



Citation: *CG v Canada Employment Insurance Commission*, 2025 SST 57

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: C. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (669164) dated June 27, 2024
(issued by Service Canada)

Tribunal member: Kristen Thompson

Type of hearing: Teleconference

Hearing date: January 7, 2025

Hearing participant: Appellant

Decision date: January 22, 2025

File number: GE-24-3984

Decision

[1] The appeal is allowed. The Tribunal's General Division agrees with the Appellant.

[2] The Canada Employment Insurance Commission (Commission) has shown that the Appellant gave false information, so it had 72 months to reconsider his claim. It has shown that it acted judicially when it reconsidered the Appellant's claim for benefits.

[3] The Appellant didn't voluntarily leave his job. He was let go by the employer. And the Commission hasn't proven that the Appellant lost his job because of misconduct. This means that the Appellant isn't disqualified from receiving Employment Insurance (EI) benefits.¹

Overview

[4] The Appellant was separated from his job on June 25, 2019, during his claim for EI benefits. The Commission looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job.

[5] The Commission says that the Appellant made false statements when he failed to report his earnings for the week starting June 16, 2019, and separation of employment from his employer. So, it had 72 months to reconsider his claim.² It says that it acted judicially when it reconsidered his claim for benefits.

[6] The Commission says that, at the time he left his job, the Appellant didn't have reasonable assurance of another job. It says that he didn't offer an explanation as to why he couldn't continue working with the employer, even without the use of a company truck.

[7] The Appellant agrees that he made a false statement when he failed to report his earnings for the week starting June 16, 2019. But he says that the Commission

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 subsection 52(5) of the *Employment Insurance Act* (Act).

overlooked a relevant factor when it reconsidered his claim for benefits, as it didn't speak with him about the circumstances.

[8] The Appellant says that he didn't quit his job. He says that he was let go by his employer, after the employer learned that the Appellant interviewed for another job.

Issues

[9] Does the Commission have 72 months to reconsider the Appellant's claim because a false statement was made?

[10] Has the Commission shown that it acted judicially when it used its discretion to reconsider the Appellant's claim for benefits?

[11] Did the Appellant voluntarily leave his job?

- If so, did he have just cause for leaving and no reasonable alternative?
- If not, was he dismissed because of misconduct?

Analysis

Does the Commission have 72 months to reconsider the Appellant's claim because a false statement was made?

[12] The Commission usually has 36 months, after benefits have been paid, to reconsider its decision and calculate an overpayment. The time is extended to 72 months if, in the opinion of the Commission, a false or misleading statement or representation was made in connection with the claim.³

[13] The Commission says that the Appellant made false statements, so it had 72 months to reconsider his claim.⁴ Specifically, it says that he failed to report his earnings for the week starting June 16, 2019, and separation of employment from his employer.⁵

³ See subsection 52(1) to (4) of the *Employment Insurance Act* (Act).

⁴ See subsection 52(5) of the *Employment Insurance Act* (Act).

⁵ See GD3A-43 to 44, and GD3A-53.

[14] The Appellant agrees that he made a false statement when he failed to report his earnings for the week starting June 16, 2019.

[15] The Tribunal's Appeal Division says that the Commission doesn't have to show that an appellant "knowingly" made a false or misleading statement in order to extend the time to 72 months. Instead, the Commission has to show that it could reasonably find that the appellant made a false or misleading statement or representation.⁶

[16] The Commission and the Appellant agree that the Appellant made a false statement when he failed to report his earnings for the week starting June 16, 2019. I see no evidence to show otherwise. This means that the Commission had 72 months to reconsider the Appellant's claim.

Has the Commission shown that it acted judicially when it used its discretion to reconsider the Appellant's claim for benefits?

[17] When the Commission reconsiders a decision, it has to use its discretion judicially. The Tribunal can set aside a discretionary decision if, for example, an appellant can establish that the Commission:⁷

- acted in bad faith
- acted for an improper purpose or motive
- took into account an irrelevant factor
- ignored a relevant factor
- acted in a discriminatory manner

[18] The Commission says that it acted judicially when it used its discretion to reconsider the Appellant's claim for benefits, as a false statement was made by the Appellant. It says that it doesn't need to speak to the Appellant to determine if false statements were made.

