



Citation: *NZ v Canada Employment Insurance Commission*, 2025 SST 396

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: N. Z.
Representative: A. Z.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (686918) dated November 20,
2024 (issued by Service Canada)

Tribunal member: John Rattray

Type of hearing: Videoconference

Hearing date: January 6, 2025

Hearing participants: Appellant
Appellant's representative

Decision date: January 13, 2025

File number: GE-24-3951

Decision

[1] The appeal is dismissed. I disagree 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 had abandoned his job because he missed more than three shifts.

[4] Even though the Appellant doesn't dispute that this happened, he says that he was subject to an order to have no contact with his ex-partner when he ran into her. This led to his incarceration in jail and subsequent house arrest.

[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.

Matters I have to consider first

I will hear the two appeals together

[6] The Appellant had two appeals on different issues that involve the same circumstances. This appeal is about whether the Appellant lost his job because of his misconduct. The other appeal is about whether the Appellant was available for work.² Because the appeals are related, I decided to hear them together because they involve the same circumstances and hearing them together won't cause prejudice to either party.

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 GE-24-3952.

[7] However, I will provide separate reasons for each appeal because the legal issues are different.

I will accept the documents sent in after the hearing

[8] During the hearing, the Appellant said he had documents that are relevant to the issues in question. I told the Appellant that I would accept these documents after the hearing if they were promptly submitted. He submitted them promptly and I will accept them.³

Issue

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

Analysis

[10] 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?

[11] I find that the Appellant lost his job because he missed more than three shifts at work because he was incarcerated in jail and then under house arrest. As a result, he was unable to fulfill an essential condition of his employment contract, go to work.

[12] The parties agree that the Appellant lost his job because of his incarceration and house arrest. I see no evidence to the contrary and find that the Appellant lost his job because of his incarceration and subsequent house arrest.

³ See GD6.

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.⁴ Misconduct also includes conduct that is so reckless that it's almost wilful.⁵ 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.⁶

[15] 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.⁷

[16] 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's more likely than not that the Appellant lost his job because of misconduct.⁸

[17] The Commission says that there was misconduct because the Appellant was aware of the obligation to be available for work and that if he missed three shifts he could be dismissed. It says that the Appellant knew that breaching his bail condition to have no contact with his ex-partner could lead to his incarceration and house arrest, preventing him from working.

[18] The Appellant says that his employer tried to keep his job open for him. It had previously held his job open when he was incarcerated from March 18, 2024, to April 19, 2024. He said that he used up vacation time and various leaves of absence that were made available to him to maintain his employment relationship.

⁴ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁵ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

⁶ See *Attorney General of Canada v Secours*, A-352-94.

⁷ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁸ See *Minister of Employment and Immigration v Bartone*, A-369-88.

[19] The Appellant was arrested on June 9, 2024, and incarcerated in jail until June 26, 2024, when he was released on house arrest. He testified that he was aware of his bail conditions and had breached a condition of it to have no contact with his ex-partner. He says he ran into her near where he lived.

[20] The Appellant testified that the issues he had with his ex-partner and his breach of his bail conditions relate to mental health issues. He had previously made use of his employer's employee assistance program. He also claims that his ex-partner sabotaged his job by having him arrested.

[21] In August 2024, after the Appellant had been dismissed from his job, he was arrested for breaching the conditions of his house arrest and detained for three days at hospital for a mental health evaluation. He was then transferred to jail where he remained incarcerated until November 25, 2024. He pleaded guilty to breach of the conditions of his house arrest and failure to comply.

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

- The Appellant knew that being incarcerated or under house arrest would prevent him from going to work.
- He knew that missing more than three shifts could be grounds for dismissal.
- It was an essential condition of his employment that he be available to work.
- He was required to work on site.
- He knew that any breach of his bail conditions could result in his incarceration.
- He knew one of his bail conditions was to have no contact with his ex-partner.
- He decided to try his relationship with his ex-partner again without obtaining a variation in his bail conditions.

- He had contact with his ex-partner on June 9, 2024, in breach of his bail conditions, leading to his incarceration and house arrest.

[23] I also find that the evidence establishes that the Appellant's actions in breach of his bail conditions in June 2024, were wilful, conscious, deliberate, and reckless. He didn't provide any medical documentation to support a finding that he was unaware of the consequences of his actions, or that his actions in June 2024, weren't wilful, conscious, deliberate, or intentional. It was the Appellant's conduct in June that led to his incarceration and house arrest which resulted in his loss of employment.

[24] In making this finding, I accept as credible the Appellant's testimony and his representative that he was facing mental health issues for which he sought assistance from the employer's employee assistance plan. However, following his arrest in June, he wasn't detained and held for mental health observation.

[25] I acknowledge that he was detained for mental health observation in August 2024, when he breached the conditions of his probation. While this isn't directly related to his loss of employment on July 4, 2024, he later pled guilty to breach of probation and failure to comply. However, even then he didn't argue that he wasn't responsible for his actions. This is consistent with my finding that the actions which led to his loss of employment in July 2024 were willful.

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

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

[27] It is commendable that the Appellant has expressed a genuine desire to move forward from his incarceration, receive counselling and support, and find employment. However, the law doesn't allow me to ignore his misconduct.

Conclusion

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

[29] This means that the appeal is dismissed.

John Rattray

Member, General Division – Employment Insurance Section