



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

Decision

Appellant: Shankadev Subramaniam
Representative: Sancia Pinto

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (572844) dated March 2, 2023
(issued by Service Canada)

Tribunal member: Elizabeth Usprich

Type of hearing: Videoconference
Hearing date: July 11, 2023
Hearing participants: Appellant
Appellant's representative

Decision date: July 21, 2023
File number: GE-23-982

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Canada Employment Insurance Commission (Commission) hasn't 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 isn't disqualified from receiving Employment Insurance (EI) benefits.¹

Overview

[3] The Appellant lost his job. The Appellant's employer said that he was let go because he submitted fake receipts to his employer's insurance plan for reimbursement.

[4] The Appellant doesn't agree. He says he didn't know the receipts were fake. He says there was no reasonable way that he could have known that there was a problem with the receipts. The Appellant says his employer has subsequently agreed that they ended the employment relationship without cause.

[5] The Commission accepted the employer's original reason for the dismissal. It decided that the Appellant lost his job because of misconduct. Because of this, the Commission decided that the Appellant is disqualified from receiving EI benefits.

Matter I have to consider first

I will accept the documents sent in after the hearing

[6] The Appellant sent in documents that he read/referred to at the hearing. I will accept the documents. They have been coded as GD7.

Interpreter

[7] An interpreter, M.Z., attended the hearing to translate.

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

Issue

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

Analysis

[9] To answer the question of 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?

[10] I find that the Appellant lost his job because his employer thought the Appellant had engaged in fraudulent activity by submitting false receipts to the employer's insurance benefits.

– Background

[11] The Appellant worked for his employer since March 1991. He testified that he had never had any kind of performance issues. There is nothing on file to suggest that he did. I accept his testimony on this point.

[12] On October 4, 2022, the employer asked the Appellant about claims for benefits for physiotherapy that his wife had in 2021.

[13] The Appellant testified that his wife had gone to a clinic several times in 2021 because she was in pain. It is not disputed that the Appellant's wife received some type of treatment, and received receipts.² The receipts had the correct dates and showed his wife as the person that received the treatment.

[14] After receiving these receipts, the Appellant testified his wife filled in a benefits claim form.³ The Appellant testified he had reviewed the form at the time. The Appellant testified the Commission had some discrepancies in their documents about what he

² See GD7-3 and GD7-4.

³ See GD7-2.

read and reviewed before the claims were submitted. The Appellant testified that this was due to a language barrier. He reiterated that although his wife filled out the forms, he did review them before signing them. I accept the Appellant's testimony on this point. I find that he answered in a straightforward manner. Additionally, he had the assistance of an interpreter during the hearing. This means that the Appellant could be clear on the question he was being asked and I could be clear as to what his answer was.

Arguments

[15] The Commission found that the Appellant was dismissed due to the "submission of fraudulent invoices for insured benefits".⁴

[16] The Commission agrees that the Appellant wasn't aware that his claims for benefits were fraudulent.⁵

[17] The Commission argues that the Appellant had simply signed the claims benefit forms.⁶ The Commission argues that the Appellant's wife was going for massages. The employer's insurance benefits didn't cover massages. Yet, the Appellant had a health care spending account that could have been used for massages.

[18] The Commission argues that the Appellant should have seen that the services weren't labelled as physiotherapy. Yet, this is factually incorrect. The receipts clearly indicate that they are for physiotherapy.⁷

[19] The Commission says the Appellant should have first confirmed to see if his submissions were eligible for reimbursement. The Commission argues that the Appellant signing off and submitting the claims was reckless. They agree that the Appellant's actions weren't deliberate but the actions were reckless to the point of approaching wilfulness.

⁴ See GD4-3.

⁵ See GD4-3.

⁶ See GD4-3 which relies on a record from the Commission see GD3-10.

⁷ See GD7.

[20] The Commission also says the Appellant was up to date on his employer's Code of Conduct and it would cover situations like submitting fake receipts.

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

[21] The reason for the Appellant's dismissal isn't misconduct under the law.

[22] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.⁸ Misconduct also includes conduct that is so reckless that it is almost wilful.⁹ 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.¹⁰

[23] 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.¹¹

[24] 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.¹²

[25] The Commission argues that although the Appellant's actions weren't deliberate that they were reckless.

[26] I don't agree with the Commission. First, the receipts clearly indicate that they were for physiotherapy. The claim was also for physiotherapy. It is unknown why the Appellant would question the claim form or the receipts since they matched.

[27] Second, the Appellant testified, under oath, that his wife filled out the claims forms but he reviewed them before signing them. If the Appellant reviewed the claims,

⁸ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁹ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

¹⁰ See *Attorney General of Canada v Secours*, A-352-94.

¹¹ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹² See *Minister of Employment and Immigration v Bartone*, A-369-88.

he would have seen that the claim form was for physiotherapy and the receipts were also for physiotherapy.

[28] Third, the Appellant testified that his wife had some pain and went to this clinic to ask about treatment. The Appellant testified that he didn't believe his wife understood the difference between a massage or physiotherapy. To her, and to the Appellant, she was simply receiving treatment.

[29] Fourth, if the Appellant had understood that the treatment was for massage and not physiotherapy (even though that is stated on the receipt) he still had coverage through his health care spending account. This means that the claim still could have been submitted and reimbursement still could have occurred.

[30] Fifth, the Appellant's Representative submitted during the hearing that it has become apparent that the clinic was under investigation for giving fake receipts.

[31] Sixth, the Commission argues submitting fake receipts goes against the employer's Code of Conduct. But I find that the Appellant didn't know the receipts were fake until over a year later when his HR department told him that. This means that the Appellant couldn't have known that he was doing anything against his employer's Code of Conduct.

[32] It is unknown how the Appellant can be considered reckless in this case. The Commission agrees the Appellant couldn't have known that the claim submitted was fraudulent. I find that the Appellant couldn't have known that the receipts were fraudulent since the receipts say they are for physiotherapy which matched the claim.

[33] The employer has since provided the Appellant with an updated Record of Employment (ROE).¹³ This ROE's reason for issuance is shown as "K" which is "other" and under the comments it says, "termination without cause".

¹³ See GD3-46 and GD6-2.

[34] The Commission says determining misconduct isn't just based on the ROE. I agree. I am not bound by how the employer and employee characterize their separation.¹⁴ The ROE isn't determinative.

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

[35] Based on my findings above, I find that the Appellant didn't lose his job because of misconduct.

Conclusion

[36] The Commission hasn't proven that the Appellant lost his job because of misconduct. Because of this, the Appellant isn't disqualified from receiving EI benefits.

[37] This means that the appeal is allowed.

Elizabeth Usprich
Member, General Division – Employment Insurance Section

¹⁴ See, for example, *Canada (Attorney General) v. Morris*, 1999 CanLII 7853 (FCA).