



Citation: *SR v Canada Employment Insurance Commission*, 2024 SST 782

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

Decision

Appellant: S. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (622385) dated November 1, 2023 (issued by Service Canada)

Tribunal member: John Rattray

Type of hearing: In person

Hearing date: January 24, 2024

Hearing participant: Appellant

Decision date: February 6, 2024

File number: GE-23-3394

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 her job because of misconduct (in other words, because she did something that caused her to lose her job). This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.¹

Overview

[3] The Appellant lost her job. The Appellant's employer said that she was let go because she made a negative social media posting about the restaurant in which she worked.

[4] The Appellant says that it isn't the real reason why the employer let her go. The Appellant says that the employer let her go because she had a dispute over praying at work, as well as the payment of tips, the payment of overtime, and her hours of work.

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

Matter I have to consider first

I will accept certain documents sent in after the hearing and reject other documents

[6] The Appellant referred to text messages during the hearing that are relevant to her appeal. I agreed to accept these documents at the hearing subject to allowing the Commission an opportunity to make further submissions.² The Commission made further submissions.³

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

² See GD10.

³ See GD12.

[7] Later, the Appellant sent in additional documents that I didn't request.⁴ I didn't accept these further documents because they were not referred to in the hearing and are not relevant to the issues I must decide.

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?

[10] I find that the Appellant lost her job because of comments on social media about a dispute with her employer.

[11] The Appellant and the Commission don't agree on why the Appellant lost her job. The Commission says that the reason the employer gave is the real reason for the dismissal. The Commission says that she made accusations about the employer on a workplace chat group and the next day posted a negative Google review about her employer while at work.

[12] The Appellant disagrees. The Appellant says that the real reason she lost her job is that she:

- asked the employer for unpaid overtime⁵
- demanded tips be paid to employees

⁴ See GD13.

⁵ See GD3-16.

- demanded the employer reinstate her hours of work⁶
- had a dispute with the employer about praying at work⁷

[14] The Appellant worked in a halal restaurant which served the local community, including customers who have the same religion as the Appellant and the owner.

[15] The employer spoke with the Appellant after her shift ended on Saturday, July 15, 2023, about praying at work. The Appellant took offence to the discussion about her use of the employer's premises to pray.

[16] At 2:12 a.m. Sunday, July 16, 2023, the Appellant asked other employees through an online workplace chat group whether it was a crime or bad thing for her to pray at work because the owner asked her not to.⁸ The restaurant manager and the owner's son told her that this type of communication "was not appropriate at all" on the workplace chat group, and it could be discussed at the next work meeting.⁹

[17] The Appellant continued posting, promising that the owner would be educated about employee rights, and asserting her right to pray, especially after her shift.¹⁰ The restaurant manager said to pause the discussion, but it continued.

[18] The manager repeated his request to stop the conversation and to meet on Monday, July 17, 2023.¹¹

[19] The Appellant continued posting to the workplace chat and asked if she was permitted to use the restaurant property to change or to use the toilet.¹² The Appellant was removed from the workplace chat.

[20] On Sunday, July 16, 2023, while the Appellant was at work, a negative Google review addressed to the restaurant's customers was posted. The review was posted on

⁶ The Appellant claims she was promised 60 hours of work a week. See GD10-7.

⁷ See GD2-8.

⁸ See GD3-39.

⁹ See GD3-38.

¹⁰ See GD3-37.

¹¹ See GD3-43.

¹² See GD3-43.

the Appellant's daughter's account, but claimed it was made by the Appellant. It said the Appellant was reposting because her employer had blocked her last comment. The review made unfavourable comments about the owner and that he bothered the Appellant for practising her religion.¹³

[30] The employer fired the Appellant for breach of trust related to the Google review, and provided the Appellant with a termination letter.¹⁴ The Appellant denies responsibility for the review and says there is no evidence to prove she posted it. She says she has been wrongfully dismissed because of her dispute about praying, and demands for overtime pay, tips, and reinstatement of additional hours of work.

[31] The employer says before it fired the Appellant it confirmed with her that she posted the review. It also says it has an audio recording of her admission, but the Commission hasn't provided a copy of it.¹⁵

[32] The Appellant denies speaking with the employer about the review, writing the review or asking others to post it. She also says that though the review was made on her daughter's account, she never asked her daughter if she posted the review and didn't even know when it was posted.

– **My findings**

[33] I find that the Appellant lost her job because of comments she made about her employer on social media. She ignored instructions to discuss her concerns at a meeting with her manager on Monday.

¹³ See GD3-26.

