



Citation: *DM v Canada Employment Insurance Commission*, 2024 SST 348

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: D. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (634528) dated December 16, 2023 (issued by Service Canada)

Tribunal member: John Rattray

Type of hearing: Videoconference

Hearing date: February 22, 2024

Hearing participants: Appellant
Appellant's representative

Decision date: February 23, 2024

File number: GE-24-325

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.¹

Overview

[3] The Appellant lost his job as a tire and lube technician at a car dealership. The Appellant's employer said that he was let go because his driver's licence was suspended, and it was a requirement of his job to have a valid licence.

[4] Although 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 the new owners were restructuring the business.

[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?

Analysis

[7] To answer the question 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.

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

Why did the Appellant lose his job?

[8] I find that the Appellant lost his job because his driver's licence was suspended, and it was a job requirement.

[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 dismissed because his licence was suspended for one year. It tried to accommodate the Appellant with alternative duties that didn't require driving, but it didn't work out.

[10] The employer says that it only learned about the Appellant's suspension on October 23, 2023, after conducting a driver's licence check. It tried to accommodate the Appellant's loss of his licence for one week but concluded it wasn't working out and terminated his employment.² It explained that it terminated him on October 30, 2023, without alleging cause because it didn't know why his licence was suspended and it was easier to do this.³

[11] The Appellant disagrees. The Appellant says that the real reason he lost his job is that new owners purchased the dealership in September 2023. The new owners made changes in the dealership and let some staff go including the Appellant. He says he was dismissed without cause as written on his termination letter and record of employment.⁴

[12] He denies that the suspension of his driver's licence on August 4, 2023, prevented him from performing his job duties. He says that the suspension only prohibited him from driving on public roads. It didn't apply to private property such as the dealership.⁵

² See GD3-39 to GD3-41.

³ See GD3-57.

⁴ See GD3-22 and GD3-26.

⁵ See GD3-36. The prohibition order said the Appellant was prohibited from operating a motor vehicle on any street, road, highway, or other public places.

[13] He says he told his supervisor about the suspension on August 7, 2023, and was permitted to keep working without restriction until October when he was put on modified duties for several weeks.

[14] I find that the Appellant was dismissed because his driver's licence was suspended. I prefer the evidence of the employer that it dismissed the Appellant because the Appellant's licence was suspended because:

- The parties agree that the Appellant's licence was suspended.
- The parties agree that a valid driver's licence is a requirement of the Appellant's job.
- The employer's evidence was consistent that it only discovered the suspension on October 23, 2023, and tried to accommodate the Appellant for one week.⁶
- The Appellant was terminated on October 30, 2023.⁷
- The Appellant said on his application for EI benefits that he was dismissed because he lost his driving licence.⁸
- His application said he required a driver's licence to perform his job.⁹
- His application said the employer tried to accommodate him with duties that didn't require driving, but there wasn't enough work without a valid licence.¹⁰
- His application said that he had little to no work to do without a valid licence.¹¹
- The employer was hiring additional technicians.

⁶ See GD3-39 to GD3-41.

⁷ See GD2-9.

⁸ See GD3-9.

⁹ See GD3-10.

¹⁰ See GD3-11.

¹¹ See GD3-12.

- The Appellant's evidence about whether and when he told his employer about his licence suspension was inconsistent.¹²
- The Appellant's evidence that he was on modified duties for about one month before he was terminated is inconsistent with the documents provided by the employer.¹³

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

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

[16] 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's almost wilful.¹⁵ 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.¹⁶

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

[18] 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's more likely than not that the Appellant lost his job because of misconduct.¹⁸

[19] The Commission says that there was misconduct because the Appellant's actions were wilful. He understood that driving under the influence would put his licence and thereby his job in jeopardy. It argues that the fact that the employer accommodated

¹² See GD3-33, GD3-34, GD3-52 to GD3-54, and his testimony at the hearing.

¹³ See GD3-34.

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

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

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

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

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

the Appellant for a short period of time doesn't change the fact that his actions were misconduct under the *Employment Insurance Act* (Act).

[20] The Appellant says that there was no misconduct because his termination letter says he was dismissed without cause. The employer allowed him to work without modification of his duties for several months after it had been advised of his licence suspension. He says he was let go because of a restructuring by the new owners. As noted above he also argues that his termination letter and record of employment say he was dismissed without cause.

[21] The letter of termination signed by the Appellant stating that he was dismissed without cause is not determinative of the issue before this Tribunal. I find the employer's explanation why it dismissed the Appellant without cause credible.¹⁹ The termination letter doesn't contradict what the employer told the Commission during its investigation. This means that I must assess the evidence and come to a decision whether the actions amount to misconduct under the Act.²⁰

[22] I find that the Commission has proven that there was misconduct, because the Appellant's conduct in driving while over the legal blood alcohol limit was both wilful and reckless.²¹ It led to the suspension of his driver's licence. Holding a valid driver's licence was a requirement of the Appellant's position.

[23] The case law is clear that where an employee is required to hold a valid driver's licence, the loss of the licence because of the employee's wrongful act is misconduct.²²

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

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

¹⁹ See GD3-57.

²⁰ See *Canada (Attorney General) v Morrow*, A-170-98.

²¹ See GD3-35.

²² See *Canada (Attorney General) v Brissette*, A-1342-92.

Conclusion

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

[26] This means that the appeal is dismissed.

John Rattray

Member, General Division – Employment Insurance Section