Citation: *MB v Canada Employment Insurance Commission*, 2025 SST 468

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	M. B.
Representative:	P. Z.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (691863) dated November 21, 2024 (issued by Service Canada)

Tribunal member:	Teresa M. Day
Type of hearing:	In person
Hearing date:	March 4, 2025
Hearing participants:	Appellant Appellant's representative
Decision date:	March 20, 2025
File number:	GE-24-4148

Decision

[1] The Resondent (Commission) has proven the Appellant lost her job because of misconduct[1]. This means the Appellant is disqualified from receiving employment insurance (EI) benefits starting August 18, 2024.

[2] The appeal is dismissed, with modification to the start date of the disqualification.

Overview

[3] The Appellant was employed as a cashier by X (the employer). She worked until June 25, 2024 and then renewed a claim for EI benefits on August 12, 2024. She told the Commission she lost her job through no fault of her own[2]. Her Record of Employment (ROE) said she was dismissed[3].

[4] The law says if you are dismissed from your employment due to your own misconduct, you will be disqualified from receiving EI benefits[4].

[5] The Commission investigated the reason for the Appellant's dismissal.

[6] The employer said the Appellant was approved for 2 weeks of vacation plus a 15-day leave of absence and was expected to return to work on July 26, 2024. The Appellant said she wouldn't be returning to work until August 9, 2024. The employer dismissed her for job abandonment after she failed to attend 3 shifts in a row[5].

[7] The Appellant said she was scheduled for 2 weeks paid vacation. She asked the employer for an additional 30 days off as a leave of absence. They had a dispute about whether her leave of absence would be for 15 days or 30 days. She believed she was approved to be off work until August 8, 2024, but the employer said she was expected

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[1] That is, "misconduct" **as the term is used for purposes of EI benefits**. The meaning of "misconduct" for purposes of EI benefits is discussed in detail under Issue 2. As a general rule, misconduct for purposes of EI benefits is wilful conduct that you knew or ought to have known could cause you to lose your job.
[2] See GD3-20.
[3] See GD3-17.
[4] Section 30 of the *Employment Insurance Act* (EI Act).
[5] See GD3-23 and GD3-28 to GD3-32.

to return to work as of July 26, 2024. She was on vacation and didn't come home until August 8, 2024, at which point the employer said she had abandoned her job[6].

[8] The Commission decided the reason the Appellant lost her employment was due to misconduct according to the *Employment Insurance Act* (EI Act). This meant she couldn't receive EI benefits on her renewal claim[7].

[9] The Appellant asked the Commission to reconsider. She explained[8] that she received an E-mail from the employer saying she was expected to return to work on "August 9th"[9]. She took that to mean the employer changed its mind and decided to give her a 30-day leave of absence on top of her 2 weeks of vacation. When she saw her name on the schedule to work on July 25, 2024, she contacted the employer to ask why? On July 18, 29024, the employer responded[10] by pointing out that the E-mail it sent specifically said she'd been approved for 2 weeks of vacation and a 15-day leave of absence. It said the August 9th date was an error, and she was expected to return to work as of July 26, 2024. It also said failure to attend 3 consecutive shifts in a row would be considered job abandonment. But she was on vacation outside of Canada and felt it was the employer's error and not her responsibility[11]. She didn't think the employer could change its mind while she was overseas.

[10] The Commission maintained that the Appellant was disqualified from EI benefits because she lost her job due to her own misconduct. The Appellant appealed to the General Division of the Social Security Tribunal (Tribunal).

[11] I must decide if the Commission has proven the Appellant lost her job due to her own misconduct[12].

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[6] See GD3-20 to GD3-21.
[7] See GD3-33.
[8] The Appellant's reconsideration interview is at GD3-
[9] She provided a copy of this E-mail at GD3-40.
[10] The Appellant provided a copy of the employer's responding E-mail at GD3-41.
[11] See GD3-54.
[12] The Commission has the burden of proof in this case.

Issue

[12] Did the Appellant lose her job because of her own misconduct[13]?

Analysis

[13] To answer this question, I have to decide 2 things:

- What did the Appellant do – or fail to do – that caused her to lose her job?
- Does the law consider that conduct to be misconduct?

Issue 1: Why did the Appellant lose her job?

Short answer:

[14] She did not return to work as of July 26, 2024.

