



Citation: *JP v Canada Employment Insurance Commission*, 2022 SST 1104

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Claimant: J. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (464071) dated April 20, 2022 (issued by Service Canada)

Tribunal member: Bret Edwards

Type of hearing: Videoconference

Hearing date: September 6, 2022

Hearing participants: Claimant
Claimant's witness

Decision date: September 14, 2022

File number: GE-22-1746

Decision

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

[2] The Canada Employment Insurance Commission (Commission) has proven that the Claimant 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. The Claimant's employer said that he was let go because he refused to comply with their mandatory COVID-19 vaccination policy.

[4] The Claimant agrees that he lost his job for this reason. However, he says that his employer treated him unfairly and didn't grant him a religious exemption from the policy.

[5] 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.

Issue

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

Analysis

[7] 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.

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

Why did the Claimant lose his job?

[8] I find that the Claimant lost his job because he refused to comply with his employer's mandatory COVID-19 vaccination policy.

[9] The Claimant and the Commission agree on why the Claimant lost his job. The Claimant agrees that he lost his job because he refused to comply with his employer's mandatory COVID-19 vaccination policy.² His employer also says that he lost his job for this reason.³

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

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

[11] 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 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.⁶

[12] 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.⁷

[13] 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 that it has to show that it is more likely than not that the Claimant lost his job because of misconduct.⁸

² GD3-24, GD3-30.

³ GD3-31.

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.

[14] The Commission says that there was misconduct because the Claimant knew he could be let go for not complying with his employer's mandatory COVID-19 vaccination policy, but decided not to comply anyway.⁹

[15] The Claimant agrees that he didn't comply with his employer's mandatory COVID-19 vaccination policy, but says that there is no misconduct because his employer treated him unfairly and refused his request for a religious exemption.¹⁰

[16] I find that the Commission has proven that there was misconduct for the following reasons.

[17] I find the Claimant committed the actions that led to his dismissal, as he agrees that he refused to comply with his employer's mandatory COVID-19 vaccination policy.

[18] I further find the Claimant's actions were intentional as he made a conscious decision not to comply with his employer's mandatory COVID-19 vaccination policy.

[19] The Claimant argues that another decision from the Tribunal involving an employer's mandatory COVID-19 policy shows that he didn't commit misconduct.¹¹

[20] I understand the Claimant's argument, but I'm not bound by prior decisions of the Tribunal and must decide each case based on the facts before me.

[21] I also note that this other Tribunal decision was based on evidence that the employer wasn't going to accept any religious exemption requests, despite stating in their policy that employees who were not vaccinated for either medical or religious reasons wouldn't be disciplined.¹² There is no evidence before me that the Claimant's employer had a similar intention. So, I don't give this other decision much weight here.

[22] The Claimant further argues that his witness's testimony shows that he didn't commit misconduct. His witness, who worked with him, testified that their employer

⁹ GD4-3.

¹⁰ GD2-2, GD2-3.

¹¹ GD8-2 to GD8-9.

¹² GD8-7, GD8-8.

refused his religious exemption request too, but the Commission approved his application for EI benefits.

[23] While I understand the Claimant's argument, I don't agree that his witness's testimony shows that he didn't commit misconduct. I'm not bound by the Commission's decisions on other EI applications and can't make assumptions about the specific information the Commission relied on to make these decisions. I can only look at the Claimant's actions in relation to what the law says about misconduct. So, I don't give his witness's testimony much weight either.

[24] The Claimant testified that he decided not to get vaccinated due to his religious beliefs. He testified that he has been a Catholic all of his life and the COVID-19 vaccination goes against Catholic doctrine.

[25] The Claimant also testified that his employer refused his request for a religious exemption from their mandatory COVID-19 vaccination policy.

[26] Regarding his request for a religious exemption, the Claimant submits the documents he sent to his employer, including a letter from his priest, as part of his request.¹³ He also submits a letter from his employer, dated November 11, 2021, which states that his request was not approved because the information he provided amounted to a personal preference and didn't meet the requirements for an accommodation based on creed.¹⁴ The letter makes it clear that the employer reviewed the Claimant's exemption request and the documents he submitted before deciding to deny it.

