



Citation: *CD v Canada Employment Insurance Commission*, 2025 SST 190

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

## **Decision**

**Appellant:** C. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (684511) dated November 6,  
2024 (issued by Service Canada)

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**Tribunal member:** Harkamal Singh

**Type of hearing:** Teleconference

**Hearing date:** January 17, 2025

**Hearing participants:** Appellant

**Decision date:** January 29, 2025

**File number:** GE-24-4021

## 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.<sup>1</sup>

## Overview

[3] The Appellant lost her job at X. The employer initially laid her off due to shortage of work, but later amended the reason to dismissal for misconduct, claiming she harassed a coworker by making derogatory social media posts and had previously brought a baseball bat to work.

[4] While the Appellant acknowledges posting about her coworker on social media and bringing a baseball bat to work, she explains she only posted about her coworker after failed negotiations to return to work, and only brought the baseball bat to protect herself after being threatened by her coworker's daughter at a company Christmas party. The Appellant maintains she was actually dismissed because she was looking for other work while on layoff, not for misconduct.

[5] The Commission accepted the employer's position that the Appellant was dismissed for violating the company's harassment policy through her social media posts and workplace behavior. It decided the Appellant lost her job because of misconduct and disqualified her from receiving Employment Insurance benefits.

## Issue

[6] Did the Appellant lose her job because of misconduct?

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

## Analysis

[7] 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?

[8] I find that the Appellant lost her job because she violated the company's harassment policy by posting derogatory comments about her coworker on social media after being warned about harassment.

[9] The Appellant and the Commission don't agree on why the Appellant lost her job. According to the Commission, the employer stated that the Appellant was dismissed because she violated the company's harassment policy on multiple occasions, culminating in posting derogatory content about her coworker on social media despite previous warnings about harassment.<sup>2</sup> The employer indicated this was the main reason for dismissal, not the fact that she was looking for other work.<sup>3</sup>

[10] The Appellant disagrees. She maintains that she was told she had "constructively quit" because she posted that she was job hunting while on layoff.<sup>4</sup> She states she was looking for work only because she needed to pay her bills while waiting to complete the required anger management course to return to work.<sup>5</sup>

[11] After reviewing all the evidence, I find the Appellant was dismissed for violating the harassment policy for the following reasons:

- a) The employer consistently maintained throughout that the social media posts about the coworker were the reason for dismissal, not the job hunting posts<sup>6</sup>

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<sup>2</sup> GD3-56

<sup>3</sup> GD3-44

<sup>4</sup> GD3-27

<sup>5</sup> GD3-43

<sup>6</sup> GD3-44, GD3-56

- b) The employer's harassment policy document shows a "zero tolerance policy regarding threats, verbal or physical violence, harassment and/or bullying towards colleagues"<sup>7</sup>
- c) The Appellant admitted posting negative content about her coworker and acknowledged she "should not have posted the content"<sup>8</sup>
- d) There is documented evidence of prior warnings about harassment, including an incident report from December 15, 2023 noting the Appellant was "bullying and belittling her co worker on a regular occasion in the company office"<sup>9</sup>
- e) The employer provided a clear timeline showing that after the Christmas party incident, the Appellant was warned that continued harassment would result in dismissal<sup>10</sup>
- f) While there are text messages showing discussions about job hunting<sup>11</sup>, the employer explicitly stated this was not the reason for dismissal<sup>12</sup>

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

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

[13] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>13</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>14</sup> 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.<sup>15</sup>

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<sup>7</sup> GD3-49

<sup>8</sup> GD3-55

<sup>9</sup> GD3-58

<sup>10</sup> GD3-56

<sup>11</sup> GD3-39, GD3-40

<sup>12</sup> GD3-44

<sup>13</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>14</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>15</sup> See *Attorney General of Canada v Secours*, A-352-94.

[14] 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.<sup>16</sup>

[15] 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.<sup>17</sup>

[16] The Commission says there was misconduct because the Appellant willfully violated the company's harassment policy through multiple incidents. First, the Appellant had been harassing her coworker before the Christmas party incident.<sup>18</sup> Then, during the Christmas party, she threw a napkin at her coworker and pushed her into a table. After being warned about her behavior and required to take anger management training, she escalated the situation by bringing a baseball bat and hitting desks while making threatening sounds. Finally, despite explicit warnings that further harassment would result in dismissal, she posted a derogatory photo and comments about her coworker on Facebook.<sup>19</sup> The Commission argues this pattern of behavior shows willful misconduct, as the Appellant knew her conduct was prohibited yet chose to continue harassing her coworker anyway.<sup>20</sup>

[17] The Appellant says there was no misconduct because she made the social media post during ongoing negotiations about returning to work, after being unable to reach an agreement with her employer.<sup>21</sup> She states she took down the post immediately when asked.<sup>22</sup> She maintains she was ultimately dismissed because she was looking for other work while on layoff, not because of harassment.<sup>23</sup>

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<sup>16</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>17</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

<sup>18</sup> GD4-5

<sup>19</sup> GD4-5

<sup>20</sup> GD4-6

<sup>21</sup> GD3-30

<sup>22</sup> GD3-42

<sup>23</sup> GD3-27

[18] I find that the Commission has proven that there was misconduct, because:

- a) The evidence shows a pattern of escalating hostile behavior. Starting with the Christmas party incident, the Appellant threw a napkin at her coworker S. and may have pushed her into a table. The Appellant testified that her memory is unclear due to alcohol consumption. What is clear is that the situation became physical, regardless of intent.
- b) After this incident, rather than taking steps to improve workplace relations, the Appellant brought a baseball bat to work and engaged in intimidating behavior by hitting desks and slamming drawers.<sup>24</sup>
- c) Even after being warned about harassment and required to complete anger management training, the Appellant made a deliberate choice to post derogatory content about her coworker on social media. By her own admission, she testified that she "exploded" online in rage and acknowledged she should not have posted the content about her co-worker.<sup>25</sup>
- d) While the Appellant testified she didn't read or sign the employee handbook containing the harassment policy, this doesn't excuse her conduct. The company had a clear harassment policy, and simply choosing not to review workplace policies doesn't exempt an employee from following them. The policy stated that the company had a clear "zero tolerance policy regarding threats, verbal or physical violence, harassment and/or bullying towards colleagues".<sup>26</sup> The Appellant's repeated violations of this policy, despite warnings and opportunities to correct her behavior, demonstrate willful misconduct.
- e) The timing and nature of the social media posts suggests they were retaliatory and intended to cause harm to her coworker's reputation. This was not an

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<sup>24</sup> GD3-58, GD3-59

<sup>25</sup> GD3-55

<sup>26</sup> GD3-49

impulsive outburst but required multiple deliberate steps - accessing a photo, writing derogatory comments, and posting them publicly.<sup>27</sup>

- f) Although the reason for separation on the Record of Employment changed over time, the evidence clearly shows that the Appellant's repeated harassment of her coworker, culminating in the social media posts, was the ultimate reason for her dismissal on January 10, 2024.

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

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

### **Conclusion**

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

[21] This means that the appeal is dismissed.

Harkamal Singh  
Member, General Division – Employment Insurance Section

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<sup>27</sup> GD3-52