



Citation: *AF v Canada Employment Insurance Commission*, 2026 SST 197

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** A. F.  
**Representative:** S. M.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Melanie D'Aguanno

---

**Decision under appeal:** General Division decision dated December 15, 2025  
(GE-25-3032)

---

**Tribunal member:** Stephen Bergen

**Type of hearing:** Teleconference  
**Hearing date:** March 10, 2026  
**Hearing participants:** Appellant  
Appellant's representative  
Respondent's representative

**Decision date:** March 12, 2026  
**File number:** AD-26-23

## **Decision**

[1] I am allowing the appeal. The Claimant was not dismissed for misconduct, so he is not disqualified from receiving benefits for that reason.

## **Overview**

[2] A. F. is the Appellant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI benefits). The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant planned a vacation and needed to obtain leave from his employment. Months in advance of his anticipated vacation, he submitted a request for an unpaid leave of absence through his supervisor. He reminded the supervisor repeatedly, but he could not get a decision on his leave request. On the last day before he had wanted to begin his leave, he spoke to the plant manager. According to the Claimant, the plant manager gave him permission to take leave, and assured him he would have his job when he returned.

[4] However, the Claimant's employer later dismissed him for having been absent without leave. When the Claimant applied for EI benefits, the Commission said he could not receive benefits because he lost his job due to misconduct. The Claimant asked the Commission to reconsider but it would not change its decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, which agreed with the Commission and dismissed his appeal. Next, he appealed to the Appeal Division.

[6] I am allowing the appeal. The General Division made at least one important error of fact. I have corrected this error, and I have made the decision the General Division should have made. I have decided that the Claimant was not dismissed for misconduct.

## **The parties agree on the outcome of the appeal**

[7] The Commission conceded that the General Division made legal and factual errors. It asked that I make the decision, and that I allow the appeal and decide that the Claimant was not dismissed for misconduct.

[8] I converted the scheduled hearing into a settlement conference to discuss the concession. The Claimant agreed with the Commission's position completely: The parties were agreed on the outcome.

## **I accept the proposed outcome**

[9] The General Division made an error of fact because it ignored or misapprehended who was responsible for approving leave requests for the employer.

[10] The General Division said that there was "no evidence" to show that the Claimant's leave request was approved. It found that the Claimant was aware his leave request should be processed through the supervisor and that his supervisor did not approve his leave request. The General Division relied on these findings to conclude that the Claimant should have known he could be dismissed.

[11] This might make sense if the supervisor were the only one who could approve leave requests, or if he had final authority over leave approvals. However, the evidence did not show this.

[12] The Claimant confirmed that the usual process was for employees to submit their leave requests through the supervisor. However, he also said that the supervisor forwarded leave requests to the plant manager for approval. He said that it was the plant manager who ultimately decided whether to approve leave requests.

[13] The Claimant testified that he asked the plant manager directly and that the manager approved his request. He also said that he would not have taken leave if it had not been approved. This evidence was unchallenged.

**My decision**

[14] I accept that the plant manager was the one with authority to approve leaves, regardless of whether the request came through the supervisor or from an employee directly. Because of this, it was reasonable for the Claimant to believe that he could take the leave he requested after he obtained the plant manager's approval directly.

[15] I also accept that the Claimant obtained the approval of the manager. The Commission has the burden of proving misconduct, and there was no evidence that challenged the Claimant's testimony on this point.

[16] Since the Claimant obtained approval from the person with apparent authority to grant that approval, he could not have known that taking leave was breaching a duty to his employer and he could not have known that he could be dismissed for taking leave.

[17] The Claimant's conduct was not misconduct for the purposes of the *Employment Insurance Act*.

**Conclusion**

[18] I am allowing the appeal. The General Division made an error of fact, which I have corrected. I have made the decision that the General Division should have made. The Claimant was not dismissed for misconduct.

Stephen Bergen  
Member, Appeal Division