



Citation: *TM v Canada Employment Insurance Commission*, 2025 SST 231

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: T. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (693768) dated January 16, 2025
(issued by Service Canada)

Tribunal member: Connie Dyck

Type of hearing: Teleconference

Hearing date: February 13, 2025

Hearing participant: Appellant

Decision date: February 24, 2025

File number: GE-25-293

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. The Appellant's employer said that he was let go because he missed two days of work without calling his employer.

[4] The Appellant says the dismissal was wrong because he lost his phone and car key and had no way to contact his employer or get to work.

[5] 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 is disqualified from receiving EI benefits.

Matter I have to consider first

The employer is not an added party

[6] Sometimes the Tribunal sends an Appellant's former employer a letter asking if they want to be added as a party to the appeal. In this case, the Tribunal sent the employer a letter.² The employer did not reply to the letter.

[7] To be an added party, the employer must have a direct interest in the appeal.

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

² GD5.

I have decided not to add the employer as a party to this appeal, because there is nothing in the file that indicates my decision would impose any legal obligations on the employer.

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 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?

[10] I find the Appellant lost his job because he missed work without authorization and without advising his employer.

[11] The Appellant and the Commission don't disagree on why the Appellant lost his job. They both agree he was dismissed because he didn't show up for work and didn't notify the employer.

[12] I find that the Appellant lost his job because he didn't go to work on Monday, July 29, 2024. He didn't have permission to be absent and didn't call his employer before the start of his shift.

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

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

[14] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.³

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

Misconduct also includes conduct that is so reckless that it is almost wilful.⁴ 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.⁵

[15] 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.⁶

[16] The Commission says that there was misconduct because the Appellant knew the company policy that he needed to notify the employer if he was going to be absent from work. He was advised at the time of training that he needed to call, email or text his employer if he couldn't show up to work and not doing so would lead to dismissal.⁷

[17] The Appellant says that there was no misconduct because he did notify his employer that he wouldn't be at work, as soon as he found his phone and was able to call them.

[18] I find the Commission has proven that there was misconduct because the Appellant did miss work on Monday, July 29, 2024, without notifying his employer and without permission. The Appellant was scheduled to start work at 7:00am. He did eventually notify his employer, but this was almost 5 ½ hours after he was expected to be at work. Also, the Appellant said he knew he was supposed to contact his employer if he couldn't get to work.⁸

– **The Appellant was absent from work without notifying his employer**

[19] The Appellant's work schedule was fixed. It was always Monday to Friday, 7:00am to 3:00pm. The Commission and the employer say the Appellant missed two days of work (Friday and Monday). But the Appellant says he was at work on Friday.

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

⁷ GD3-34.

⁸ GD3-37.

The ROE says the last day for which the Appellant was paid was Friday.⁹ It is unclear if the Appellant worked Friday or not. But this doesn't matter because it isn't the number of days the Appellant was away from work that determines misconduct.

[20] 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.¹⁰

[21] The misconduct is that the Appellant was away from work on Monday, when he was scheduled to work and expected to be at work. He was away without permission and without notifying his employer, despite knowing that he had to contact his employer if he was going to be away from work on any given day.

[22] The Appellant says he couldn't contact his employer because he left his phone and car keys in his friend's car. He says his actions weren't misconduct because he contacted his employer as soon as he had his phone back on Monday.

[23] The Appellant provided conflicting statements to the Commission about his efforts to retrieve his phone. He said he didn't contact his employer to advise them of his situation, because he didn't want to ask a neighbor or go into a business to use a phone.¹¹ In his reconsideration request, he said that he had tried to knock on neighbor's doors, to borrow a phone, but no one was home.¹² Even though he lost his phone, it doesn't explain why he couldn't show up at work. He could have emailed his employer, just as he had emailed his mother. In any event, the Appellant knew or ought to have known that he could be dismissed if he didn't show up at work and didn't contact his employer.

[24] The Appellant testified that on Monday, he did reach his mother by email with the use of a playstation. She called his friend, and the friend returned his phone and keys a few hours later on Monday. He didn't try and email his employer as he had his mother.

⁹ GD3-20.

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

¹¹ GD3-23.

¹² GD3-26.

Nor did he have his mother call his employer to say why the Appellant wasn't at work on that Monday morning. Absences and tardiness, despite many warnings, is misconduct since it is reckless, and it shows a lack of concern with respect to the employer.¹³

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

[25] Based on my findings above, I find the Appellant did lose his job because of misconduct. He didn't notify his employer, and he knew dismissal was a possibility if he didn't notify his employer that he would be absent from work.

Conclusion

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

[27] This means that the appeal is dismissed.

Connie Dyck

Member, General Division – Employment Insurance Section

¹³ ([Parsons v Canada \(Attorney General\)](#), 2005 FCA 248; [Murray v Canada \(Attorney General\)](#), A-245-96).