



Citation: *KL v Canada Employment Insurance Commission*, 2022 SST 359

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

Decision

Appellant: K. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (444738) dated January 29, 2022
(issued by Service Canada)

Tribunal member: Sylvie Charron

Type of hearing: Videoconference

Hearing date: April 6, 2022

Hearing participant: Appellant

Decision date: April 25, 2022

File number: GE-22-709

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.¹

Overview

[3] The Appellant lost her job. The Appellant's employer said that she was let go because she refused to follow her employer's mandatory vaccination policy.

[4] The Appellant doesn't dispute that this happened. However, she says that she met all requirements for employment insurance and should not be disqualified. She further argues that the employer's policy is unreasonable and violates her human rights.

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

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

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 mandatory vaccination policy.

[9] The Appellant does not dispute that this is why she was fired. She argues however that the employer's policy is unreasonable and unconstitutional. She adds that it violates her human rights and her medical privacy; as well, she says that it goes beyond what the provincial government has mandated.

[10] I find that my role is not to determine whether the employer's policy is reasonable or not. Rather, it is to focus on the Appellant's conduct and to determine whether it is misconduct under the law.

[11] I find that the evidence supports the finding that the Appellant lost her job because she refused vaccination.

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

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

[13] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.² Misconduct also includes conduct that is so reckless that it is almost wilful.³ 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.⁴

[14] 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.⁵

² See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

⁴ See *Attorney General of Canada v Secours*, A-352-94.

⁵ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

[15] The Commission has to prove that the Appellant lost her 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 her job because of misconduct.⁶

[16] The Commission says that there was misconduct because the Appellant had been made aware of the employer's vaccination policy and the timeframes for compliance.⁷

[17] The policy had been communicated to all employees. It clearly set out that refusal to comply would lead to a two-week suspension without pay; further non-compliance would result in termination.⁸

[18] The employer's policy is extensive and was drafted in response to Directive 6 for public hospitals in the province.⁹ The employer also sent urgent reminders to staff who were not compliant by the dates outlined in the policy.

[19] The Commission argues that to deliberately and willfully refuse to follow a policy put in place by the employer to protect all employees and patients meets the definition of misconduct under the Act.

[20] The Appellant gave the Commission her reasons for non-compliance. It is clear that her refusal to get the vaccine was deliberate and voluntary.¹⁰

[21] The Appellant says that she requested an exemption based on creed; this was refused. She confirmed that she does not qualify for a medical exemption.

[22] In testimony, the Appellant stated that she had brought a grievance to her union. This was eventually withdrawn as she was told there was little chance of success. She has retained a lawyer to look into a Court process.

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

⁷ GD3-30, 31

⁸ GD3-51 and following

⁹ GD3-40 to 61

¹⁰ GD3-34 to 36

[23] The Appellant says that she has paid into employment insurance and is entitled to financial support. The Appellant testified that she has found a job and has been working since the beginning of December.

[24] I find that the Commission has proven that there was misconduct.

[25] The Appellant knew of the employer's vaccination policy. She knew that not complying could lead to being fired from her job. She maintained her refusal to get vaccinated and was fired. By knowingly and voluntarily not following her employer's policy, she accepted the consequences. There is a direct causal effect between her refusal and the job loss.

[26] I find that given all the evidence in the file and the Appellant's testimony, the Appellant's conduct was such that she could reasonably foresee that it would result in her dismissal.

[27] I understand that the Appellant feels that because she paid into the employment insurance fund, she is entitled to financial support. This belief goes against the fundamental principle of employment insurance, that is, an employee must not voluntarily place herself in a position of unemployment. This is what the Appellant did in this case. This conscious and deliberate breach of the duty owed to the employer is misconduct under the Act.

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

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

Conclusion

[29] The Commission has proven that the Appellant lost her job because of misconduct. This means that the appeal is dismissed.

Sylvie Charron

Member, General Division – Employment Insurance Section