Citation: *TP v Canada Employment Insurance Commission*, 2025 SST 493

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	T. P.
Representative:	L. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision dated February 6, 2025 (issued by Service Canada)

Tribunal member:	Marc St-Jules
Type of hearing:	Teleconference
Hearing date:	April 3, 2025
Hearing participant:	Appellant Appellant's representative
Decision date:	April 28, 2025
File number:	GE-25-465

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 because of this employment.[1]

Overview

[3] The Appellant lost her job. The Appellant's employer said that she was let go because she arrived late. This was after she had been warned in writing that any further occurrences may result in termination.

[4] The Commission considered the information and determined the Appellant was disqualified from receiving EI benefits because she lost her job due to misconduct.

[5] The Appellant and her Representative disagree. They argue that the last written warning was unjustified. It should not be considered in my decision. They also argue that the Appellant asked to arrive late prior to the shift but the employer withheld the approval until after the scheduled start time. This meant the Appellant could not physically be on time. There are more arguments, but they will be discussed later in this decision.

Matters I have to consider first

The appeal was returned from the Appeal Division

[6] This is the second time this appeal is before the General Division (GD). The Appellant disagreed with the original GD decision and successfully argued before the Appeal Division (AD) that the GD failed to follow a fair process. The AD returned the matter to the GD to be heard by a new GD member.

---

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

[7] The appeal was assigned to me and a new hearing was conducted. This decision is the result of this new hearing.

Potential bias

[8] The Representative testified that she was concerned that as government employees, Tribunal members may be biased. It was also something that was mentioned to the AD in writing: "All the members work for the government to save money by not paying EI benefits. Will one member go against another member's decision? That is doubtful, even if justice demands it."[2]

[9] Allegations of bias are serious. They challenge the integrity of the Tribunal and of its members.[3] An appellant must prove bias based on evidence, not suspicion.[4] The allegation cannot be done lightly. It cannot rest on suspicion, conjecture, insinuations or the impressions of the Appellant.

[10] The legal test for establishing bias is high: "[W]hat would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would [they] think that it is more likely than not that [the General Division member], whether consciously or unconsciously, would not decide fairly."[5]

[11] I acknowledge that my salary is paid by the government. I am not persuaded by this argument.

[12] Tribunal members are presumed to be impartial. If I were to follow the Appellant's argument, no Tribunal member would **ever** be able to render an impartial decision. A similar argument can be said about judges in formal court settings.

---

[2] See RGD07 page
[3] *Committee for Justice and Liberty et al.* v *National Energy Board et al.*, [1978] 1 SCR 369.
[4] *SM* v *Minister of Employment and Social Development*, 2015 SSTAD 1050.
[5] The Supreme Court of Canada established this test in *Committee for Justice and Liberty et al.* v *National Energy Board et al.,* [1978] 1 SCR 369 para 31.

[13] General Division decisions are appealed to the Appeal Division and some of them are dismissed but some are allowed. This further adds that the mere suspicion cannot be enough to justify bias.

[14] I also made the decision not to recluse myself based on this argument. This decision must be made by the GD. If I were to accept this argument, all fellow GD members would presumably be biased. It would serve no purpose to have this appeal assigned to another GD member.

[15] I find that a reasonable person would not conclude all Tribunal members are biased.

Appellant attended hearing

[16] Prior to the hearing, the Representative communicated that the Appellant may not want to join. The Tribunal was asked if the Appellant must attend the hearing.

[17] In response to this, a letter was sent.[6] This letter informed them that attendance is not mandatory but may be advisable as the Appellant would be the only individual with firsthand knowledge of all the events.

[18] As the reason for this request was not known, I offered to have an early morning hearing or a hearing which started into early evening. Additionally, the option to listen to the first hearing was offered. The important factor is that the Appellant be given the opportunity to present her case.

[19] The Representative did attend the entire hearing. Through the Representative, the Appellant was offered to attend for a short time to address any questions pertinent to the decision before me.

[20] The Appellant was called during the hearing, and did provide some testimony. I find that no prejudice was created towards the Appellant as she was informed that

[6] See RGD02.

attendance is optional and was offered alternatives such as having different times to attend or to listen to the original hearing.

Post hearing documents

[21] I received post-hearing documents from the Appellant.[7] I accepted these documents as they are similar arguments to what was in the hearing. They clarified what was said in the hearing.

[22] I find no prejudice in doing so as this topic was discussed in the hearing and the Commission was given the opportunity to reply and chose not to. The deadline for the Commission to reply was April 16, 2025. It is now April 28, 2025, and the Commission has not replied.

Listening to the original hearing recording

[23] As this is the second time this appeal has been before the GD, I do have access to the recording of the original hearing. I do not normally listen to earlier recordings when this occurs.[8] I do so as I want to the Appellant to provide their own testimony and possibly prevent any bias that may come with listening to the previous hearing.

