[TRANSLATION]

Citation: *LP v Canada Employment Insurance Commission*, 2025 SST 715

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (683413) dated September 10, 2024 (issued by Service Canada)

Tribunal member:	Manon Sauvé
Type of hearing:	In person
Hearing date:	December 3, 2024
Hearing participants:	Appellant Employer Employer's representative
Decision date:	January 22, 2025
File number:	GE-24-3460

Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) has proven that the Appellant lost her job because of misconduct. This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.[1]

Overview

[3] For the past two years, the Appellant worked as a secretary and an advisor for an optometry centre. On June 12, 2024, she was let go because of misconduct.

[4] The Appellant applied for EI benefits. She argues that she was unfairly let go and harassed. The Commission decided to give her benefits because it was of the view that she wasn't let go because of misconduct.

[5] When the employer was informed of the Commission decision, it asked for it to be reconsidered. It argues that the Appellant was let go because of misconduct. So, after many attempts to improve her skills and after an action plan was established, she refused to make the changes asked of her. She was dismissed.

[6] The Appellant disagrees. She refused to sign the action plan because it contained mistakes. She also denies having committed the acts she is accused of. The employer didn't act properly toward her. She was bullied and harassed.

[7] After investigating, the Commission found that the Appellant lost her job because of misconduct. She made mistakes that had consequences for the employer, she didn't collaborate to find solutions to the bad work environment, and she stopped talking to her employer. Finally, she refused to sign the action plan, knowing that she would be let go if she refused.

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

Matter I have to consider first

[8] In this case, the employer asked to be an Added Party. I accepted that the employer be an Added Party because of what the Appellant alleged.

[9] The hearing took place on December 3, 2024, with both parties present. At the end of the day, I offered the parties to continue the hearing at a later date if they felt they needed to say more. I wanted to make sure that I was acting fairly.

[10] It was agreed that the Appellant would make written submissions. The Added Party had an opportunity to make submissions, and the Appellant could respond.

[11] I gave the Appellant more time to make her submissions. On December 18, 2024, she sent a final document. The Commission and the employer didn’t make submissions after that.

Issue

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

Analysis

[13] 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?

[14] I accept that the Appellant worked as a secretary and 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.

[15] When she went back to work in July 2023, the Appellant 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.

[16] According to the employer, employees were focused on finding who made the mistakes rather than on solutions. In fact, the conflict was between the Appellant and an employee. They accused each other of making mistakes.

[17] The employer presented a list of the mistakes that the Appellant made. I won't list in detail what the employer is accusing her of. But I accept that the employer accuses her of not having correctly noted clients' contact information, and of having commented on a client's result—even though she isn't qualified to make a diagnosis. She also deleted client files.

[18] The employer also accuses her of disrupting the work environment. The Appellant looked to blame others, denied having made any mistakes, ignored the employer, and complained of being harassed.

[19] The employer met with the Appellant and the employee to try to resolve the situation. Voices were raised, and they blamed and accused each other. The employer sent both employees home. In its view, this meant a suspension.

[20] 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 Appellant stopped working because of medical conditions.

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

[22] At the hearing, S. M., the firm's human resources consultant, testified about her meetings with the Appellant and the development of the action plan.

[23] She says that the employer asked the firm for help because of a conflict at work and the Appellant's work performance.

[24] To establish an action plan, the Appellant took a psychometric test. This allows a better understanding of a person's profile. On May 9, 2024, she took the test, and she got the results on May 16, 2024. An action plan was then developed, and a meeting was held on May 31, 2024.

[25] At the meeting on May 31, 2024, the Appellant, two people from the firm, the employer, and an employee were present. The action plan was read page by page and explained, to involve the Appellant in the process. She told the Appellant that she risked being let go if she didn't participate in the action plan. In fact, the Appellant had received verbal and written warnings, and she had been suspended.

[26] After the meeting, the Appellant received a revised version of the action plan. It wasn't reviewed in detail, since it had been agreed to proceed in this way at the meeting on May 31, 2024. On June 2, 2024, the second version was sent to the Appellant.[2]

[27] According to S. M., the Appellant replied by email on June 3, 2024. The Appellant refused to sign the action plan.[3] She said that there was false information in the document. She tried to contact S. M. for an explanation.

