



Citation: *TH v Canada Employment Insurance Commission*, 2022 SST 1588

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

Decision

Appellant: T. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (454298) dated February 5, 2022 (issued by Service Canada)

Tribunal member: Leanne Bourassa

Type of hearing: Teleconference

Hearing date: May 19, 2022

Hearing participants: Appellant

Decision date: June 16, 2022

File number: GE-22-942

Decision

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

[2] The Claimant hasn't shown just cause (in other words, a reason the law accepts) for leaving her job when she did. The Claimant didn't have just cause because she had reasonable alternatives to being placed on leave. This means she is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left her job for an unpaid leave of absence on November 29, 2021 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that she voluntarily left (or chose to be put on unpaid leave) from her job without just cause, so it wasn't able to pay her benefits.

[4] I must decide whether the Claimant has proven that she had no reasonable alternative to being on a leave of absence from her job.

[5] The Commission says that the Claimant could have adhered to the employer's vaccination policy by the dates outlined in the policy.

[6] The Claimant disagrees and states that she did not voluntarily take a leave from her job but was placed on leave by her employer because she refused to disclose her medical history. She does not have any medical or religious exemption from vaccination and her employer's policy was illegal.

Preliminary matters

[7] The Claimant made certain comments in her notice of appeal that suggested that she may be considering raising constitutional arguments in her appeal. Claims that raise challenges against the Employment Insurance Act under the Canadian Charter of Rights and Freedoms are handled through a special process. I held a pre-hearing

conference with the Claimant on May 10, 2022 to provide her with information about that process. The Claimant decided that she would not be proceeding with a Charter argument as part of this appeal at this time.

Issue

[8] Is the Claimant disqualified from receiving benefits because she voluntarily left her job without just cause?

[9] To answer this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

Analysis

The parties don't agree that the Claimant voluntarily left

[10] I find that the Claimant voluntarily left her job. My reasons follow.

[11] The Claimant testified that her employer, a federal crown corporation, put in place a policy that required that employees provide proof they had been vaccinated against COVID-19. She said that non-compliance with the policy will result in employees being placed on indefinite unpaid leave of absence until they provide acceptable proof of vaccination.

[12] The Claimant says she did not quit her job. She was put on an unpaid leave against her will. She argues that if a leave is imposed, it does not result in a disentitlement.¹

[13] The Claimant also argues that her employer's policy is illegal. She has provided articles of various legal statutes that she alleges are violated by the employer's policy. She also claims that Criminal Code provisions with respect to assault and torture apply in this case.

¹ The Claimant is basing this argument on the Digest of Benefit Principles section 6.6.2. The Commission created the Digest of Benefit Entitlement Principles as guidelines to guarantee some consistency in making decisions. The Digest doesn't have legislative authority, so it doesn't have the force of law. This means I am not bound by those guidelines. (See *Canada (Attorney General v Hudon*, 2004 FCA 22)

[14] The Commission says that the Claimant was aware of the requirements of her employer's vaccination policy. She was also aware there would be consequences of non-compliance. Despite this, she chose not to disclose her vaccination status or to be vaccinated.

[15] I agree with the Commission that the Appellant voluntarily made a choice that resulted in her unpaid leave. The Appellant chose not to disclose her vaccination status, knowing there would be consequences. Therefore, she accepted those consequences. This means that she voluntarily chose to go on unpaid leave rather than to disclose her vaccination status. If you agree to something, knowing what the consequences are, you agree to the consequences.

[16] The Claimant did testify that there was some question as to whether or not testing would be allowed as an alternative to vaccination. However, the fact that vaccinated employees who reported their vaccination status would continue to work without a problem was never in doubt. So being vaccinated was the only sure way to comply with the policy. The Claimant made the choice to take the risk that her employer would not enforce the policy. In doing that, she put herself in a position where she was not compliant with the policy and subject to the consequences of that choice.

The parties don't agree that the Claimant had just cause

[17] The parties don't agree that the Claimant had just cause for voluntarily taking a leave from her job when she did.

[18] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.² Having a good reason for leaving a job isn't enough to prove just cause.

² Section 30 of the *Employment Insurance Act* (Act) explains this.

