



[TRANSLATION]

Citation: *LP v Canada Employment Insurance Commission and X*, 2025 SST 714

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	L. P.
Respondent:	Canada Employment Insurance Commission
Representative:	Louis Gravel
Added Party:	X
Representative:	Samuel Grisé

Decision under appeal:	General Division decision dated January 22, 2025 (GE-24-3460)
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Tribunal member:	Pierre Lafontaine
Type of hearing:	Teleconference
Hearing date:	June 16, 2025
Hearing participants:	Appellant Respondent's representative Added Party Added Party's representative
Decision date:	July 4, 2025
File number:	AD-25-134

Decision

[1] The appeal is allowed. The Appellant (Claimant) didn't lose her job because of misconduct.

Overview

[2] The employer let the Claimant go. She applied for Employment Insurance (EI) benefits. The Respondent (Commission) found that the Claimant wasn't let go because of misconduct. The Commission gave her EI benefits.

[3] The Added Party (employer) asked for her benefit claim to be reconsidered. The Commission overturned its initial decision to find that the Claimant lost her job because of misconduct. The Claimant disagreed and appealed to the Tribunal's General Division.

[4] The General Division found that the Claimant was let go after refusing to sign the revised action plan. She imposed herself on her employer after refusing. She knew or should have known that she would be let go if she refused to sign the revised action plan. She lost her job because of misconduct.

[5] The Claimant was given permission to appeal the General Division decision to the Appeal Division. She argues that the General Division ignored evidence and made an error in its interpretation of misconduct.

[6] I have to decide whether the General Division made its decision without regard for the material before it, and whether it made an error of law in its interpretation of misconduct.

[7] I am allowing the Claimant's appeal.

Issue

[8] Did the General Division make its decision without regard for the material before it, and did it make an error of law in its interpretation of misconduct?

Preliminary remarks

[9] As noted at the hearing, the Appeal Division doesn't accept new evidence related to the merits of the case. The Appeal Division reviews General Division decisions using the same evidence.¹

[10] To decide this appeal, I have listened to the recording of the General Division hearing.

Analysis

[11] The Claimant argues that the General Division ignored evidence and made an error in its interpretation of misconduct.

[12] The General Division found that the Claimant was let go after refusing to sign the revised action plan. She imposed herself on her employer after refusing. She knew or should have known that she would be let go if she refused to sign the action plan. She lost her job because of misconduct.

[13] Before the General Division, the Claimant argued that, after receiving the revised action plan from her employer, she emailed S. M. saying that she refused to sign the action plan in its proposed form. S. M. then replied by email that she would talk with the employer and get back to her as soon as possible. The Claimant argued that the employer and S. M. never got back to her before she was let go.²

[14] The Claimant argued that she didn't know or could not have known that she would be let go, since she was waiting for S. M. and the employer to respond. This was why she showed up for work.

[15] The General Division's role is to consider the evidence that both parties have presented to it. This allows it to determine the facts that are relevant to the particular

¹ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

² See GD2-5.

issue before it, and to explain, in its written decision, the decision it is giving independently based on those facts.

[16] The General Division has to clearly justify its findings. When it is faced with contradictory evidence, it can't disregard it. If it decides that the evidence should be dismissed or assigned little or no weight at all, it has to explain the reasons for the decision, failing which there is a risk that its decision will be marred by an error of law or be qualified as capricious.³

[17] The General Division didn't say why it ignored the evidence that the Claimant submitted. That evidence consisted of S. M.'s response to the email dated June 3, 2024, saying that she would talk with the employer and get back to the Claimant as soon as possible. It also included the Claimant's explanation that she showed up for work because she was waiting for S. M. and the employer to respond.

[18] But this was relevant evidence in finding whether the Claimant knew or should have known that she would be let go if she refused to sign the revised action plan. This is an error of law.

[19] Given this error that the General Division made, I am justified in intervening.

Remedy

There are two ways to fix the General Division's errors

[20] When the General Division makes an error, the Appeal Division can fix it in one of two ways: (1) It can send the matter back to the General Division for a new hearing; or (2) it can give the decision that the General Division should have given.

