



Citation: *SK v Canada Employment Insurance Commission*, 2024 SST 1619

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: S. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (687382) dated November 8,
2024 (issued by Service Canada)

Tribunal member: Suzanne Graves

Type of hearing: Teleconference

Hearing date: December 20, 2024

Hearing participant: Appellant

Decision date: December 30, 2024

File number: GE-24-3880

Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) has proved 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 was dismissed from her job on July 15, 2024, and applied for EI regular benefits. The Appellant's employer told the Commission it dismissed her because she created a false company employment offer for another person.

[4] 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.

[5] The Appellant doesn't dispute that this incident happened. She admits that she created a fake employment offer letter for her boyfriend. But she says the letter was only for personal use, and she never meant to harm the employer or anyone else. The Appellant argues that she had been a good employee, and her employer shouldn't have dismissed her for her actions.

Matter I have to consider first

The employer is not a party to the appeal

[6] Sometimes the Tribunal sends the Appellant's former employer a letter asking if they want to be added as a party to the appeal. In this case, the Tribunal wrote to the Appellant's employer asking if it wished to be added as a party, but it didn't reply to that letter.²

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

² The Tribunal's notice to the employer as a potential added party is at GD5.

[7] To be an added party, the employer must have a direct interest in the appeal. I have decided not to add the employer as a party as there is no evidence to show that it has a direct interest in the outcome of this appeal.

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] The Commission argues that the Appellant lost her job because her employer discovered she had created a fake offer of employment in its company name. When the employer found out about the letter, it suspended her for one week, then dismissed her.

[11] The Appellant doesn't dispute that she created a fake offer of employment under the company's name. She argues that the letter was only for her boyfriend's personal use, and she never intended harm to anyone, including her employer. She created the letter to help her boyfriend, so he could be released from his job and move to get married to her.

[12] So, I find that the Appellant lost her job because she created a false offer of employment for another person, using her employer's company name.

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

[13] The reason for the Appellant's dismissal falls under the definition of misconduct under the *Employment Insurance Act* (EI Act).

[14] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.³ Misconduct also includes conduct that is so reckless that it is almost wilful.⁴

[15] The law says that the Appellant doesn't have to have wrongful intent (in other words, she doesn't have to mean to do something wrong) for her behaviour to be misconduct under the law.⁵

[16] There is misconduct if the Appellant knew or should have known that her conduct could prevent her from carrying out her duties toward her employer and that there was a real possibility that she'd be let go because of that.⁶

[17] 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.⁷

The Commission's argument

[18] The Commission argues there was misconduct because the Appellant admitted she created a fake employment offer letter, using the name of her employer's company. The Appellant told the Commission that the offer letter was strictly for personal reasons and that she didn't create it using her work laptop or send it out herself.

[19] The employer told the Commission that the Appellant had included the name and phone number of a manager at its company as a reference.⁸

[20] The Commission considered the Appellant's explanation that she had created the offer to help her boyfriend get released from his job. It concluded that the falsified document appeared to have been both for employment and immigration (work-permit)

³ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁴ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

⁵ See *Attorney General of Canada v Secours*, A-352-94.

⁶ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁷ See *Minister of Employment and Immigration v Bartone*, A-369-88.

⁸ The Commission's notes of its discussion with the Appellant's employer are at GD3-52.

purposes. Even though the Appellant explained the intent of her actions, it also says that her purpose isn't relevant to the issue of whether there was misconduct.⁹

[21] The Commission argues that the Appellant should have known that her actions would jeopardize the relationship of trust between her and her employer.¹⁰ It says that the Appellant acted wilfully, and that her actions amounted to gross negligence.

The Appellant's argument

[22] The Appellant testified in a straightforward manner. She admits that she created a false offer of employment. She testified that she created the fake offer to help her boyfriend as she wanted to give the relationship a second chance.¹¹ He needed an offer of employment to show to his employer and parents so that he could be released from his job in another province and move to be with her.

[23] The Appellant argues that she drafted the offer letter strictly for personal reasons and didn't send the letter herself. She strongly denies including the name of a company manager as a reference but admitted she included a manager's phone number. A friend helped her by sending the fake offer to her boyfriend from a company email account, but it was never used by anyone.

[24] She says that she was a good employee and never had a single caution or warning from her employer. She didn't know that she would be dismissed for her actions. She testified that she only apologized to her employer because they accused her of a criminal act.

[25] The Appellant says this situation has led to distress and financial hardship. Her intentions were pure, and she has always paid EI premiums. She wasn't charged criminally, and never intended harm to anyone. She cannot find a new job and asks for her benefits to be approved on humanitarian grounds.¹²

⁹ The Commission makes this argument at GD4-4.

¹⁰ The Commission makes these arguments at GD4-3 to 4.

¹¹ The Appellant makes this argument at GD2-3.

¹² The Appellant makes this argument at GD2-4.

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

[26] The Appellant lost her job because of misconduct under the EI Act. My reasons are set out below.

[27] The Appellant didn't dispute that she created a false employment offer letter. So, I find that her actions were wilful, in the sense that they were conscious, deliberate, and intentional.

[28] I considered the Appellant's arguments that she was a good employee who never received a warning or caution from her employer, and that she had never been criminally charged in connection with the incident.

[29] In these circumstances, the employer decided that the Appellant's actions in creating a fake employment offer letter in its company name was an act of a serious enough nature for it to dismiss her.

[30] I accept the Appellant's testimony that she didn't intend to harm her employer or anyone else, but her intention isn't relevant to my decision. As stated above, a claimant doesn't have to intend to do something wrong for conduct to be considered misconduct.¹³

[31] The fact that the Appellant wasn't warned, or charged with a criminal offence also isn't relevant to my decision. It isn't my role to decide whether the employer should have given her a second chance or a lesser penalty for her actions. I can only consider whether what the Appellant did or failed to do is misconduct under the EI Act, and whether this led to the loss of her job.¹⁴

[32] I agree with the Commission that the Appellant should have known that creating a false offer of employment would jeopardize the relationship of trust between herself and the employer, and that being dismissed as a result would be a real possibility.

¹³ *Attorney General of Canada v Secours*, A-352-94

¹⁴ *Canada (Attorney general) v Marion*, 2002 FCA 185; *Fleming v Canada (Attorney General)*, 2006 FCA 16; *SS v Canada Employment Insurance Commission*, 2022 SST 780.

[33] So, based on my findings above, I find that the Commission has proved, on the balance of probabilities, that the Appellant lost her job because of misconduct.

[34] I acknowledge the Appellant's evidence about her financial hardship.¹⁵ I have compassion for her circumstances, but I am required to follow the strict rules set out in the EI Act. I have no ability to approve benefits on humanitarian grounds or to make exceptions for special cases, even in the interest of compassion.¹⁶

Conclusion

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

[36] This means that the appeal is dismissed.

Suzanne Graves

Member, General Division – Employment Insurance Section

¹⁵ The Appellant filed a video showing online bank records as evidence of her financial hardship (GD6A).

¹⁶ In *Canada (Attorney General) v Lévesque*, 2001 FCA 304, the Federal Court of Appeal held that the legislation has to be followed, regardless of the personal circumstances of the appellant (see also *Pannu v Canada (Attorney General)*, 2004 FCA 90).