



Citation: *AP v Canada Employment Insurance Commission*, 2023 SST 1841

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

## Decision

**Appellant:** A. P.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (588565) dated June 8, 2023 (issued by Service Canada)

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**Tribunal member:** Katherine Parker  
**Type of hearing:** Teleconference  
**Hearing date:** August 28, 2023  
**Hearing participant:** Appellant  
**Decision date:** September 8, 2023  
**File number:** GE-23-1851

## 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 lost his job. The Appellant's employer said that he was let go because he behaved in an aggressive and unacceptable way towards the Production Manager in an incident on December 7, 2022. The employer said that the Production Manager felt threatened and that his behaviour was so extreme that they feared the situation would escalate into physical violence.<sup>2</sup>

[4] 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. The Appellant says that the employer actually let him go because it didn't manage his workplace injury properly and it was a toxic place to work.

[5] 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

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

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

<sup>2</sup> See GD3-27 for the termination letter.

## Analysis

[7] 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?

[8] I find that the Appellant lost his job because he lost his temper with the Production Manager on December 7, 2022, which violated the employer's policy on workplace violence and harassment.

[9] 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. The employer told the Commission that the Appellant was hostile, aggressive, and acted inappropriately on December 7, 2022. The employer said the incident caused a massive disruption to operations and distressed the Appellant's co-workers.<sup>3</sup>

[10] The Appellant disagrees. The Appellant says that the real reason he lost his job is that he had been suffering from a leg injury and was irritated by the employer's lack of support. He said that he cut his leg a few months earlier and then returned to work on light duties. He was then tasked with undesirable jobs and shifts and not trained to do them. Over time he was feeling belittled and degraded.

[11] It all became too much for the Appellant on December 7, 2022, when the Production Manager yelled at him and others for doing a poor job. On that day, the Appellant was tasked to do a job that he hadn't been trained to do. The Production Manager inspected the job and said it was all wrong. The Appellant got upset with her tone and approach. He had been experiencing some humiliation about doing light duties

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<sup>3</sup> See GD3-27 for the termination letter.

when he should have taken time to heal from his injury. He agrees that he lost his temper and yelled at the Production Manager.

[12] The Production Manager requested an escort who took the Appellant out of the workplace. But not before he made a scene in the changeroom when he became more aggressive, threw things around, and slammed doors. The employer said in the termination letter on GD3-27 that the employment relationship was irreparable broken down.

[13] I find that the Appellant caused distress and upset at his workplace because he was frustrated.

- The Appellant injured his leg in October, 2022. He returned to work the next day with a medical note saying he could work on light duties.
- The Appellant said he should have taken time off to heal but he didn't want to lose his pay. He got one day pay from WSIB, but he didn't explore any other income replacement options such as EI sick benefits.
- While his workplace injury may have caused him to be irritable, he didn't seek medical attention and he didn't want to take time off.

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

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

[15] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>4</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>5</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>6</sup>

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

<sup>5</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>6</sup> See *Attorney General of Canada v Secours*, A-352-94.

[16] There is misconduct if the Appellant knew or should have known that his conduct could get in the way of doing his job for his employer and that there was a real possibility of being let go because of that.<sup>7</sup>

[17] 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>8</sup>

[18] The Commission says that there was misconduct because the Appellant acted in a hostile and aggressive way, and he violated the workplace violence and harassment policy.

[19] The Appellant says that there was no misconduct because the employer wasn't fair and treated him in a way that he felt demeaned.

[20] I find that the Commission has proven that there was misconduct. The Appellant agreed that he lost his temper and said he had been warned in the past.

- The Appellant had been getting more and more irritated at work. He wasn't happy with the jobs he was being given. He felt it was unfair but at the same time, he didn't ask for time off.
- He responded to his frustrations with anger and lost his temper. He didn't seek counselling or conflict resolution.
- On December 7, 2022, the Appellant knew he had done something that cost him his job. When he was being walked out, he said he knew he was fired.<sup>9</sup>
- The Appellant caused distress to other workers, and to the Production Manager. She was so upset that she had to go home for the day.

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<sup>7</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>8</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

<sup>9</sup> The Appellant said this at the hearing.

- Although the Appellant felt upset and angry with the situation, he didn't look for other ways to discuss the problem. Instead he lost his temper.

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

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

### **Conclusion**

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

[23] This means that the appeal is dismissed.

Katherine Parker  
Member, General Division – Employment Insurance Section