



RM v Canada Employment Insurance Commission, 2022 SST 496

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

Decision

Appellant: R. M.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (457501) dated February 21, 2022
(issued by Service Canada)

Tribunal member: Sylvie Charron
Type of hearing: Videoconference
Hearing date: April 11, 2022
Hearing participant: Appellant

Decision date: May 2, 2022
File number: GE-22-825

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 adhere to the employer's COVID vaccination policy. The Appellant refused to be vaccinated or tested for Covid-19. She was terminated on September 29, 2021.²

[4] The Appellant doesn't dispute that this happened. She says that she refused to comply for religious and safety reasons. She confirmed that she did not attempt to obtain a medical or religious exemption to 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

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

² See GD3-6 to 9.

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 comply with the employer's Covid-19 vaccination policy.

[9] The Appellant and the Commission agree that's why the Appellant lost her job.

[10] The employer explained to the Commission that they had implemented a vaccine policy on September 7, 2021. It applied to every employee unless there were valid reasons for an exemption. Until fully vaccinated, employees had to get tested twice a week.

[11] The Appellant was told that if she did not get vaccinated, she was in danger of losing her job. The period to comply with the vaccination policy was extended to November 10, 2021 and employees were allowed to continue testing. The Appellant still refused, having informed the employer that she would not get vaccinated on September 28, 2021 and never changing her mind. She was dismissed on September 29, 2021.³

[12] The employer confirmed that the Appellant did not formally request a medical or a religious exemption, other than to refer to an affidavit that she had completed in 2019 that indicated her opposition to immunization generally.⁴

[13] The Appellant confirmed that on September 24, 2021, she notified the employer that she felt uncomfortable with the vaccine and could not commit to being tested twice a week. She received a termination letter on September 29, 2019.⁵

[14] She did not want to get tested because she had to pay and get tested away from her place of work. This was too complicated. She also stated that she follows the Bible

³ See GD3-24

⁴ See GD7-2

⁵ See GD3-32, 33.

so she did not want to be vaccinated. In testimony, she confirmed that she believed that the vaccine would be harmful to her, because of her pain in her shoulder and arm.⁶

[15] I find that the evidence in the file, that is, the Appellant's conversations with the Commission, the employer's information given to the Commission, and the Appellant's testimony all confirm that the Appellant lost her job because she refused to be vaccinated or tested in accordance with her employer's vaccination policy.

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

[16] The reason for the Appellant's dismissal is misconduct under the law. My reasons follow.

[17] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.⁷ Misconduct also includes conduct that is so reckless that it is almost wilful.⁸ 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.⁹

[18] 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.¹⁰

[19] 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.¹¹

[20] The Commission says that there was misconduct because the Appellant was informed of the employer's Covid-19 vaccination policy, the reasons for it and the

⁶ See GD7-2 to 8

⁷ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁸ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

⁹ See *Attorney General of Canada v Secours*, A-352-94.

¹⁰ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹¹ See *Minister of Employment and Immigration v Bartone*, A-369-88.

timelines to comply. She was also made aware that she could be terminated should she not comply.

[21] The evidence reveals that notwithstanding the information given to the Appellant, she still chose to refuse vaccination or testing. This makes her refusal voluntary and intentional. As well, she knew that she could be fired because of this; this is what happened in the end.

[22] Complying with the employer's policy would have avoided the unemployment situation. The wilful, conscious and deliberate act of refusal meets the legal notion of misconduct outlined in ss. 30(1) of the Act.

[23] In testimony, the Appellant objected to the notion of misconduct in her case. She testified that she loved her job. She spent 27 years working with children and was dedicated to the kids.

[24] I understand the Appellant's position and I sympathize with her situation. However, I cannot change the law. Based on my findings above, I find that the Commission has proven that the Appellant has lost her job because of misconduct for refusing to follow the employer's policy.

Conclusion

[25] The finding of misconduct means that the Appellant is disqualified from receiving benefits.

[26] This means that the appeal is dismissed.

Sylvie Charron
Member, General Division – Employment Insurance Section