



[TRANSLATION]

Citation: *GL v Canada Employment Insurance Commission*, 2022 SST 1435

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: G. L.
Representative: Myriam Bohémier

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (455358) dated February 4, 2022 (issued by Service Canada)

Tribunal member: Leanne Bourassa

Type of hearing: Videoconference
Hearing date: May 18, 2022
Hearing participants: Appellant
Appellant's representative

Decision date: June 21, 2022
File number: GE-22-966

Decision

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

[2] The Canada Employment Insurance Commission (Commission) has proven that the Claimant, G. L, lost his job because of misconduct (in other words, because he did something that caused him to lose his job). This means that the Claimant is disqualified from receiving Employment Insurance (EI) benefits.¹

Overview

[3] The Claimant lost his job as a technician at a law firm. His employer says that he was let go because he went against its new COVID-19 vaccination policy. The Claimant applied for EI benefits. The Commission accepted the employer's reason for the dismissal. It decided that the Claimant lost his job because of misconduct. Because of this, the Commission decided that the Claimant is disqualified from receiving EI benefits.

[4] The Claimant doesn't dispute that he went against his employer's vaccination policy. But he says that he should not be disqualified from receiving benefits because he doesn't agree with the reason given—that is, misconduct. He had good reasons for refusing to comply with the policy, and the policy itself was unreasonable. The Claimant asked the Commission to reconsider his application. The Commission once again denied his application for benefits.

[5] The Commission says that the Claimant was aware of the policy, the deadlines, and the consequences of refusing to comply. The Claimant still deliberately refused to comply. This refusal is why he was let go.

¹ Section 30 of the *Employment Insurance Act* (Act) says that claimants who lose their job because of misconduct are disqualified from receiving benefits.

Matters I have to consider first

The Claimant asked me to adjourn the hearing (change the hearing date)

[6] The hearing was scheduled for May 2, 2021. The representative asked for an adjournment. It was granted, and the hearing took place on May 18, 2022.

The employer isn't a party to the appeal

[7] Sometimes, the Tribunal sends the appellant's former employer a letter asking it whether it wants to be added as a party to the appeal. In this case, the Tribunal sent such a letter to the employer. The employer didn't respond.

[8] To be a party to the appeal, the employer must have a direct interest in the appeal. I decided not to add the employer as a party to this appeal because nothing in the file suggests that my decision would impose legal obligations on the employer.

Issue

[9] Did the Claimant lose his job because of misconduct?

Analysis

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

Why did the Claimant lose his job?

[11] I find that the Claimant lost his job because he refused to comply with the employer's new policy requiring employees to be vaccinated against COVID-19.

[12] The employer and the Claimant both confirmed with the Commission that the Claimant was let go because he refused to comply with the new vaccination policy.

[13] I see nothing in the file that contradicts this information. The Claimant's Record of Employment indicates that it was filed because of a dismissal. Additionally, the Claimant indicated in his application for benefits that he was let go because he refused to follow a company policy requiring employees to have and provide proof of a vaccine passport.

[14] I therefore have to decide whether the reason for the dismissal is misconduct under the law.

Is the reason for the Claimant's dismissal misconduct under the law?

[15] The reason for the Claimant's dismissal is misconduct under the law.

[16] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.² Misconduct also includes conduct that is so reckless that it is almost wilful.³ 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.⁴

[17] 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.⁵

[18] The Commission has to prove that the Claimant lost his job because of misconduct. The Commission has to prove this on a balance of probabilities. This means it has to show that it is more likely than not that the Claimant lost his job because of misconduct.⁶

² See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

³ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

⁴ See *Attorney General of Canada v Secours*, A-352-94.

⁵ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁶ See *Minister of Employment and Immigration v Bartone*, A-369-88.

[19] The Commission says that there was misconduct for the following reasons:

- In the context of the pandemic, a vaccination requirement can be considered reasonable.
- The Claimant acted deliberately and consciously because he knew there would be a consequence if he didn't comply with the policy by the deadline.
- He breached a reasonable duty toward his employer and made no mention of exceptional circumstances or contraindications to explain his refusal.
- His behaviour is incompatible with the terms of the employment contract, conflicts with the employer's activities, and undermines the relationship of trust with the employer. That is the immediate cause of the termination of employment.