The evidence:

[15] The Appellant relies on an E-mail from the employer dated **June 17, 2024**[14]. The first full paragraph reads:

> "You have been approved for a two-week vacation and a fifteen day leave of absence for a total consecutive time away from the workplace for one month and one day. The decision is based on being able to maintain operational continuity and ensuring fairness across all team members.

The second full paragraph reads:

> "Your leave of absence ends on August 8th, 2024. You will be expected to return to work as of August 9th for all scheduled shifts. You will be responsible to contact the store to receive your schedule following your vacation and leave of absence. Failure to attend three consecutive shifts in a row will result in job abandonment."

(The Appellant highlighted the 2 dates in the second paragraph)

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[13] That is, "misconduct" **as the term is used for purposes of EI benefits**.
[14] See GD3-40.

[16] The employer told the Commission the Appellant was terminated because she was aware she was only authorized to be away for 4 weeks and failed to return to work on time[15].

[17] The employer provided the following documents:

a) Leave of Absence Request form[16]

- On April 19, 2024, the Appellant submitted a request for a 30-day leave of absence, from July 10, 2024 to August 8, 2024.
- On June 7, 2024, the employer marked the form as "Approved for July 14, 2024 to July 25, 2024". The employer also wrote:

> "Not approved, as per conversation that you can have 15 days leave of absence. If you accept, please sign below and date."

- The Appellant wrote: "I don't accept this decision" and signed her name.

b) A chain of 4 E-mails on **July 18, 2024**[17]:

- The Appellant sent an E-mail to the employer why she was on the schedule to work July 25, 2024 when her leave of absence ends August 8, 2024?
- The employer responded that there appeared to be "a typo" with the dates, but the Appellant was aware she was only approved to be off until July 25, 2024 and was expected to return to work as of July 26, 2024. The employer wrote:

> "You will be responsible to contact the store to receive your schedule following your vacation and leave of absence. Failure to attend three consecutive shifts in a row will result in job abandonment."

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[15] See GD3-23.
[16] At GD3-30.
[17] Starting chronologically at GD3-32 and concluding on GD3-31.

- The Appellant replied:

> "You made mistake you fix it. It makes me sick to my stomach I deal with this matter when I come back. I will contact labour board, this went out of control"

- The Employer wrote back that there was "a human error" with the dates, but the E-mail clearly stated the Appellant was approved for a 2-week vacation and a 15-day leave of absence, which would allow her to be off work until July 25, 2024[18]. This was consistent with "multiple conversations" and the Leave of Absence Request form. Failure to attend 3 consecutive shifts starting from July 26, 2024 will result in job abandonment.

c) A chain of 2 E-mails on **July 24, 2024[19]**:

- The Appellant sent the employer an E-mail saying that "the final decision"[20] on her leave of absence was that it ended on August 8, 2024 and she was expected to return to work on August 9, 2024. She asked not to be put on schedule during the period her leave was granted.

- The employer responded by detailing all the times it confirmed the Appellant's leave of absence would only be 15 days, and repeated she was expected to return to work on July 26, 2024. It also reminded the Appellant that if she was absent for 3 consecutive shifts without prior approval, it would result in job abandonment.

[18] The Appellant traveled to Poland on June 26, 2024 and didn't return to Canada until August 8, 2024[21].

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[18] See GD3-31.
[19] See GD3-28 to GD3-29.
[20] See GD3-29.
[21] See GD2-5 and the Appellant's testimony at the hearing.

[19] The employer sent the Appellant an E-mail on August 9, 2024 stating:

> "You were scheduled to return to work on July 26, 2024. However, you missed more than three consecutive shifts, leading to a determination of job abandonment. A formal letter regarding this matter was sent to your address on file on July 30, 2024."[22]

[20] A termination letter was issued on August 19, 2024[23]. It said the Appellant abandoned her employment by failing to return to work by the agreed upon date of July 26, 2024.

The Appellant's position:

[21] The Appellant said the employer is using her failure to return to work on July 26, 2024 as an excuse. She thinks she was dismissed as retaliation for filing a complaint against one of the store managers.

[22] She testified that she complained of "indirect sexual harassment" and bullying, and she referred me to the Summary of Outcome of Investigation letter she received from the employer as evidence of her complaint[24]. She thinks her dismissal was the employer's way of getting back at her.