[24] I find this is appropriate as appellants can be nervous and learn from the process and be more prepared in subsequent hearings.

[25] However, in this case, as the Appellant was reluctant to attend as explained previously, I wanted to make sure that if she does not attend, I still have all the information and testimony she wanted to provide. I therefore asked the Appellant and her Representative their position on the fact that I can listen to the previous hearing.

[26] The Appellant and her Representative agreed that I can listen to the previous hearing. For this reason, I did listen to it. This earlier hearing was considered in this decision. I find that no prejudice to the Appellant in this case as I listened to the hearing

---

[7] See RGD10.
[8] There are exceptions. An example of this would be a witness is no longer available.

with her and her Representative's consent. As the Commission did not attend either hearing, I find they are not prejudiced either.

The Representative did testify

[27] I allowed considerable leeway for the Representative to testify. She clearly had a good understanding of the facts in this case. It is evident from the submissions that she had written many of the arguments in this case with the help of the Appellant.

[28] The Representative had firsthand knowledge of one conversation with the employer. However, this was after the Appellant had been terminated.

Issue

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

Analysis

[30] 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?

[31] I find that the Appellant lost her job because the employer believed the Appellant arrived late after having been warned.

[32] The Appellant, however, argues the new boss did not like her. The Appellant was dismissed because the company no longer valued her.[9]

[33] I am not persuaded by this argument. There may very well have been another motive for her dismissal. However, the dismissal was only made possible because the Appellant was late.

---

[9] See RGD09 page 2.

[34] I find this is the reason she was dismissed. The Appellant agrees she was late on that date. I find that this event is what made her dismissal a reality.

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

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

[36] To be misconduct under the law, the conduct has to 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, she doesn't have to mean to be doing something wrong) for her behaviour to be misconduct under the law.[12]

[37] There is misconduct if the Appellant knew or should have known that her conduct could get in the way of carrying out her duties towards her employer and that there was a real possibility of being let go because of that.[13]

[38] 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.[14]

[39] The Commission says that there was misconduct because the Appellant had received multiple warnings regarding arriving late.[15] The Appellant had been given a final warning which indicated termination was a possibility. The Appellant should have known that she may face termination after this final warning.

[40] The Appellant says that there was no misconduct because of the following:

---

[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 GD04 page 5.

- Last warning not valid. Using this letter should be illegal.[16] The absences were out of her control.[17]

- The local manager did not convey to the regional manager that the incidents in February were justified.[18]

- There was an understanding that arriving late was ok if there was another person. The manager had allowed another girl to arrive late for a nail appointment.[19]

- Signing the last warning does not mean she agreed to its contents.[20] The Appellant says she should not have signed the letter as her absences were justified.[21]

- The employer withheld their consent to the Appellant's request to arrive late.[22]

- Letter of reference from former manager.[23]

- Personal conflict.[24]

- Employer required to give an opportunity to explain.[25]

- The Appellant was never given a chance to improve herself.[26]

- Absence of written policy on tardiness.[27]

---

[16] See RGD09 page 2.
[17] See RGD09 page 2.
[18] Testified to during the original hearing.
[19] Testified to during the original hearing.
[20] See RGD08 page 4.
[21] See AD01B-2.
[22] See RGD08 page 2.
[23] See AD01B-4.
[24] See RGD09 page 2.
[25] See RGD07 page 7 and RGD09 page 2.
[26] See GDD09 page 2.
[27] See RGD09 page 2.

- Although informed that dismissal could be a possibility, she did not believe it.[28]

- More severe disciplinary measures were not considered. The letter only says up to and including dismissal.[29]

- Appellant had confirmed with her co-worker that she would be there on time.[30] There was therefore no need for the Appellant to also be there for 9:00 a.m.

- Other individuals were consulted. They agreed the dismissal was not justified.[31]

[41] I will address each of these separately and explain why I am not persuaded. I will then address if the test for misconduct has been met.

– **Last warning not valid**

[42] I am not persuaded by this argument. The fact remains that the last warning was in fact given. It clearly says that the next incident may lead to dismissal.

[43] When evaluating misconduct, I have to consider the Appellant's action or inaction. This is because there are well-established court decisions that say it is not the employer's conduct that must be considered.[32]

[44] This was not the first time she was late. I have documentary evidence that the Appellant was warned in November 2023.[33] This written warning says that the Appellant was previously warned for being late and that a 3rd warning would be issued.

[45] After this November warning, the February warning letter mentions 7 instances where she was late.[34] This was anywhere from 6 minutes late to 4 hours late.

