



Citation: *CB v Canada Employment Insurance Commission*, 2025 SST 455

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

## **Decision**

**Appellant:** C. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (699742) dated January 16, 2025  
(issued by Service Canada)

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**Tribunal member:** John Rattray

**Type of hearing:** In person

**Hearing date:** March 5, 2025

**Hearing participant:** Appellant

**Decision date:** March 11, 2025

**File number:** GE-25-469

## Decision

[1] The appeal is dismissed. I disagree with the Appellant.

[2] The Canada Employment Insurance Commission (Commission) didn't prove that the Appellant voluntarily left his job.

[3] However, the 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.<sup>1</sup>

## Overview

[4] The Appellant lost his job on August 8, 2024. The Appellant's employer said that he voluntarily left his job because he didn't show up for work without letting it know. The Commission looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[5] The Appellant disagrees and says that he didn't voluntarily leave his job. He says he was laid off when he returned to work after being ill for two days.

[6] The Commission says that the Appellant didn't contact his employer about missing work and didn't respond to its attempts to contact him. It says that the Appellant voluntarily left, even if he was dismissed, because the dismissal was the logical outcome of his deliberate actions.

## Issues

[7] How did the Appellant's employment end?

[8] If he voluntarily left, did he have just cause?

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

[9] If he was dismissed, did he commit the actions or conduct that resulted in his loss of employment? If so, do these actions or conduct constitute misconduct?

## Analysis

[10] I must first determine whether the Appellant voluntarily left his job or was fired (dismissed).

[11] Both voluntarily leaving and dismissal because of misconduct are linked under the same section of the *Employment Insurance Act* (Act).<sup>2</sup> This is because they both refer to situations in which a claimant loses their job because of their deliberate action. A claimant is disqualified from receiving regular EI benefits if they lose their employment due to misconduct or if they voluntarily leave their employment without just cause.

[12] So, if I conclude that the case is one of dismissal rather than one of voluntary leaving, I am not straying from the issue before me as long as the evidence supports the finding. This is because the issue I must determine is whether the Appellant is disqualified from receiving regular EI benefits.

### Did the Appellant voluntarily leave or was he dismissed?

[13] I find that the Appellant didn't voluntarily leave his job. He was dismissed.

[14] The law says that if the Appellant had a choice to stay or leave his job, then he voluntarily left.<sup>3</sup> The Appellant and the Commission don't agree on whether the Appellant had this choice.

[15] The Commission says the Appellant didn't show up to work on August 6 and 7, 2024. It says the employer tried to contact the Appellant when he didn't show up to work, but he didn't respond. The Commission says that the Appellant voluntarily left his job by his actions.

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<sup>2</sup> *Canada (Attorney General) v. Easson*, A-1598-92.

<sup>3</sup> *Canada (Attorney General) v. Peace*, 2004 FCA 56.

[16] The Appellant was a credible witness at his hearing. He testified in a direct, consistent manner. I was able to test his evidence through questioning.

[17] I accept the Appellant's evidence that he didn't voluntarily leave his job. He says that after being ill for two days, he returned to work. He admits that when he was ill, he didn't contact his employer because his pay as you go phone plan had run out. He didn't intend to leave his job. When he showed up for his shift, he was called into his supervisor's office and dismissed. He wasn't given a choice.

[18] For the above reasons, I find that the Appellant didn't have a choice of staying or leaving. He was dismissed. This means he didn't voluntarily leave his job.

[19] Because the Appellant didn't voluntarily leave his job, I don't need to consider whether he had just cause for leaving.

## **Misconduct**

[20] To answer the question 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?**

[21] I find that the Appellant lost his job because he didn't report to work on August 6, and 7, 2024, and didn't notify his employer.

[22] The employer told the Commission that the Appellant lost his job after he didn't show up for three shifts and didn't call in about his absence. It said he had abandoned his job. The Commission says that the Appellant didn't show up for two shifts and didn't notify his employer about his absence.

[23] The Appellant agrees with the Commission and says that he lost his job after he didn't show up for two shifts and didn't notify his employer.

