



Citation: *MZ v Canada Employment Insurance Commission*, 2023 SST 1473

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

Decision

Appellant: M. Z.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (580942) dated April 25, 2023 (issued by Service Canada)

Tribunal member: Glenn Betteridge

Type of hearing: In writing

Decision date: August 3, 2023

File number: GE-23-1227

Decision

[1] M. Z. is the Appellant in this appeal. I am dismissing her appeal.

[2] The Canada Employment Insurance Commission (Commission) has proven she lost her job because of misconduct. In other words, she did something that caused her to lose her job.

[3] So she can't get Employment Insurance (EI) benefits.

Overview

[4] The Appellant lost her job at a hospital (employer).

[5] Her employer says she abandoned her job. She didn't give it medical documentation to support her absences, which she says were for health reasons.

[6] The Commission accepted the employer's reasons. It decided the Appellant voluntarily left (quit) her job without just cause under the *Employment Insurance Act* (EI Act). So the Commission didn't pay her EI benefits.

[7] The Appellant says she didn't quit her job. She says her employer told her not to come to work because she was having symptoms. And she couldn't get a doctor's note since she could not go to the doctor because of her symptoms.

[8] The Appellant chose to have her appeal hearing in writing. So I made this decision based on the documents in the appeal file.¹

¹ These documents are GD2 (Appellant's appeal notice), GD3 (Commission's reconsideration file), GD4 (Commission's representations); GD6, 7 and 8 (Appellant's additional documents), and GD7 (Commission's supplementary representations).

Issue

[9] I have to decide whether the Appellant is disqualified from getting EI benefits because she voluntarily left (quit) her job **or** because she lost her job because of misconduct.

Analysis

I can decide the appeal under voluntary leaving or misconduct

[10] The law says you can't get EI benefits if you lose your job because of misconduct **or** if you voluntarily leave your job without just cause.²

[11] The Commission has said two things. In its decision letters, it said the Appellant voluntarily left her job without just cause.³ In its submissions to the Tribunal, it said she lost her job because of her misconduct.⁴

[12] Voluntary leaving **and** misconduct are dealt with in the same section of the law. So I can apply either one when I decide whether the Appellant can get EI benefits.⁵

[13] The first thing I have to decide is why the Appellant's job ended. In other words, did she voluntarily leave (quit) or did her employer dismiss her?

The Appellant was dismissed, she didn't quit

[14] I find that the employer dismissed the Appellant.

[15] In its submissions at the Tribunal, the Commission changed the reason for disentitlement to misconduct.⁶

² See section 30(1) of the EI Act. It says a person is **disqualified from receiving any benefits** if they **lost their employment because of their misconduct** or **voluntarily left their employment without just cause**.

³ See the Commission's original decision letter, at GD3-38, and its reconsideration decision letter, at GD3-51.

⁴ See GD4-3.

⁵ See *Canada (Attorney General) v Easson*, A-1598-92 (FCA), and *Canada (Attorney General) v Desson*, 2004 FCA 303.

⁶ See GD4-3.

[16] The Appellant says she didn't voluntarily leave her job. She consistently said her employer fired her.⁷

[17] Her employer says the Appellant abandoned her job when she didn't come to work for health reasons and didn't justify her absences with medical documentation.⁸ On the record of employment her employer marked "quit" (code E).⁹ But the employer contradicts itself. In the comments section of the record it wrote, "Employee was on EI sick leave but never return and now EE is **terminated** effective June 16, 2022." [I added the bold.]

[18] I prefer the Appellant's evidence and the Commission's evidence and argument to what the employer says. The Commission and the Appellant agree that her employer dismissed her. I don't accept the employer's evidence shows she quit, for three reasons. First, the employer's evidence isn't consistent. It gives two reasons (quit and terminated) on the record of employment. Second, "abandonment" is almost certainly the term the employer uses in its policy, the Appellant's contract, or the collective agreement.¹⁰ So that's how it understands the Appellant's circumstances. But my job is to decide this appeal under the EI Act by looking at all the facts. I don't have to accept the employer's characterization. Third, the overwhelming weight of the evidence I have accepted shows me the employer—not the Appellant—took the initiative to end the employment relationship.