---

[28] See AD01B page 2.
[29] See RGD09 page 2.
[30] See RGD10 page 2.
[31] See RGD07 page 6. The Representative wrote about and testified about this.
[32] See *Dubeau v Canada (Attorney General),* 2019 FC 725; *Paradis v Canada (Attorney General),* 2016 FC 1282; *Canada (Attorney General) v McNamara* 2007 FCA 107; *Canada (Attorney General) v Caul*, 2006 FCA 251.
[33] See GD03 page 23.
[34] See GD03 page 24.

[46] The Representative testified that all of them were justified and only possibly two were because of traffic. Even so, the employer decided to issue this letter. These two late instances because of traffic were perhaps enough to justify the letter by themselves. Again, I am not here to judge how the employer acted.

– **The local manager did not convey to the regional manager the fact that the absences in February 2024 were justified.**

[47] I am not persuaded by this argument. I acknowledge that the two weeks in February were certainly traumatic to the Appellant. Her mother needed her help or support with cancer, her dogs died, and she had an issue with lice. For this reason, the Appellant strongly feels the late arrivals were justified. However, there were 7 incidents. The Appellant testified that "most" absences were justified in the original hearing. For the second hearing, the Appellant's representative said perhaps all but two of the absences were justified. The two which were not, were because of traffic.

[48] I acknowledge that if the local manager did not convey this information, it may have had a different outcome. However, there are some absences that are admittedly not justified. The traffic ones as an example. There is clear established case law that it is an employee's responsibility to arrive on time.[35]

[49] I cannot ignore the fact that the Appellant was warned that she had to arrive on time going forward. The employer did not dismiss the Appellant when her dogs died or when she was late with car issues as an example. It is therefore the Appellant's subsequent actions which led to her dismissal. The Appellant had the opportunity to correct her actions going forward. She did for a week but then made the choice to ignore earlier warnings.

[35] See *Canada (Attorney General) v Maher*, 2014 FCA 22.

– **There was an understanding that arriving late was ok if there was another person.**

[50] I am not persuaded by this argument. I acknowledge that the manager may have allowed another girl to arrive late for a nail appointment. I do not know the circumstances regarding this approval. Examples of these are

- This other employee may have asked longer in advance.[36]
- The employer may have reviewed the workload and considered this in granting approval.
- Unlike the Appellant, the other employee may have received an actual approval.
- It is possible this employee does not have any prior warnings.

[51] The Appellant testified in the original hearing that it is only with the current manager that two employees start at 9:00 a.m. and therefore it seemed justifiable that if arrangements are made for at least one to be there, it was ok. It seems evident that the current manager may be stricter. However, I am here to consider the Appellant's conduct leading to her dismissal. The current manager wanted the Appellant to be there on time and this is why she was warned.

– **In the past, arriving 5-10 minutes late was not seen as being late.**

[52] I am not persuaded by this. There are two main reasons. The first is the November warning. This warning clearly says that the Appellant should arrive 10 minutes early to be ready for the start time. The second reason is that the Appellant took the unilateral decision to arrive at least 30 minutes late. Her text mentions she should arrive at 9:45 a.m.

[53] The Appellant testified that she did arrive about 30 minutes late. This is even after her appointment was cut short. In other words, arriving 30 minutes late was the

[36] The Appellant testified in the original hearing that it was possible the day before or the morning of the change. This leads me to conclude that the Appellant was not sure of the exact timeframe this other employee actually obtained consent.

very best scenario possible. This is much longer than any 5-10 minutes late tolerated in the past.

– **Signing the last warning does not mean she agreed to its contents. She should not have signed the letter as her absences were justified.**

[54] I am not persuaded by this argument. The Appellant agreed she was late for those instances. She agrees the letter says that it may lead to terminations but did not "believe it would."

[55] She argues she had various reasons for being late which were outside her control. I agree that these are unfortunate events, but the Appellant agrees that she was informed of the threat of dismissal.[37]

[56] The Appellant provided a quote from Bill Stein, Legal Studies stating that signing is an acknowledgement only. However, another part of his quote adds that the signature **verifies the receipt** of the warning.[38]

[57] I acknowledge that the Appellant may not agree with the letter but it is undeniable that she received it.

– **The employer withheld their consent to the Appellant's request to arrive late**

[58] I am not persuaded by this argument. In support of this argument, the Appellant provided a quote from the *Digest of Benefit Entitlement Principles* (Digest). Chapter 7 Section 7.3.1.4. It says the Commission must seek proof that permission was withheld by the employer and that the employee understood permission was denied.

[59] However, the Digest section 7.3.1 also mentions that employers have a right to expect employees to report to work on time. It is important to note that the Digest is not the law. I have to apply the law and this is what my analysis does.

---

[37] See AD01B page 2.
[38] See RGD08 page 4.

[60] The Appellant texted her boss at close to midnight about her appointment requested to arrive later. Her start time was to be 9:00 a.m.