⁶ See *MG v Canada Employment Insurance Commission*, 2019 SST 576.

⁷ See *SF v Canada Employment Insurance Commission*, 2022 SST 1095; *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

[19] The Appellant says that the Commission overlooked a relevant factor when it reconsidered his claim for benefits. He says that the Commission couldn't have reasonably been of the opinion that false statements were made when it made its decision, dated February 26, 2024, because it didn't speak with him first.

[20] The employer issued a Record of Employment (ROE) on June 28, 2019. It says that the Appellant was employed from June 17, 2019, to June 25, 2019, and earned \$1,456.00.⁸

[21] The employer gave the Commission payroll information on September 6, 2019. It says that the Appellant earned \$1,064.50 from June 16, 2019, to June 22, 2019.⁹

[22] The Appellant reported that he didn't receive any earnings during the period from June 9, 2019, to June 22, 2019.¹⁰

[23] The Commission tried to contact the Appellant by telephone on December 20, 2022, but the phone number didn't connect or wasn't in service, so it wrote to the Appellant.¹¹

[24] The Appellant says that he was no longer living at the address the Commission had on file. He says that he didn't know about the decision assessing an overpayment until the Canada Revenue Agency (CRA) started to garnish his income tax return.

⁸ See GD3A-13 to 14.

⁹ See GD3A-23 to 24.

¹⁰ See RGD3-4 to 8.

¹¹ See GD3A-37 to 42.

[25] The Commission has a reconsideration policy. It says that a claim will only be reconsidered when:¹²

- benefits have been underpaid
- benefits were paid contrary to the structure of the *Employment Insurance Act*
- benefits were paid as a result of a false or misleading statement
- the appellant ought to have known there was no entitlement to benefits

[26] I find that the Commission has shown that it acted judicially when it used its discretion to reconsider the Appellant's claim for benefits. The Commission followed its reconsideration policy, as benefits were paid as a result of a false statement. It gathered new and supporting evidence, including the payroll information from the employer. It tried contacting the Appellant. Although it delayed until December 2022 before trying to contact the Appellant, and delayed issuing its decision until February 2024, it still acted within the 72-month timeframe.

Why did the Appellant lose his job?

[27] The parties disagree that the Appellant voluntarily left his job.

[28] The Commission says that the Appellant voluntarily left his job.

[29] The Appellant says that he was let go by his employer, after the employer learned that the Appellant interviewed for another job.

[30] The ROE issued by the employer says that the Appellant quit.¹³ When the employer was asked for payroll information, the employer wrote that the Appellant found a job more similar to his previous work experience.¹⁴

[31] There is no indication in the appeal file that the Commission spoke with the employer.

¹² See Digest of Benefit Entitlement Principles, Chapter 17.

¹³ See GD3A-13 to 14.

¹⁴ See GD3A-23 to 24.

[32] The Appellant says that the employer went bankrupt in 2020.

[33] The Commission spoke with the Appellant on June 25, 2024. Its notes say:¹⁵

- the Appellant left his job because the employer wasn't willing to give him the company truck and changed the terms after he was hired
- the Appellant was trying to find another job and he was expecting to find another job after he left, but he didn't have any other job offers at the time he left his job

[34] In the notice of appeal, the Appellant says that he left the job because he thought a new job was forthcoming. He says that the employer went bankrupt, so finding documentation about his leaving was very difficult.¹⁶

[35] In his submissions, the Appellant says he was let go by his employer, after the employer learned that he interviewed for another job.¹⁷

[36] The Appellant testified that he disagrees that he left his job because the employer wasn't willing to give him a company truck. He says that he doesn't recall saying this to the Commission.

[37] The Appellant says that he knew within hours of starting the job that he wouldn't stay with the employer for a long time. He says that the employer leased equipment, but the yard was full of equipment, indicating that the employer wasn't making money. He says that he was hired as a field technician, but the employer didn't have this type of work for him to do, so he was performing the duties of a shop hand. He says that, since there was no field technician work, he didn't have use of a company truck.

