



Citation: *BA v Canada Employment Insurance Commission*, 2024 SST 1688

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: B. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (669543) dated June 17, 2024
(issued by Service Canada)

Tribunal member: Barbara Hicks

Type of hearing: Teleconference

Hearing date: August 27, 2024

Hearing participant: Appellant

Decision date: September 15, 2024

File number: GE-24-2746

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 dishwasher in March 2019. The Appellant's employer said that he was let go because of misconduct at work. The employer says the Appellant intentionally broke a dish and swore at a co-worker. The Appellant had previous outbursts at work, which he was warned about.²

[4] Even though the Appellant doesn't dispute that he had some outbursts at work, he says he accidentally broke the dish. He denies that he swore at his co-worker.

[5] The Appellant received 46 weeks of benefits from September 27, 2020 to August 27, 2021.³ In January 2021, the Commission became aware of the reason for the Appellant's dismissal from the restaurant.⁴

[6] 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 was disqualified from receiving EI benefits.

[7] Because the Appellant had received an overpayment of EI benefits due to the disqualification, the Commission issued a Notice of Debt for \$12,096.00 on September 25, 2021.⁵

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

² See GD3-28.

³ See GD4-1.

⁴ See GD4-1.

⁵ See GD3-34 and GD3-35..

Issue

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

Analysis

[9] To answer the question of whether the Appellant lost his job because of misconduct, I must decide two things. First, I must determine why the Appellant lost his job. Then, I must determine whether the law considers that reason to be misconduct.

Why did the Appellant lose his job?

[10] I find that the Appellant lost his job because of the history of outbursts at work, including breaking a dish, and swearing and yelling at co-workers.

[11] 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.

[12] The Appellant disagrees and says he was laid off. He says he didn't have an outburst on the last day of work, and he denied yelling and swearing. He admits he had some outbursts in the past but says he never tried to cause any trouble.⁶

[13] The Appellant says it can be very loud in the dishwashing area and that it's necessary to yell to be heard.⁷ He says there's a certain culture in restaurant workplaces due to the stress, but he didn't do anything inappropriate.⁸

[14] There is no evidence, aside from the Appellant's assertion, that the Appellant was laid off. The employer's record of employment indicates the Appellant was dismissed.⁹

[15] I find that the Appellant lost his job due to the history of outbursts at work, which led to co-workers feeling uncomfortable working with him. The employer was able to

⁶ See GD3-31.

⁷ See GD3-31.

⁸ See GD3-33.

⁹ See GD3-19.

provide a detailed history of the outbursts and witnesses provided information to the Commission. I find on a balance of probabilities that the Appellant behaved as described by the employer, which led to his dismissal.

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

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

[17] To be misconduct under the law, the conduct must be wilful. This means that the conduct was conscious, deliberate, or intentional.¹⁰ Misconduct also includes conduct that is so reckless that it is almost wilful.¹¹ 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.¹²

[18] 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.¹³

[19] The Commission must prove that the Appellant lost his job because of misconduct. The Commission must prove this on a balance of probabilities. This means that it must show that it is more likely than not that the Appellant lost his job because of misconduct.¹⁴

[20] The Commission says the Appellant's aggressive behaviour and unprovoked outbursts constituted misconduct within the meaning of the Act because the Appellant failed to heed the employer's warnings and continued his offensive behaviour.¹⁵

[21] The Commission says the Appellant had been warned about his behaviour and he should have recognized that his actions could threaten his job security.¹⁶

¹⁰ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹¹ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

¹² See *Attorney General of Canada v Secours*, A-352-94.

¹³ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹⁴ See *Minister of Employment and Immigration v Bartone*, A-369-88.

¹⁵ See GD4-3.

¹⁶ See GD4-4.

[22] The employer says the Appellant was a good worker, but he couldn't control his temper.¹⁷ When his outburst at work became more frequent, the employer started to document the incidents.¹⁸ The incidents included:

- January 9 – outburst at a server about throwing leftovers in the garbage. Verbal warning given.
- January 16 – upset and yelling about cups being put in the wrong spot. Verbal warning given.
- January 24 – refused to wash a co-worker's cup. Smashed the cup. Sent home and terminated.

