



Citation: *AM v Canada Employment Insurance Commission*, 2022 SST 1232

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

# Decision

**Appellant (Claimant):** A. M.

**Respondent (Commission):** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (463292) dated April 22, 2022 (issued by Service Canada)

---

**Tribunal member:** Gerry McCarthy

**Type of hearing:** Teleconference

**Hearing date:** August 30, 2022

**Hearing participant:** Appellant

**Decision date:** September 8, 2022

**File number:** GE-22-1572

## Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) has proven that the Claimant lost her job because of misconduct (in other words, because she did something that caused her to lose her job). This means the Claimant is disqualified from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] The Claimant lost her job as a registered nurse on November 7, 2021. The Claimant's employer ("X") said the Claimant was let go because she failed to comply with their vaccination policy.

[4] The Commission accepted the employer's reason for the dismissal. It decided that the Claimant lost her job because of misconduct. Because of this, the Commission decided the Claimant was disqualified from receiving EI benefits as of November 7, 2021.

[5] The Commission says the Claimant's refusal to comply with the employer's vaccination policy constituted misconduct, because she willfully disregarded the effect her actions would have on retaining her job.

[6] The Claimant says there was no misconduct on her part. She further says the employer should have granted a religious exemption.

## Issue

[7] Did the Claimant lose her job because of misconduct?

---

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

## Analysis

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

### Why did the Claimant lose her job?

[9] I find the Claimant lost her job because she failed to comply with the employer's vaccination policy by November 7, 2021.

[10] The Commission says the reason the employer gave is the reason for the dismissal. The employer said the Claimant failed to provide proof of vaccination by November 7, 2021.

[11] The Claimant doesn't dispute she was dismissed because she failed to comply with the employer's vaccination policy. However, the Claimant says there was no misconduct on her part.

[12] I find the Claimant lost her job because she failed to comply with the employer's vaccination policy by November 7, 2021.

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

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

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

---

<sup>2</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

<sup>4</sup> See *Attorney General of Canada v Secours*, A-352-94.

[15] There is misconduct if the Claimant 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 because of that.<sup>5</sup>

[16] The Commission has to prove that the Claimant 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 Claimant lost her job because of misconduct.<sup>6</sup>

[17] The Commission says there was misconduct, because the Claimant refused to comply with the employer's vaccination policy and willfully disregarded the effect her actions would have on retaining her job.

[18] The Claimant says there was no misconduct, because the employer should have given her a religious exemption from the vaccine. She further says the employer violated her human rights.

[19] I find the Commission has proven there was misconduct. I make this finding because the Commission confirmed with the Claimant that she was aware that failing to comply with the employer's mandatory vaccination policy could lead to her dismissal (GD3-21). I realize the Claimant testified the employer should have granted her a religious exemption. However, I agree with the Commission that the Claimant did not provide a document from a religious leader at her church stating she was advised not to receive any of the Covid-19 vaccines for a religious reason. Furthermore, the employer didn't allow the Claimant's request for a religious exemption from the vaccine.

### **Additional Testimony from the Claimant**

[20] I realize the Claimant argued that the employer had violated her human rights. Specifically, the Claimant referred to freedom of conscience and religion. Nevertheless, the matter of determining whether the employer's policy was fair or reasonable wasn't

---

<sup>5</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

within my jurisdiction. In short, other avenues existed for Claimant to make these arguments.<sup>7</sup>

[21] Finally, I recognize the Claimant was frustrated and unhappy with the denial of her request for a religious exemption. However, the only issue before me is whether the Claimant lost her job because of misconduct. On this matter, I must apply the law. In other words, I cannot ignore the law even for compassionate reasons.<sup>8</sup>

### **So, did the Claimant lose her job because of misconduct?**

[22] Based on my findings above, I find the Claimant lost her job because of misconduct.

### **Conclusion**

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

[24] This means the appeal is dismissed.

*Gerry McCarthy*

Member, General Division – Employment Insurance Section

---

<sup>7</sup> *Paradis v Canada (Attorney General)*, 2016 FC 1281.

<sup>8</sup> *Knee v Canada (Attorney General)*, 2011 FCA 301.