Citation : *AL v Canada Employment Insurance Commission*, 2022 SST 280

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (442386) dated December 9, 2021 (issued by Service Canada)

Tribunal member:	Paul Dusome
Type of hearing:	Videoconference
Hearing date:	February 24, 2022
Hearing participant:	Appellant
Decision date:	March 14, 2022
File number:	GE-22-101

Decision

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

[2] The Canada Employment Insurance Commission (Commission) has proven that the Claimant was suspended from her job because of misconduct (in other words, because she did something that caused her to be suspended). This means that the Claimant is disentitled from receiving Employment Insurance (EI) benefits.[1]

Overview

[3] The Claimant's employer (Employer) placed her on an unpaid leave from work for failing to comply with its new policy respecting COVID vaccination. The Employer said that she was put on leave for failing to provide proof that she was vaccinated against COVID, or provide regular proof of negative COVID tests. She had also failed to provide proof that she was exempt from the vaccination requirement for medical or religious reasons.

[4] Even though the Claimant doesn't dispute that this happened, she says that the demand that she comply with the policy is a breach of her employment contract, and a violation of her inalienable rights. The requirement that she take the vaccine is a demand that she submit to an unproven medical procedure without her consent. She advanced a number of other reasons, which will be reviewed in this decision. The Claimant says that she is entitled to receive EI benefits.

[5] The Commission accepted the employer's reason for the unpaid leave. It decided that the Claimant had stopped working by taking a voluntary leave of absence without just cause. Because of this, the Commission decided that the Claimant was disentitled from receiving EI benefits.

[6] After the Claimant had filed her appeal to the Tribunal, the Commission changed its reason for the disentitlement. It now said that the Claimant was disentitled because

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[1] Section 31 of the *Employment Insurance Act* (Act) says that claimants who are suspended for misconduct are not entitled to receive benefits. Section 32 of the Act says that claimants who take a leave of absence without just cause are not entitled to receive benefits.

she was suspended for misconduct. The Commission asked that the Tribunal dismiss the appeal, and replace the disentitlement for taking a leave of absence without just cause, with a disentitlement for suspension due to misconduct. In this decision, I will use ‘suspension’ or ‘leave’ to mean a period during which an employer tells an employee not to come to work. The phrase ‘leave of absence’ has a special meaning under section 32 of the Act, so I will use that phrase only in discussing section 32.

Matter I have to consider first

I will accept the documents sent in after the hearing

[7] At the hearing, the Claimant referred to a number of documents not before the Commission or the Tribunal. These were: the employment contract between the Employer and the Claimant; an email to the Employer from the Claimant, outlining in detail her reasons for refusing the vaccination and exemptions; and a copy of that part of the Nuremberg Code respecting medical experiments. These documents are relevant to understanding the Claimant’s employment contract, and the basis for her reasons for opposing the vaccination policy. I have received and accepted these documents, and forwarded them to the Commission for its response to them. The Commission responded that its position asking for dismissal of the appeal, and replacing the disentitlement reason ‘leave of absence without just cause’ with ‘suspension for misconduct’, remained unchanged.

Issues

[8] I. Was the Commission legally permitted to change the reason for disentitlement from leave of absence without just cause to misconduct?

[9] II. Was the Claimant suspended from her job because of misconduct?

[10] III. Did the Claimant voluntarily take a leave of absence without just cause?

I. Was the Commission legally permitted to change the reason for disentitlement from leave of absence without just cause to misconduct?

[11] The issues of just cause and misconduct are dealt with in sections 29 to 33 of the Act. Paragraph 29(c) defines 'just cause' for the purposes of section 30 to 33. Section 30 deals with disqualification from receiving EI benefits in cases of losing employment because of voluntarily leaving without just cause, or because of misconduct. Section 31 deals with disentitlement from receiving EI benefits in cases of suspension for misconduct. Section 32 deals with disentitlement from receiving EI benefits in cases of voluntarily taking a leave of absence without just cause. Section 30 deals with situations in which the employment has ended. Sections 31 and 32 deal with situations in which the employment continues, but the employee is not at work.