¹⁴ See GD3-27.

¹⁵ See GD3-25.

[34] The Tribunal doesn't accept the Appellant's submissions that she didn't know about the review, wasn't responsible for it, and didn't discuss it with her employer. Her evidence isn't credible because the termination letter states that she's being fired because of the review. If she had no knowledge of the review and wasn't responsible for it, it's more likely than not that when she received the termination letter she would have:

- asked her employer about the review
- denied her involvement
- spoken with her daughter to understand what had happened

[35] She didn't.

[36] The Appellant has also given contradictory evidence which calls her credibility into question. She apologized for the review, then retracted her statement three days later when it didn't resolve her dispute over the reason for her dismissal.¹⁶ Her retraction says that when she was being fired, she agreed to the assertion about the review, while trying to digest the news that she was being fired.¹⁷

[37] The retraction is also inconsistent with her evidence at the hearing. At the hearing, she testified she didn't know about the review, didn't discuss it with the employer, and didn't agree that she posted it.

[38] The retraction also says, "I naturally turned to my family to express the flood of emotions and seek their support. I'm only responsible for my own actions and as such cannot be held liable for the actions and reactions of those who showed their support in this difficult situation."¹⁸

[39] I find that it's more likely than not that the Appellant is responsible for the content of the review which led to her being fired. Early on Sunday, July 16, 2023, the Appellant was told that there is a time and place to discuss her concern about praying, and it

¹⁶ See GD2-12 to GD2-14.

¹⁷ See GD2-13.

¹⁸ See GD2-12.

would be discussed the following Monday. The Appellant ignored that instruction, continued to make comments, and was removed from the workplace chat group. The review was posted less than 15 hours later, claimed to be posted by the Appellant, set out details of her dispute over paying, and that she had been blocked by her employer. It isn't credible that her daughter would post a negative review, claim to be the Appellant, and make negative comments about the owner and employer without the approval of the Appellant. If the daughter did act without the approval of the Appellant, it isn't credible that the Appellant didn't ask her daughter about the review.

[40] I find that the Appellant wasn't dismissed over tips, overtime hours, or demands for more hours of work. I find this because there was no evidence that she was dismissed because of her disagreement with the employer on tips, overtime, or hours of work.¹⁹ The Appellant testified that she only asked the owner a few times about tips and overtime. She had exchanged text messages with the owner to obtain copies of pay stubs she had previously been provided, and the owner said he had requested copies be provided to her.²⁰ The Appellant said that her hours of work had been reduced a couple of months before she was terminated, and she was given the option of working three or five days a week.²¹

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

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

[42] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.²² Misconduct also includes conduct that is so reckless that it is almost wilful.²³ 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.²⁴

¹⁹ See GD7-4 and GD7-6 letters from other former employees who "quit" and "left" the restaurant over disputes regarding tips. There is no evidence that they were fired.

²⁰ See GD10-4 and GD10-5.

²¹ See GD10-6 to GD10-14.

²² See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

²³ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

²⁴ See *Attorney General of Canada v Secours*, A-352-94.

[43] There is misconduct if the Appellant knew or should have known that her conduct could get in the way of carrying out her duties toward her employer and that there was a real possibility of being let go because of that.²⁵

[44] 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.²⁶

[45] The Commission says that there was misconduct because the Appellant willfully posted inflammatory statements and made unfavourable personal remarks about the Appellant. It also says that she acted willfully because the Google review states that she's reposting because the employer blocked her last comment.

[46] The Appellant says that there was no misconduct because there is no evidence to prove she posted the review.

[47] For the reasons set out above, I find that it is more likely than not that the Appellant is responsible for the content of the review that led to her being fired.

[48] I also find her conduct was wilful because she had been instructed by her manager and the owner's son to discuss her concerns at a work meeting on Monday, July 17, 2023. Instead, she continued to comment on both the workplace chat group, and later through the Google review. She ignored her employer's instructions, aired her dispute over praying at work, and made negative statements about both the restaurant and the owner. She knew or should have known that her conduct would get in the way of performing her duties, and there was a real possibility of being let go.

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

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

²⁵ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

²⁶ See *Minister of Employment and Immigration v Bartone*, A-369-88.

Other issues

[50] I am not making any finding about the other issues raised by the Appellant about the overtime, tips, and her demand for more hours of work. These issues are not within the jurisdiction of this Tribunal. The Appellant may wish to pursue these issues with the Ministry of Labour or with legal counsel.

Conclusion

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

[52] This means that the appeal is dismissed.

John Rattray

Member, General Division – Employment Insurance Section