



Citation: *AM v Canada Employment Insurance Commission*, 2022 SST 1339

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

## Decision

**Appellant:** A. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (478295) dated June 7, 2022 (issued by Service Canada)

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**Tribunal member:** Kristen Thompson

**Type of hearing:** Teleconference

**Hearing date:** October 25, 2022

**Hearing participant:** Appellant

**Decision date:** October 27, 2022

**File number:** GE-22-2137

## 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 her job because of misconduct (in other words, because she did something that caused her to lose her job). This means that the Claimant is disqualified from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] The Claimant lost her job. The Claimant's employer says that she was let go because she went against its vaccination policy: she didn't get vaccinated.

[4] Even though the Claimant doesn't dispute that this happened, she says that going against her employer's vaccination policy isn't misconduct.

[5] 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 that the Claimant is disqualified from receiving EI benefits.

[6] The employer has a mandatory vaccination policy. The only exemption available is for medical reasons.

[7] The Claimant says her employer didn't provide her with enough information to make a decision based on informed consent. She says the policy isn't reasonable. She says she is concerned about the long-term safety of the vaccine and side effects. She says she should have been exempted from the policy because of her religion.

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

## **Issue**

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

## **Analysis**

[9] The law says that you can't get EI benefits if you lose your job because of misconduct. This applies when the employer has let you go or suspended you.<sup>2</sup>

[10] 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?**

[11] I find that the Claimant lost her job because she went against her employer's vaccination policy.

[12] The Claimant doesn't dispute this happened.

[13] The Commission says the Claimant was placed on an unpaid leave, and then terminated, for failing to comply with the employer's vaccination policy. It says that the policy was clearly communicated to the Claimant, she was aware that if she didn't comply with the policy she would lose her job, and the policy is reasonable within the workplace context.

[14] I find that it is undisputed that the Claimant lost her job because she went against her employer's vaccination policy.

### **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.

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<sup>2</sup> See sections 30 and 31 of the Act.

[16] The *Employment Insurance Act* (Act) doesn't say what misconduct means. But case law (decisions from courts and tribunals) shows us how to determine whether the Claimant's dismissal is misconduct under the Act. It sets out the legal test for misconduct—the questions and criteria to consider when examining the issue of misconduct.

[17] Case law says that, to be misconduct, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>3</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>4</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>5</sup>

[18] 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>6</sup>

[19] The law doesn't say I have to consider how the employer behaved.<sup>7</sup> Instead, I have to focus on what the Claimant did or failed to do and whether that amounts to misconduct under the Act.<sup>8</sup>

[20] I have to focus on the Act only. I can't make any decisions about whether the Claimant has other options under other laws. Issues about whether the Claimant was wrongfully dismissed or whether the employer should have made reasonable arrangements (accommodations) for the Claimant aren't for me to decide.<sup>9</sup> I can consider only one thing: whether what the Claimant did or failed to do is misconduct under the Act.

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<sup>3</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>4</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>5</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>6</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>7</sup> See section 30 of the Act.

<sup>8</sup> See *Paradis v Canada (Attorney General)*, 2016 FC 1282; *Canada (Attorney General) v McNamara*, 2007 FCA 107.

<sup>9</sup> See *Canada (Attorney General) v McNamara*, 2007 FCA 107.

[21] 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>10</sup>

[22] The Commission says that there was misconduct because:

- The employer had a vaccination policy;
- The employer clearly notified the Claimant about its expectations about getting vaccinated;
- The employer sent letters and an email to the Claimant, and spoke to her several times to communicate what it expected; and,
- The Claimant knew or should have known what would happen if she didn't follow the policy.

[23] The Claimant says that there was no misconduct because her employer didn't provide her with enough information to make a decision based on informed consent. She says the policy isn't reasonable. She says she is concerned about the long-term safety of the vaccine and side effects. She says she should have been exempted from the policy because of her religion.

[24] The employer's vaccination policy says that employees are to be vaccinated with two doses by October 26, 2021. Employees who haven't received any doses are unable to work after October 25, 2021. Employees who remain unvaccinated on November 15, 2021 will be terminated. The only exemption to the policy is a medical exemption.<sup>11</sup>

[25] The employer told the Commission that the policy was communicated to employees starting in September 2021. The employer says the policy was

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<sup>10</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

<sup>11</sup> See GD3-32 to 33.

communicated through corporate bulletins, manager communications in the workplace, emails, and automated messages.<sup>12</sup>

[26] The Claimant says that she received an email from her employer directing her to information about the vaccine through the British Columbia Centre for Disease Control. She says that she visited the websites and they didn't give her enough information to make a decision based on informed consent.

[27] The Claimant says that she didn't apply for a medical exemption. She says that she applied for a religious exemption. She says her religious exemption was denied.

[28] The Claimant testified that she knew what she had to do under the vaccination policy and what would happen if she didn't follow it. She says she was told by the employer on September 13, 2021 that she need to be vaccinated to continue working there. She says she received her final warning on October 22, 2021 and was suspended. She says she received a suspension letter. The suspension letter stated the conditions she must meet to return to work, including receiving the first and second dose of the vaccine.<sup>13</sup>

[29] The Claimant says she was told by her employer that if she could prove that she had received her vaccination by November 14, 2021, she could return to work. If not, she would be dismissed. She says she received a termination letter.

[30] The Claimant says her termination letter stated that, if she becomes fully vaccinated, she can contact the employer to discuss her options. She says that she hasn't contacted the employer to discuss her options, as she hasn't been vaccinated. Therefore, the Claimant knew that if she didn't follow the vaccination policy, she would lose her job. Despite this, she consciously chose not to get vaccinated.

[31] I find that the Commission has proven that there was misconduct because:

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<sup>12</sup> See GD3-28.

<sup>13</sup> See GD3-32 and 33.

- The employer had a vaccination policy that said employees were to be vaccinated with two doses by October 26, 2021. Employees who haven't received any doses are unable to work after October 25, 2021. Employees who remain unvaccinated on November 15, 2021 will be terminated;
- The employer clearly told the Claimant about what it expected of its employees in terms of getting vaccinated;
- The employer communicated what was expected to the Claimant several times, in various forms of communication, including letters, an email, and meetings; and,
- The Claimant knew or should have known the consequence of not following the employer's vaccination policy.

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

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

[33] This is because the Claimant's actions led to her dismissal. She acted deliberately. She knew that refusing to get vaccinated was likely to cause her to lose her job.

### **Conclusion**

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

[35] This means that the appeal is dismissed.

Kristen Thompson  
Member, General Division – Employment Insurance Section