³ See *Oberde Bellefleur OP Clinique dentaire O. Bellefleur (Employer) v Canada (Attorney General)*, 2008 FCA 13.

The record is complete. I can give the decision that the General Division should have given.

[21] Considering that the parties had the opportunity to present their case before the General Division, I will give the decision that the General Division should have given.⁴

– The notion of misconduct

[22] The notion of misconduct doesn't imply that the breach of conduct needs to be the result of wrongful intent; it is enough that the misconduct be conscious, deliberate, or intentional. In other words, there is misconduct where a claimant knew or should have known that their conduct was such as to impair the performance of the duties owed to their employer and that, as a result, dismissal was a real possibility.

[23] It is well established that the employer and the Commission have the burden of proving, on a balance of probabilities, that the Claimant lost her job because of misconduct.

– Did the Claimant lose her job because of misconduct?

[24] The Claimant worked as a secretary and an advisor for an optometry centre. She held the job since May 25, 2022. But she was off work for a few months because she had an accident.

[25] When she went back to work in July 2023, the Claimant resumed her position. A few months later, employees stopped getting along. Mistakes were made when booking appointments, and there was dissatisfaction regarding leave requests based on seniority.

[26] Faced with the challenges resulting from the conflict and the ongoing mistakes, the employer asked a human resources firm for help. At the same time, the employee who didn't get along with the Claimant stopped working because of medical conditions.

⁴ Under section 59(1) of the *Department of Employment and Social Development Act*.

[27] The Claimant met with the staff of the human resources firm to establish her profile and develop an action plan. She met with the employer and a staff member of the firm on May 31, 2024.

[28] The employer told the Commission that the Claimant had been told at the meeting on May 31, 2024, that this was the final version of the action plan, and that she would be let go if she refused to comply without good cause.⁵

[29] But, on June 2, 2024, the Claimant received by email a revised version of the action plan that hadn't been presented to her at the meeting on May 31, 2024. The revised plan includes more than just minor changes.⁶

[30] On June 3, 2024, the Claimant emailed S. M. to tell her that she could not sign the revised plan. She left her a voice message. Later that day, on June 3, S. M. replied to the Claimant by email, saying that she had just listened to her voice message and read her email. She said:

[translation]

...I just listened to your voice message and read your two emails from today. I will talk to S. and J. about it tomorrow morning.

I will get back to you as soon as possible [emphasis added].⁷

[31] When she testified before the General Division, S. M. confirmed that she didn't talk with the Claimant after her email of June 3, 2024.⁸

[32] The Claimant showed up for work as usual on June 5, 2024. The employer didn't talk to her about refusing to sign the revised action plan before letting her go on June 12, 2024.

[33] To properly apply the test for misconduct under the *Employment Insurance Act* (EI Act), it has to be determined whether the Claimant knew or should have known that her conduct would result in her being let go. To do this, I don't have to consider

⁵ See GD3-75.

⁶ For example, the revised version includes a minimum passing score of 8/10 to avoid the termination of employment—something that isn't found in the original version. See GD2-14 to GD2-46.

⁷ See GD2-13.

⁸ Listen to the recording of the General Division hearing at 14:58.

legal principles that apply outside of the EI context, including labour or human rights law.

[34] Considering the evidence before the General Division, I can't find that the Claimant knew or should have known that refusing to sign the revised plan would lead to her being let go.

[35] At that point, the Claimant was still waiting for S. M. to respond. She went back to work for the period from June 5 to June 12, 2024, without the employer immediately sending her back home. But the Claimant had to record that she accepted the revised plan by 2 p.m. on June 3, 2024.

[36] In this context, the Claimant could reasonably believe that she would receive, as S. M. had promised, a response to her email of June 3, 2024—where she asked for changes to be made to the revised action plan.

[37] I am of the view that, on a balance of probabilities, and after considering all of the evidence before the General Division, the Commission and the employer didn't establish that the Claimant lost her job because of misconduct under the EI Act.

[38] For these reasons, I am allowing the Claimant's appeal.

Conclusion

[39] The appeal is allowed.

[40] The Claimant didn't lose her job because of misconduct under sections 29 and 30 of the EI Act.

Pierre Lafontaine
Member, Appeal Division