[24] I find that the Appellant worked on August 2, 2024, but didn't report to work on August 6, and 7, 2024, and didn't notify his employer about his absence. I find this because:

- The Appellant testified that he worked on Friday, August 2, 2024.
- The Record of Employment (ROE) issued by the employer confirms that he was paid for working August 2, 2024.<sup>4</sup>
- The Appellant testified that he didn't notify his employer about his absence.

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

[25] The reason for the Appellant's dismissal is misconduct under the law. He should have known that he might lose his job because of his actions.

[26] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>5</sup> Misconduct also includes conduct that is so reckless that it's almost wilful.<sup>6</sup> 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.<sup>7</sup>

[27] 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.<sup>8</sup>

[28] 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.<sup>9</sup>

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<sup>4</sup> See GD3-17.

<sup>5</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>6</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>7</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>8</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>9</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

[29] The Commission says that it was the Appellant's deliberate actions that led to his separation from employment. Whether it is characterized as voluntary leaving or misconduct, the Appellant deliberately didn't report to work, or contact his employer about his absence. The Appellant didn't respond to the employer's attempts to reach him by text or phone on August 6, 2024. It says that this amounted to a refusal to perform the services for which he was hired.

[30] The Appellant testified that:

- He was ill on August 6, and 7, 2024 and didn't go to work.
- He didn't notify his employer about being ill and missing work.
- Previously he would call or text his supervisor if he was going to be late for work or if he was ill.
- On August 8, 2024, he returned to work.
- He was called into the supervisor's office and told that he was being let go.
- He showed his supervisor the rash on his arms that prevented him from working on August 6, and 7, 2024, but was told to leave.
- He didn't see a doctor and didn't have a doctor's note for his absence.
- He says he didn't get the texts and calls from his supervisor on August 6, 2024, asking where he was because his pay as you go phone had run out of minutes.
- He only saw the texts on August 8, 2024, after he had been let go and after he topped up his phone.

[31] In responding to questions about why he didn't contact his employer about being ill and not reporting for work, the Appellant said it was his mistake. Previously, he would text his supervisor, and let him know if he was ill and, sometimes, he would attach photos of a swollen knee or foot.

[32] He testified that he didn't know that he could be dismissed for not calling his employer to say he was ill and not showing up for work. He said that:

- He didn't know about any policy on absence.

- He received no orientation.
- He had received no prior warnings.
- His supervisor would tell him to come in to work even if his arthritis was acting up
- He would send in photos of his swollen knee or ankle.

[33] I find that there was misconduct because the Appellant made the decision not to report to work or notify his employer about his absence on August 6 and 7, 2024. It was a wilful, and reckless choice.

[34] While I accept the Appellant's evidence that his pay as you go phone had run out of minutes, I find that it was wilful and reckless not to take steps to notify his employer. He could have topped up his phone, asked to borrow a neighbour's phone, or even go into work on August 6, 2024, to explain that he was ill.

[35] I find that he knew he was expected to tell his employer if he was ill or running late. I find this because his practice was to notify his employer. Also, the employer had questioned his prior illnesses, telling him to come in to work when he complained of his arthritis. This had led the Appellant to provide proof of his prior illnesses by sending photos.

[36] I find that the employer's prior acceptance of the Appellant's attendance record was based on the Appellant providing timely notice and, sometimes, corroboration of his illness. It was a significant escalation not to report to work for two shifts without notifying the employer.

[37] I accept the Appellant's evidence that he didn't mean to be doing something wrong. He was feeling ill. However, failing to report to work without notifying his employer got in the way of carrying out his duties toward his employer. He acknowledged that it was a mistake not to notify his employer.

[38] For the above reasons, I find that the Appellant knew or should have known that failing to report to work for two days without notifying his employer could lead to his dismissal.<sup>10</sup>

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

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

### **Conclusion**

[40] I find that the Appellant didn't voluntarily leave his job.

[41] However, I find that the Appellant lost his job because of misconduct. Because of this, the Appellant is disqualified from receiving EI benefits.

[42] This means that the appeal is dismissed.

John Rattray

Member, General Division – Employment Insurance Section

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<sup>10</sup> See *Canada (Attorney General) v Locke*, A-799-95.