[38] The Appellant says that he continued to look for another job. He says that he attended several interviews, including an interview on June 25, 2019.

¹⁵ See GD3A-53 to 54.

¹⁶ See GD2-6.

¹⁷ See GD8.

[39] The Appellant says that the employer (his supervisor) asked him, on June 25, 2019, if he was at a job interview, and he replied, “yes.” The employer asked him if he was offered a job, and he replied, “no.” The employer asked if he was going to put in his notice, and he replied that he would, once he had the job for sure.¹⁸

[40] The Appellant says that the employer told him that he doesn’t have to give two weeks’ notice, and he doesn’t have to come back to work. He says that the employer seemed irritated. The Appellant asked if he should come to work the next day, and the employer replied, “don’t bother, it’s all good.”

[41] The Appellant says that he texted his employer the next day to ask about work, but he didn’t hear back. He says that he intended to keep the job until he had another job offer. He says that he was starting to have money problems, and he made twice as much working than EI benefits paid.

[42] The Appellant says that he only had contact with his supervisor. He didn’t have contact with human resources or head office, as these departments were in another part of the province.

[43] I asked the Appellant why he didn’t tell the Commission that he intended to keep the job until he had another job offer. He says that he didn’t understand what was going on. He didn’t understand the role of the Commission, and it didn’t explain the situation to him. He didn’t want to say anything until he understood what he was being accused of.

[44] The Appellant says that he didn’t get a job offer until approximately one month later, and he turned it down because he was in the hiring process for a different job.¹⁹

[45] The Appellant submitted mental health counselling records in support of his appeal. He says that the records show that he thought he was fired by the employer. His online journal to a therapist shows the following messages:²⁰

¹⁸ See GD8-21.

¹⁹ See GD8-22.

²⁰ See GD8.

- On June 23, 2019, the Appellant wrote that he has been working at his new job for one week, but he has an interview for another job which he thinks he'd prefer. He is anxious to quit a job after less than 2 weeks.
- On July 12, 2019, the Appellant wrote that he has an interview with an employer that he previously interviewed with.
- On August 2, 2019, the Appellant wrote that he still hasn't gotten a job yet.
- On December 2, 2019, the Appellant wrote that his job isn't the best at the moment, and he is having issues learning. He says that he was let go from his last job out of the blue.
- On December 13, 2019, the Appellant wrote that he has been essentially fired from 2 jobs.
- On February 15, 2020, the Appellant wrote, "like when I got fired in June, and she said it was because I had a bad attitude."

[46] I find that the Appellant didn't voluntarily leave his job. The Appellant was let go by his employer. I rely on the Appellant's testimony to make my decision. He provided a reasonable explanation as to the discrepancies in the appeal file. He said that he didn't understand the Commission's role, what he was being accused of, and finding documentation about leaving was difficult as the employer went bankrupt.

[47] The Commission submitted documents from the employer that say the Appellant quit and he found a job similar to his previous work experience. But the Commission didn't speak with the employer. It didn't put the Appellant's reconsideration statements or submissions forward to the employer for comment.

[48] I find that the Appellant didn't intend or choose to leave his job on June 25, 2019. The employer dismissed the Appellant upon learning that he was interviewing for a job elsewhere. The Appellant agreed that he was looking for another job. He testified that he intended to keep his job until he secured a job elsewhere.

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

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

[50] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.²¹ Misconduct also includes conduct that is so reckless that it is almost wilful.²² 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.²³

[51] 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.²⁴

[52] 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.²⁵

[53] I find that the Commission hasn't proven that there was misconduct. For example, it hasn't shown that the Appellant acted against any employer policy, including any rule against absenteeism, working for a competitor, or inappropriate behaviour.

Conclusion

[54] I find that the Appellant isn't disqualified from receiving benefits.

[55] This means that the appeal is allowed.

Kristen Thompson

Member, General Division – Employment Insurance Section

²¹ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

²² See *McKay-Eden v Her Majesty the Queen*, A-402-96.

²³ See *Attorney General of Canada v Secours*, A-352-94.

²⁴ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

²⁵ See *Minister of Employment and Immigration v Bartone*, A-369-88.