[23] She argues the gratuitous severance offer set out in her termination letter and the Full and Final Release the employer asked her to sign[25], along with the fact the employer paid her termination pay[26] (even though she refused to sign the Release) show she did nothing wrong by remaining on leave until August 8, 2024. She says these things show the employer was trying to cover its tracks because her termination was wrongful.

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[22] At GD3-42.
[23] See GD3-46 to GD3-47.
[24] At GD3-43 to GD3-45
[25] See GD3-46 to GD3-52.
[26] See the Record of Employment at GD3-17, which shows termination pay of $1,429.43 was paid to the Appellant on September 6, 2024.

My findings

[24] I'm not persuaded by the Appellant's testimony and submissions that the real reason for her dismissal was because she filed a complaint against a manager.

[25] The Appellant made her complaint on June 11, 2024[27]. This was ***after*** her request for a 30-day leave of absence was turned down on June 7, 2024, a decision she marked on the Request Form with the words "I don't accept"[28].

[26] The Appellant told the Commission ***and*** testified at the hearing that she was "negotiating" with her manager and the HR manager after she was turned down for the full 30 days[29]. So it could also be possible the Appellant's complaint was retaliation (or a negotiating tactic) for the employer's decision to limit her leave of absence to 15 days. I note she sent an E-mail to the employer on June 14, 2024 advising she was considering resigning because of the employer's decision on her leave of absence request[30]. This shows how unhappy she was with the employer's decision on her leave and the significant steps she was prepared to take in response to it.

[27] I agree with the Commission there's no correlation between the Appellant's complaint and the events that led to her dismissal. I also note that both the termination letter outlining the "gratuitous severance offer" and the draft release are worded in broad, general terms[31]. In the absence of a specific reference to the Appellant's complaint, I cannot see how the offer of severance pay relates to her complaint. However, nothing in my decision prevents the Appellant from pursuing a wrongful dismissal action against the employer if she wishes to do so.

[28] In my view, the preponderance of evidence shows the Appellant's job loss was triggered by her failure to return to work as of July 26, 2024. The employer scheduled her for shifts starting from July 26, 2024 and her failure to return to work as of that date

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[27] See the first paragraph of the Investigation Outcome letter at GD3-43.
[28] See the Leave of Absence Request Form at GD3-30.
[29] See the Supplementary Record of Claim at GD3-53 for the Appellant's statement to the Commission.
[30] See GD11-2.
[31] See GD3-46 to GD3-52.

caused her to miss 3 (or more) consecutive shifts, which was job abandonment according to the employer's policy.

[29] The Appellant argued she was on an approved leave of absence until August 8, 2024.

[30] But she doesn't deny being **told on July 18, 2024** that the employer required her to be available for work starting from July 26, 2024[32].

[31] Nor does she dispute the employer's evidence that she was scheduled for 3 (or more) shifts starting from July 26, 2024 and missed all those shifts[33].

[32] And she knew the employer had a policy that missing 3 (or more) consecutive shifts is considered job abandonment.

[33] I therefore find the credible and uncontested evidence shows the Appellant lost her employment because she did not return to work as of July 26, 2024.

Issue 2: Is the conduct that caused her dismissal misconduct under the law?

[34] Yes, the reason for the Appellant's dismissal is misconduct for purposes of EI benefits.

The law:

[35] To be misconduct under the law, the conduct that led to the separation from employment must be wilful. This means the conduct was conscious, deliberate, or intentional[34]. Misconduct also includes conduct that is so reckless (or careless or negligent) that it is almost wilful[35] (or shows a wilful disregard for the effects of their actions on the performance of their job).

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[32] See the E-mail chain on July 18, 2024, as set out in paragraph 17b above.
[33] As set out in the E-mail at GD3-42. I see no reason to doubt the statements in tis E-mail.
[34] See *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36.
[35] See *McKay-Eden v. Her Majesty the Queen*, A-402-96.

[36] The Appellant doesn't have to have wrongful intent (in other words, she didn't have to mean to do something wrong) for her behaviour to be considered misconduct under the law[36].

[37] There is misconduct if the Appellant knew or ***ought to have known*** her conduct could get in the way of carrying out her duties towards the employer and there was a real possibility of being terminated because of it[37].

[38] The Commission must prove the Appellant was dismissed from her job due to misconduct[38]. It relies on the evidence Service Canada representatives obtain from the employer and the Appellant to do so.

