



Citation: *RL v Canada Employment Insurance Commission*, 2022 SST 1205

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

Decision

Appellant: R. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (467116) dated May 3, 2022
(issued by Service Canada)

Tribunal member: Catherine Shaw

Decision date: October 3, 2022

File number: GE-22-1784

Introduction

[1] The Claimant was suspended from his job for not complying with his employer's COVID-19 vaccination policy. The policy required employees to attest to their vaccination status. The Claimant didn't comply with the policy by the deadline. As a result, the employer placed him on an unpaid leave of absence (suspension).

[2] The Commission decided the Claimant couldn't be paid EI benefits because he was suspended due to misconduct. The Claimant asked the Commission to reconsider this decision because the requirement to disclose his vaccination status violated his right to privacy. This requirement was not part of the terms of his employment when he was hired.

[3] The Commission maintained its decision because the Claimant was aware of the employer's policy that required him to be vaccinated against COVID-19 or have an approved accommodation. He knew that failing to comply with the policy would cause him to be suspended from his job and he made the choice not to comply. The Claimant has appealed this decision to the Tribunal.

Issue

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

Analysis

[5] I must summarily dismiss an appeal if I am satisfied that it has no reasonable chance of success.¹

[6] The law says that claimants who are dismissed from their job because of misconduct are disqualified from receiving benefits.²

¹ Section 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states this requirement.

² See section 30 of the *Employment Insurance Act*.

[7] It also says that claimants who are suspended from their job because of their misconduct are disentitled from receiving benefits until one of the following conditions is met:

- their period of suspension expires; or,
- they lose or voluntarily leave their job; or,
- they work enough hours with another employer after the suspension started.³

[8] The Claimant was employed by the federal government. In October 2021, the federal government put in place guidelines that required employees attest to their vaccination status by October 29, 2021.⁴ Employees who did not attest to their vaccination status would be placed on leave without pay two weeks after the attestation deadline.⁵

[9] The Claimant was aware of the requirements of the employer's policy. He knew that if he didn't attest to his vaccination status, he would be placed on unpaid leave.⁶

[10] The Claimant didn't want to attest to his vaccination status. He felt that the employer's requirement for him to disclose medical information violated his right to privacy.⁷

[11] The Claimant was placed on leave without pay on November 12, 2021. On the record of employment, the employer put a comment stating that the leave was "due to non-compliance with the employer's vaccination policy."⁸

[12] For there to be misconduct under the *Employment Insurance Act*, the Commission has to show that the Claimant engaged in wilful conduct that he knew or

³ See section 31 of the *Employment Insurance Act*.

⁴ See GD3-26 to GD3-39.

⁵ See GD3-33.

⁶ See GD3-78 to GD3-79.

⁷ See the Claimant's request for reconsideration starting on GD3-61.

⁸ See GD3-17.

reasonably should have known could get in the way of carrying out his duties to his employer and that there was a real possibility of being let go because of that.⁹

[13] Wilful conduct means that the conduct was conscious, deliberate, or intentional.¹⁰ 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.¹¹

[14] Before summarily dismissing an appeal, I must send written notice to the Claimant and allow him time to make submissions.¹²

[15] Given that the evidence on record shows that the Claimant chose not to comply with the employer's mandatory vaccination policy and he was aware he could lose his job for that choice, I sent notice of my intention to summarily dismiss this appeal on September 14, 2022.¹³ The Claimant provided additional submissions, which I have taken into consideration in this decision.¹⁴

[16] From the evidence on file, I see that the employer required the Claimant to attest to his vaccination status by October 29, 2021. The Claimant was notified of this policy. He was told that he would be placed on unpaid leave if he did not comply with the policy.

[17] The Claimant said that the employer's policy wasn't part of his employment contract at the time he was hired. The policy conflicts with his right to privacy. His employer has violated his human rights by trying to force him to get a vaccine to keep his job.

[18] In Canada, there are a number of laws that protect an individual's rights, such as the right to privacy or the right to equality (non-discrimination). The Charter is just one of

⁹ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹⁰ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹¹ See *Attorney General of Canada v Secours*, A-352-94.

¹² See section 22 of the *Social Security Tribunal Regulations*

¹³ See GD6.

¹⁴ See GD7.

these laws. There is also the *Canadian Bill of Rights*, the *Canadian Human Rights Act*, and a number of provincial laws that protect rights and freedoms.

[19] These laws are enforced by different courts and tribunals.

[20] The Social Security Tribunal (SST) is allowed to consider whether a provision of the *Employment Insurance Act* or its regulations (or related legislation) infringes rights that are guaranteed to a claimant by the Charter.

[21] But the SST is not allowed to consider whether an action taken by an employer violates a claimant's Charter fundamental rights. This is beyond our jurisdiction. Nor is the SST allowed to make rulings based on the *Canadian Bill of Rights* or the *Canadian Human Rights Act* or any of the provincial laws that protect rights and freedoms.

[22] The Claimant may have other recourse to pursue his claims that the employer's policy conflicted with his contract or violated his rights. But, these matters must be addressed by the correct court or tribunal. They are not within my jurisdiction to decide.

[23] The employer has a right to manage their daily operations, which includes the authority to develop and implement policies at the workplace. When the employer implemented this policy as a requirement for all of its employees, this policy became a condition of the Claimant's employment.

[24] The Federal Court of Appeal has said that the Tribunal does not have to determine whether an employer's policy was reasonable or a claimant's dismissal was justified.¹⁵

[25] It is well established that a deliberate violation of the employer's policy is considered misconduct within the meaning of the *Employment Insurance Act*.¹⁶

¹⁵ See *Paradis v Canada (Attorney General)*, 2016 FCA 1281.

¹⁶ See *Canada (Attorney General) v Bellavance*, 2005 FCA 87; *Canada (Attorney General) v Gagnon*, 2002 FCA 460.

[26] The Claimant chose not to attest to his vaccination status. This refusal was intentional. As such, he was not in compliance with the employer's policy. And, at the time he was let go, he had no intention to become compliant.

[27] If I accept the facts as true, there is no argument that the Claimant could make that would lead me to a different conclusion. There is no evidence that he could provide that would change these facts. As a result, I find his appeal is bound to fail, no matter what arguments or evidence he could bring to a hearing.¹⁷ This means I must summarily dismiss his appeal.¹⁸

Conclusion

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

Catherine Shaw
Member, General Division – Employment Insurance Section

¹⁷ See *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147.

¹⁸ See section 22, *Social Security Tribunal Regulations*