Citation: *AS v Canada Employment Insurance Commission*, 2025 SST 1374

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (733409) dated October 29, 2025 (issued by Service Canada)

Tribunal member:	John Rattray
Type of hearing:	Videoconference
Hearing date:	December 4, 2025
Hearing participant:	Appellant
Decision date:	December 12, 2025
File number:	GE-25-3225

Decision

[1] The appeal is dismissed. The General Division disagrees with the Appellant.

[2] The Appellant didn't voluntarily leave his job without just cause. But 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).

[3] This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.[1]

Overview

[4] In March 2021, the Appellant was charged with sexual assault. He was fired from his job working in a medical clinic.

[5] In September 2023, the Appellant started working as a dispatcher for a transportation company. It was unaware of the ongoing criminal proceedings against him.

[6] In June 2024, he went to a court hearing and was sentenced to one year of incarceration. He was immediately taken into custody and was unable to work.

[7] He was released from prison in February 2025, and contacted his former employer which said that there was no work available for him.

[8] The Appellant applied for EI benefits.

[9] The Commission denied him benefits. It initially said that the Appellant voluntarily left his job without just cause. However, in its submissions, it also raised the issue of misconduct. It says that where a claimant is unable to work because of their

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

incarceration, they are not entitled to EI benefits whether the end of employment results from voluntary leaving without just cause, or from dismissal for misconduct.

[10] The Appellant disagrees. He says that he didn't leave his employment voluntarily. He also says that his actions were not misconduct because they occurred years before and were unrelated to his current work. Furthermore, he never intended or foresaw that his actions would have employment consequences.[2]

Matter I have to consider first

I will accept the documents sent in after the hearing

[9] During the hearing, I agreed to accept certain documents about his contract of employment and the record of employment that were relevant to the issues if the Appellant promptly submitted them to the Tribunal. The Appellant did so. He also sent in numerous additional submissions on the issues discussed in the hearing.[3]

[10] I have agreed to accept these documents because the issues are complex. Furthermore, it was only during the hearing that the Appellant appreciated the nature of the Commission's submissions about misconduct, and voluntarily leaving employment without just cause.

[11] I find that accepting these documents will not cause prejudice to the parties and will allow the Appellant a full and fair hearing.

Issues

[12] Did the Appellant voluntarily leave his job and if so, did he have just cause?

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

[2] See GD11 and GD12.
[3] See GD8 to GD12.

Analysis

[14] I must first determine whether the Appellant voluntarily left his job or whether he was dismissed for misconduct.

[15] I have considered that voluntarily leaving and misconduct are linked under the same section of the *Employment Insurance Act* (Act).[4] This is because they both refer to situations in which a claimant isn't working in their job because of their deliberate action. A claimant is disentitled from receiving regular EI benefits if they are not working in their job due to misconduct, or if they voluntarily leave without just cause.

[16] So, if I conclude that this is a case about dismissal for alleged misconduct, rather than one of voluntarily 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 disentitled from receiving regular EI benefits.

Did the Appellant voluntarily leave or was he dismissed?

[17] I find that the evidence supports a finding that the Appellant was dismissed from his job.

[18] I find this because the law states that when determining whether a claimant has voluntarily left his employment, the question to ask is, "did the claimant have the choice to stay or to leave."[5]

[19] I find that the Appellant didn't have a choice to stay or leave.[6] The Appellant testified that he didn't have a choice to stay or leave, because he was incarcerated and could not report to work.[7]

[4] *Canada (Attorney General) v. Easson*, A-1598-92.
[5] *Canada (Attorney General) v Peace*, 2004, FCA 56.
[6] See section 29(c) of the *Employment Insurance Act* (Act).
[7] See also GD3-25.

Was the Appellant dismissed for misconduct?

[10] 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?

[11] I find that the Appellant lost his job because he was unable to report to work while he was incarcerated serving his sentence.

[12] I find this because the unchallenged evidence establishes that the Appellant was taken into custody on June 12, 2024. On that date, he was sentenced to one year of incarceration and was unable to work.

