



Citation: *AS v Canada Employment Insurance Commission*, 2022 SST 215

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

## Decision

**Appellant:** A. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (442957) dated December 10, 2021 (issued by Service Canada)

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**Tribunal member:** Sylvie Charron

**Type of hearing:** Videoconference

**Hearing date:** February 7, 2022

**Hearing participant:** Appellant

**Decision date:** February 28, 2022

**File number:** GE-22-116

## Decision

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

[2] The Canada Employment Insurance Commission (Commission) has proven that the Appellant lost her job because of misconduct (in other words, because she did something that caused her to lose her job). This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] The Appellant lost her job. The Appellant's employer said that she was let go because she refused to be vaccinated in accordance with the employer's vaccination policy.

[4] The Appellant doesn't dispute that this happened. However, she says that she has the right to choose whether to be vaccinated or not or to refuse any medical procedure. She adds that her employment contract does not include participation in any experimental medical procedures or impose mandatory vaccination.

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

## Issue

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

## Analysis

[7] 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

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<sup>1</sup> Section 30 of the *Employment Insurance Act* says that appellants who lose their job because of misconduct are disqualified from receiving benefits.

lost her job. Then, I have to determine whether the law considers that reason to be misconduct.

### **Why did the Appellant lose her job?**

[8] I find that the Appellant lost her job because she refused to be vaccinated in accordance with her employer's vaccination policy. The Appellant also refused testing for Covid-19.

[9] The Appellant does not dispute this.

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

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

[11] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>2</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>3</sup> The Appellant doesn't have to have wrongful intent (in other words, she doesn't have to mean to be doing something wrong) for her behaviour to be misconduct under the law.<sup>4</sup>

[12] 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.<sup>5</sup>

[13] The Commission has to prove that the Appellant lost her job because of misconduct, as defined above. 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.<sup>6</sup>

[14] The Commission says that there was misconduct because:

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<sup>2</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>3</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>4</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>5</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>6</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

- The employer implemented a compulsory vaccination policy for the hospital and told the Appellant on September 7, 2021 that she had to submit proof of vaccination by October 22, 2021.
- Employees were advised that if not vaccinated by October 22, 2021, they would be terminated.
- The Appellant did not have a permanent right to work from home.
- The Appellant confirmed that she did not have any medical condition that could justify an exemption to vaccination. Instead, she was exercising her rights.<sup>7</sup>
- The Appellant has steadfastly refused vaccination and testing.

[15] The Appellant says that there was no misconduct because she is waiting for more research to be done on the available vaccines, which she describes as “experimental”. She opposes vaccination and has the right to chose.<sup>8</sup>

[16] The Appellant also says that the EI Act has not been amended to state that refusing vaccination would lead to not getting EI benefits.

[17] I find that the Commission has proven that there was misconduct, because the conduct, that is, refusing vaccination, was willful or deliberate, and there is a causal relationship between the misconduct and the dismissal.

[18] The Appellant argues that the Act has not been changed to address the issue of non-vaccination; that is correct. The Act does not need to be changed in this regard; misconduct has been and is still defined the same way. Misconduct according to the EI Act is, as explained in paragraphs 11 and 12 above, means that an employee does something that goes against a reasonable employer policy willfully and deliberately, knowing that it might result in dismissal. This is what happened here, in my view.

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<sup>7</sup> See GD3-17

<sup>8</sup> See GD3-26

[19] The Appellant argues that she has a right to bodily integrity; that is also correct. But that does not mean that it guarantees her a job in a workplace where the employer has reasonably decided to protect **all** employees by the best means possible.

[20] In testimony, the Appellant says that she is refusing vaccination based on creed under the *Human Rights Act of Ontario*. That is the Appellant's right, and this belief should be brought in front of the proper tribunal to be dealt with. There is no evidence that a formal request in that sense has been made either to the employer or to another tribunal.

[21] Finally, at the hearing, the Appellant stated that even though she has been dismissed from her job and another employee has replaced her, she has been told she could go back should she choose to comply with the vaccination policy.

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

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

### **Conclusion**

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

[24] This means that the appeal is dismissed.

Sylvie Charron  
Member, General Division – Employment Insurance Section