[23] The employer told the Commission that there were witnesses to the outbursts and that co-workers were afraid to work with him.¹⁹

[24] The incident on January 24th was described by a witness as follows: The Appellant didn't want to wash M.'s cup. He got so angry that he threw the cup into the bin so hard that it smashed. Then the Appellant started screaming and calling the supervisor names. The Appellant was so angry he was throwing dishes around.²⁰

[25] The employer says smashing the cup was the last straw. The Appellant should have just washed the cup.²¹

[26] The Appellant admitted that he did have about 3 or 4 outbursts but that's not the reason he was fired.²² He says he was standing up for himself. The Appellant says he wasn't allowed to wash the staff's personal dishes, and someone kept putting their personal dish in the dishwasher. The Appellant said he kept moving the dish out of the

¹⁷ See GD3-29.

¹⁸ See GD3-29.

¹⁹ See GD3-28 and GD3-32.

²⁰ See GD3-32.

²¹ See GD3-29.

²² See GD3-40.

dishwasher and, on the third time, the handle accidentally broke and the cup dropped and smashed.²³

[27] It seems to me that the Appellant was engaged in a power struggle with a staff member, Mary, over the personal dish. He didn't want to wash it. The Appellant's temper got the best of him.

[28] Inappropriate and disrespectful behaviour in the workplace is misconduct under the Act.²⁴

[29] Yelling obscenities and throwing objects during a temper tantrum at work is considered misconduct.²⁵

[30] Threats, offensive remarks and inappropriate behaviour at work violates the employer/employee relationship and therefore constitutes misconduct and a disqualification is applicable.²⁶

[31] I accept the Commission's evidence provided by the employer regarding the Appellant's behaviour at work. The employer's description of the troublesome behaviour remained consistent throughout the Commission's investigation and was backed up documentary records and witness statements. Furthermore, the timeline of the Appellant's outbursts at work coincided with the timing of his dismissal.

[32] The Appellant's outbursts at work, including swearing, yelling and breaking a dish, constituted misconduct.

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

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

²³ See GD3-31.

²⁴ *Gauvreau v Canada (Procureur general)*, 2021 FC 92, 2021 CarswellNat 911, 2021 CarswellNat 306.

²⁵ *CUB 16065*; *CUBs 11650* and *22601A*.

²⁶ *Hastings A-592-06*; *Forgues A-257-05*.

Hardship

[34] The law says that a person who receives EI benefits that they are not entitled to must repay the amount wrongfully paid.²⁷

[35] The Appellant testified that he is 62-years old and on welfare. He has no money and can barely afford to buy food. He struggles to pay his rent each month. He says he doesn't have the money to repay the overpayment. He has struggled to find employment in the last few years and is only currently working part-time. The Appellant says the labour market has been very tough.

[36] The Appellant testified that if my decision is negative, he will have no choice but to keep appealing because he simply can't afford to pay the debt.

[37] I sympathize with the Appellant. His situation sounds very challenging.

[38] While I don't have jurisdiction to write-off an overpayment, the Appellant may have options in this regard.

[39] The Commission has jurisdiction to write off overpayments in specific circumstances.²⁸ The Appellant may decide to request a write-off due to financial hardship. To do this, he may contact Service Canada to request a "write off of his overpayment because of financial hardship."

[40] The Appellant can also contact the Canada Revenue Agency (CRA) to negotiate a repayment option. The CRA would then assess the Appellant's financial situation and make a recommendation to the Commission's Chief Financial Officer Branch.

²⁷ See sections 43 to 46.1 and 65 of the Act.

²⁸ See EI Regulations section 56(1).

Conclusion

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

[42] This means that the appeal is dismissed.

Barbara Hicks

Member, General Division – Employment Insurance Section