[12] The courts have ruled on the issue of changing the reason for disqualification from voluntarily leaving without just cause to misconduct. The Commission and the Tribunal are permitted to do this, if the evidence supports the finding of either voluntarily leaving without just cause or misconduct, or both. The following quote sets out the rationale for this:

> In *Attorney General of Canada v. Easson*, A-1598-92, February 1, 1994, this Court made it clear that "dismissal for misconduct" and "voluntarily leaving without just cause" are two notions rationally linked together because they both refer to situations where loss of employment results from a deliberate action of the employee. The Court went on to add that the two notions have been linked for very practical reasons: it is often unclear from the contradictory evidence, especially for the Commission, whether the unemployment results from the employee's own misconduct or from the employee's decision to leave. In the end, since the legal issue is a disqualification under subsection 30(1) of the Act, the finding of the Board [now the Social Security Tribunal, General Division] or the Umpire [now the Social Security Tribunal, Appeal Division] can be based on any of the two grounds for disqualification as long as it is supported by the evidence. There is no prejudice to a claimant in so doing because the claimant

> knows that what is sought is a disqualification from benefits and he is the one who knows the facts that led to the seeking of the disqualification order.[2]

[13] That rationale is equally applicable to the situation in this case, namely disentitlement based on either taking a leave of absence without just cause, or suspension for misconduct. I must then decide if the evidence supports either or both of the grounds for disentitlement. The Commission is now basing its position on suspension for misconduct. If the evidence does not support the Commission's current position, it is still open to find whether the evidence does support the ground of taking leave without just cause.

[14] For the reasons set out in Part II, the evidence does support misconduct as the ground for disentitlement. For the reasons set out Part III, it is not proper for me to decide the leave of absence without just cause issue.

II. Was the Claimant suspended from her job because of misconduct?

Analysis

[15] A claimant who is suspended from work because of misconduct is not entitled to receive EI benefits until the period of suspension expires, or she voluntarily quits or loses the job, or accumulates enough hours of work with a different employer to qualify for EI benefits.[3] If the claimant voluntarily quits or loses the job, the disentitlement ends, and the claimant is disqualified from receiving EI benefits under subsection 30(1) of the Act.[4]

[16] To answer the question of whether the Claimant was suspended from her job because of misconduct, I have to decide two things. First, I have to determine why the Claimant was suspended from her job. Then, I have to determine whether the law considers that reason to be misconduct.

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[2] See *Canada (Attorney General) v Borden*, 2004 FCA 176.
[3] See section 31 of the Act.
[4] See *Thibodeau v Canada (Attorney General)*, 2015 FCA 167, paragraphs [48] to [51].

Why did the Employer suspend the Claimant?

[17] I find that the Claimant was suspended from her job because she did not comply with the Employer's new policy on vaccination for COVID-19.

[18] The Claimant and the Commission agree on why the Claimant was suspended from her job. That was because the Employer implemented a new COVID vaccination policy. The policy had a deadline for employees to prove having been vaccinated, or to comply with regular testing for COVID, or to obtain an exemption on medical or religious grounds. The Claimant did not comply with any of the options under the policy by the deadline. The Employer put the Claimant on leave after the deadline.

Is the reason for the Claimant's suspension misconduct under the law?

[19] The reason for the Claimant's suspension is misconduct under the law.

[20] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.[5] The Claimant 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.[6]

[21] There is misconduct if the Claimant 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 disciplined or let go because of that.[7]

[22] The Commission has to prove that the Claimant 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 Claimant lost her job because of misconduct.[8]

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[5] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[6] See *Attorney General of Canada v Secours*, A-352-94.
[7] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[8] See *Minister of Employment and Immigration v Bartone*, A-369-88.

