Citation: *BG v Canada Employment Insurance Commission*, 2023 SST 1770

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: B. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (561415) dated January 6, 2023 (issued by Service Canada)

Tribunal member: Greg Skelly

Type of hearing: In person
Hearing date: June 26, 2023
Hearing participants: Appellant
Decision date: July 3, 2023
File number: GE-23-297

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 her job because of misconduct (in other words, because she did something that caused her to lose her job). This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.[1]

Overview

[3] The Appellant lost her job as a caretaker for an apartment block. The Appellant's employer said that she was let go because there were multiple complaints from tenants and others about the Appellant. The employer said that they met with the Appellant to give her a final warning and after that, the Appellant would not allow a contractor into the building which led to a delay in getting work completed.

[4] The Appellant says that she does not know why she was fired. Even though the Appellant doesn't dispute that she refused to allow a contractor access to the building, she says that it isn't the real reason why the employer let her go.

[5] The Appellant says that she doesn't know why she was fired. And she does not have a signed warning notice and did not discuss the complaints with her employer. She says that the law says an employee must sign and discuss issues with the employer.[2]

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

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[1] Section 30 of the *Employment Insurance Act* says that claimants who lose their job because of misconduct are disqualified from receiving benefits.
[2] See GD2-5.

Issue

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

Analysis

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

Why did the Appellant lose her job?

[9] I find that the Appellant lost her job because she would not allow a contractor into the apartment block where she was caretaking.

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

[11] The employer told the Commission that after multiple complaints by tenants and others about the Appellant's behaviour and warnings from the employer, the Appellant refused access to a contractor which caused delays in fixing the heating to multiple units in the apartment block.[3]

[12] The Appellant partially agrees. The Appellant said in testimony she was aware of complaints from tenants about her. She said her manager did not support her and that she was always blamed.

[13] The Appellant also said in testimony that the contractor already had keys and did not need her assistance and that one of their staff had touched her inappropriately in the past. She said she told her employer, and they did not take action. She said that she did not contact the police as she feared for her job.

[3] See GD3-42.

[14] I find that the Appellant was dismissed from her employment for failing to allow a contractor access to the apartment block where she was the caretaker.

[15] I make this finding as this is what the contractor says in his letter to the employers,[4] this is what the employer told the Commission,[5] and this is what the Appellant said at the hearing.

[16] The Appellant could have notified her employer that she was uncomfortable with the presence of the contractor or made arrangements to have someone else deal with him but chose not to.

[17] While the Appellant believes that the dismissal was not justified, she does agree that she did not allow the contractor access to the building.

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

[18] The reason for the Appellant's dismissal is misconduct under the law.

[19] 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 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.[8]

[20] 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.[9]

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[4] See GD3-24.
[5] See GD3-42.
[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.

[21] 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.[10]

[22] The Commission says that there was misconduct because there were numerous complaints from tenants and others about the Appellant's behaviours. And that she had been warned if the complaints continues that she would be let go.[11]

[23] A complaint dated May 8, 2020, from a tenant says that the Appellant was bullying tenants and that she is going to stay on as caretaker to make them miserable.[12]

[24] An undated complaint saying the caretaker told a tenant that she likes to antagonize tenants, that there is bullying in the building as well as gossiping.[13]

[25] A complaint dated August 16, 2021, in which a tenant accuses the Appellant of saying that there are rent increases because there are "Indians" in a building; that she uses her dog to aggravate other dogs in the building; that conditions are dirty and that the Appellant as caretaker is hard to get a hold of.[14]

[26] A complaint dated November 24, 2021, from New Directions (social service agency) saying they wished to lay a formal complaint about the Appellant asking questions of their staff about some tenants; breaching confidentiality; complaining to agency staff about tenants; maintenance issues being ignored and the Appellant not making tenants feel welcomed.[15]

[27] A complaint dated February 5, 2022, from a tenant about a dryer not fixed and that the tenant can't contact the Appellant as she blocked her number.[16]

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[10] See *Minister of Employment and Immigration v Bartone*, A-369-88.
[11] See GD3-25.
[12] See GD3-32.
[13] See GD3-29.
[14] See GD3-30.
[15] See GD3-28.
[16] See GD3-26.

[28] A complaint from a contractor dated June 10, 2022, that expressed concerns about trying to gain entry, but the appellant was reluctant; the Appellant told the contractor that she wanted out of caretaking and that due to being denied entry, the repairs to heat in the building was delayed.[17]

[29] The employer also provided the Commission with two warning letters that it says it sent to the Appellant.

