



[TRANSLATION]

Citation: *CG v Canada Employment Insurance Commission*, 2022 SST 877

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

Decision

Appellant: C. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (464020) dated March 31, 2022 (issued by Service Canada)

Tribunal member: Sylvie Charron

Type of hearing: Videoconference
Hearing date: August 5, 2022

Hearing participant: Appellant

Decision date: August 31, 2022
File number: GE-22-1589

Decision

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

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

Overview

[3] The Appellant was suspended from her job. The Appellant's employer says that she was suspended because she didn't follow the employer's vaccination policy.²

[4] The Appellant doesn't dispute that this happened. She says that she didn't follow her employer's vaccination guidelines because she was concerned that the vaccine could make her health problems worse. She was unable to get a medical exemption within the employer's time frame.³

[5] The Commission accepted the employer's reason for the suspension. It decided that the Appellant was suspended from her job because of misconduct. Because of this, the Commission disentitled the Appellant from receiving EI benefits.

Issue

[6] Was the Appellant suspended from her job because of misconduct?

¹ Section 31 of the *Employment Insurance Act* says that appellants who are suspended from their job because of misconduct are disentitled from receiving benefits.

² See GD3-16 and 17.

³ See GD3-18 and 19.

Analysis

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

Why was the Appellant suspended from her job?

[8] I find that the Appellant was suspended from her job because she refused to follow her employer's vaccination policy and get the COVID-19 vaccine. She chose to not get vaccinated. The Appellant confirms that this is what happened.

[9] The employer told the Commission that the Appellant was suspended from her job for failing to comply with the mandatory vaccination requirement for public service employees. According to the employer's policy, the Appellant had until October 29, 2021, to comply with the policy. She did not. So, effective November 25, 2021, she was suspended and put on administrative leave.

[10] The Appellant agrees that this is what happened. She refused to get vaccinated because she was afraid of making her gastrointestinal problems worse. She consulted her family doctor, who suggested that she get the first dose of the vaccine because he didn't see any issue. He suggested that she talk to her specialist to get a medical exemption. Unfortunately, the Appellant wasn't able to get an appointment with the specialist within the time frame the employer set.

[11] I find that the Appellant was let go for failing to comply with her employer's vaccination policy.

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.⁴ Misconduct also includes conduct that is so reckless that it is almost wilful.⁵ 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.⁶

[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 or suspended from her duties because of that.⁷

[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.⁸

[16] The Commission says that there was misconduct because the Appellant agrees that the employer informed her of its vaccination policy and the consequences if she didn't follow it. Still, she decided not to get vaccinated knowing that her conduct could lead to her getting suspended from her job. The Appellant also admits that she was unable to get a medical exemption.

[17] The Appellant says that there was no misconduct because her decision to not get the vaccine was to protect her own health. She has been working from home since the beginning of the pandemic, so she isn't in contact with anyone.

⁴ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

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.

[18] The Appellant also argues that she had COVID in January and had only muscle aches and no fever. In addition, she believes that she could not give informed consent because there was very little information about the vaccines and how they might interact with her particular symptoms.

[19] The Appellant doesn't believe that protecting herself is misconduct.

[20] On a final note, the Appellant testifies that she went back to her job on June 20, 2022; she still works from home, as she did before the pandemic.

[21] I find that the Commission has proven that there was misconduct because there is no doubt that, for health reasons, the Appellant deliberately and knowingly refused to get vaccinated. She admits that she was aware of the possible consequences. The Appellant was then suspended from her job because she wasn't vaccinated. The Commission has shown that the Appellant's situation falls within all the criteria for misconduct under the law.

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

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

Conclusion

[23] The Commission has proven that the Appellant lost her job because of misconduct. Because of this, the Appellant is disentitled from receiving EI benefits.

[24] This means that the appeal is dismissed.

Sylvie Charron
Member, General Division – Employment Insurance Section