The evidence:

[39] The Appellant and her representative both wanted to testify at the hearing. Normally a representative only makes arguments and submissions and doesn't give evidence. In this case, I agreed to accept the representative's testimony because he is the Appellant's husband and has direct knowledge of the matters at issue in this appeal.

[40] The hearing took nearly 2 hours. For the sake of clarity, I will summarize their testimony together.

[41] The Appellant and her representative/husband testified as follows:

Re: Appellant's history with this employer

- The employee handbook says you can get up to 30 days leave of absence every 3 years.

[36] See *Attorney General of Canada v. Secours*, A-352-94.
[37] See *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36.
[38] The Commission has to prove this on a balance of probabilities (see *Minister of Employment and Immigration v. Bartone*, A-369-88). This means the Commission must show it is more likely than not that the Claimant lost her job because of misconduct.

- The Appellant worked for this employer for 4 years. She started as a stock clerk and her first day was on September 9, 2020.

- In May 2022, her mother passed away suddenly. She took an authorized leave of absence for 30 days to travel to Poland to organize the funeral and attend to her mother's affairs.

- While she was in Poland, she asked for an "extension" for another 30 days leave of absence and it was granted.

- But she couldn't come back even after 60 days because she had so much to do in Poland.

- She asked for another extension of her leave of absence "extension" but was turned down. On August 8, 2022, the employer sent her a letter saying that she quit, and it issued an ROE saying she quit.

- The Appellant returned to Canada on November 23, 2022. She was re-hired by the employer on December 5, 2022 and trained as a cashier.

- She worked without any complaints about her performance until June 25, 2024, when she started 2 weeks of holidays and another leave of absence.

Re: Decision to go to Poland in the summer of 2024

- They decided to go to Poland for 6 weeks of vacation during the summer of 2024. It's a long way to go and "not worth it" just to go for 2 or 3 weeks.

- They bought their plane tickets in February 2024. Their flights were departing Canada on June 26th and returning on August 8th.

- In late February or early March 2024, the Appellant told her manager she wanted 6 weeks off.

- She kept talking to him about it, but he kept saying it could only be 2 weeks of vacation and 2 weeks leave of absence because it would be difficult to replace her.

- The Appellant's husband told her to keep negotiating because summer isn't busy at the store – not like the Christmas season.

- The HR representative, JL (JL) got involved. JL was the same person the Appellant dealt with for the extended leave of absence she took when her mother passed away in May 2022.

Re: Asking for a leave of absence request

- On April 19th, the Appellant completed a Request Form to ask for a 30-day leave of absence. With her 2 weeks of vacation, this would be the 6 weeks she wanted to be off work to go to Poland.

- On June 7th, the employer turned down her request[39]. It said she could have 2 weeks of vacation, but only 15 days leave of absence. That would give her a month off work – not the 6 weeks she wanted.

- On June 14, 2024, she sent an E-mail to JL asking for an explanation.

- She also asked JL for a reference letter[40], because after the employer turned down her 30-day leave request, she was considering 2 options: either re-book her plane ticket or quit her job.

- If she decided to quit her job, she wanted to have an employment letter and a reference letter so she could apply for work when she returned from Poland.

- On June 17, 2024, the Appellant got an E-mail response from JL[41].

[39] See GD3-30.
[40] See GD11-2
[41] GD2-10.

- The Appellant and her husband read it together and once they saw the August 8th and 9th dates, they started "celebrating" because it meant they were going on their vacation.

- When she received the June 17, 2024 E-mail, she read the first paragraph – the one about 2 weeks of vacation and 15 days leave of absence – and she considered that to be a mistake because she saw the August 8th and 9th dates in the second paragraph and the second paragraph was the one that said what would happen if she didn't return.

- On June 24, 2024, she called JL and thanked her for the June 17, 2024 E-mail.

- She didn't bring the mistake to JL's attention. She didn't seek clarification between the 2 conflicting paragraphs. She just said thank you for the E-mail.

- JL didn't know about the mistake in the June 17th E-mail until the Appellant reached out to her on July 18th[42].

- They traveled to Poland on June 26, 2024.

Re: While they were in Poland

- The Appellant was keeping in touch with a co-worker who was sending her texts with photos of the upcoming schedule[43].

