



Citation: *TA v Canada Employment Insurance Commission*, 2022 SST 629

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

**Decision**

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

---

**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (458780) dated March 7, 2022  
(issued by Service Canada)

---

**Tribunal member:** Catherine Shaw  
**Type of hearing:** Teleconference  
**Hearing date:** May 10, 2022  
**Hearing participant:** Appellant  
**Decision date:** May 13, 2022  
**File number:** GE-22-872

## Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) has proven that the Claimant was suspended because of misconduct (in other words, because he did something that caused him to be suspended). This means that the Claimant is disqualified from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] The Claimant was suspended from his job for not getting the COVID-19 vaccination. The employer implemented a policy that required employees to get vaccinated. He asked for an exemption to the policy but the employer refused. He didn't get the COVID-19 vaccination by the deadline, so the employer suspended him.

[4] The Commission decided that the Claimant was suspended from his job because of misconduct. Because of this, the Commission decided that the Claimant is disentitled from receiving EI benefits.

[5] The Claimant says that it isn't fair that he was suspended from his job. He shouldn't be forced to get a vaccination. And it wasn't part of the terms of his employment when he was hired.

## Matter I have to consider first

### The employer is not a party to this appeal

[6] The Tribunal identified the Claimant's former employer as a potential added party to the Claimant's appeal. The Tribunal sent the employer a letter asking if they had a direct interest in the appeal and wanted to be added as a party. The employer did not respond by the date of this decision. As there is nothing in the file that indicates the

---

<sup>1</sup> Section 31 of the *Employment Insurance Act* (Act) says that claimants who are suspended from their job because of misconduct are disentitled from receiving benefits.

employer has a direct interest in the appeal, I have decided not to add them as a party to this appeal.

## **Issue**

[7] Was the Claimant suspended from his job because of misconduct?

## **Analysis**

[8] The law says that claimants who lose their job because of misconduct are disqualified from receiving benefits.<sup>2</sup>

[9] It also says that claimants who are suspended from their job because of their misconduct are disentitled from receiving benefits until one of the following conditions is met:

- their period of suspension expires; or,
- they lose or voluntarily leave their job; or,
- they work enough hours with another employer after the suspension started.<sup>3</sup>

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

## **Why was the Claimant suspended?**

[11] Both parties agree that the Claimant was suspended because he chose not to comply with the employer's policy that required him to get vaccinated against COVID-19. I see no evidence to contradict this, so I accept it as fact.

---

<sup>2</sup> See section 30 of the Act.

<sup>3</sup> See section 31 of the Act.

## **Is the reason for his suspension misconduct under the law?**

[12] The reason for the Claimant's suspension 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.<sup>4</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>5</sup> The Claimant 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>6</sup>

[14] There is misconduct if the Claimant 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>7</sup>

[15] The Commission has to prove that the Claimant was suspended 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 Claimant was suspended because of misconduct.<sup>8</sup>

[16] The Commission says that there was misconduct because the Claimant was aware that he was required to comply with the employer's policy to continue working in his job. The Claimant chose not to take the vaccine. In doing so, he willfully made the choice not to comply with the employer's policy.

[17] The Claimant says that there was no misconduct because the policy was not part of the terms of his employment when he was hired. He felt the vaccine wasn't safe and he shouldn't be forced to take it.

[18] The Claimant worked at a hospital. The employer notified the Claimant about its policy about COVID-19 vaccination in October 2021. The policy required employees to

---

<sup>4</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>5</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>6</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>7</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>8</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

get their COVID-19 vaccination by December 17, 2021. The Claimant testified that he understood that employees who did not get vaccinated would be let go.

[19] The Claimant spoke to his manager after the policy was announced. He told her about his concerns regarding the mandatory vaccine policy. She told him that she understood his feelings and if he didn't want the vaccine then he didn't need to get it, but they would let him go.

[20] The Claimant asked the employer for a religious exemption. He gave the written exemption request to his manager. He spoke to the manager again before December 17, 2021, and she told him that the employer was going to deny his exemption.

[21] The Claimant was scheduled for shifts past December 17, 2021, the deadline for the mandatory vaccination under his employer's policy. But, on December 17, 2021, a staffing representative from the employer called him and told him that his shifts were cancelled because of the vaccination policy. The Claimant testified that he was expecting that to happen.

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

[23] The Claimant wilfully and consciously chose to not comply with the employer's policy. It is clear from the evidence that he knew the consequences of not complying would result in him losing his job.

[24] The Claimant was notified about the employer's policy in October 2021. He chose not to get his COVID-19 vaccination as required by the policy. He knew that not complying with the policy could result in him being suspended from work.<sup>9</sup>

[25] I understand the Claimant made efforts to get an exemption from the policy. But, the employer refused his exemption request. The Claimant was aware that he was not exempted from the employer's policy based on his health concerns or religious beliefs.

---

<sup>9</sup> The Claimant stated in her Notice of Appeal that the employer told her if she failed to comply with the policy that she would receive a suspension then possibility of termination. The Claimant's submissions are found at GD2-5.

Yet, he chose not to comply with the employer's policy, regardless. If he intended to comply with the policy, the Claimant could have communicated that to his employer and asked for an extension of time.

[26] The Claimant argued that the requirement to get the COVID-19 vaccination was not part of his terms of employment when he was hired.

[27] The employer has a right to manage their daily operations, which includes the authority to develop and implement policies at the workplace. When the employer implemented this policy as a requirement for all of its employees, this policy became a condition of the Claimant's employment.

[28] I understand the Claimant's concerns that the employer's policy was not fair and that it did not give him any option other than to get vaccinated. I acknowledge that he disagrees with the employer's policy and feels that the loss of his employment was unjustified. But, I do not have the authority to decide whether the employer breached his human rights by suspending the Claimant from his job.

[29] The Federal Court of Appeal has said that the Tribunal does not have to determine whether an employer's policy was reasonable or a claimant's dismissal was justified. The Tribunal has to determine whether the Claimant's conduct amounted to misconduct within the meaning of the *Employment Insurance Act*.<sup>10</sup>

[30] The Claimant may have other recourse to pursue his claims that the employer's policy breached his human rights and unfairly suspended him. But these matters must be addressed by the correct court or Tribunal.

### **So, was the Claimant suspended because of misconduct?**

[31] Based on my findings above, I find that the Claimant was suspended because of misconduct.

---

<sup>10</sup> See *Canada (Attorney General) v Marion*, 2002 FCA 185.

## **Conclusion**

[32] The Commission has proven that the Claimant was suspended from his job because of misconduct. Because of this, the Claimant is disentitled from receiving EI benefits.

[33] This means that the appeal is dismissed.

Catherine Shaw  
Member, General Division – Employment Insurance Section