

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

Decision

Appellant: A. P.
Representative: S. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (460131) dated March 24, 2022
(issued by Service Canada)

Tribunal member: Catherine Shaw

Decision date: June 17, 2022

File number: GE-22-1305

Introduction

[1] The Claimant was placed on an unpaid leave of absence (suspended) for not getting the COVID-19 vaccination. Her employer implemented a policy that required employees to get vaccinated or have an approved exemption. The Claimant wasn't vaccinated by the deadline, so the employer suspended her and later dismissed her.

[2] The Commission disentitled the Claimant from receiving EI benefits because it decided she voluntarily took a leave of absence from her job without having just cause. The Claimant asked the Commission to reconsider this decision because she didn't voluntarily take leave from her job. She didn't get vaccinated, so the employer mandated she take an unpaid leave of absence.

[3] The Commission changed its decision. It said the Claimant was still disentitled from benefits, but it decided that was because the Claimant was suspended from her job because of her own misconduct. It said the Claimant was aware of the employer's policy that required her to be vaccinated, she knew that failing to comply with the policy would cause her to be suspended, and she 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 as a security guard at a health care centre. In September 2021, the Claimant's employer put in place a policy that required all of its employees to be fully vaccinated or have an approved exemption by October 19, 2021. The policy states that failing to comply with the policy may result in an unpaid leave of absence, or other action up to and including termination.⁴

[9] The employer said the policy was sent to all employees. They also held town halls, spoke to staff about vaccinations, and held specialty clinics.⁵ The Claimant confirmed that she was notified about the policy in September 2021. She understood that she had to be vaccinated by October 19, 2021.⁶

[10] The Claimant didn't want to get vaccinated. She felt the vaccination was experimental and was concerned that she might have adverse side effects.⁷

[11] The Claimant was placed on unpaid leave of absence from October 18, 2021, for not following their mandatory vaccination policy. She was dismissed on March 29, 2022.⁸

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

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

⁴ See GD3-20 to GD3-27.

⁵ See GD3-18.

⁶ See GD3-35.

⁷ See GD3-19.

⁸ See GD2-6.

reasonably should have known could get in the way of carrying out her duties to her 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, she doesn't have to mean to be doing something wrong) for her behaviour to be misconduct under the law.¹¹

[14] Before summarily dismissing an appeal, I must send written notice to the Claimant and allow her 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 she was aware she could be terminated for that choice, I sent notice of my intention to summarily dismiss this appeal on June 2, 2022. I asked her to respond by June 14, 2022. The Claimant did not provide a written response by the date of this decision.

[16] From the evidence on file, I see that the employer put in place a policy that required the Claimant to be vaccinated against COVID-19, or to have an approved exemption. The Claimant was notified of this policy. She was told that she would lose her job if she did not comply with the policy.

[17] 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.

[18] 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.

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 Section 22 of the *Social Security Tribunal Regulations*

[19] The Claimant was not vaccinated and did not have an approved exemption by the deadline set out in the policy. She was not in compliance with the employer's policy. And, at the time she was let go, she had no intention to become compliant. There is no evidence or testimony she could provide in a hearing that would change that.

[20] It is plain and obvious on the face of the record that the appeal is bound to fail.¹³ As a result, I find that this appeal has no reasonable chance of success. Accordingly, the law requires that I dismiss it.¹⁴

Conclusion

[21] I find that the appeal has no reasonable chance of success; so, the appeal is summarily dismissed.

Catherine Shaw
Member, General Division – Employment Insurance Section

¹³ The Federal Court of Appeal used this language to describe the test for summarily dismissing an appeal in *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147.

¹⁴ See section 22, *Social Security Tribunal Regulations*