[23] It is not the role of the Tribunal to determine whether the dismissal was justified, or was the appropriate sanction.[9]

[24] The issue is not whether the employer was guilty of misconduct by engaging in unjust dismissal; rather, the question is whether the applicant was guilty of misconduct.[10]

[25] The Commission says that there was misconduct because the Claimant was aware of the Employer's COVID policy, its requirements, the accommodations the policy offered, and the deadline for compliance. She was aware of the consequences of failing to comply. She chose not to comply, and was suspended as a result. She failed to take steps to enquire about a medical exemption. She attempted to put the onus of addressing her many concerns about the vaccine on the Employer.

[26] The Claimant says that there was no misconduct for a number of reasons. The Employer unilaterally changed the terms of her employment to require that she submit to a COVID-19 vaccination. There was no explicit or implicit term of employment that allowed the Employer to mandate that she undergo a medical procedure. Any medical procedure required her consent, which she did not give. The Employer failed to allow her proposed accommodations to permit her to continue working without complying with the policy. The Employer's unilateral decision to place her on unpaid leave was an attempt to avoid the Employer's legal obligation to accommodate her in employment up to the point of undue hardship. The Employer was discriminating on the ground of disability, based on its view that an unvaccinated person is more likely to be a carrier of COVID, that is, disabled. The Employer operated its business COVID-free for one and one half years by following public health guidelines. The provincial government had not imposed a vaccine mandate on the Employer. Therefore, the Employer's unilateral decision to now require vaccines could not have been a bona fide occupational requirement.

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[9] *Canada (Attorney General) v Caul*, 2006 FCA 251.
[10] *Paradis v Canada (Attorney General)*, 2016 FC 1282.

[27] I find that the Commission has proven that there was misconduct, because it has proven the four elements of misconduct: wilfulness; breach of duty to the employer; foreseeability of discipline or dismissal; and the breach caused the suspension or dismissal.

[28] I will set out the following analysis under three subheadings: Factual findings; The four elements of misconduct; and The Claimant's arguments for her position.

– **Factual findings**

[29] The Claimant worked at one of the Employer's appliance retail stores for over 11 years. The store was part of a larger business group, with a head office in a different city. In the fall of 2021, she was the store administrator for that one store. The job required her to assist the store manager, hire employees, oversee inventory, and deal with customers (mostly by phone) about information, complaints, and service. She worked in an area behind a counter with other staff, but could use an office in the back of the store alone. She had to be in the store to do most of her work. Her in-store work would require personal interaction with other staff. During the pandemic, there had never been a case of COVID in the store since the start of the pandemic in March 2020.

[30] The Claimant had a written employment contract with the Employer. The original contract had been replaced with a new written contract in 2014. The Claimant signed this new contract. Among the terms set out were the following. The Employer reserved the right to change a number of terms, such as title, work location, compensation, benefits, "and policies and procedures that may affect you based on the needs of the business without the changes constituting a termination of your employment." The contract also had clauses about terminating employment, with or without cause. "With cause" reasons included wilful misconduct, disobedience or wilful neglect of duty, or any act or conduct which is contrary to the goodwill, business reputation or best interests of the Employer. The contract also stated that the Employer expected the employee to comply with all relevant workplace legislation (including human rights and occupational health and safety law). That clause concluded, "Any breach of this expectation or Company policies will result in disciplinary action up to and including termination."

[31] The Claimant had worked for the Employer for a number of years. She was reliable. There had been no complaints about her work. She had never been disciplined. During the pandemic, she had complied with the COVID protocols, such as masks, face shields, distancing, hand sanitizing and washing, and monitoring her temperature.

