



Citation: *KT v Canada Employment Insurance Commission*, 2022 SST 216

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

Decision

Appellant: K. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (440768) dated December 6, 2021 (issued by Service Canada)

Tribunal member: Sylvie Charron

Type of hearing: Videoconference

Hearing date: January 18, 2022

Hearing participant: Appellant

Decision date: February 23, 2022

File number: GE-21-2592

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 left his job on September 24, 2021 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to be placed on unpaid leave) from his job without just cause, so it wasn't able to pay him benefits.

[4] I must 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 adhered to the employer's vaccination policy that had also been agreed to by the union.

[6] The Appellant disagrees and states that he was given no alternatives. There were no possible means of accommodation, such as working from home, rapid testing, waiting on vaccine preference or other possible work arrangements.

I will accept the documents sent in after the hearing

[7] At the hearing, we discussed certain documents that are relevant to the case. I requested that the Appellant send them to me post-hearing; the documents were received within the agreed-to timeframe. They are coded GD6 and form part of the record.

Issue

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

[9] 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

[10] I find that the Appellant voluntarily left his job, for the reasons that follow.

[11] The Appellant states that he did not consent to taking or request to take unpaid leave. In his view, this makes it involuntary.

[12] The Commission replies that the Appellant was aware of the requirements of the vaccine policy put in place by the employer and supported by the union. 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 and eventually termination. The Appellant chose not to get vaccinated, and so voluntarily accepted the consequences. This means that the Appellant voluntarily chose to go on unpaid leave.

[13] I agree with the Commission. The Appellant voluntarily chose to go on unpaid leave. If you agree to something, knowing what the consequences are, you agree to the consequences.

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.

[15] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.¹ 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 leaving your job when you did. It says that you have to consider all the circumstances.²

[17] It is up to the Appellant to prove that he had just cause.³ 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 go on unpaid leave. 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 did not want to get vaccinated when the employer requested it.

[19] The Appellant testified that he is not an "anti-vaxxer"; he has received other immunizations and his children are vaccinated. Rather, he firmly believes that the employer should not be dictating health decisions. It all hinges on what is reasonable in the circumstances. He agrees that he is not compliant with the vaccine policy, but there were no accommodations offered, such as regular testing or working from home.

[20] The Appellant also states that even with 100% compliance, there are outbreaks within fully vaccinated populations and the vaccines do not stop transmission. The reality is that the vaccine only protects the individual and not the collective, as the vaccine apparently prevents death or serious illness, but not transmission.

[21] The Appellant also testifies that what he is saying is "not yet" to vaccination, not "never". He wants to be able to make a truly informed decision. He contends that the policy rollout was too rapid and did not give him enough time to carefully weigh the

¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

possible problems associated with the vaccines that are only one year old. He confirms that he has reached out to a lawyer, his doctor, and the union. He has filed a grievance and the process is ongoing. As well, he does not want to be forced to disclose his vaccination status.

[22] The Appellant has consulted his doctor. The doctor supported his decision to wait before getting vaccinated, but she stated that she could not legally provide a medical exemption.

[23] Overall, the Appellant is adamant that there should be options other than being vaccinated. The vaccination policy is not law. The Appellant has submitted a labour arbitrator's position that deems the Electrical Safety Authority's (ESA) mandatory vaccination policy unreasonable.

[24] While I respect the arbitrator's decision in the case of the ESA's policy, this has no application in the present case. The Appellant's case is decided solely on the EI Act and the jurisprudence related to it.

[25] The Appellant says that he had no reasonable alternative to leaving at that time because no viable options were offered. He states that this is unreasonable.

[26] Finally, the Appellant confirms that his employer has now placed him on a 12-month leave of absence as of January 31, 2022. This leave will end should the Appellant provide proof of vaccination or if the status of the Covid-19 pandemic has improved and the obligation to be vaccinated to be onsite no longer exists.

[27] 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 followed the employer's reasonable policy and received the vaccine.

[28] I find that the Appellant did not have just cause to leave when he did. There was a reasonable alternative: to get vaccinated.

[29] I understand the Appellant's position. He feels that his employer is forcing something on him that he does not agree with. I agree that the Appellant has the right to

choose which of the employer's policies he decides to follow. However, this right does not override the consequences of not following the policy.

[30] In this case, the employer put in place a vaccination policy that was supported as reasonable by the appropriate Ministry and the workplace union.⁴ It follows the recommendations put forth by medical bodies in the province. The employer decided that the best course of action, the safest way to deal with the pandemic, was to require that all who came on campus be vaccinated. I find that the Appellant cannot prove just cause in these circumstances.

[31] After a careful consideration of all the evidence, I find that the Appellant did not have just cause for leaving when he did.

Conclusion

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

[33] This means that the appeal is dismissed.

Sylvie Charron

Member, General Division – Employment Insurance Section

⁴ See GD3-67