[19] Based on the evidence I have accepted I find the Commission has shown the employer dismissed the Appellant. She didn't voluntarily leave (quit).

⁷ This is what she said in her EI application (at GD3-8), her calls with the Commission (at GD3-26 and GD3-49), her reconsideration request (at GD3-40), and her appeal (at GD2-6). She also writes this in emails she sent to her employer, at GD3-44 to GD3-47.

⁸ See GD3-50.

⁹ See GD3-20.

¹⁰ In its letter to the Appellant, the employer refers to its "Health Absence Management and Accommodation Policy", at GD3-30.

[20] This means I now have to consider whether the reason the employer dismissed the Appellant counts as misconduct under the EI Act. To do this I have to decide two things:

- the reason the employer dismissed the Appellant
- whether that reason is misconduct

The reason the employer dismissed the Appellant

[21] The Commission says the employer dismissed the Appellant because she didn't give medical documents to support her ongoing absence from work.¹¹ The employer's evidence supports this reason.

[22] On her EI application, the Appellant says her employer didn't tell her why she was dismissed.¹² But she told the Commission her employer fired her because she could not get the doctor's notes her employer said she had to get.¹³

[23] I prefer what the Appellant told the Commission to the box she ticked on her EI Application. The notes of her calls with the Commission show me she knew the reason her employer dismissed her—for not providing medical notes. And the check boxes on the EI form don't have this as an option.

[24] So the Commission and the Appellant agree on the reason her employer dismissed her. And the employer's evidence supports this reason. I have no reason to doubt what the Appellant and the Commission say about the reason, or what the employer said to the Commission or wrote to the Appellant. And there is no credible and reliable evidence that goes against that.

¹¹ See GD4-3.

¹² See GD3-10.

¹³ See the Commission's notes of its calls with the Appellant at GD3-26 and GD3-50.

[25] Based on the evidence I have accepted, I find the employer dismissed the Appellant because she didn't give it medical documents to support her absence from work.

That reason is misconduct under the EI Act

[26] The reason the employer dismissed the Appellant is misconduct under the law.

– The law about misconduct

[27] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.¹⁴ Misconduct also includes conduct that is so reckless that it is almost wilful.¹⁵ The Appellant doesn't have to have wrongful intent (in other words, she doesn't have to mean to be doing something wrong) for her behaviour to be misconduct under the law.¹⁶

[28] There is misconduct if the Appellant **knew or should have known** that her conduct could **get in the way of carrying out her duties toward her employer** and that there was a **real possibility of being let go** because of that.¹⁷

[29] The Commission has to prove that the Appellant lost her 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 her job because of misconduct.¹⁸

[30] The role of the Tribunal isn't to determine whether the employer's decision to dismiss an appellant was reasonable, justified, or the appropriate sanction.¹⁹

¹⁴ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹⁵ See *McKay-Eden v Her Majesty the Queen*, A-402-96 (FCA).

¹⁶ See *Attorney General of Canada v Secours*, A-352-94 (FCA).

¹⁷ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹⁸ See *Minister of Employment and Immigration v Bartone*, A-369-88 (FCA).

¹⁹ See *Canada (Attorney General) v Caul*, 2006 FCA 251; *Canada (Attorney General) v Marion*, 2002 FCA 185.

– **What the Commission and the Appellant say**

[31] The Commission says the Appellant’s employer asked her for medical documentation to support her absence from work.²⁰ It gave her a deadline to that. It told her that if she didn’t, it would decide she abandoned her job. And it did all this in writing. She didn’t give medical documentation to her employer—which was deliberate. And it dismissed her because of that.

[32] The Commission didn’t accept her explanation that she could no go to the doctor because she had symptoms. She went to the doctor and got a note shortly after her employer dismissed her. It also says there is no evidence that shows she attempted to comply with her employer’s request before she lost her job.