[32] On September 13, 2021, the Employer circulated a "Group Mandatory Vaccination Policy" (Policy) to all the employees, including the Claimant. The Policy applied to all of the Employer's employees, and to third part subcontractors. The Policy required office employees, who had been working remotely, to return to the office for 50% of the time starting January 4, 2022. Store employees (which included the Claimant) were to continue to report to the store for all scheduled shifts. In light of the ongoing pandemic, and the Employer's ongoing efforts to maintain a safe workplace for employees and customers, the Employer required "all employees to be fully vaccinated against COVID-19 as defined by Health Canada in accordance with this Policy." In support of the Policy, the Employer referred to obligations under occupational health and safety law, recommendations from Public Health of Canada and the National Advisory Committee on Immunization, industry requirements and other public health authorities. The Employer reserved the right to amend the Policy as appropriate. Employees vaccinated pursuant to the Policy had to show satisfactory proof of COVID-19 vaccination to the Employer by October 11, 2021. The Employer would keep any documentation from an employee confidential, and would only "collect, use and disclose an employee's proof of vaccination and/or vaccination status in accordance with applicable privacy laws." The Policy stated that the Employer will comply with its obligations under human rights legislation and accommodate employees who were unable to be vaccinated for "substantiated reasons including medical or religious reasons." Employees had until October 11, 2021, to submit the Employer's Vaccine Exemption Form in support of their claim to exemption. If an employee qualified for an exemption, she would be required to be tested on her own time a minimum of twice weekly on a schedule determined by the Employer. The employee had to show a negative COVID test (including rapid tests) to their manager before reporting for work. The employee was responsible for any costs related to the testing. Employees were

required, after they were vaccinated, to continue to comply with COVID safety protocols such as face coverings and social distancing. Under the heading “Compliance”, the Policy stated, “Employees who are non-compliant with this policy will be subject to discipline up to and including termination.” The Policy ended with the statement that “this policy is subject to change at any time, based on the evolving pandemic situation, industry best practices/guidelines and/or regulatory requirements.”

[33] The Claimant did not agree with the policy requiring her to be vaccinated. She did not want to be vaccinated for a number of reasons, which she explained to the Employer. I will give a brief overview these reasons here, to provide context for the Claimant’s efforts to deal with the Employer. I will review these reasons in detail below under the heading dealing with the Claimant’s arguments in support of her position. At this stage of the analysis, what is important is the law relating to misconduct for EI purposes (set out above), and what the Claimant did to try to deal with the Employer’s mandatory vaccine requirement.

[34] In a nutshell, the Claimant objected to the vaccine based on her right to consent to any medical treatment such as a vaccine (which consent she did not give), and on concerns about the safety of a vaccine that had been rushed into distribution. She wanted guarantees of the safety of the vaccine, and guarantees that she would not suffer any ill effects if she took the vaccine. She also said she was not required to disclose her medical information to the Employer.

[35] The Claimant received the Policy by email from the Employer on September 13, 2021. That is the date on the Policy. On September 30, 2021, the Employer emailed her a reminder to submit proof of vaccination or request for exemption by the deadline of October 11, 2021. The Claimant replied that day, asserting her right to privacy of her medical information. She asked that she not be discriminated against because of this. She asked that she be accommodated with an option to work remotely. The employer responded on October 12, 2021, stating that employees needed to show vaccination status, or to provide evidence to support the Employer accommodating such employees under human rights law for religious or disability matters. The email concluded by

stating that if the Claimant did not comply with the policy by applying for an exemption, she would be placed on an unpaid leave effective the end of the day on October 15, 2021. If she did not wish to comply, she was to return all the Employer's property by noon that day. If there was a change in her decision, please advise. At 9:34a.m. on October 15, 2021, the Claimant replied by email. She had a list of seven items of information she required. The Claimant testified that the Employer should have known the answers to these questions. If she were satisfied with the information the Employer provided, she would accept the Employer's offer to receive the treatment on three conditions. First, the Employer confirm in writing that she would suffer no harm. Second, "following acceptance of this, the offer must be signed by a fully qualified doctor who will take full legal and financial responsibility for any injuries occurring to myself, and/or from any interactions by authorized personal [sic] regarding these procedures." Third, "In the event that I should have to decline the offer of vaccination, please confirm that it will not compromise my position and that I will not suffer prejudice and discrimination as a result?" The Claimant concluded by reserving her inalienable rights. At 10:38a.m., the Employer responded. It said that it would not complete the material requested. It suggested that she speak to her doctor. It said that while the Employer respected her personal decisions, its primary concern must be the health and safety of its employees and customers. It concluded that if her vaccination status changes, please advise.