- On July 18, 2024, a co-worker informed the Appellant she was on the schedule to work starting on July 25th.

- The Appellant was "in shock" and reached out to JL to ask why she was scheduled to work when she wasn't due back at work until August 9th[44].

[42] At 56:45 of the recording of the hearing.
[43] At 58:30 of the recording of the hearing.
[44] See GD2-11.

- JL said there was a typo in the dates in the June 17, 2024 E-mail. JL said it was a "human error" and that the Appellant was only authorized to be away until July 25, 2024 and expected to be available to work as of July 26, 2024 for all scheduled shifts[45].

- The Appellant's husband wrote back: you made this mistake, you fix it.

- The Appellant's problems started after this. Before the Appellant reached out on July 18, 2024, nobody knew there was a mistake in the June 17, 2024 E-mail.

- After that day "all things went bad" against the Appellant.

Re: The Appellant's decision to remain in Poland

- There were a lot of mistakes. Why would she have been put on the schedule to work July 25th if, as JL said, she wasn't required to be back at work until July 26th?

- JL said there was a human error in the June 17th E-mail, but the Appellant thought the error was the other way around.

- JL said the first paragraph was correct. The Appellant believed the second one was.

- As far as the Appellant was concerned, she was authorized to be off work until August 8, 2024.

- They were 6,000 kms away and it's difficult to get back home on short notice. The Appellant's house is in a town near the Southern border of Poland. To get there, they flew to Vienna and then drove approximately 4 hours to her house.

- The employer could easily have found someone else to cover for the Appellant or made other arrangements to save a good employee who was fully trained.

[45] See GD2-12.

- But the employer wanted to get back at the Appellant for making a complaint against one of the store managers for "indirect sexual harassment" and bullying.
- She didn't mention her health problems to JL or Service Canada because she wanted to "avoid this additional element" and because she was "let go anyhow".
- Once they returned to Canada on August 8th, she was already terminated.
- But she got sick while she was in Poland. She was sick on July 18th, when she was E-mailing with JL, and when her condition didn't improve she went to a doctor on July 26th and was prescribed antibiotics for "heavy bronchitis".
- If she thought she had to return to work on July 26th, she would have sent her medical documents (at GD10) to JL as proof she was unable to return to work then.
- But she was convinced that her return-to-work date was August 9th.
- There were so many errors, why should the Appellant be the only one who is penalized?

Re: The Appellant's termination

- When the Appellant was fired, the employer offered her termination pay and asked her to sign a Release saying she would be quiet and no talk about anything to anyone.
- She refused to sign it, but they paid her the termination money anyway.
- If the employer really believes it was misconduct, why would it have paid that?
- Her dismissal was wrongful. Any manager could have fixed things for the Appellant even though she didn't show up for work. But the employer wanted to get rid of her because she complained about one of the store managers and this was the easiest way to take care of it.

[42] The Appellant bought her plane ticket in February 2024, before she even asked for 6 weeks off work. **I asked her why she didn't change her ticket on June 7th, after her request for a 30-day leave of absence was only approved for 15 days[46].**

[43] The Appellant answered:

- She could change the ticket while she was in Poland – she didn't have to do it before.
- Or she could buy a new portion of a ticket "with no problem"[47].
- Her earlier conversations with the employer were only negotiations.
- When she got the June 17th E-mail and saw the August 8th date, she thought she got what she wanted after all.

[44] **I asked the Appellant why she thought the employer would change its mind when it had never wavered prior to the June 17th E-mail?[48]**

- Her earlier conversations with the employer were "only negotiations"[49].
- Her manager told her she couldn't get 30 days leave of absence because they'd have to train somebody else, and it would disrupt the workplace for the position of cashier.
- But she knew there were other employees who were already trained and could easily cover her position.

[46] At 1:12:40 of the recording of the hearing.
[47] At 1:13:45 of the recording of the hearing.
[48] At 1:21:30 of the recording of the hearing.
[49] At 1:24:08 of the recording of the hearing.

- And from her review of the schedules while she was away, that's exactly what happened. She saw that the employer just moved other cashiers around (from the bakery department or the meat department) and had coverage.

- On June 7th, she had a conversation with JL and explained that her trip wasn't just vacation but was also a special trip that was still related to the death of her mother.

- She asked JL why she wasn't giving her 30 days now, when she gave her a 30-day leave of absence ***plus*** a 30-day extension when her mother passed away in 2022.

