



Citation: *MH v Canada Employment Insurance Commission*, 2022 SST 1035

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

Decision

Appellant: M. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (470435) dated May 11, 2022 (issued by Service Canada)

Tribunal member: Glenn Betteridge

Type of hearing: Teleconference

Hearing date: September 28, 2022

Hearing participants: Appellant

Decision date: October 13, 2022

File number: GE-22-1999

Decision

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

[2] The Canada Employment Insurance Commission (Commission) has proven that the Claimant was suspended and then lost her job because of misconduct. In other words, she did something that caused her to be suspended and lose her job.

[3] This means that the Claimant is disentitled (because she was suspended) and then disqualified (because she lost her job) from receiving Employment Insurance (EI) benefits.¹

Overview

[4] The Claimant lost her job as a registered nurse. She worked as a nurse for over 25 years. She worked on the front lines during the COVID pandemic, until her employer suspended her.

[5] Her employer had a mandatory COVID vaccination policy. Her employer says that she was put on unpaid leave of absence and then let go because she didn't prove she was vaccinated against COVID.² In other words, because she didn't follow its COVID vaccination policy.

[6] The Claimant doesn't dispute this. She hasn't had any doses of a COVID vaccine.

[7] But she says refusing to get vaccinated against COVID and give her employer proof is not misconduct under the *Employment Insurance Act* (EI Act). COVID vaccines are experimental and harmful. They are a DNA-altering substance and are potentially fatal. So, forcing people to get vaccinated against COVID is a crime against humanity and genocide. This means her employer unlawfully dismissed her. And according to a

¹ Section 30 of the *Employment Insurance Act* (EI Act) says that claimants who lose their job because of misconduct are **disqualified** from receiving benefits. Section 31 of the EI Act says that claimants who are suspended because of misconduct are **disentitled** from receiving benefits for a period of time.

² In this decision, a suspension means the same thing as a leave of absence without pay.

decree from the self-appointed Queen of the Kingdom of Canada, she is legally entitled to get \$3,000 per month in EI benefits.

[8] The Commission accepted the employer's reasons. It decided the Claimant was suspended and lost her job because of misconduct. So, the Commission disentitled her (for being suspended) and disqualified her (for losing her job) from receiving EI benefits.³

Issue

[9] Did the Claimant get suspended from her job and then lose her job because of misconduct?

[10] To answer this question, I have to decide two things.

- First, I have to decide why the Claimant was suspended from her job and why she lost her job.
- Second, I have to decide whether the law considers those reasons to be misconduct.

Analysis

The reason the Claimant was suspended and lost her job

[11] I accept the Claimant was suspended and then lost her job because she didn't follow her employer's COVID vaccination policy.

[12] The Claimant and the Commission agree this is the reason she was suspended and then lost her job.⁴

[13] And there is no evidence that goes against this.

³ See the Commission's initial decision and reconsideration decision letters at GD3-33 and GD3-57.

⁴ See the Commission's notes of its phone calls with the Claimant at GD3-19 and GD3-32. And this is what she testified to at the hearing.

The reason is misconduct under the EI Act

[14] I find that the reason for the Claimant's suspension and her dismissal is misconduct under the law.

[15] I set out the reasons for my finding in the rest of this section.

Misconduct under the EI Act

[16] The law says that you can't get EI benefits if you lose your job because of your own misconduct.

[17] This appeal is about two sections of the EI Act that both deal with misconduct. One is about being **suspended** from a job because of misconduct.⁵ The other is about being **dismissed** from a job because of misconduct.⁶

[18] There is misconduct under the law if the Claimant knew or should have known:

- her conduct could get in the way of carrying out her duties to her employer;
and
- there was a real possibility she could be suspended or dismissed because of that conduct.⁷

[19] The Claimant's conduct has to be wilful. This means her conduct has to be conscious, deliberate, or intentional, or so reckless that it is almost wilful.⁸ She doesn't have to mean to do something wrong.⁹

[20] The Commission has to prove misconduct on a balance of probabilities. This means it has to show that it is more likely than not the Claimant was suspended and lost her job because of misconduct.

⁵ See section 31 of the EI Act.

⁶ See section 30 of the EI Act.

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

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

The Commission's position and the Claimant's position

[21] The Commission says that there was misconduct because the Claimant's employer suspended and then dismissed her when she didn't comply with its COVID vaccination policy.¹⁰ She knew about the policy. She knew her employer could suspend or dismiss her if she didn't get vaccinated and give it proof. And she made a deliberate decision not to get vaccinated.

[22] The Claimant says that there was no misconduct. Her employer unlawfully dismissed her. COVID vaccines are experimental and harmful. They are DNA-altering substances and potentially fatal.¹¹ So, forcing people to get vaccinated against COVID is a crime against humanity and genocide.¹² And according to a decree from a self-appointed Queen of the Kingdom of Canada, she is legally entitled to get \$3,000 per month in EI benefits.¹³

The Commission has shown there was misconduct

[23] The Commission and the Claimant agree on the essential facts. What the Claimant told the Commission and said at the hearing lines up with the evidence the Commission relied on to deny her EI benefits. Here are the essential facts.

[24] Her employer had a mandatory COVID vaccination policy.¹⁴ That policy says:

- employees had a duty to get a first dose of a COVID vaccine, and to give the employer proof, by October 4, 2021

¹⁰ See GD4 for the Commission's summary of the evidence and its position

¹¹ The Claimant sent a list of "adverse events of special interest" to the Commission (see GD3-46 to GD3-54) and to the Tribunal (see GD6-2 to GD6-10).

