



Citation: *NL v Canada Employment Insurance Commission*, 2022 SST 218

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

# **Decision**

**Appellant:** N. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (440730) dated December 16, 2021 (issued by Service Canada)

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**Tribunal member:** Sylvie Charron

**Type of hearing:** Teleconference

**Hearing date:** February 9, 2022

**Hearing participant:** Appellant

**Decision date:** March 3, 2022

**File number:** GE-22-140

## Decision

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

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant didn't have just cause because he had reasonable alternatives to being placed on unpaid leave from his job. This means he is disqualified from receiving Employment Insurance (EI) benefits.

## Overview

[3] The Appellant was placed on unpaid leave and applied for EI benefits effective September 19, 2021. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to leave) his job for a leave without pay without just cause, so it wasn't able to pay him benefits.

[4] I must decide whether the Commission has proven that the Appellant left his job voluntarily. I must also decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[5] The Commission says that the Appellant could have agreed to vaccination following the employer's vaccination policy.

[6] The Appellant disagrees and states that he did not request to take a leave of absence, but rather was forced to take leave because he refused to be vaccinated. He had no choice in the matter.

## Issue

[7] Is the Appellant disqualified from receiving benefits because he voluntarily left his job without just cause?

[8] To answer this, I must first address the Appellant's voluntary leaving. I then have to decide whether the Appellant had just cause for leaving.

## **Analysis**

### **The parties don't agree that the Appellant voluntarily left**

[9] I find that the Appellant voluntarily left his job. My reasons follow.

[10] The Appellant was put on an unpaid leave of absence by his employer because he refused to be vaccinated according to his employer's vaccination policy. He refused knowing that his refusal to follow the policy would result in an unpaid leave.

[11] The Commission says that the Appellant was aware of the requirements of the vaccination policy put in place by his employer. He was also aware of the possible outcome of not complying with it. The policy is clear that non-compliance can result in an unpaid leave of absence.<sup>1</sup>

[12] I find that the Appellant's conduct was willful. This means that the conduct was conscious, deliberate or intentional. He voluntarily decided that he would not be vaccinated, knowing that he would be placed on an unpaid leave of absence. This, in my view, makes the leaving voluntary. The Appellant voluntarily accepted the consequences of non-compliance with the vaccination policy. I find that if you agree to something, knowing what the consequences are, you agree to the consequences.

[13] The Appellant's leave could end should he initiate his return to work as outlined in the employer's vaccination policy. This means that the Appellant could comply with the policy, or the government changes immunization requirements for workplaces.<sup>2</sup>

### **The parties don't agree that the Appellant had just cause**

[14] The parties don't agree that the Appellant had just cause for voluntarily leaving his job when he did.

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<sup>1</sup> See GD3-23

<sup>2</sup> See GD3-31

[15] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>3</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[16] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.<sup>4</sup>

[17] It is up to the Appellant to prove that he had just cause.<sup>5</sup> He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his only reasonable option was to be placed on unpaid leave of absence. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant left.

[18] The Appellant says that he left his job because he was placed on an involuntary leave of absence by his employer. The Appellant says that he had no reasonable alternative to leaving at that time because he was not comfortable with being vaccinated, and there was no other way to stay on the job other than to take a weekly Covid-19 test. He refused testing.

[19] The Appellant maintains that to force him to get a rapid antigen at his expense was a change in his duties that he did not agree to. It had to be done on his own time so that meant spending more time on work-related duties.<sup>6</sup>

[20] The Appellant is adamant that his leave is not voluntary and therefore does not follow the *Employment Insurance Act* or the *Regulations*. I have explained in paragraph 12 above why I find that the Appellant's leave is voluntary.

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<sup>3</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

<sup>4</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

<sup>5</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

<sup>6</sup> See GD2-28

[21] The Commission says that the Appellant didn't have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says that the Appellant could have agreed to either weekly testing or to get vaccinated.

[22] I find that given all the circumstances, the Appellant had reasonable alternatives to leaving when he did.

[23] The Appellant agreed that he had no religious, cultural or medical reason not to get vaccinated; he simply is not comfortable with the vaccine.<sup>7</sup>

[24] While I understand that the Appellant did not want to get vaccinated, and that is his right, he could have agreed to weekly testing. That was a reasonable alternative in his situation.

[25] Even though the Appellant believes that to get tested is a change in his duties that was not in his original employment contract, I find that this alternative is simply a reasonable means to allow the Appellant to safely perform his duties during a global pandemic. There is no actual change to the Appellant's daily work.

[26] Given all the evidence, I find that the Appellant had reasonable alternatives to leaving his job when he did.

## **Conclusion**

[27] I find that the Appellant is disqualified from receiving benefits.

[28] This means that the appeal is dismissed.

Sylvie Charron  
Member, General Division – Employment Insurance Section

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<sup>7</sup> See GD3-16