- She had been negotiating with the store manager and her direct supervisor when the June 17th E-mail was sent by the Human Resources representative, JL.

- JL was the same person who gave her the extended leave of absence in 2022. So that's why she thought the Er had changed its mind to allow her a 30-day leave of absence.

What the parties say:

[45] The Commission says there was misconduct because the Appellant failed to return to work after an authorized leave, despite being warned of the job loss consequences. It says her decision not to return as of July 26, 2024 was wilful and the direct cause of her termination.

[46] The Appellant says there was no misconduct because she believed she was authorized to be away until August 8, 2024. There may have been 2 different ways of reading the June 17th E-mail, but the employer could easily have scheduled someone else to cover for the Appellant until August 8th and "talked about it after" or given the Appellant a warning or another form of progressive discipline instead of firing her. She shouldn't be penalized because the HR manager made a mistake, or the employer changed its mind while she was on leave and wanted to get rid of her because she complained about a manager.

My findings:

The Appellant's conduct was wilful

[47] The Appellant argues that her conduct was caused by a mistake in the June 17, 2024 E-mail from JL. She believed she was approved for a 30-day leave of absence and wasn't required to return to work until August 9, 2024. Therefore, her decision not to return to work as of July 26, 2024 doesn't meet the standard of wilful conduct for purposes of being disqualified from EI benefits.

[48] I disagree.

[49] The courts have said conduct that is so careless and reckless as to be wilful will be considered intentional for purposes of a finding of misconduct.

[50] I find the Appellant's conduct (her failure to return to work as of July 26, 2024) meets this legal test for wilful.

[51] There are 2 reasons for this.

[52] **First**, the Appellant deliberately disregarded the conflicting statements in JL's E-mail on June 17th in order to take the 30-day leave of absence she wanted.

- Up to that point, the employer had ***clearly*** and ***repeatedly*** told the Appellant her leave of absence was limited to 15 days. The decision was stated on her Leave of Absence Request form, and she heard it on multiple occasions from her manager and from JL[50].
- She never accepted the employer's decision. She was "still negotiating".
- But the employer never budged off the 15-day limit – all the way back to when the Appellant first started talking about it in late February or early March 2024.

[50] See GD3-28.

- When the Appellant threatened to quit if she didn't get what she wanted (which is what she did in her email of June 14th), the employer responded by providing her with reference letter she asked for. It didn't beg the Appellant not to quit. And it didn't change its mind. Rather, the first paragraph of JL's response (the June 17th E-mail) shows the employer was holding firm to its decision:

> "As per your request please find attached employment letter and reference letter.
>
> You have been approved for a two-week vacation and a fifteen day leave of absence for a total consecutive time away from the workplace of one month and one day. The decision is based on being able to maintain operational continuity and ensuring fairness across all team members."[51]

- But the Appellant seized on the second paragraph of the June 17th E-mail:

> "Your leave of absence ends on August 8th, 2024. You will be expected to return to work as of August 9th for all scheduled shifts. You will be responsible to contact the store to receive your schedule following your vacation and leave of absence. Failure to attend three consecutive shifts in a row will result in job abandonment."[52]

- The Appellant spotted the obvious inconsistency within this E-mail. She admitted to this in her testimony. She said that when she read it, she thought the first paragraph was a mistake and the second paragraph was correct.

- But instead asking JL to clarify the inconsistency, the Appellant consciously and deliberately decided not to do so. And this was because she wanted to take advantage of the fact the second paragraph appeared to be in her favour.

- The Appellant had 8 days between receiving the June 17th E-mail and leaving Canada on June 25th. It was incumbent on her to protect her employment by asking JL why the June 17th E-mail said one thing in the first paragraph and a

[51] See GD3-40.
[52] See GD3-40.

different thing in the second. **This was the only way for the Appellant to know when she had to be back at work.**

- The Appellant said JL had time to clarify the mistake before she left Canada. But the Appellant and her husband both testified that JL was unaware of the mistake until the Appellant reached out to her on July 18th (from Poland). So this argument is not persuasive.

- The Appellant said she phoned JL on June 24th to thank her for the June 17th E-mail.

- But it's what the Appellant didn't say in that phone call is telling. She didn't thank JL for changing her mind, or for granting her request for a 30-day leave of absence after all. She just thanked her for the E-mail.