[33] So the Commission says the Appellant engaged in misconduct by not complying with her employer’s request for medical documentation.

[34] The Appellant says her employer told her to stay home because she was ill.²¹ She says she kept getting sick with COVID symptoms. Then she was pregnant, but her pregnancy tests came back negative. She applied for maternity leave from work anyway.

[35] The Appellant acknowledges her employer asked her for medical documentation. She told the Commission her employer was requesting a medical “every two weeks.” She couldn’t go to the doctor to get a note because she had nausea, vomiting, diarrhea, and couldn’t get out of bed. She says she can’t get prenatal classes because they all ask for a positive test result. She says no one seems to believe what she says.

[36] The Commission and the Appellant agree her last day of work was in mid-November 2021. Her employer dismissed her effective June 15, 2022. And she didn’t go to work between those two dates.

²⁰ See GD4-3 and GD4-4 for the Commission’s position.

²¹ See GD2-6.

[37] The employer’s letter to the Appellant—which she received because she sent it to the Commission—is dated June 8, 2022. It says:

- the employer also sent letters to the Appellant, dated May 4 and May 27, 2022
- she has been absent from work since November 15, 2021
- on May 4 the Appellant emailed her employer saying she was pregnant and had applied for a maternity leave
- her employer told her to apply for maternity leave she had to complete a form and give it a medical certificate
- the Appellant returned the form, but didn’t send a medical certificate
- the employer informed her the medical absence was “unsupported” and gave her another opportunity to give the medical certificate, by June 3
- her employer had not received the medical certificate by June 8
- if the Appellant didn’t contact the employer and give a medical certificate by June 15, the employer would accept this as an indication she had voluntarily resigned and/or abandoned her job

[38] There is one doctor’s note in the appeal file.²² It’s dated July 18, 2022—about one month after the employer dismissed the Appellant. It says nothing about fitness to work or return to work. It doesn’t explain why the Appellant has been absent from work. And its doesn’t say why the Appellant didn’t see the doctor earlier on. It only confirms the Appellant is under the doctor’s care and is, “currently being followed and investigated for medical issues.”

²² See the letter at GD3-22.

– **That reason is misconduct under the EI Act**

[39] The Appellant's conduct is misconduct under the EI Act.

[40] I accept the Commission's evidence, the doctor's note, and what the employer's letter says. I have no reason to doubt any of this evidence. There are no contradictions is. And when I look at it together, the sequence of events makes sense in the circumstances.

[41] I don't accept the Appellant's evidence that her employer told her not to come to work because of symptoms. Her employer's letter directly contradicts this. And I prefer her employer's letter because it is detailed and credible. The Appellant's belief that she is pregnant, where there is no evidence of this, causes me to doubt her evidence on this point.

[42] I accept her evidence that she didn't give her employer medical documentation by the deadline. Her employer's letter supports this. But I don't accept her evidence that she wasn't able to go to a doctor to get a note because of her symptoms. For the reason I gave in the paragraph before this one, I doubt her evidence about this.

[43] Based on the evidence I have accepted, I find the Commission has shown the Appellant:

- was away from work for a prolonged period of time, which she said was because of health issues
- her employer asked her multiple times in writing for medical documentation to support her absence from work
- the Appellant had an obligation to give this documentation under the employer's policy and because her employer asked her for it
- her employer informed her that if she didn't give it the medical documentation by June 15, 2022, her employment would end—so she knew she could lose her job

- she didn't give the employer the medical documentation it asked for
- her employer dismissed her because of this
- her refusal to comply with her employer's policy and request was wilful (conscious, deliberate, or intentional)

[44] So I find the Commission has proven the Appellant's failure to give her employer medical documents to support her absence from work is misconduct under the EI Act.

Conclusion

[45] The Commission has proven the Appellant lost her job for a reason the EI Act considers to be misconduct.

[46] This means she can't get EI benefits.

[47] So I am dismissing her appeal.

Glenn Betteridge
Member, General Division – Employment Insurance Section