



Citation: *CC v Canada Employment Insurance Commission*, 2022 SST 978

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

## **Decision**

**Appellant:** C. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (455637) dated February 17, 2022  
(issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Decision date:** July 4, 2021

**File number:** GE-22-1031

## Introduction

[1] The Claimant's employer adopted a policy requiring employees to provide proof of receiving the first dose of the vaccine against COVID-19 by September 13, 2021 and proof of receiving a second dose by October 24, 2021.<sup>1</sup> The Claimant told her employer she was not getting vaccinated. She was dismissed from her job on September 21, 2021.<sup>2</sup> The Commission refused to pay the Claimant employment insurance (EI) benefits because she lost her employment due to her misconduct.<sup>3</sup>

## Matters I have to consider first

### The employer is not an added party

[2] Sometimes the Tribunal sends the Claimant's former employer a letter asking if they want to be added as a party to the appeal. In this case, the Tribunal sent the employer a letter. The employer did not reply to the letter.

[3] To be an added party, the employer must have a direct interest in the appeal. I have decided not to add the employer as a party to this appeal, because there is nothing in the file that indicates my decision would impose any legal obligations on the employer.

## Issue

[4] I must decide whether the Claimant's appeal should be summarily dismissed.

## The law

[5] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

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<sup>1</sup> In this decision the Appellant is called the Claimant and the Respondent is called the Commission. The policy is on pages GD3-19 and GD3-20. Page numbers are from the appeal file.

<sup>2</sup> See page GD3-18.

<sup>3</sup> See page GD3-37 and Page GD3-58

[6] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.<sup>4</sup>

[7] Section 30(1) of the *Employment Insurance Act* (EI Act) says that a claimant is disqualified from receiving EI benefits if they lost their employment because of their misconduct.

## **Evidence**

[8] The appeal file shows the Claimant completed an application for EI benefits on September 24, 2021.<sup>5</sup>

[9] The appeal file has a Record of Employment (ROE) issued for the Claimant on September 21, 2021.<sup>6</sup> It shows the reason for issuing as Other. The Comments section states, “She decided not to be vaccinated against COVID-19 s public health guidelines required all club members to establish proof of vaccination to attend our facility.” The last day for which the Claimant was paid was September 18, 2021.

[10] The Claimant spoke to a Service Canada officer on November 18, 2021.<sup>7</sup> The Claimant said she worked in the spa industry directly with the public and her work involves physical touch around the head and face. She said that she was dismissed for refusing to get vaccinated against COVID-19. Her refusal is based on her beliefs as a Catholic. The Claimant said she was not pressured to refuse the vaccine by a religious group or organization and she had not discussed the vaccine with any members of her church. The Claimant told the officer that the numbers of the chemicals in the vaccine are both considered signs of Satan in the Holy Bible.

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<sup>4</sup> The Tribunal sent a notice of its intention to summarily dismiss this appeal to the Claimant on June 2, 2022. She was given until June 16, 2022 to make submissions. See GD6. The Claimant made a submission on June 16, 2021, see GD8

<sup>5</sup> See pages GD3-5 to GD3-54 for the application for EI benefits. The date of application is on page GD3-14.

<sup>6</sup> See page GD3-3

<sup>7</sup> See page GD3-16

[11] The Claimant sent a number of documents to the Service Canada officer.<sup>8</sup> These documents included a letter to the provincial Human Rights Commission, a letter from Health Canada to another person, a notice from the provincial health officer, a notarized affidavit of religious belief for exemption from COVID vaccination (unsigned and not notarized), and documents related to the contents of vaccine.

[12] A representative of the Claimant's employer spoke to a Service Canada officer on November 18, 2021.<sup>9</sup> She said that the Board of Directors introduced a COVID-19 Staff Policy in September 2021 as per the provincial government's public health guidelines. The guidelines stated that all employees and club members were required to provide proof of vaccination by October 24, 2021. The employer met with the Claimant prior to her being dismissed and she made it clear that she would not get vaccinated due to religious reasons.

[13] The appeal file has a copy of the letter of termination issued to the Claimant.<sup>10</sup> The letter states that the employer mandated all employees, who are able, to be vaccinated against COVID-19. The Claimant had made it clear she had no intention of being vaccinated. As a result, her employment was terminated effective September 21, 2021.

## Submissions

[14] In her appeal to the Tribunal, the Claimant wrote she chose not to be vaccinated due to her religious beliefs. She wrote that she was unlawfully terminated because she was not given an opportunity to request an exemption to her employer's policy. The Claimant stated that she was unlawfully terminated due to discrimination. The Claimant also argued that the *Canadian Charter of Rights and Freedoms* (Charter), the Universal Declaration on Bioethics and Human Rights, the Nuremberg Code and the Helsinki Declaration provide for informed consent.<sup>11</sup>

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<sup>8</sup> See pages GD3-122 to GD3-

<sup>9</sup> See page GD3-17

<sup>10</sup> See page GD3-18

<sup>11</sup> See pages

[15] On June 16, 2022, the Claimant made submissions in reply to the Tribunal's Notice of Intention to Summarily Dismiss.<sup>12</sup> She wrote she believed her appeal had a reasonable chance of success as she believed her Canadian Rights had been violated. She wrote that Canadians have inalienable rights, a Constitution and a Charter of Rights and Freedoms, plus the rule of law. She said that no Order or government mandates supersede the guaranteed right to work, assemble, worship or see your family or loved ones, nor to force you to have anything stuck into any part of your body without your 100% consent.