- So ***only*** the Appellant and her husband knew there was a mistake in the June 17th E-mail. They just didn't know if the error was in paragraph 1 or paragraph 2.

- The Appellant decided not to find out.

- She chose instead to rely on paragraph 2 and proceed as if she'd been granted a 30-day leave of absence after all.

- This deliberate choice, in the face of the employer's consistent, unwavering decision to limit the Appellant to a 15-day leave of absence – and the plain language in paragraph 1 of the June 17th E-mail – show an intentionality and recklessness that makes the Appellant's conduct wilful.

[53] **Second**, it was clear by July 18th that the employer expected the Appellant to return to work on July 26th. Yet she chose not to return to Canada until August 8th.

- On July 18th, the Appellant reached out to JL and asked why she was on the work schedule when her leave of absence ended August 8th.

- JLresponded immediately. JL told the Appellant there appeared to be "a typo with the dates"[53]. JL said the Appellant was well aware she'd been approved for a 15-day leave of absence ending on July 25, 2024. And JL reminded the Appellant she was expected to return to work as of July 26, 2024 for all scheduled shifts.

- The Appellant didn't want to accept this. She told JL it was her mistake and she should fix it[54].

- But JL responded by reminding the Appellant of the multiple conversations they'd had about her 15-day leave of absence and that she was expected to return to work as of July 26th.

- So there's no doubt that, by July 18th, the Appellant understood the employer's expectation that she return to work as of July 26th.

- The Appellant had 7 days to return to Canada so she could be available for work starting from July 26th.

- I am satisfied that, as of July 18th, the Appellant could have returned to Canada in time to be back at work as of July 26th. As she testified, she could have changed her plane ticket while she was in Poland or bought a new portion of a ticket "with no problem". She had a 4-hour drive to the airport in Vienna, and a flight to Toronto from there.

- I give little weight to the Appellant's testimony that she was sick as of July 18th. This is because she never once mentioned any health issues to JL at the time (they exchanged emails on July 18th and 24th) or to Service Canada. And even if the Appellant wasn't feeling well, the medical evidence she provided doesn't show she was unable to travel back to Canada between July 18th and July 25th.

[53] See GD3-31.
[54] See GD3-31.

- Instead of arranging to get home in time to start work on July 26th the Appellant wrote back to JL on July 24th, referring to the June 17th email as "the final decision" and maintaining she wasn't due back at work until August 9th. She then wrote:

> "This decision was made well in advance prior to my departure from Canada. Therefore, I kindly request that I am not put on a schedule during the period of my leave that has been granted. I will be in contact with HR shortly after my return."[55]

- JL responded on July 24th, setting out the details of all the times the Appellant was told her leave of absence would be limited to 15 days. And JL once again reminded the Appellant that she was expected to return to work on July 26th.

- The Appellant nonetheless chose to remain in Poland until August 8th, exactly as she had planned to do all along.

- The decisions and choices the Appellant made between July 18th and 25th, in the face of the employer's unequivocal requirement she return to work as of July 26th show an intentionality and recklessness that makes the Appellant's conduct wilful.

[54] The Appellant consciously and intentionally chose not to return to work as of July 26, 2024.

[55] By doing so, she unilaterally decided the employer could manage without her until she returned to work on August 9th, after a 30-day leave of absence. In making that decision, the Appellant carelessly and recklessly took an unnecessary risk with her employment by missing 3 (or more) consecutive shifts starting from July 26, 2024, which she knew the employer would consider to be job abandonment. She also showed a wilful disregard for the effects of her actions on the performance of her job.

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[55] See GD3-29.

[56] This means the Appellant's conduct (her failure to return to work as of July 26, 2024) satisfies the test for wilfulness.

The Appellant ought to have known she could be dismissed.

[57] There's ample evidence the Appellant understood that missing 3 consecutive shifts would be considered job abandonment. It was repeated many times by JL in numerous communications to the Appellant.

[58] The Appellant was also aware of the consequences of job abandonment. She told the Commission she understood "the rule" was that if she was absent for 3 days in a row, she would be terminated for job abandonment[56].

[59] And, by July 18, 2024, she unequivocally knew the employer expected her to return to work on July 26, 2024.

[60] So the Appellant should have been on high alert not to put herself in a position of missing 3 consecutive shifts starting from July 26, 2024.