[36] The email exchanges noted in the previous paragraph were those before the Commission and the Tribunal at the time of the hearing. At the hearing, the Claimant referred to another email, which she provided after the hearing. The Commission has reviewed this document, and maintained its position. That email was dated October 15, 2021, at 11:17a.m., with another copy sent to another executive of the Employer at 11:20a.m. There is no copy of a response from the Employer. That email had a five-page attachment in single-spaced type, titled "Vaccine Notice of Liability, Employers…" I will deal with that five-page document in the "Claimant's arguments in support of her position" heading below.

[37] The Claimant testified about verbal discussions with her manager concerning the Policy. She stated her reasons for not wanting to be vaccinated. She proposed ways of continuing to work without being vaccinated. She proposed working remotely, or working alone in the back office. The manager said he would discuss this with the head office. The Claimant received no response from the manager. The only response from the Employer was through the emails noted above. These were from the Vice President of human resources at the head office of the Employer.

[38] The Claimant did not take the COVID-19 vaccine. She did not apply for an accommodation or exemption on religious or medical grounds. She did not obtain regular tests to continue working under the Policy.

– **The elements of misconduct**

[39] The four elements of misconduct for the purposes of EI are: wilfulness; breach of duty to the employer; the breach caused the suspension or dismissal; and foreseeability of discipline or dismissal.

[40] The Commission has proven all four of those elements. The Claimant's action in refusing to comply with the Employer's Policy was misconduct for EI purposes.

[41] Wilfullness requires that the action of the claimant be conscious, deliberate, or intentional. For EI purposes, 'intentional' does not require proof of an intention to do something wrong. On the evidence, it is clear that the Claimant's action of not complying with the requirements of the Policy was conscious, deliberate and intentional. She told the Employer her reasons for not complying. The Employer still required that she comply with the Policy. Her response was to make the choice not to comply. That was wilfulness.

[42] A breach of duty owed to an employer relates to the performance of the employee's obligations under the contract of employment. It requires a breach of an express or implied duty under the contract of employment.[11] The Claimant says that the

[11] *Canada (Attorney General) v Lemire*, 2010 FCA 314.

Employer broke the contract with her by unilaterally imposing the Policy on her, without her consent. She did not breach a duty under the contract. The Claimant is incorrect on both points. The Employer did not breach the contract by imposing the Policy. Under the 2014 written employment contract, the Employer had the right to change the terms of the contract including "policies and procedures that may affect you based on the needs of the business". The contract also stated that breach of the Employer's policies "will result in disciplinary action up to and including termination." That latter part of the contract means that the Claimant's choice to not comply with the Policy was a breach of the employment contract. Her choice not to comply resulted in the Employer placing her on leave. Because of the suspension, she was not able to perform her obligations under the contract. She claimed that the Employer's significant unilateral changes to the terms of her employment amounted to termination of her employment contract without cause. That does not assist her in this appeal. The issue in this appeal is not whether the employer was guilty of misconduct by engaging in unjust dismissal. The proper question is whether the Claimant was guilty of misconduct under the *Employment Insurance Act*.[12] The Claimant's remedy for wrongful dismissal is a law suit in the courts.

