreed that he understood that the employer would suspend him or let him go if he didn't acknowledge the documents. This means that he knew, or should have known, that there was a real possibility that he could be let go.
- The Appellant's refusal to sign the documents was the reason that he lost his job.

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

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

### **Conclusion**

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

[33] This means that the appeal is dismissed.

Susan Stapleton  
Member, General Division – Employment Insurance Section