[19] The law explains what it means by “just cause.” The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.³

[20] It is up to the Claimant to prove that she had just cause.⁴ She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that her only reasonable option was to go on an unpaid leave of absence. When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit.

[21] The Claimant says that she was put on leave from her job because she did not want to disclose her confidential medical information and so she was placed on an unpaid leave of absence by her employer. She says that she had no reasonable alternative to leaving at that time because her employer would not allow her any alternatives to being vaccinated, such as doing daily testing.

[22] The Claimant testified that she is on an indefinite leave of absence; she was told she can go back to work if she gets vaccinated.

[23] The Commission says that the Claimant didn't have just cause, because she had reasonable alternatives to being on leave when she did. Specifically, it says that the Claimant could have complied with the employer's vaccination policy. I agree.

[24] In this case, the employer is a federal crown corporation. As such, it follows federal guidance when setting its policies. In the context of a global pandemic, the employer chose to follow the guidance to implement measures to ensure the safety of its workforce and the public they interact with. I find that the Claimant cannot prove just cause in those circumstances.

[25] The Claimant has submitted many documents explaining why she thinks her employer's policy is illegal. I don't have the authority to decide if the policy is legal or not. Even if I did, the Claimant has not provided evidence to show specifically what part

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

of the policy violates her contract or collective agreement or that a court or arbitrator has found the policy to be illegal. Without that evidence, I can't conclude that the employer was engaged in practices that were contrary to the law.⁵

[26] The Claimant argues that requiring her to provide her confidential information was a violation of her rights. But she also says that she had no problem doing testing. The results of testing would have had to have been shared with her employer, so she would have been accepting to provide medical information. This contradiction makes me give less weight to her argument.

[27] The Claimant did testify that before the policy was put in place, she was aware that it could require vaccination, but she was hoping it would allow for testing instead of vaccination. She was in contact with her union, hoping there would be another option. When she was put on leave, she did file a grievance through the union. So, she did explore that alternative before making a decision that would lead to her being put on unpaid leave.

[28] The Claimant testified that she had received the shingles vaccine in July of 2021. At that time, she says her doctor told her if she was interested in the COVID vaccine she would have to wait 6-8 months before getting it. I don't see any evidence that the Claimant raised this issue with her employer. She may have mentioned it in an email message to her manager, or with the union, but there is no evidence of that in the file.

[29] I understand the Claimant did try to talk to her doctor about the delay for getting the COVID vaccine after the shingles vaccine. This could have provided her with support for a medical exemption to delay getting a vaccine. Her doctor's office told her they were not providing medical exemptions. So having a medical exemption was not a reasonable alternative for her. But this also suggests there was no medical reason preventing her from being vaccinated and complying with the policy.

[30] I have considered whether the Claimant was dismissed for misconduct, rather than having taken a leave of absence without just cause. I find that this is not a case of

⁵ This is a circumstance that I would have to consider under paragraph 29 (c)(xi) of the Act.

dismissal for misconduct for several reasons. First, the Claimant has not been dismissed, but placed on an indefinite leave of absence. Second, the Claimant knows she can go back to her job should she get vaccinated. She has a choice to return to work and it is her decision not to be vaccinated that is preventing her return at this time. She has the choice of bringing the leave to an end or waiting to see if the policy is changed or her employer terminates her employment.

[31] The Claimant had a choice of whether or not to be vaccinated and disclose her status to her employer. She chose the option that had the consequence of her being on an unpaid leave of absence. She was free to choose not to be vaccinated, no one was forcing her to get the shot. But there were consequences to that choice. In this case, her refusal resulted in her being on a leave of absence. She had alternatives to being on that leave, so she hasn't shown just cause. Since she hasn't shown just cause for being on a leave of absence, she is disentitled to benefits⁶.

Conclusion

[32] I find that the Claimant is disqualified from receiving benefits.

[33] This means that the appeal is dismissed.

Leanne Bourassa
Member, General Division – Employment Insurance Section

⁶ This disentitlement will end when she either goes back to work, loses or leaves her job, or has enough hours with another job to make a new claim. This is set out in section 32(2) of the Employment Insurance Act.