[43] The Claimant's refusal to comply with the Policy was the cause of her being suspended. That is clear from the email exchange between the Claimant and the Employer's Vice President of human resources. In her email of September 30, 2021, the Claimant said that she would not disclose her personal medical information to the Employer. The Vice President replied on October 12, 2021, that the information was needed to comply with human rights legislation that required accommodation for religious or disability reasons. The Vice President concluded that if the Claimant did not comply with the Policy by applying for an exemption, she would be placed on an unpaid leave effective at the end of the day on October 15, 2021. The Vice President also stated, "If there is a change in your decision, please advise." On the morning of October 15, 2021, the Claimant replied with a list of seven items of information about the vaccine that she wanted from the Employer, and three conditions for taking the

[12] *Paradis v Canada (Attorney General)*, 2016 FC 1282.

vaccine. The Vice President replied later that morning, saying that the Employer will not be completing the material requested. She referred the Claimant to her doctor for information about the vaccine. She concluded by stating, "If your vaccine status changes please advise us." The Claimant has not taken the vaccine or applied for an exemption, or been tested for COVID, up to the date of the hearing. The Employer placed the Claimant on leave.

[44] The Claimant's suspension for failure to comply with the Policy was foreseeable to the Claimant. The employment contract expressly provided for discipline up to termination for breaching the Employer's policies. The Policy stated that employees who were non-compliant with the Policy will be subject to discipline up to and including termination. The Vice President's email of October 12, 2021, explicitly told the Claimant that if she did not comply with the Policy by end of day on October 15, 2021, she would be placed on an unpaid leave. On those facts, there can be no doubt that the Claimant foresaw that she would be put on unpaid leave by the deadline if she did not comply with the Policy.

– **The Claimant's arguments in support of her position**

[45] The starting point is the limited authority of the Tribunal in making decisions. Unlike the superior courts, the Tribunal does not have wide-ranging authority to deal with all legal issues that may be presented to it. The General Division EI Section of the Tribunal may dismiss the appeal, confirm, rescind or vary the decision of the Commission in whole or in part or give the decision that the Commission should have given.[13] That limits what the Tribunal can do in EI matters to what the Commission can do in administering the *Employment Insurance Act* and its regulations. The Tribunal General Division has to work within that framework. The Tribunal's authority to decide any question of fact or law necessary for the disposition of the appeal is similarly limited.[14] The Tribunal lacks the authority to rule on many of the arguments advanced by the Claimant.

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[13] *Department of Employment and Social Development Act*, section 54(1).
[14] *Department of Employment and Social Development Act*, section 64.

[46] The Claimant refers to breach of the *Ontario Human Rights Code*. She says that the Employer breached its responsibility to ensure that she could work in an environment free of discrimination based on perceived physical disability (that she is more likely to be a carrier of COVID). She says that the Employer is avoiding its duty to accommodate up to the point of undue hardship, and is refusing accommodation for her. The fact that she has been complying with COVID protocols (masking, face shields, monitoring temperature, sanitizing and washing hands, social distancing), and that the Employer has no history of COVID in store for one and one-half years shows that the requirement to be vaccinated is not a bona fide occupational requirement. That is confirmed by the provincial government not imposing a vaccine mandate. This does not assist the Claimant. Paragraph 29(c) of the *Employment Insurance Act* deals with just cause for voluntarily leaving employment or taking leave from employment. It does not deal with suspension for misconduct. The concept of just cause, defined in paragraph 29(c) of the EI Act, does not apply to misconduct. The things that the Claimant has mentioned in this paragraph relate to possible just cause based on discrimination under the *Canadian Human Rights Act* (not the Ontario Code) or practices of an employer that are contrary to law.[15] Since we are not dealing with just cause in this appeal, for reasons set out under Part III, the Tribunal has no authority to deal with the human rights claims in this appeal. The Claimant has three possible remedies. She can deal with the appropriate government authority responsible for enforcing the human rights laws. She can sue in court for wrongful dismissal, including violation of the human rights law. Her other remedy can arise if her employment ends and the Commission rules that she quit without just cause. That decision would disqualify her from receiving EI benefits. In that situation, she could appeal to the Tribunal to contest the issue of disqualification based on lack of just cause.

