



Citation: *JC v Canada Employment Insurance Commission*, 2022 SST 498

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

**Decision**

**Appellant:** J. C.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (447830) dated January 25, 2022  
(issued by Service Canada)

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**Tribunal member:** Sylvie Charron  
**Type of hearing:** Videoconference  
**Hearing date:** April 25, 2022  
**Hearing participant:** Appellant

**Decision date:** May 19, 2022  
**File number:** GE-22-588

## 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 his job because of misconduct (in other words, because he did something that caused him to lose his job). This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] The Appellant lost his job. The Appellant's employer first suspended him on September 13, 2021 and then dismissed the Appellant on January 21, 2022 because he did not comply with the employer's vaccination policy.

[4] The Appellant doesn't dispute that this happened.

[5] The Commission decided that the Appellant lost his job because of misconduct. Because of this, the Commission decided that the Appellant is disqualified from receiving EI benefits.

[6] The Appellant disagrees; there was no misconduct. He says that he should not have to be vaccinated to keep his employment. He questioned the value of the policy as vaccinated people can still get Covid-19 or transmit it; as well, unvaccinated people are allowed to enter the employer's premises. He also argues that the employer does not have to know what medical procedures he has undertaken. Vaccination was not part of his employment contract. He also states that the vaccination policy infringes on his privacy.

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

## **Matter I have to consider first**

### **I will accept the documents sent in after the hearing**

[7] At the hearing, we discussed certain relevant documents that the Appellant would send in after the close of the proceeding. The documents were sent in as agreed to and were coded as GD8. The Commission sent in GD9 and GD10 in reply. All were considered in coming to the decision in this case.

### **Issue**

[8] Did the Appellant lose his job because of misconduct?

### **Analysis**

[9] An Appellant who loses his job because of misconduct is disqualified from receiving benefits.<sup>2</sup>

[10] An Appellant who is suspended from his job because of his own misconduct is not entitled to receive benefits until the period of suspension ends, or they lose or voluntarily leave their employment, or they accumulate enough hours with another employer after the suspension started.<sup>3</sup>

[11] To answer the question of whether the Appellant lost his job because of misconduct, I have to decide two things. First, I have to determine why the Appellant lost his job. Then, I have to determine whether the law considers that reason to be misconduct.

### **Why did the Appellant lose his job?**

[12] I find that the Appellant lost his job because he refused to be vaccinated in accordance with his employer's vaccination policy.

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

<sup>3</sup> Section 31 of the Act

[13] Documents in the file confirm that the Appellant was placed on an unpaid leave of absence as of September 14, 2021 and that his employment was terminated on January 21, 2022, for failure to comply with the employer's vaccination policy.<sup>4</sup> The Appellant confirmed this in testimony.

[14] The employer communicated its vaccination policy to all employees on August 4, 2021 and issued many reminders. The policy stated that vaccination was expected by September 13, 2021 as a condition of employment.<sup>5</sup>

[15] In testimony, the Appellant confirmed that he knew that he could be let go if not vaccinated. He also said that he would go back to that job if it were possible.

[16] The Appellant submits that the vaccination policy is not reasonable. He was doing his job through nearly two years of the pandemic with no issues; the government did not mandate a vaccination policy; it was only a directive. There was no vaccine mandate in his employment contract.

[17] The employer did not want employees working from home and did not retain the option of frequent rapid testing.

[18] The Appellant confirmed that he did not request an exemption of any kind.

[19] At the hearing, the Appellant explained that the employer did not give any safety data as regards vaccines. The employer did not explain what its liability would be should any of the employees get sick; there was only the obligation to get the vaccine. The Appellant also likened his refusal to get vaccinated to the refusal of any employee to drive or operate a defective piece of machinery; it is simply not safe. Accepting to get the vaccine could have resulted in injury or death; there is nothing reasonable about the employer's policy.

[20] Finally, the Appellant submits that the imposition of the vaccine does not respect his right to bodily autonomy, privacy or informed consent; all this is protected under the

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<sup>4</sup> See GD8-11

<sup>5</sup> See GD3-23 and GD8-11

Bill of Rights. The Appellant states that his dismissal for misconduct is being challenged in court, as is the employer's vaccination policy.

[21] Given all the above, I find that it is undisputed that the Appellant was fired from his job because he refused to comply with the employer's vaccination policy.

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

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

[23] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>6</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>7</sup> The Appellant doesn't have to have wrongful intent (in other words, he doesn't have to mean to be doing something wrong) for his behaviour to be misconduct under the law.<sup>8</sup>

[24] There is misconduct if the Appellant knew or should have known that his conduct could get in the way of carrying out his duties toward his employer and that there was a real possibility of being let go because of that.<sup>9</sup>

[25] The Commission has to prove that the Appellant lost his 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 his job because of misconduct.<sup>10</sup>

[26] The Commission says that there was misconduct because the Appellant does not dispute that he lost his job because he refused to comply with the employer's vaccination policy. The Appellant was given time to follow the policy, then was placed on suspension and finally was terminated. The Appellant's behaviour fits the description of misconduct under the Act as it was conscious and intentional.

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<sup>6</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>7</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>8</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>9</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>10</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

[27] The Commission submits that the Appellant did this willingly and voluntarily, and it was foreseeable that the Appellant could lose his job by doing so. The Appellant's conduct was intentional and he knew what the consequences might be.<sup>11</sup> There is a direct link between the refusal of vaccination and the loss of the job.

[28] The Appellant says that there was no misconduct because he refused to follow a policy that was ineffective and unreasonable. He has major reservations about the safety of the vaccines and the employer offered no safety data or alternatives to the vaccines.

[29] I find that the Commission has proven that there was misconduct, because the evidence clearly shows that the Appellant voluntarily and consciously chose to not get the vaccine against Covid-19 as required by the employer's policy.

[30] I also find that once the employer imposed a vaccination policy, this became a fundamental condition of employment. While I agree that the Appellant has the right to decline vaccination, the employer has the right to manage the day-to-day operations of the workplace. This includes the right to develop and impose policy related to health and safety in the workplace.

[31] While I note the Appellant's concerns as regards the safety of the vaccines in general, the medical privacy issues and what he perceives as being forced to get a medical treatment that he does not have enough information about, it is not my role to determine whether the vaccination policy was reasonable, or whether the dismissal was justified. My role is simply to determine if the conduct in question amounts to misconduct under the EI Act.<sup>12</sup>

[32] The Appellant's recourse on the above issues is before the courts. I note that the Appellant has testified that court proceedings are ongoing.

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<sup>11</sup> See GD3-28

<sup>12</sup> See *Canada (Attorney General) v. Marion*, 2002 FCA 185

[33] The purpose of the EI Act is to compensate employees who are separated from their employment involuntarily and who are thus without work.<sup>13</sup> In this case, the loss of employment was deliberate and voluntary; the Appellant knew he could lose his job by refusing to be vaccinated.

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

## **Conclusion**

[35] The Commission has proven that the Appellant lost his job because of misconduct. Because of this, the Appellant is disqualified from receiving EI benefits.

[36] This means that the appeal is dismissed.

Sylvie Charron

Member, General Division – Employment Insurance Section

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<sup>13</sup> See *Canada (CEIC) v. Gagnon*, 2 SCR 29