



Citation: *LA v Canada Employment Insurance Commission*, 2022 SST 219

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

**Decision**

**Appellant:** L. A.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (442849) dated December 17,  
2021 (issued by Service Canada)

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**Tribunal member:** Sylvie Charron  
**Type of hearing:** Teleconference  
**Hearing date:** February 14, 2022  
**Hearing participant:** Appellant

**Decision date:** March 7, 2022  
**File number:** GE-22-192

## **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 her job when she did. The Appellant didn't have just cause because she had a reasonable alternative to being placed on unpaid leave or suspended from her job. This means she is disqualified from receiving Employment Insurance (EI) benefits.

## **Overview**

[3] The Appellant left her job for an unpaid leave of absence on October 15, 2021 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that she voluntarily left (or chose to be put on unpaid leave) from her job without just cause, so it wasn't able to pay her benefits.

[4] I must decide whether the Appellant has proven that she had no reasonable alternative to leaving her job.

[5] The Commission says that the Appellant could have adhered to the employer's vaccination policy by the dates outlined in the policy.

[6] The Appellant disagrees and states that she was placed on a voluntary leave from her employment because she was unwilling to be vaccinated. She does not have any religious or medical reason to refuse vaccination.

## **Issue**

[7] Is the Appellant disqualified from receiving benefits because she voluntarily left her 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 her job. My reasons follow.

[10] The employer's vaccination policy clearly states that it applies to all staff unless there is a medical reason not to obtain the Covid-19 vaccine. Vaccination is mandatory as of October 15, 2021. Non-compliance with the policy will result in employees being placed on indefinite unpaid leave of absence until they provide acceptable proof of vaccination.<sup>1</sup>

[11] The Appellant states that she is unwilling to be vaccinated, citing a combination of fear of needles and anxiety about a vaccine that is still in an "experimental" phase.

[12] At the hearing, the Appellant testified that she is exercising her freedom of choice. She points out that her employer never objected to her not getting other vaccines; this vaccine is not in her employment contract.

[13] The Appellant also feels she is entitled to benefits as she has dutifully contributed to the EI fund while she was employed. She says that she wants to work and she never agreed to be placed on leave.

[14] The Commission says that the Appellant was well aware of the requirements of her employer's vaccination policy. She was also well aware of the consequences of non-compliance. The policy is clear that non-compliance can result in an indefinite unpaid leave. This is what happened in this case.

[15] I agree with the Commission that the Appellant voluntarily chose to go on unpaid leave. The Appellant chose not to be vaccinated, knowing the consequences. Therefore, the Appellant accepted the consequences. This means that she voluntarily chose to go on unpaid leave rather than to be vaccinated. If you agree to something, knowing what the consequences are, you agree to the consequences.

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<sup>1</sup> See GD3-33 to 43.

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

[16] The parties don't agree that the Appellant had just cause for voluntarily leaving her job when she did.

[17] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.<sup>2</sup> Having a good reason for leaving a job isn't enough to prove just cause.

[18] 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.<sup>3</sup>

[19] It is up to the Appellant to prove that she had just cause.<sup>4</sup> She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that her only reasonable option was to quit. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit.

[20] The Appellant says that she left her job because she did not want to be vaccinated and was placed on an unpaid leave of absence by her employer. The Appellant says that she had no reasonable alternative to leaving at that time because there were no alternatives to vaccination, which she did not want.

[21] The Appellant testified that she has a fear of needles and experiences anxiety towards the vaccine which is still in an "experimental" phase. She is exercising her freedom of choice.

[22] The Appellant testified that she was placed on a 2-year leave of absence; she can go back if she gets the vaccine. She confirmed that she had always tested negative for Covid-19 prior to her leave. She had excellent job reviews and she wants to work.

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<sup>2</sup> Section 30 of the *Employment Insurance Act* (Act) explains this.

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

<sup>4</sup> See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

[23] The Commission says that the Appellant didn't have just cause, because she had reasonable alternatives to leaving when she did. Specifically, it says that the Appellant could have complied with the employer's vaccination policy. I agree.

[24] In this case, the employer put in place a reasonable policy that was supported by the appropriate Ministry. It follows recommendations put forth by medical bodies in the province to safely deal with the pandemic. I find that the Appellant cannot prove just cause in these circumstances.

[25] The Commission further says that the Appellant's refusal to comply is an act of misconduct because she was well aware of the employer's mandatory vaccination policy and voluntarily chose not to comply without any valid reason. It says that the Appellant knew or ought to have known that such conduct would result in dismissal.

[26] I find that in this case, the Appellant has taken a voluntary leave of absence without just cause, and she has not been dismissed for misconduct. First, the Appellant has not been dismissed, but placed on an indefinite leave of absence. Second, the parties know and agree that the Appellant can go back to her job should she get vaccinated. This does not rise to the level of misconduct contemplated the *Act*. Rather, it fits squarely within the situation described in s.32 of the *Employment Insurance Act*.

[27] I find that the Appellant has taken a voluntary period of leave from her employment without just cause.

## **Conclusion**

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

[29] This means that the appeal is dismissed.

Sylvie Charron  
Member, General Division – Employment Insurance Section