[47] The Claimant said that the Employer's demand that she disclose her private medical information was a violation of her rights. The Tribunal does not have authority to rule on that issue. The proper authority is the provincial privacy body that enforces

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[15] *Employment Insurance Act*, subparagraphs 29(c)(iii) and (xi). Practices of an employer contrary to law could include the matters referred to in the Claimant's "Vaccine Notice of Liability" discussed below.

privacy legislation, including medical issues. The Policy provides for the confidentiality of the Claimant's information in accordance with applicable privacy laws. The Claimant's argument is undercut by her willingness to comply with the Policy if the Employer provided the information and met the conditions set out in her email dated October 15, 2021, at 9:34a.m.

[48] The Claimant emailed to the Vice President of human resources a five-page "Vaccine Notice of Liability", with 42 footnote links to websites. It states that the Employer is unlawfully practising medicine by requiring employees to submit to any vaccine, including the experimental gene therapy COVID vaccine. There is no public health emergency. The supposed increase in cases is a result of increased testing using PCR tests not designed for that purpose. The PCR test produces false positives in 97% of the samples tested. Various courts and medical authorities support this. Based on the factual information, the emergency use of the COVID vaccine is not required or recommended. The Claimant cites the Nuremberg Code that requires voluntary informed consent for medical experiments performed on humans. She cites the COVID "vaccine" as being in clinical trials until 2023, hence qualifying as a medical experiment. "Numerous doctors, scientists and medical experts are issuing dire warnings about the short- and long-term effects of COVID-19 injections…" She cites statistics to show that persons under 30 are at very low risk of contracting or transmitting COVID. The vaccine is unproven, and may increase the risk of respiratory disease. The COVID vaccine has caused more deaths in five months than from all vaccines combined in the last 23 years. The government is hiding that information. Administration of the vaccine may violate the *Crimes Against Humanity and War Crimes Act of Canada*, the *Canadian Criminal Code,* the *Genetic Non-Discrimination Act*, and the *Canadian Charter of Rights and Freedoms.* Administration of the vaccine can also be negligence. Vaccination is voluntary in Canada. A government vaccine mandate, or one by an employer, is a violation of Canadian law and international agreements and declarations. The Claimant concludes, "Therefore, I hereby notify you that I will hold you personally liable for any financial injury and/or loss of my personal income and my ability to provide food and shelter for my family if you use coercion or discrimination against me based on my decision not to take the [sic] ANY vaccine including the

COVID-19 experimental injection." The Tribunal has no authority to rule on these matters. Unlawfully practising medicine has to be dealt with by the provincial body governing the medical profession. The Tribunal has no authority to rule on the various laws, or international agreements and declarations, with the exception of the *Canadian Charter of Rights and Freedoms* (*Charte*r). The *Charter* is discussed in the next paragraph. The Tribunal also does not have authority to engage in the fact-finding to decide the questions about the vaccine noted above, or to decide negligence, or to decide the Employer's liability for the Claimant's financial losses. Those matters are handled by the courts.

[49] The *Charter* grants rights to everyone in Canada. But the *Charter* applies to governments only, not to private individuals or private businesses.[16] It is up to the governments to protect the rights given to everyone in Canada. If a government creates a law or policy that violates a *Charter* right, the law or policy could be ruled to be unconstitutional, and to have no force at all. Courts and many tribunals have the authority to review and rule on whether a law it has authority to deal with is unconstitutional. For example, the Social Security Tribunal could rule on a claim that part of the EI law violated women's equality rights by giving them lesser entitlement to EI parental benefits than men receive. If the Tribunal found the law to violate a Charter right, it could declare that part of the EI law unconstitutional. Policies created by private individuals or private businesses are not laws. They are not subject to review under the *Charter*. They cannot be ruled to be unconstitutional. In this case, the Policy is an action of a private business, the Employer. The Policy is not subject to *Charter* review. The Tribunal therefore has no authority to rule on the Claimant's *Charter* claim about the Policy in this appeal. .

