



[TRANSLATION]

Citation: *JT v Canada Employment Insurance Commission*, 2023 SST 2051

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

## Decision

**Appellant:** J. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (604266) dated August 9, 2023 (issued by Service Canada)

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**Tribunal member:** Jacques Bouchard

**Type of hearing:** Videoconference

**Hearing date:** November 20, 2023

**Hearing participants:** J. T.

**Decision date:** November 28, 2023

**File number:** GE 23-2466

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Canada Employment Insurance Commission (Commission) hasn't 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 isn't disqualified from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] The Appellant lost his job. His employer says that he was let go because he was often late, made a serious mistake in destroying a document, and violated the safety policy by altering an N-95 mask to make it easier for him to breathe.

[4] Even though the Appellant doesn't dispute what happened, except for his tardiness, he says that it isn't the real reason for his dismissal. The Appellant says that the employer actually let him go because of a personality conflict with his immediate supervisor.

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

[6] The Appellant has worked for about two years for a company specializing in the manufacture of pharmaceutical products. A safety policy exists because the industry is subject to Health Canada audits.

[7] The Appellant says that he never had any disciplinary measures in his first 18 months of work. His problems began with the hiring of a new supervisor in November 2022. In the space of six months, he allegedly experienced harassment from the

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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.

supervisor and received three unjustified disciplinary warnings, before his dismissal on June 1, 2023.

[8] The employer says that the Appellant was let go under the progressive discipline policy, after two written warnings and a one-day suspension.

[9] The Commission maintains that the Appellant's careless or wilful violation of company policy and guidelines led to his dismissal.

[10] The Appellant is appealing the decision to disqualify him from EI and says that he was unfairly let go.

[11] The Tribunal has to decide whether the Appellant's conduct related to the violations of his employment contract was conscious, wilful, or intentional.

## **Issue**

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

## **Analysis**

[13] 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?**

[14] I find that the Appellant lost his job mainly because of a personality conflict with his immediate supervisor and not because of a serious violation of the industry's internal policies based on a principle of progressive alleged offences.

[15] The Commission and the Appellant 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, based on the principle of progressive discipline, the employee caused his dismissal.

[16] The Appellant disagrees. He says that the real reason he lost his job is that the supervisor was harassing him for reasons he doesn't know. He says that he was never late, never had any disciplinary measures in 18 months. His problems began with the hiring of a new supervisor, who criticized him for being slow at work and belittled him in front of the other employees.

[17] The Appellant says that he has to show his ID card at the entrance every day. He insisted at the hearing that there was no tardiness. In front of the others, the supervisor called him "J. R.," because he didn't think he was fast enough.

[18] The supervisor always made him feel that he could be let go and gave him unnecessary warnings. At the hearing, the Appellant explained that he had to wear special clothing from head to toe, which took some time. The supervisor wanted him to arrive 15 minutes before his shift started to get dressed.

[19] The Appellant says that he always arrived on time to get dressed, which is why he initially disagreed. Concerning the second written warning for destroying an important document, the Appellant said that he checked with a manager in quality control before destroying a document that had several errors. He admitted that he should not have followed advice to destroy the document, but it wasn't wilful, careless, or intentional. Finally, regarding the alteration of the N-95 mask, a mandatory mask intended to protect him from fine particles, he said that all employees struggled to breathe with this mask on and had found ways to modify it while remaining safe.

[20] He concluded by saying that, if it hadn't been for his supervisor's determination to discredit him, he would still be employed considering the principle of progressive warnings.

[21] I find that, considering the Appellant's arguments, he didn't act wilfully to end his employment contract. The Appellant's arguments are credible as to the explanations for his alleged tardiness. It seems more likely than not that the employer (immediate supervisor) was criticizing him for taking too long to get ready when he arrived at work, hence the use of the name "J. R.," which was explained at the hearing.

[22] As for wilfully destroying important documents, the Tribunal finds, on the contrary, that the Appellant was careful about the rule by checking with a manager in quality control.

[23] The Tribunal understands that the Appellant modified his N-95 mask in violation of the safety guidelines and policy. But it also understands that this breach alone would not have led to the Appellant's dismissal, considering the principle of progressive discipline.

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

[24] The reason for the Appellant's dismissal isn't misconduct under the law.

[25] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>2</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>3</sup> For there to be misconduct under the law, the Appellant doesn't have to have wrongful intent (in other words, he doesn't have to be doing something wrong) for his behaviour to be misconduct under the law.<sup>4</sup>

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

[27] 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>6</sup>

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<sup>2</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>3</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>4</sup> See *Attorney General v Secours*, A-352-94.

<sup>5</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>6</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

[28] The Commission says that there was misconduct because the Appellant wilfully violated the company's policy and had several previous breaches warning him of the consequences of a new breach.

[29] The Appellant says that there was no misconduct because he didn't have wilful intent. On the contrary, he made sure to collaborate with his coworkers in quality control. He maintains that he was harassed by his supervisor and treated unfairly compared to his coworkers.

[30] I find that the Commission hasn't proven that there was misconduct because it didn't prove that the conduct was wilful, careless, or intentional. The Tribunal considers that the Appellant worked for 18 months without obvious problems and without written warnings, which shows some compliance with industry rules and policies.

[31] The use of a nickname like "J. R." speaks to the toxic environment the Appellant worked in and makes the Appellant's testimony at the hearing credible.

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

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

### **Conclusion**

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

[34] This means that the appeal is allowed.

Jacques Bouchard  
Member, General Division – Employment Insurance Section