[28] The Appellant showed up for work on June 5, 2024. The employer contacted S. M. at the firm. It didn't know how to proceed. By refusing to sign the action plan, the Appellant knew that she had been let go. The employer didn't understand why she showed up for work without having signed the plan.

[29] On June 12, 2024, the employer received a message from a supplier about mistakes that the Appellant had made. Seeing how her attitude was and how she refused to sign the action plan, she was let go.

[30] The employer testified that the Appellant was hired in May 2022. She received training and seemed to have the potential to work at the company. But, a few months

[2] See GD3-49.
[3] See GD2-13.

later, she had a concussion while doing some activity at her home. She was off work for six months.

[31] She gradually went back to work in July 2023. The employer noticed mistakes, and it continued the training because she hadn't learned everything. For example, she didn't correctly note patients' phone numbers for calling back or confirming appointments.

[32] The employer says that there were two mistakes that it could not tolerate. It refers to the events of April 11 and 18, 2024.[4] Mr. A had an appointment, but Mr. B showed up instead. In fact, the Appellant used the patient's date of birth rather than the last name. All the information about Mr. A was deleted from the file and replaced with Mr. B's information.

[33] The Appellant was met with regarding this. The employer says that she didn't take the significance of her mistake seriously. She trivialized the situation: [translation] "[E]veryone makes mistakes."

[34] She was met with, warned, and suspended between the time she went back to work in July 2023 and the time she was let go.

[35] On April 18, 2024, there was a pretest to prepare the file. The patient had significant myopia, and she was worried that her daughter might have it too. Looking at the test, the Appellant said that the myopia had increased enormously. This isn't the Appellant's role, and she doesn't have the skills to assess a test.

[36] Regarding interpersonal conflicts at work, the employer noted that the Appellant and a colleague didn't get along. They would never be friends. It tried to resolve the situation, but it always had two versions of events. Both looked for the other's mistakes. Notes were taken to find out who was at fault. It was in this context that the employer asked the firm for help.

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[4] See GD6-5.

[37] The employer noticed that, while the employee wasn't there, mistakes kept being made. So, it needed a third party to intervene.

[38] The employer had trouble communicating with the Appellant. She would interrupt it, and she no longer spoke to it. Complaints about being psychologically harassed were made. The Appellant complained to the Commission des normes, de l'équité, de la santé et de la sécurité du travail [Quebec's labour standards commission].

[39] The employer says that it made efforts to resolve the conflict when it happened and to support the Appellant with an action plan. It didn't work. She kept behaving inappropriately, and she refused to sign the plan.

[40] The employer says that she was met with, warned, and suspended between the time she went back to work in July 2023 and the time she was let go.

[41] The Appellant denies having committed the acts she is accused of. She made mistakes. But contrary to what the employer argues, they didn't have serious consequences.

[42] She denies having received disciplinary action—like being suspended for a day. It was sick leave.

[43] When she testified, the Appellant disagreed with the employer's version of events.

[44] She notes that, when she went back to work, she felt that the employer didn't have the same attitude. She accused the employer of not being the same as usual. It accused her. It apologized for raising its voice. It was frustrated because, under the Act, she was entitled to two weeks of vacation.

[45] The Appellant then explains in detail why she wasn't getting along with one of the employees. She accuses the employer of not having taken action and of having favoured the other employee. She accuses it of having acted angrily.

[46] She denies having ignored her employer and not answering it. She has an explanation for each of the accusations. The Appellant says that she acted correctly. She was harassed.

[47] After reviewing the file and hearing the Appellant, the employer, the employee of the human resources firm, and the parties' submissions, I am of the view that the Appellant committed the acts she is accused of.

[48] I find that it is more likely that the Appellant made mistakes, minimized how important they were, behaved inappropriately toward her employer, and refused to sign the response plan—leading to her being let go.