[27] I understand that the Claimant feels his employer treated him unfairly by introducing a mandatory COVID-19 vaccination policy and not granting him an exemption.

¹³ GD7-7 to GD7-21.

¹⁴ GD7-6.

[28] Unfortunately, however, I can't decide whether an employer's conduct, including their policies, is fair or reasonable when looking at the issue of misconduct.¹⁵ I can only look at the Claimant's actions in relation to what the law says about misconduct. It is clear in this case that the Claimant made a conscious decision to not comply with his employer's mandatory COVID-19 policy by refusing to get vaccinated.

[29] I also find the Claimant knew or should have known that refusing to comply with his employer's mandatory COVID-19 vaccination policy could lead to him losing his job.

[30] The Claimant told the Commission and reiterated in his testimony that he knew he could get fired for not complying with his employer's mandatory COVID-19 vaccination policy.¹⁶

[31] I note that the Claimant's employer introduced a policy on September 7, 2021 that required employees to be vaccinated against COVID-19. The policy stated that employees had to confirm their vaccination status by October 6, 2021 and be fully vaccinated by November 20, 2021, but that they could request accommodation under the policy.¹⁷

[32] I note that the Claimant's employer's mandatory COVID-19 vaccination policy also stated that employees were expected to comply with the policy as a condition of employment and those who didn't could be subject to discipline, up to and including termination.¹⁸

[33] Although the Claimant told the Commission and testified that he knew he could get fired for not complying with his employer's mandatory COVID-19 vaccination policy, he also testified that he never believed he would actually be fired for not following it because he had submitted a religious exemption request and thought it would be approved.

¹⁵ See *Paradis v Canada (Attorney General)*, 2016 FC 1282.

¹⁶ GD3-24, GD3-30.

¹⁷ GD3-37 to GD3-41.

¹⁸ GD3-42.

[34] The Claimant also testified that he continued to believe he wouldn't be fired even after his employer didn't grant his exemption request because he thought they would still be able to work something out that would allow him to keep his job.

[35] I believe the Claimant when he says that he thought he would be able to work out something with his employer and keep his job even after his employer denied his exemption request. But this doesn't mean the Claimant couldn't have still known that he could get fired after his employer didn't grant his exemption request. In other words, it was entirely possible for him to believe both of these things at the same time. He also confirmed that he was aware of the consequences of not complying with the policy, as mentioned above.

[36] Additionally, there is evidence that the Claimant's employer reiterated to him that he could be let go for not complying with their mandatory COVID-19 vaccination policy after denying his exemption request on November 11, 2021.

[37] The employer sent an email, dated November 17, 2021, to all employees, reminding them that the final date to comply with the mandatory COVID-19 vaccination policy was end of day on November 20, 2021.¹⁹

[38] The employer's email states that effective November 21, 2021, employees who didn't comply would be immediately placed on unpaid absence and be given up to December 30, 2021 to comply with the policy. It further states that effective December 31, 2021, employees who remained unvaccinated would be fired with cause, except for those with an approved accommodation or medical exemption.²⁰

[39] The dates of the exemption refusal and policy reminder letters (November 11, 2021 and November 17, 2021 respectively) show that the Claimant knew his employer had not granted his exemption request when the employer sent the reminder email to employees.

¹⁹ GD3-43.

²⁰ GD3-43.

[40] The employer's reminder email clearly describes the consequences of not complying with their mandatory COVID-19 vaccination policy, including termination on December 31, 2021, as mentioned above. It also does not say anything about the policy being flexible, so I don't see why the Claimant would have continued to believe he couldn't be let go for refusing to comply with it.

[41] While I understand that the Claimant hoped he could work out something with his employer to keep his job even after his employer had denied his exemption request, I find that the evidence also shows that he should have known that he could also be let go.

[42] I therefore find that the Claimant's conduct is misconduct under the law since he committed the conduct that led to his dismissal (he refused to comply with his employer's mandatory COVID-19 vaccination policy), his actions were intentional, and he knew or ought to have known that his actions would lead to him being let go.

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

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

Conclusion

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

[45] This means that the appeal is dismissed.

Bret Edwards

Member, General Division – Employment Insurance Section