



[TRANSLATION]

Citation: *WG v Canada Employment Insurance Commission*, 2024 SST 206

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

## Decision

**Appellant:** W. G.  
**Representative:** V. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (617610) dated October 10, 2023 (issued by Service Canada)

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**Tribunal member:** Manon Sauvé

**Type of hearing:** In person  
**Hearing date:** January 16, 2024  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** February 7, 2024  
**File number:** GE-23-3147

## Decision

[1] The appeal is allowed.

[2] The Canada Employment Insurance Commission (Commission) hasn't proven that the Appellant lost her job because of misconduct. This means that the Appellant isn't disqualified from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] The Appellant worked as a financial security advisor for an insurance broker from June 2022. She was let go on July 25, 2023.

[4] The Appellant applied for EI regular benefits. The Commission investigated the Appellant and the employer to find out the reasons for the dismissal. The employer says it received three complaints about the Appellant. Because of this, on July 25, 2013, the employer met with the Appellant and let her go. The Commission is refusing to pay the Appellant benefits because she lost her job because of misconduct.

[5] The Appellant disagrees with the Commission's decision. The employer didn't provide evidence of the complaints. It said it was confidential. The Appellant argues that she was let go for no reason. She filed a complaint with the Commission de normes, de l'équité et de la santé du travail [sic] [Quebec's labour standards commission] (CNESST) because she considers that the dismissal was illegal and that she didn't commit the alleged acts.

## Matter I have to consider first

[6] At the hearing, the Appellant's representative submitted additional documents. The Appellant also sent in documents after the hearing, including the agreement between the Appellant and her employer before the CNESST.

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

[7] As I mentioned at the hearing, the documents were sent to the Commission so it could make additional submissions. I gave the Commission a deadline.<sup>2</sup> It didn't follow up on the letter. This means that the decision can be made after that deadline.

## **Issue**

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

## **Analysis**

[9] 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?<sup>3</sup>**

[10] The Appellant worked as a financial advisor for an insurance broker. She got a leave of absence from February 11, 2023, to February 27, 2023, to visit her family. She left Canada for Algeria during that period.

[11] On February 27, 2023, she had to see a doctor urgently because she was hemorrhaging. She had to receive care in Algeria. She told her employer about the situation. She got permission from her doctor to return to Canada around July 20, 2023. She returned to Canada on July 20, 2023. She had to go back to work on July 27, 2023.

[12] On July 24, 2023, her employer asked to meet with her by videoconference on July 25, 2023. The Appellant assumed that she needed to be aware of certain changes during her absence.

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<sup>2</sup> See the January 24, 2024, letter to the Commission. It had until February 2, 2024, to reply.

<sup>3</sup>

[13] At the July 25, 2023, meeting, the employer had a representative of one of its clients with it. They told the Appellant that she was let go because she had received three complaints from an insurer, an advisor, and a client.

[14] The Appellant asked for details about these complaints. The employer told her that everything was under investigation and confidential. The Appellant was asked to sign a release to end the employment. The Appellant refused.

[15] According to the information the Commission obtained from the employer, the Appellant didn't comply with the Autorité des marchés financiers [Financial Markets Authority] (AMF) Code of Ethics.

[16] As part of the reconsideration request, the employer confirmed that it had received three complaints. But it said the insurer's complaint wasn't important. The Appellant was criticized for having illegible writing. The complaint from an insurance broker concerned the sale of insurance. The Appellant should have asked for the insurance to be cancelled. Instead, she asked the client to do so. Finally, the complaint from a client concerned incorrect information entered by the Appellant.

[17] The Appellant disagrees. As a financial advisor, she has to comply with the AMF Code of Ethics. She hasn't had any complaints about her alleged acts.

[18] She argues that the employer let her go because of her medical issues and her age.

[19] It is likely that she made errors when entering data, but the employer hasn't proven the alleged acts.

[20] After reviewing the file, hearing the Appellant's testimony, and considering the parties' arguments, I am of the view that the Commission hasn't proven the Appellant's alleged acts.

[21] A finding of misconduct must be made on the basis of clear evidence and not merely of speculation and suppositions.<sup>4</sup>

[22] In addition, misconduct is a violation of the law, a regulation, or an ethical rule, and may mean that an essential condition of the employment ceases to be met, resulting in dismissal.<sup>5</sup> We have to look at the facts. We can't simply adopt the employer's finding of misconduct. An objective assessment is needed to say that misconduct was in fact the cause of the loss of employment.<sup>6</sup>

[23] But the Commission hasn't proven that the Appellant breached a rule, law, or regulation. The employer argued that the Appellant didn't follow rules, without providing evidence to the Commission. It simply stated errors the Appellant had made, but there was nothing to support its accusations. Letting a person go because of misconduct is a serious matter with significant consequences. It isn't enough to agree with the employer when it didn't provide clear evidence.

[24] The Appellant provided the agreement between her and her former employer following the employer's complaint about an illegal practice.

[25] I understand that I am not bound by the agreement between the employer and the Appellant.<sup>7</sup> I still have to look at the evidence. I did consider the Commission's evidence and found that it hadn't proven the Appellant's alleged acts.

[26] Also, although the parties didn't admit it, the employer or its business partner still signed a letter saying the Appellant had terminated her employment for personal reasons. According to the confirmation of employment, the Appellant has shown unwavering attendance, interpersonal skills, and a willingness to serve clients well.<sup>8</sup>

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<sup>4</sup> *Crichlow v Canada (Attorney General)*, A-562-97

<sup>5</sup> *Canada (Attorney General) v Brissette*, A-1342-92

<sup>6</sup> *Meunier v Canada Employment and Immigration Commission*, A-130-96

<sup>7</sup> *Canada (Attorney General) v Morris*, A-291-98

<sup>8</sup> GD9-5

[27] This letter from the employer is difficult to reconcile with the position it took during the Commission's investigation.<sup>9</sup>

[28] In the circumstances, I find that the Commission hasn't proven the acts that led to the Appellant's dismissal.

[29] I don't need to consider whether the Appellant's acts amount to misconduct because the Commission hasn't proven them.

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

[30] Based on my findings above, I find that the Appellant didn't lose her job because of misconduct.

### **Conclusion**

[31] The Commission hasn't proven that the Appellant lost her job because of misconduct. Because of this, the Appellant isn't disqualified from receiving EI benefits.

[32] This means that the appeal is allowed.

Manon Sauvé

Member, General Division – Employment Insurance Section

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<sup>9</sup> *Canada (Attorney General) v Morrow*, A-170-98; *Canada (Attorney General) v Boulton*, A-45-96