[16] The Claimant went on to state in her submissions that she had strong reason to believe that she "was unlawfully terminated, wrongfully dismissed and discriminated by former employer." She stated that her employer requesting her vaccine status was a violation of her medically protected Privacy, mandating the medical gene therapy test with no exemption or exception and gave no other reasonable options or accommodations. She stated her employer unlawfully practiced medicine, prescribed, recommended, facilitated, advertised, mandated, incentivized and used coercion and insisted employees submit to any vaccine. She stated that the threat to use an experimental COVID-19 injection, mask or testing as a condition of employment was not only illegal but unconstitutional and discriminatory.

[17] The Claimant also noted in her submissions that she retained the right to refuse consent even after she was properly informed about the COVID-19 vaccine and that vaccines are not mandatory in Canada. The Claimant quoted from the *Federal Emergencies Act*, section 7 of the Charter and the Nuremberg Code. The Claimant provided a link to a video and summary of the video, an excerpt from a lawyer, and sections from the *Bill of Rights*, *Canadian Human Rights Act*, her province's *Public Health Act*, and her province's *Human Rights Act*. The Claimant also included a medical note regarding the impact on her of the change in her employment situation.

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<sup>12</sup> See GD8. The Claimant submitted two documents on June 16, 2022. In the second document (GD8) she asked that the Tribunal disregard the first document (coded GD7). Accordingly, I have only considered the submissions contained in the GD8 document.

[18] The Commission submitted that the Claimant lost her employment as a result of her own misconduct. She was informed of the employer's policy requiring vaccination against COVID-19 and failure to comply with the policy would result in loss of employment. The Commission said there was no evidence that, in implementing the policy, the employer targeted the Claimant or any specific individual or group within the workplace. It says the circumstances in this case do not give rise to discrimination on any of the prohibited grounds.

[19] The Commission submits that by choosing not to adhere to the employer's COVID-19 vaccination policy, the Claimant chose not to prevent her unemployment situation. It says her actions were conscious, intentional and taken in full knowledge that would result in the termination of employment. In this way, the Commission says, the Claimant's action leading to the loss of her employment satisfy the definition of misconduct.

## **Analysis**

### **– Matters outside my jurisdiction**

[20] The Claimant's appeal and her submission to the Tribunal's Notice of Intention to Summarily Dismiss state her belief that the actions of her employer violated the Charter, the privacy act, and other international laws and were discriminatory. She has also stated that she was wrongfully dismissed and that she is guaranteed the right to work under Section 7 of the Charter.

[21] Section 7 of the Charter does not protect or guarantee a job with any employer, or a protection from the consequences of an employee's choice not to get vaccinated.<sup>13</sup> Section 7 does not require an employer to employ a person on terms and conditions set by that person or in a manner that person deems appropriate.

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<sup>13</sup> Section 7 of the Charter says: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[22] It is not my role to determine if the employer's actions violated the Charter or any other law. There are other venues, such as the courts and human rights tribunals where those claims can be made.

[23] It is equally not my role to determine if the termination of the Claimant's employment constitutes wrongful or constructive dismissal as that term relates to Canadian employment law and common law.

[24] A claim of wrongful dismissal claim is made in a court because the common law legal tests used to decide those claims is different from the legal tests that are used to decide whether misconduct has led to the loss of employment.<sup>14</sup>

[25] It is also not my role to determine the COVID-19 vaccine's efficacy or safety.

– **Matters within my jurisdiction**

[26] My role is to decide whether the Claimant's appeal should be summarily dismissed.

[27] To summarily dismiss the Claimant's appeal, the law says I must be satisfied that her appeal has no reasonable chance of success.<sup>15</sup>

[28] The issue is whether it is plain and obvious on the record that the appeal is bound to fail.

[29] The question is **not** whether the appeal must be dismissed after considering the facts, the case law and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that could be presented at a hearing.<sup>16</sup>

[30] When I apply the law and the two legal tests above, I can only conclude that the Claimant's appeal has no reasonable chance for success.

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<sup>14</sup> The legal test for misconduct within the meaning of the EI Act is explained below.

<sup>15</sup> See subsection 53(1) of the DESD Act

<sup>16</sup> The Tribunal explained this in *AZ v. Minister of Employment and Social Development*, 2018 SST 298.

[31] For the purposes of the EI Act, for me to find misconduct, I would have to see that the Claimant engaged in wilful conduct that she knew or should have known could get in the way of carrying out her duties to her employer and she knew there was a real possibility of being let go because of that.<sup>17</sup>

[32] Wilful conduct is conduct that is conscious, deliberate or intentional.<sup>18</sup> There does not have to be wrongful intent for behaviour to be misconduct under the law.<sup>19</sup>

[33] The employer's policy required that all employees receive a first dose of the vaccine against COVID-19 by September 13, 2021. Employees were required to receive a second dose of the vaccine by October 24, 2021.

[34] The appeal file shows the Claimant told her employer she would not be getting vaccinated. She was aware of the employer's policy, that she could be dismissed from her job if she did not comply with the policy, and as a result, not be able to carry out her employment duties. There is no evidence that could be presented at a hearing that would change this. It is clear to me that, on the record, the Claimant's appeal has no reasonable chance of success. As a result, I must dismiss the Claimant's appeal.

## **Conclusion**

[35] I find that the appeal has no reasonable chance of success; therefore, the appeal is summarily dismissed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section

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<sup>17</sup> This is set out in the Federal Court of Appeal case of *Mishibinijima v. Canada (Attorney General)* 2007 FCA 36

<sup>18</sup> See *Mishibinijima v. Canada (Attorney General)* 2007 FCA 36

<sup>19</sup> See *Attorney General of Canada v. Secours*, A-352-94