



Citation: *EA v Canada Employment Insurance Commission*, 2023 SST 1661

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

# Decision

**Appellant:** E. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (593544) dated June 15, 2023 (issued by Service Canada)

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**Tribunal member:** Amanda Pezzutto

**Type of hearing:** Videoconference

**Hearing date:** August 30, 2023

**Hearing participant:** Appellant

**Decision date:** September 11, 2023

**File number:** GE-23-1840

## Decision

[1] E. A. is the Appellant. The Canada Employment Insurance Commission (Commission) says she can't get Employment Insurance (EI) benefits. This is because the Commission says she lost her job because of misconduct. The Appellant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Appellant's appeal. I find that the reason she lost her job is misconduct. This is because I find that she didn't give her employer a copy of her childcare license certificate. This decision means that the Appellant can't get EI benefits.

## Overview

[3] The Appellant worked in a childcare centre. She didn't give her employer a copy of her childcare license certificate when she started the job. After a few days, she still hadn't given the employer a copy of her certificate. The employer says they fired the Appellant because she couldn't keep working without a certificate.

[4] The Commission says this means that the Appellant lost her job because of misconduct. The Commission says she knew that she had to give the employer a copy of her certificate if she wanted to keep working. The Commission says she acted deliberately when she didn't give the certificate to her employer.

[5] The Appellant disagrees. She says the employer never asked her for a copy of the certificate. She says she stopped working because the employer didn't have enough hours for her.

## Matter I have to consider first

### **The Appellant asked to proceed with the hearing, even though she didn't have a copy of the entire appeal file**

[6] At the beginning of the hearing, the Appellant said she didn't have the entire appeal file. She said she didn't have the Commission's evidence (GD3) and she didn't have the Commission's arguments (GD4).

[7] I told her that these documents were important to her appeal. I explained that the Commission explained its arguments in these documents and gave copies of the evidence it used to come to its decision.

[8] I told the Appellant that we could proceed with the hearing, or I could ask Tribunal staff to re-send these documents to her and we could reschedule. I asked the interpreter to translate these options so I could be certain that the Appellant understood her two options.

[9] The Appellant asked to proceed with the hearing. She said she wanted to continue with the hearing, even after I told her that the appeal documents were important to her hearing.

[10] So, we proceeded with the hearing.

## **Issue**

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

## **Analysis**

[12] 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?**

[13] The Commission says the Appellant lost her job because she didn't give the employer a copy of her childcare certificate.

[14] The Appellant disagrees. She says that she stopped working because the employer didn't have enough hours for her.

[15] I agree with the Commission. I think it's likely that the employer dismissed the Appellant because she didn't give them a copy of her childcare certificate.

[16] The Commission spoke to the employer several times. Each time, the employer said they dismissed the Appellant because she didn't give them a copy of her childcare certificate. The employer said they needed the certificate for provincial licensing reasons. They said they could lose their childcare license if they didn't have the Appellant's certificate on file.

[17] The employer gave the Commission a copy of a text message they sent to the Appellant on her last day of work. In this text message, the employer asks the Appellant for her certificate.

[18] I give a lot of weight to this text message. This is because the employer sent it on the Appellant's last day of work. I think it adds weight to the employer's statement that they had already asked the Appellant for the certificate several times.

[19] So, I believe the employer. I think it's likely that the employer dismissed the Appellant because she didn't give them a copy of her childcare licensing certificate.

[20] Now, I must decide if the Appellant's actions – failing to give her employer a copy of the certificate – are misconduct under the meaning of the law.

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

[21] I find that the reason the Appellant lost her job is misconduct under the meaning of the law.

[22] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>1</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>2</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>3</sup> See *Attorney General of Canada v Secours*, A-352-94.

[23] There is misconduct if the Appellant knew or should have known that h conduct could get in the way of carrying out h duties toward her employer and that there was a real possibility of being let go because of that.<sup>4</sup>

[24] 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.<sup>5</sup>

[25] The Commission says the reason the Appellant lost her job is misconduct. The Commission says she knew that her employer needed her certificate, but she acted deliberately when she didn't give a copy to the employer. The Commission says she knew she couldn't keep working if her employer didn't have a copy of her certificate.

[26] The Appellant disagrees. She says her employer knew that she had lost her certificate. She also says the employer never asked for the certificate before she started working or while she was working. She says the employer only asked for the certificate after she stopped working so they could finish doing payroll.

[27] I think the employer and the Commission are more reliable than the Appellant. I find that the Appellant lost her job because of misconduct.

[28] The Appellant and the Commission disagree about what happened and why the Appellant stopped working.

[29] When there are different statements about what happened, I have to look at all of the evidence and make a decision on a balance of probabilities. This means I have to decide what is more likely to be true.<sup>6</sup>

[30] The employer told the Commission that they asked the Appellant for her certificate before she even started working. They said they continued asking for the

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<sup>4</sup> See *Mishibinjima v Canada (Attorney General)*, 2007 FCA 36.

<sup>5</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

<sup>6</sup> The Federal Court of Appeal says that the standard of proof is the balance of probabilities for employment insurance matters in its decision *Canada (Attorney General) v. Corner*, A-18-93.

certificate after she started working. They said they told her that she needed to provide the certificate if she wanted to keep working. They said the Appellant told them that she would give them the certificate.

[31] And then the employer says that they told her that they were dismissing her because she hadn't given them a copy of her certificate. The employer says this is when the Appellant told them that she had lost the certificate.

[32] The employer told the Commission that they could have helped the Appellant get a replacement certificate if she had told them earlier that it was lost.

[33] The Appellant disagrees with the employer's statements. She says that she told the employer that she had lost her certificate. She also says that the employer didn't ask her for a copy of the certificate before she started working and they didn't ask her for a copy while she was working. She says they only asked her for a copy of the certificate about a month after her last day of work. They needed it so they could complete their payroll and report her hours to the provincial government.

[34] I think the employer is more credible than the Appellant. This is because the employer gave the Commission a copy of a text message they sent to the Appellant on her last day of work. In the text message, the employer asks the Appellant for her certificate.

[35] This text message shows me that the employer asked the Appellant for her certificate at least once while she was still working. I think it also shows me that it is likely that the employer had asked the Appellant for the certificate before her last day of work.

[36] So, I think it's likely that the employer asked the Appellant for her certificate before she started working and then while she was working. I think it's likely that the employer warned the Appellant that she couldn't keep working if she didn't give them a copy of her certificate. And I find the reason the employer dismissed the Appellant is because she didn't give them a copy of her certificate.

[37] This means that the reason the Appellant lost her job is misconduct. This is because:

- I find it likely that the Appellant knew her employer needed a copy of her certificate. I also find it likely that she knew she couldn't keep working if she didn't give the employer a copy of the certificate.
- The Appellant acted deliberately when she didn't give the employer a copy of her certificate. I also find that she acted recklessly when she didn't ask her employer for help with getting a replacement.
- Her actions led directly to her dismissal.

[38] When I look at these findings together, it means that the reason the Appellant lost her job is misconduct under the meaning of the law.

## **Conclusion**

[39] I am dismissing the Appellant's appeal. I find that the Appellant lost her job because of misconduct. This means she can't get EI benefits.

Amanda Pezzutto  
Member, General Division – Employment Insurance Section