[49] I give little weight to the Appellant's testimony. She testified that she didn't know that refusing to sign the action plan would lead to her being let go. But the employer and S. M. said the opposite. The Appellant knew that she would be let go if she didn't sign the plan.

[50] In fact, the employer and some employees of the firm met with the Appellant to explain the action plan. She refused to sign and asked for changes to be made. A second version of the plan was sent to her. She again refused to sign the plan. It was written that if she didn't sign the plan, she would be let go.

[51] The employer was convinced that the Appellant understood that she had been let go. She still showed up for work. She made a new mistake that ended their relationship. In fact, the Appellant imposed herself on her employer after refusing to sign the action plan.

[52] In my view, the Appellant's explanations aren't credible when she tries to justify going back to work, even though she refused to sign the plan. The situation was clear: If she refused to sign the plan, she would be let go. By showing up for work, she only created discomfort.

[53] I will now decide whether the acts that the Appellant is accused of constitute misconduct under the Act.

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

[54] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.[5] Misconduct also includes conduct that is so reckless that it is almost wilful.[6] The Appellant doesn't have to have wrongful intent for her behaviour to be misconduct under the law.[7]

[55] There is misconduct if the Appellant knew or should have known that her conduct could get in the way of carrying out her duties toward her employer and that there was a real possibility of being let go because of that.[8]

[56] 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.[9]

[57] Before I decide whether the Appellant's acts constitute misconduct, I will address some of the arguments that she made.

[58] The Appellant says that the employer didn't act properly toward her. She listed many situations where, in her view, the employer behaved inappropriately. She argued that she didn't commit the acts she was accused of, that she wasn't responsible for a conflict with a colleague, and that she didn't make serious mistakes. In short, she didn't make any mistakes. As I noted, I give little credibility to the Appellant's explanations.

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[5] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[6] See *McKay-Eden v Her Majesty the Queen*, A-402-96.
[7] See *Attorney General of Canada v Secours*, A-352-94.
[8] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[9] See *Minister of Employment and Immigration v Bartone*, A-369-88.

[59] I find that the employer noted that the Appellant had behaviour problems and difficulties in performing her duties. It called on a specialized firm to help her. She refused to sign the action plan.

[60] During the hearing, I redirected the Appellant many times. I reminded her that my role isn't to find whether the employer acted correctly. In fact, I have to decide whether the Appellant committed the acts that she is accused of and whether they constitute misconduct under the law.

[61] My role isn't to find whether the employer acted correctly. There are specialized tribunals to address employer behaviour. I have to decide whether the Appellant's acts constitute misconduct. It isn't the employer's behaviour that I have to look at, but the Appellant's. Also, I don't have to decide whether the employer took too harsh a measure in letting her go.[10] I don't have to decide how the employer handled her case.[11]

[62] In addition, the Tribunal's Appeal Division reiterated that, when assessing misconduct, the Tribunal can't consider the merits of a dispute between an employee and their employer.[12] This interpretation of the Act might seem unfair to the Appellant, but it is the one that the courts have repeatedly adopted, and the General Division has to follow.

[63] The test for misconduct looks to whether the Appellant knew or should have known that her conduct would lead to her being let go. The decision-maker should not consider the employer's conduct or legal principles that apply outside of the EI context, including labour or human rights law.

[64] In this context, I find that the Appellant knew or should have known that she would be let go if she refused to sign the action plan. She could not act as though her refusing had no impact on her employment relationship. She disregarded the conditions

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[10] See *Canada (Attorney General) v Caul*, 2006 FCA 251.
[11] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102; and *Paradis v Canada (Attorney General)*, 2016 FC 1282.
[12] See *Canada Employment Insurance Commission v RB*, 2023 SST 1249.

that the employer had clearly set out in the plan. By going to work anyway, she only showed how little she cared about her actions.

[65] So, I am of the view that the Commission has met its burden of proof. It has shown that the Appellant lost her job because of misconduct. The employer participating as an Added Party made it clear that her version of events wasn't credible.

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

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

Conclusion

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

[68] This means that the appeal is dismissed.

Manon Sauvé
Member, General Division – Employment Insurance Section