[61] Instead, she carelessly and recklessly assumed that, since she was already in Poland on her vacation, the employer would understand how she could have misinterpreted the June 17th E-mail and allow her to take the full 30-day leave of absence she'd requested. They could talk about it when she got home, and possibly give her a warning or some other progressive discipline. There was no need to terminate her employment.

[62] Her assumption turned out to be incorrect.

[63] I find the Appellant ought to have known she could be terminated for failing to return to work as of July 26, 2024.

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[56] See GD3-20. She also told the Commission that she received a letter on July 30th and E-mail on July 31st stating she abandoned her job and was terminated.

[64] JL made it clear the Appellant was expected to return to work "for all scheduled shifts", as of July 26, 2024[57]. So the Appellant knew she would be scheduled starting from that day.

[65] It wouldn't have taken long for the Appellant to miss 3 consecutive shifts[58]. So by remaining in Poland and not returning to Canada until August 8th, the Appellant knew it would happen.

[66] And the Appellant knew she could be terminated for this type of absence without authorization because she'd already been terminated once before by this employer, when she failed to return to work after her mother passed away in 2022[59].

[67] I acknowledge the Appellant is upset by what she considers to be harsh consequences for a misunderstanding she says was caused by JL's error. She pointed out the employer has taken none of the blame and wonders why JL is allowed to make a mistake and not her. Especially when the employer could easily have managed without her until August 9th.

[68] But it's not the Tribunal's role to decide if the employer acted reasonably or whether the penalty of being dismissed was too severe. The Tribunal must focus on the reason ***the Appellant*** was separated from her employment and decide if the conduct that caused her to be dismissed constitutes misconduct under the EI Act[60].

[69] I believe the Appellant's testimony that she's a hard worker and a good employee. I also recognize she didn't intend to cause the employer harm and that she's paid a high price for her conduct with the loss of her employment.

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[57] See GD3-31.
[58] See footnote 55 above. Her statements are supported by the employer's E-mail on August 9, 2024 (at GD3-42), which refers to a letter being sent to the Appellant on July 30, 2024 confirming she had missed more than 3 consecutive shifts, leading to a determination of job abandonment.
[59] See paragraph 41 above, under Appellant's history with this employer.
[60] Which means I must apply the legal test established by the cases that have considered misconduct for purposes of EI benefits.

[70] But none of these things change the law and I can't ignore the law, even if the outcome seems punitive or unfair[61]. If a claimant loses their employment due to their own misconduct, the law says they are disqualified from receiving EI benefits[62].

[71] I have found the conduct that caused the Appellant's dismissal was her failure to return to work as of July 26, 2024. I have also found this conduct was so careless and reckless as to be considered wilful, and that the Appellant ought to have known she could be dismissed for it.

[72] This means the conduct that caused the Appellant's dismissal was misconduct for purposes of section 30 of the EI Act.

[73] The Commission has, therefore, proven the Appellant lost her job at X due to misconduct and cannot receive EI benefits.

[74] So the disqualification it imposed on the Appellant's claim must remain. But I agree with the Commission that the final separation from employment occurred when the employer issued the termination letter on August 19, 2024. So I am modifying the start date of the disqualification from August 4, 2024[63] to August 18, 2024[64].

[75] If the Appellant wishes to claim benefits for the period between the renewal of her claim on August 4, 2024 and August 17, 2024, she may do so by submitting her claimant reports for these 2 weeks. The Commission has said it will review her availability and other issues before issuing payments[65].

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[61] See *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141
[62] Section 30 of the EI Act.
[63] The effective date of her renewal claim.
[64] All claims for EI benefits start on a Sunday. And weeks of benefits are payable from the Sunday of a week. So the Appellant's disqualification should be effective the Sunday of the week in which she was finally separated from her employment. Since the final separation from employment occurred on August 19, 2024, the Appellant would have been eligible for EI benefits as of the week starting August 18th. This is why the disqualification starts on August 18th and not on the date of the termination letter.
[65] See GD4-5.

Conclusion

[76] The Commission has proven the Appellant lost her job because of her own misconduct. This means she is disqualified from receiving EI benefits starting from August 18, 2024.

[77] The appeal is dismissed, with a modification to change the start date from August 4, 2024 to August 18, 2024.

Teresa M. Day
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