[61] She assumed approval as her previous manager would simply have changed the schedule.[39] The Appellant says there was conflict between her and her manager. The Appellant assumed this manager would accept her being late even with this conflict that existed.

[62] I agree that consent was not given. Even with this, the Appellant made the personal choice to attend a waxing appointment.[40] In her text to her employer, she specifically asked if this was ok. The ok was not given and the Appellant could have attended work as the ok had not been given. The Appellant made the personal choice to arrive late knowing that she had not received the ok.

– **Letter of reference**

[63] I am not persuaded by this argument. The Appellant's former manager holds the Appellant in high regard. I acknowledge that.

[64] It does not remove the fact that the Appellant had been warned in November 2023 (with references to an earlier warning) and again in February 2024 and then subsequently arrived late. The addition of this letter does not change that.

– **Personal conflict**

[65] I am not persuaded by this argument. It goes back to the fact that the Appellant was late. The Appellant was late, it is undeniable. The Appellant knew the employer was trying to promote her arrival on time. The Appellant had been warned about this in November 2023 which is prior to this manager's arrival. The new manager arrived about 6 weeks earlier. November 2023 was prior to 6 weeks.

[39] See RGD08 page 2.
[40] See GD03 page 27.

[66] This means that the Appellant's attendance was under scrutiny with the employer prior to the arrival of this manager.

– **Employer required to give an opportunity to explain**

[67] I am not persuaded by this argument. I am here to look at the Employment Insurance Act (EI Act). It is an analysis for misconduct under the EI Act that I must adhere to. The Appellant had been clearly warned she may be dismissed if she was late. I acknowledge that she had not received an answer. Yet, without this answer, she made the choice to arrive late.

[68] The Appellant made the conscious decision to arrive late and this is the test for the EI Act.

– **Never given a chance to improve herself**

[69] I am not persuaded by this argument. The Appellant was warned in November 2023. This November 2023 warning refers to an earlier warning. I acknowledge that I did not question this earlier warning. However, I have no evidence before me to make me doubt that there was an earlier warning. This was a warning prior to November 2023.

[70] The Appellant herself admitted that the employer was trying to encourage attendance on time. The Appellant was given chances and ignored those chances.

– **Absence of a written policy on tardiness**

[71] I am not persuaded by this argument. The EI Act does not require the employer to provide this document. In this case, there are clear warnings. I know the Appellant does not agree with the February 2024 letter, but she acknowledges receiving it. It clearly says that dismissal is a possibility.

– **Although informed that dismissal could be a possibility, she did not believe it.**

[72] I am not persuaded by this argument.

[73] The Appellant stated that she realized that they were trying to push the issue of punctuality.[41] She was on time the whole week after the warning.[42] However, it does not remove the fact that the Appellant was late. She had been warned for such instances in February 2024 and in November 2023.

[74] I am surprised that the Appellant could not see this as a possibility. The letter clearly said it was.

– **More severe disciplinary measures were not considered. Letter only says up to and including dismissal.**

[75] I am not persuaded by this argument.

[76] The February 2024 warning clearly mentions that dismissal is a possibility. The employer chose this route as it is their right. Again, I have to look at the Appellant's role and not the employers.

– **Appellant had confirmed with co-worker that the worker would be there on time**

[77] I am not persuaded by this argument. The employer scheduled the Appellant to start work at 9:00 a.m. The employer did so for a reason. The fact that the Appellant made sure the co-worker would be available and on time is good but does not remove the fact that the Appellant was scheduled to attend. The Appellant knew she was scheduled and made the unilateral decision to chance this.

– **Other individuals consulted agreed the dismissal was not justified**

[78] I am not persuaded by this argument. I have to look at the EI Act and look at all the evidence before me. I have no knowledge if all the facts were given to other individuals. I have no knowledge of the analysis performed or if case law was considered.

---

[41] See RGD10 page 4.
[42] See RGD10 page 4.

The elements of misconduct have been proven

[79] In this case, it is not that I believe one party over the other. The Appellant seemed credible and provided her testimony without hesitation under solemn affirmation. The problem is that the test for misconduct has been met, even if I believe her testimony.

[80] It is undeniable that the Appellant acted willfully and ought to have known that arriving late could lead to her dismissal. This is based on the following:

- She texted her employer at close to midnight for a shift starting in about 9 hours. She knew she was scheduled to work.
- She made arrangements with a co-worker. She new she was scheduled to work.
- She made the judgment call not to attend after not getting permission. This means that she was conscious and made the decision not to attend as scheduled.
- Her warning in February 2024 clearly mentions that dismissal is a possibility. Although, the Appellant did not believe she would be dismissed, she certainly ought to have known it was possible.

Conclusion

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

[82] This means that the appeal is dismissed.

Marc St-Jules
Member, General Division – Employment Insurance Section