¹² The Claimant sent the Tribunal the following documents from the International Common Law Court of Justice (Concerning Crimes against Humanity by Church, State, and Corporations): a media release (see GD6-18 and GD6-19); judgment (see GD6-20 to GD6-31); arrest warrant (see GD6-32 and GD3-33); and warrant of seizure and expropriation (see GD6-34 and GD6-35).

¹³ The Claimant sent #27 Royal Decree: Employment Insurance – Kingdom of Canada Assistance Program [Replacing CERB] of Her Majesty, Queen Roman Didulo, Head of State and Commander-in-Chief, Head or Gov't, Queen and President (12/22/2021) to the Commission (see GD3-37 to GD3-45) and to the Tribunal (see GD6-12 to GD6-17).

¹⁴ See GD3-25 and GD3-26 and GD29 to GD3-31. An Ontario provincial health order required her employer to have that policy. See the policy at GD3-25, where it refers to Ontario's Directive #6.

- employees who didn't could be placed on unpaid leave of absence
- employees had to get a second dose of COVID vaccine, and give the employer proof, by November 4, 2021
- employees who didn't could be placed on unpaid leave of absence
- employees with an approved medical exemption or human rights accommodation didn't have to get vaccinated

[25] The employer notified its employees about the policy by email in August 2021. And followed up with an email with more details on September 1, 2021.¹⁵

[26] The Claimant says she knew about the policy and the consequences of not following it.¹⁶

[27] Because the Claimant didn't comply with its COVID vaccination policy, her employer placed her on unpaid leave of absence. The suspension letter says the leave is from October 4, 2021 to November 15, 2021.¹⁷ And if she doesn't give proof of COVID vaccination (or get an approved exemption) before November 15, 2021, her employer will not allow her to return to work and will give her another letter.

[28] Then her employer extended the final deadline to comply with the policy to January 17, 2022.

[29] The Claimant didn't get vaccinated against COVID. And she didn't apply for a medical exemption or human rights accommodation.¹⁸

¹⁵ See GD3-25 and GD3-26 and GD29 to GD3-31.

¹⁶ See the Commission's notes of its call with the Claimant at GD3-19. And that's also what she said at the hearing.

¹⁷ See the employer's suspension letter to the Claimant, dated October 12, 2021, at GD3-27 and GD3-28.

¹⁸ See the Commission's notes of its call with the Claimant at GD3-32. And that's also what she said at the hearing.

[30] Her employer met with her on January 20, 2022. It terminated her employment because she had not met the vaccination requirements in its policy.¹⁹

[31] After considering and reviewing all the documents and the Claimant's testimony, I find that she:

- knew about the employer's COVID vaccination policy and her duties under that policy
- knew the consequences of not following the policy
- consciously, deliberately, and intentionally didn't get vaccinated against COVID
- was suspended and then dismissed by her employer because she didn't follow its COVID vaccination policy

[32] I made these findings because this is what she told the Commission and what she testified to at the hearing.²⁰ I have no reason to doubt what she said. This is also what the documents show. And there is no evidence that goes against this.

[33] So, I find that the Commission has shown that it is more likely than not the Claimant was suspended and dismissed for misconduct under the EI Act.

The Claimant's arguments why it's not misconduct

[34] The Claimant says refusing to get vaccinated against COVID and give her employer proof is not misconduct under the EI Act. So, the Commission should have paid EI benefits to her.

[35] She makes three arguments about this.

¹⁹ See the termination letter at GD3-23 and GD3-24.

²⁰ See the Commission's notes of its phone call with the Claimant at GD3-19.

[36] First, she says she is legally entitled to get \$3,000 per month in EI benefits under a decree from a self-appointed Queen of the Kingdom of Canada.

[37] I don't agree with this argument. The so-called decree wasn't passed by the Parliament of Canada. It has no legal force and doesn't change the EI Act. Under that Act, she isn't entitled to benefits.

[38] Second, she says that her refusal to get vaccinated isn't misconduct because her employer unlawfully dismissed her. COVID vaccines are an experimental DNA-altering substance and are potentially fatal. So, forcing people to get vaccinated against COVID is a crime against humanity and genocide.

[39] Third, at the hearing she argued that personal protective equipment (PPE) was good enough to prevent COVID transmission before the vaccines were available, so it should be good enough after.

[40] I can't consider the Claimant's second and third arguments. These arguments challenge the reasonableness and legality of her employer's COVID vaccination policy and decisions under the policy. But the courts have said the Tribunal must focus on the claimant's conduct under the misconduct sections of the EI Act, not the employer's conduct.²¹

[41] This means I can't look into whether her employer's decisions to suspend or dismiss her were legally justified. And I can't ask whether suspension and termination were reasonable or appropriate penalties.

The Claimant was suspended and lost her job because of misconduct

[42] Based on my reasons above, I find that the Claimant was suspended from her job due to misconduct from October 4, 2021 until January 19, 2022. And I find that she lost her job due to misconduct effective January 20, 2022.

²¹ See, for examples of cases that say this, *Canada (Attorney General) v Caul*, 2006 FCA 251 at paragraph 6; *Canada (Attorney General) v Lee*, 2007 FCA 406 at paragraph 5; and *Paradis vs. Canada (Attorney General)*, 2016 FC 1282 at paragraph 31.

Conclusion

[43] The Commission has proven that the Claimant was suspended and then lost her job because of misconduct. Because of this, the Claimant is disentitled and then disqualified from receiving EI benefits.

[44] So, the appeal is dismissed.

Glenn Betteridge
Member, General Division – Employment Insurance Section