[20] The Claimant argues that there was no misconduct for the following reasons:

- The employer established an illegal policy without possible accommodations, except for medical reasons.
- He had no obligation to disclose his vaccination status, and the employer acted on an assumption.
- He has worked from home full-time since the beginning of the pandemic, so the employer's measures were disproportionate to the objective.
- Finally, his employer argued the case of doctors who fought for the right to non-vaccination but dismissed its employees who fought for that same right.

[21] On August 19, 2021, the CEO sent all employees a message with the policy attached. The message indicated that the policy, approved by management, applied to all employees.

[22] The employer's policy was clear. It required all members of the firm to provide proof that they were fully vaccinated before September 30, 2021. Employees weren't allowed to go into the office until 14 days after they had gotten the last dose of the vaccine. Employees could apply for individual medical exemptions by September 3, 2021. Employees who were granted an exemption had to participate in a rapid screening program as a condition of being in the office.

[23] The Claimant told the Commission that he received the communication from management in August and understood that employees had to get vaccinated or show that they intended to do so. On September 15, 2021, he told his employer that he didn't plan on getting vaccinated. He had no reason to apply for a medical exemption. He confirmed this information at the hearing before the Tribunal.

[24] The Claimant provided a copy of his employment contract. I note that it specifically asked the Claimant to familiarize himself with all of the employer's policies and to follow them for their duration.

[25] The Claimant argues that, if this policy had been in place when he was hired, he would not have accepted the position. As far as he knows, no other new policies have been established since he was hired. He says that, if they have, this is the only one that is unjustified.

[26] According to his employment contract, the Claimant committed to follow all of the employer's policies, not just those he agreed with. Refusing to follow the vaccination policy was a breach of his duties toward his employer.

[27] I understand that the Claimant considers the policy unreasonable because he has worked from home since the beginning of the pandemic. He wasn't in contact with the public, so he wasn't putting anyone at risk.

[28] However, the Claimant admits that, before the pandemic, he didn't normally work from home but was able to do so. It was up to his manager to authorize it. The evidence shows that the employer was planning a return to the office, although it had to be

postponed. The policy prohibited unvaccinated employees from going into the office as of October 1, 2021. So, the Claimant would not have been able to carry out his duties toward his employer if he had to go into the office after that date. Therefore, the fact that he works from home doesn't make the employer's policy unreasonable.

[29] I find that the Claimant knew that refusing to provide proof of vaccination or of a vaccination appointment would lead to his dismissal. I find this because his employer clearly told him this.

[30] On September 21, 2021, the employer sent the Claimant a letter specifying that, if he didn't provide proof that he was fully vaccinated before September 20, 2021, or that he had an appointment to get vaccinated before September 23, 2021, the employer would let him go as of September 30, 2021.

[31] The Claimant obviously read and understood this document because, on September 23, he wrote to his employer objecting to his dismissal. By writing that he was within his rights to refuse vaccination and that asking for his vaccination status violated his privacy rights, the Claimant confirms that he had no intention of complying with the employer's policy.

[32] The employer replied on September 26, 2021, confirming that it disagreed with the Claimant's position. It repeated that, if the Claimant didn't agree to make a vaccination appointment, his job would be terminated as a result as of September 30.

[33] After these warnings, the Claimant still chose to refuse to get vaccinated. He has the right to refuse to get vaccinated and to choose not to comply with the employer's policy. But he doesn't have the right to protection against the consequences of his choices.

[34] The Claimant provided several documents showing that there was no consensus to impose mandatory vaccination and that the Quebec Bar was called on to intervene with the government. After his dismissal, the Claimant knew that his employer had

argued the case of certain doctors challenging mandatory vaccination in the health care system. I have read this information, but I don't find it relevant to resolving this file.

[35] Just because a law firm presents arguments for a client doesn't mean that the firm itself has adopted those arguments. Additionally, I see no evidence that any court would have found the employer's policy illegal. The Tribunal doesn't have jurisdiction to make such a finding.

[36] I find that the Commission has proven that there was misconduct. The Claimant chose not to provide proof of vaccination before September 30, 2021. The employer had a vaccination policy, and the Claimant was aware of his obligations under the policy, even though he disagreed with it. On September 21, 2021, the Claimant was directly warned of the consequences of not following the policy—in other words, that he would be let go if he didn't get vaccinated before September 30, 2021. He still chose to refuse the vaccine. The dismissal was the direct result of his informed choice not to comply with the employer's policy.

So, did the Claimant lose his job because of misconduct?

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

Conclusion

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

[39] This means that the appeal is dismissed.

Leanne Bourassa
Member, General Division – Employment Insurance Section