



Citation: *CK v Canada Employment Insurance Commission*, 2022 SST 1633

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

## **Decision**

**Appellant:** C. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (463038) dated April 5, 2022  
(issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Decision date:** August 31, 2022

**File number:** GE-22-1507

## Introduction

[1] The Claimant's employer introduced a policy that required all employees be vaccinated against COVID-19 by December 16, 2021.<sup>1</sup> The Claimant was not vaccinated by that date. The Claimant's employer put the Claimant on an unpaid leave of absence because she did not comply with the policy.<sup>2</sup> The Commission refused to pay the Claimant employment insurance (EI) benefits because she lost her employment due to her misconduct.<sup>3</sup>

## Matters I have to consider first

### The employer is not an added party

[2] Sometimes the Tribunal sends the Claimant's employer a letter asking if they want to be added as a party to the appeal. In this case, the Tribunal sent the employer a letter. The employer did not reply to the letter.

[3] To be an added party, the employer must have a direct interest in the appeal. I have decided not to add the employer as a party to this appeal, because there is nothing in the file that indicates my decision would impose any legal obligations on the employer.

### The Claimant was not on a voluntary leave of absence

[4] In the context of the *Employment Insurance Act* (EI Act), a voluntary period of leave requires the agreement of the employer and a claimant. It also must have an end date that is agreed between the claimant and the employer.<sup>4</sup>

[5] There is no evidence in the appeal file to show the Claimant agreed to taking a period of leave from her employment beginning on December 16, 2021.<sup>5</sup>

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<sup>1</sup> In this decision, the Appellant is called the Claimant and the Respondent is called the Commission.

<sup>2</sup> See page GD3-14. All page numbers are from the appeal file

<sup>3</sup> See page GD3-27.

<sup>4</sup> See section 32 of the EI Act

<sup>5</sup> See page GD3-14. The ROE records the Claimant's last day for which she was paid as December 16, 2021 (Friday). The Claimant was suspended from her employment on December 20, 2021 (Monday).

[6] The section of the law on disentitlement due to a suspension speaks to a claimant's actions leading to their unemployment. It says a claimant who is suspended from their job due to their misconduct is not entitled to benefits (emphasis added).<sup>6</sup> The evidence shows it was the Claimant's conduct, of refusing to be vaccinated, that led to her not working. I am satisfied that, for the purposes of the EI Act, the Claimant's circumstances can be considered as a suspension.

## Issue

[7] I must decide whether the Claimant's appeal should be summarily dismissed.

## The law

[8] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[9] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.<sup>7</sup>

[10] Section 31 of the *Employment Insurance Act* (EI Act) says that a claimant who is suspended from their employment because of their misconduct is not entitled to receive benefits until

(a) the period of suspension expires;

(b) the claimant loses or voluntarily leaves their employment; or,

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<sup>6</sup> See section 31 of the EI Act

<sup>7</sup> The Tribunal sent a notice of its intention to summarily dismiss this appeal to the Claimant on July 14, 2022. She was given until August 11, 2022 to make submissions. See GD7. The Claimant's submission, dated August 2, 2022 was received by the Tribunal on August 8, 2021. See GD8.

(c) the claimant, after the beginning of the period of suspension, accumulates with another employer the number of hours of insurable employment required under section 7 or 7.1 to qualify to receive benefits.

## Evidence

[11] The appeal file shows the Claimant completed an application for EI benefits on January 25, 2022.<sup>8</sup>

[12] The appeal file has a Record of Employment (ROE) issued for the Claimant on December 31, 2021.<sup>9</sup> The ROE shows the reason for issuing as Leave of Absence and the last day for which the Claimant was paid was December 16, 2021.

[13] The Claimant spoke to a Service Canada officer on February 20 and 24, 2022.<sup>10</sup> She told the officer she stopped working on December 6, 2021 due to illness. She said she received a telephone call from her employer on December 16, 2021 telling her she was suspended without pay and was not allowed to enter the building. She was to be fully vaccinated by December 16, 2021 but she said she did not take any vaccine. The Claimant told the officer she did not give a reason to her employer for not being vaccinated because it was private medical information. The Claimant said she was aware she could be put on leave but did not think it would happen.

[14] The Claimant again spoke to a Service Canada officer on April 4, 2022. She explained to the officer that she was on a period of sick leave starting December 6, 2021 and was scheduled to return to work on January 7, 2022. She was contacted on December 16, 2021 and notified she was being suspended without pay and was not allowed to enter the building unless she was fully vaccinated. The Claimant told the officer she was fully aware of the policy and the ramifications of not complying and also understood she was not terminated.

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<sup>8</sup> See pages GD3-3 to GD3-13 for the application for EI benefits. The date of application is on page GD3-12.

<sup>9</sup> See page GD3-14

<sup>10</sup> See pages GD3-16 and GD3-17

[15] Representatives of the employer spoke to a Service Canada officer on February 24, 2022 and April 5, 2022.<sup>11</sup> The representative told the officer the Claimant was on leave without pay. All employees were notified by email on October 24, 2021 that the employer was implementing a mandatory COVID-19 vaccination policy effective December 16, 2021. Any employee who did not comply with the policy or did not qualify for a medical or religious exemption would be placed on an indefinite leave of absence without pay. The representative told the officer the Claimant did not provide proof of vaccination, or request a medical or religious exemption and was placed on an unpaid leave of absence on December 17, 2021.