[13] Furthermore, the parties agree that the Appellant lost his job because he was incarcerated.[8]

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

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

[15] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.[9] **Misconduct also includes conduct that is so reckless that it is almost wilful.[10] 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.[11]**

[8] See GD2-27, GD3-21, GD4-6, GD8-4, and GD11-5.
[9] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[10] See *McKay-Eden v Her Majesty the Queen*, A-402-96.
[11] See *Attorney General of Canada v Secours*, A-352-94.

[16] 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.[12]

[17] 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 is more likely than not that the Appellant lost his job because of misconduct.[13]

[18] The Commission says that there was misconduct because in any contract of employment regular attendance at work is a condition of employment. It says that an employee's inability to report to work is a breach of a condition of the employment contract.

[19] Furthermore, the Commission says that an employee who is unable to work because of his own incarceration has lost his employment because of his own misconduct.

[20] The Appellant says that there was no misconduct because it requires deliberate or wilful conduct along with knowledge that such conduct will likely lead to job loss. He says that in his case his conduct which led to his conviction for sexual assault was unrelated to his job as a dispatcher. He says:

- His criminal conduct was years before his employment as a dispatcher.
- He didn't believe sentencing would impact his employment.
- He didn't foresee incarceration.
- He never intended any employment consequences.[14]

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[12] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[13] See *Minister of Employment and Immigration v Bartone*, A-369-88.
[14] See GD11-5 and GD11-6.

[21] Furthermore, the Appellant argues that the *Lavallee* decision of the Federal Court of Appeal can be distinguished from the facts of his case.[15] He argues that the claimant in *Lavallee* voluntarily placed himself in a situation in which he could not fulfill his employment obligations. In his case he says that incarceration was not reasonably foreseeable and he didn't voluntarily place himself in a situation in which he could not work.

[22] The Appellant made lengthy and able submissions about his appeal. However, I find that the Commission has proven that there was misconduct. I find this for the reasons set out below.

[23] There is no dispute that the Appellant was convicted of sexual assault and sentenced to incarceration from June 12, 2024, to February 11, 2025.[16] As a result, he was unable to report to work which led to his dismissal.

[24] When there is evidence of a criminal act, it isn't necessary that there be a wrongful intent for a behaviour to amount to misconduct under the Act. It is sufficient that the reprehensible act or omission complained of be made "wilfully," that is, "consciously, deliberately or intentionally."[17]

[25] In this case, it was the Appellant's criminal act that led to incarceration, and to the loss of his employment.[18] The performance of services is an essential condition of the employment contract. It was also a condition of his written contract of employment.[19] As a result, the Appellant's criminal act is determined to be misconduct.[20]

[26] In reaching this conclusion, I find that the *Lavallee* decision is applicable. Whether the Appellant foresaw incarceration was likely or not is not relevant. The

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[15] See *Canada (AG) v Lavallee*, 2003 FCA 255.
[16] See GD2-18 and GD2-24.
[17] See *Canada (Attorney General) v Ahmat Djalabit*, 2013 FCA 213.
[18] See *Canada (AG) v Lavallee*, 2003 FCA 255.
[19] See GD12-5 and GD12-6.
[20] See *Canada (Attorney General) v Ahmat Djalabit*, 2013 FCA 213.

Appellant undertook the criminal actions which led to his incarceration. “[H]e himself was the cause of his deprivation of liberty and his loss of employment.”[21]

[27] It was his incarceration ended the employment relationship. The Federal Court of Appeal tells us that employees can’t force others to take on the burden of their unemployment.[22]

[28] I find that the actions of the Appellant are considered misconduct under the law.

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

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

Conclusion

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

[31] This means that the appeal is dismissed.

John Rattray

Member, General Division – Employment Insurance Section

[21] See *Canada (AG) v Lavallee*, 2003 FCA 255.
[22] See *Canada (AG) v Borden,* 2004 FCA 176, and *Canada (AG) v Lavallee*, 2003 FCA 255.