[50] In her testimony, the Claimant provided other reasons in support of her decision. She was born free, with inalienable and God-given rights that cannot be taken away from her. Sovereignty rests with the people, and the government has no jurisdiction over the people. In addition, she has no contract with the government, so it has no

[16] *Canadian Charter of Rights and Freedoms,* section 32(1).

jurisdiction over her. She must give her consent before the government can acquire jurisdiction over her. Such issues are well beyond the limited authority of the Tribunal. Such claims have been advanced in Canadian courts before, but have not been accepted.[17] Persons in Canada are subject to the laws of the federal government throughout Canada, and to the laws of the province or territory where they happen to be. Actual consent to be bound by those laws is not required. Physical presence makes you subject to those laws.

So, was the Claimant suspended from her job because of misconduct?

[51] Based on my findings above, I find that the Claimant was suspended from her job because of misconduct.

III. Did the Claimant voluntarily take a leave of absence without just cause?

[52] A claimant who voluntarily takes a leave of absence from work without just cause is not entitled to receive EI benefits until she resumes the employment, or loses or voluntarily quits the job, or accumulates enough hours of work with a different employer to qualify for EI benefits.[18] This rule applies where the period of leave of absence has been authorized by the employer, and the employer and employee agree on the day the employee will return to work.[19] When those two conditions are not met, then the situation is treated as one of voluntarily leaving employment (quitting the job), rather than a leave of absence. The claimant would have to show just cause, at the time she quit or the time the employer told her she had no job to return to.[20] Whether the situation is one of leave of absence, or voluntarily leaving, just cause must be proven by the claimant.

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[17] *Meads v Meads*, 2012 ABQB 571 (CanLII).
[18] See section 32(2) of the Act.
[19] See section 32(1) of the Act.
[20] CUB 58960.

[53] The concept of “just cause” is defined in the Act: for the purposes of section 30 to 33, just cause exists if the claimant had no reasonable alternative to quitting or taking leave, in all the circumstances.[21]

[54] I find that it would not be proper for me to make any findings on the issue of just cause in this case for the following reasons. The Commission originally decided that the Claimant had taken a leave of absence without just cause. This case does not fit into that category, because there was no agreement between the Employer and the Claimant on a return-to-work date as required by section 32(1)(b) of the Act. The Commission properly changed its position to the Claimant being suspended for misconduct. I have found that the Employer suspended the Claimant for misconduct. The Claimant’s disentitlement from receiving EI benefits based on misconduct can end if she voluntarily leaves the Employer. If the Claimant voluntarily leaves her job with the Employer, then the disentitlement for misconduct ends, but a disqualification for quitting without just cause may be imposed.[22] The Claimant remains suspended from her employment, and she has not quit. If she does decide to voluntarily quit her job, or the employer says she has no job to return to, then the issue of voluntarily leaving without just cause will arise at that future date. The law is clear: an assessment of just cause has to look at the claimant’s circumstances at the time she quit.[23] It would be prejudicial to the Claimant for me to rule on the issue of just cause based on her present circumstances (being suspended).

Conclusion

[55] The Commission has proven that the Claimant was suspended from her job because of misconduct. Because of this, the Claimant is disentitled from receiving EI benefits until she meets one of the three conditions set out in section 31 of the Act.

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[21] See paragraph 29(c) of the Act.
[22] *Thibodeau v Canada (Attorney General),* 2015 FCA 167, paragraphs [49] to [51].
[23] *Canada (Attorney General) v Lamonde*, 2006 FCA 44.

[56] This means that the appeal is dismissed. This decision replaces the Commission's disentitlement for taking a leave of absence without just cause, with a disentitlement for suspension due to misconduct.

Paul Dusome

Member, General Division – Employment Insurance Section