## Submissions

[16] In her appeal to the Tribunal, the Claimant wrote that she disagreed with the decision and that the Tribunal was in violation of a number of “Queen Romana Didulo’s” royal decrees.<sup>12</sup> The Claimant provided copies of the “decrees” with her appeal. The Claimant followed up her initial appeal to this Tribunal with a further submission regarding the “decrees.”<sup>13</sup>

[17] In reply to the Tribunal’s Notice of Intention to Summarily Dismiss her appeal the Claimant submitted that failure to pay her under the Employment Insurance Act for refusal to take DNA Therapy Injection known as COVID 19 vaccine is Treason in the Kingdom of Canada. She attached documents from Pfizer about side effects and listed doctors in Canada who she said “died within 2 weeks of their fourth jab.” The Claimant re-sent “Queen Romana Didulo’s Royal Decrees” and said that the “Queen” could remove me from my job. The Claimant also attached an International Common Law Court of Justice decision.

[18] The Commission submitted that regardless if it worded its decision as a leave of absence or as suspension due to misconduct, the result is the same, the Claimant

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<sup>11</sup> See pages GD3-18 and GD3-25

<sup>12</sup> See page GD2-5 and pages GD2-10 to GD2-26. The person the Claimant refers to as “Queen Romana Didulo” is not Canada’s Head of State or the leader of its government or armed forces. The “decrees” the Claimant provided with her appeal are irrelevant to the appeal.

<sup>13</sup> See GD6

caused her own loss of employment when she refused to follow the employer's policy/mandate. The Commission says in this case the Claimant made a personal decision to not adhere to the employer's vaccination policy. It says because the Claimant made the personal choice not to get vaccinated, she initiated the separation from her employment because she knew not following the policy would result in the loss of her employment. The Commission says that because the Claimant's actions were wilful, reckless and deliberate, the reason she lost her employment meets the definition of misconduct.<sup>14</sup>

## Analysis

### – Matters outside my jurisdiction

[19] It is not my role to determine if the employer's policy is a violation of the "decrees" the Claimant cited in her appeal to this Tribunal.<sup>15</sup>

[20] It is equally not my role to determine the safety or efficacy of the COVID-19 vaccines.

### – Matters within my jurisdiction

[21] My role is to decide whether the Claimant's appeal should be summarily dismissed.

[22] To summarily dismiss the Claimant's appeal, the law says I must be satisfied that his appeal has no reasonable chance of success.<sup>16</sup>

[23] The issue is whether it is plain and obvious on the record that the appeal is bound to fail.

[24] The question is **not** whether the appeal must be dismissed after considering the facts, the case law and the parties' arguments. Rather, the question is whether the

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<sup>14</sup> See GD4

<sup>15</sup> The courts have said that in cases for a disqualification from receiving EI benefits due to misconduct, the focus of the analysis is on the claimant's act or omission and the conduct of the employer is not a relevant consideration. See *Paradis vs. Canada (Attorney General)*, 2016 FC 1282.

<sup>16</sup> See subsection 53(1) of the DESD Act

appeal is destined to fail regardless of the evidence or arguments that could be presented at a hearing.<sup>17</sup>

[25] When I apply the law and the two legal tests above, I can only conclude that the Claimant's appeal has no reasonable chance for success.

[26] For the purposes of the EI Act, for me to find misconduct, I would have to see that the Claimant engaged in wilful conduct that she knew or should have known could get in the way of carrying out her duties to her employer and she knew there was a real possibility of being suspended because of that.<sup>18</sup>

[27] Wilful conduct is conduct that is conscious, deliberate or intentional.<sup>19</sup> There does not have to be wrongful intent for behaviour to be misconduct under the law.<sup>20</sup>

[28] The employer's policy required that all employees provide proof of being fully vaccinated against COVID-19, unless medically contraindicated, by December 16, 2021. The appeal file shows the Claimant did not request an exemption and did not provide proof she was vaccinated against COVID-19 by December 16, 2021. She was aware of the employer's policy. She knew that she could be suspended from her job if she did not comply with the policy, and as a result, not be able to carry out her employment duties. There is no evidence that could be presented at a hearing that would change this. It is clear to me that, on the record, the Claimant's appeal has no reasonable chance of success. As a result, I must dismiss the Claimant's appeal.

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<sup>17</sup> The Tribunal explained this in *AZ v. Minister of Employment and Social Development*, 2018 SST 298.

<sup>18</sup> This is set out in the Federal Court of Appeal case of *Mishibinijima v. Canada (Attorney General)* 2007 FCA 36

<sup>19</sup> See *Mishibinijima v. Canada (Attorney General)* 2007 FCA 36

<sup>20</sup> See *Attorney General of Canada v. Secours*, A-352-94

## **Conclusion**

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

Raelene R. Thomas  
Member, General Division – Employment Insurance Section