[30] The first letter is dated December 1, 2022, that cautions the Appellant about not gossiping and that she must keep personal information private and confidential. The letter says that this is not the first complaint received and if there are more complaints, she will ask the Appellant to resign. She was also told that there were complaints about not answering her phone after hours and on weekends and that she must be available.[18]

[31] The second warning letter is dated March 16, 2021, but the employer has pointed out there is a typo on the letter, and it was actually written on March 16, 2022. Given the topics that are raised, I accept that the letter was written on March 16, 2022.

[32] The second warning letter references that there had been a meeting with the Appellant and employer the day previous. It says that there were reports of the Appellant being rude, sharing confidential information and entering suites without authorization. It also says that she is difficult to reach by phone.

[33] The warning letter says the Appellant denied the allegations and the employer said that if there were any more complaints she would be terminated. They said it was her final warning.[19]

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[17] See GD3-24.
[18] See GD3-27.
[19] See GD3-25.

[34] In discussions with the Commission, the employer said they believed that the Appellant was trying to get herself fired as she didn't want to work anymore. They also said that the employer had an in-person discussion with the Appellant in March 2022, that was followed up with the letter that she would get no more chances.[20]

[35] Given the warnings that were provided to the Appellant in writing and the meetings that had been had with the Appellant, the employer told the commission that they terminated her after another complaint about her not allowing a contractor access to conduct some repairs.[21]

[36] The Appellant says that there was no misconduct because she was not sure why she was fired. She said that she knew that tenants were making complaints about her but that she had no verbal discussions with the employer or written warnings.[22]

[37] In testimony, while the Appellant said that she didn't discuss the issues with the employer she was able to recount each incident and felt that her manager did not support her on the issues.

[38] The Appellant did say after the Commission pointed out that she had been warned, that she did not agree with them. She says that the warnings must have been emailed and she does not have it. The Appellant says that none of the problems mentioned happened and that she was never clearly informed of the issues.[23]

[39] She says that while she did have a discussion with the employer in March 2022, the letter was not received and that the complaints were her word against the tenants, and they could not be trusted.[24]

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[20] See GD3-42.
[21] See GD3-42
[22] See GD3-43.
[23] See GD3-43.
[24] See GD3-43.

[40] At the hearing the Appellant said that the only question that the employer asked at the March 2022 discussion was if she liked her job and she replied that she did. The Appellant insisted that there was no other discussion regarding complaints or a final warning.

[41] The Appellant also says in her Notice of Appeal that she doesn't have a signed warning notice and did not discuss this with her employer. She also says that it is law that an employee is to sign and discuss issues with the employer.[25]

[42] In testimony, the Appellant said that she knew that there were complaints about her from the tenants and at least one social service agency. And she admitted that she did not allow the contractor access to suites when he needed to make some repairs.

[43] I find that the Commission has proven that there was misconduct, because the Appellant refused access to a contractor and that she had been provided sufficient notice from her employer that her negative behaviours would lead to her termination.

[44] It is apparent to me based on the Appellant's testimony that there were discussions with her employer regarding tenant and other complaints.

[45] I find the Commission's evidence to be credible. It is credible that the issues were raised and discussed with the Appellant. The evidence of the warning letters is compelling that the Appellant knew or ought to have know that her actions could lead to her termination.

[46] The employer's statements to the Commission are consistent with the documentation of the complaints and warning letters.

[47] The Appellant is less credible as she is inconsistent in the information that she provided to the Commission and in testimony.

[25] See GD2-5.

[48] At times, she says that she was not told of any issues then later says she had meetings with her employer. When confronted with the warning that were on file[26], changes her story again to say that she did not discuss the issues with her employer.[27]

[49] Based on the balance of probabilities I find that the Appellant had discussions with her employer and received the warning letters.

[50] The Appellant was aware of the complaints, had discussions with her employer about the complaints and then would not allow a contractor to make repairs in the apartment block after receiving a final warning.

[51] I do not accept the Appellant's argument that she was unaware of the complaints as it is clear that she had discussions with her managers and I find that she received the warning letters.

So, did the Appellant lose her job because of misconduct?

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

Conclusion

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

[54] This means that the appeal is dismissed.

Greg Skelly
Member, General Division-
Employment Insurance Section

[26] See GD3-43.
[27] See GD2-5.