



Citation: *TB v Canada Employment Insurance Commission*, 2022 SST 1619

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

## Decision

**Appellant:** T. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (483317) dated June 24, 2022 (issued by Service Canada)

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**Tribunal member:** Amanda Pezzutto

**Type of hearing:** Teleconference

**Hearing date:** October 5, 2022

**Hearing participant:** Appellant

**Decision date:** October 31, 2022

**File number:** GE-22-2523

## Decision

[1] T. B. is the Claimant. The Canada Employment Insurance Commission (Commission) is refusing to pay Employment Insurance (EI) benefits. The Claimant is appealing the Commission's decisions to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. I find that she stopped working because her employer suspended her for misconduct. I also find that she quit her job without just cause. Both of these decisions mean that the Claimant can't get EI benefits.

## Overview

[3] The Claimant's employer introduced a vaccination policy. Under the policy, the Claimant had to attest to her vaccination status. She had to prove that she was vaccinated against COVID-19. The Claimant refused to attest to her vaccination status and didn't give her employer proof of being vaccinated against COVID-19. The Claimant's employer put her on leave without pay. After a few months of being on leave, the Claimant quit her job.

[4] The Commission says the Claimant can't get EI benefits. The Commission says her employer suspended her for misconduct. The Commission says the Claimant acted deliberately by refusing to follow the employer's vaccination policy. The Commission says she knew, or should have known, that she could lose her job.

[5] The Commission also says that the Claimant doesn't have just cause for leaving her job. The Commission says she had reasonable alternatives to leaving her job.

[6] The Claimant disagrees. She says that her employer acted abusively by bringing in a vaccination policy. She says that she doesn't think the employer can force her to take a vaccination. She says the COVID-19 vaccine is dangerous and ineffective.

[7] She also says she has just cause for leaving her job. She says she couldn't continue working for such an abusive employer.

## **Matter I have to consider first**

### **I will accept the documents sent in after the hearing**

[8] After the hearing, the Claimant sent documents. She sent a copy of the statement she read at the hearing. She also sent articles about the COVID-19 vaccine.

[9] I have decided to accept the documents that the Claimant sent after the hearing. This is because I don't see any unfairness to the Commission if I accept these documents. Tribunal staff sent copies of the documents to the Commission and the Commission had time to review and respond to the documents.

### **Issue**

[10] I have to make two decisions. First, I must decide if the Claimant lost her job because of misconduct.

[11] Then, I have to decide if the Claimant had just cause for voluntarily leaving her job.

### **Analysis - Misconduct**

#### **Did the employer suspend the Claimant?**

[12] The Commission says I should treat the Claimant's loss of employment as a suspension.

[13] The Claimant disagrees. She says she didn't stop working because of a suspension. She says her employer put her on leave without pay.

[14] The Claimant says she didn't choose to leave her job until April 2022. She says it wasn't her choice to stop working in November 2021. She says her employer chose to put her on unpaid leave.

[15] The Commission agrees. In its submissions, the Commission says the Claimant didn't choose to leave her job in November 2021.

[16] Nothing in the appeal file makes me think the Claimant chose to leave her job in November 2021. I don't think she voluntarily took a leave of absence from work.

[17] At the hearing, the Claimant said she didn't stop working because of a shortage of work. She said there was a lot of work.

[18] I agree. There isn't any evidence that makes me think the Claimant stopped working because of a shortage of work.

[19] At the hearing, the Claimant said her employer put her on a leave of absence without pay. She said this wasn't her choice. She said the employer put her on this leave because she didn't follow the employer's vaccination policy.

[20] I think this means that I should treat the Claimant's loss of employment as a suspension. This is because the Claimant and the Commission both agree that she didn't choose to leave her job in November 2021. Instead, she lost her job because she wasn't following the employer's vaccination policy. I think the parts of the law that talk about a suspension for misconduct are the most suitable way to look at the Claimant's loss of employment.

[21] So, now I have to decide if the reasons the Claimant stopped working in November 2021 are misconduct under the law. This means that I have to consider which of the Claimant's actions caused the loss of her job. Then, I have to decide if those actions are misconduct under the meaning of the *Employment Insurance Act* (EI Act).

### **Why did the employer suspend the Claimant?**

[22] The Commission says the Claimant's employer suspended her because she didn't follow the vaccination policy.

[23] At the hearing, the Claimant agreed that she stopped working in November 2021 because she didn't follow the employer's vaccination policy.

[24] At the hearing, the Claimant said her employer's vaccination policy required all employees to attest to their vaccination status. She said the policy meant that employees had to provide proof of being vaccinated against COVID-19. The Claimant said she didn't attest to her vaccination status by the employer's deadline. She said this was the reason the employer put her on an unpaid leave of absence.

[25] There isn't anything in the appeal file that makes me think the Claimant's employer suspended her for any other reason. So, I find that the Claimant's employer suspended her because she didn't follow the employer's vaccination policy. She didn't attest to her vaccination status and she didn't provide proof of being vaccinated against COVID-19.

[26] Now, I must decide if the Claimant's actions are misconduct under the EI Act.

### **Is the reason for the Claimant's suspension misconduct under the law?**

[27] I find that the reason for the Claimant's suspension is misconduct under the law.

[28] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>1</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>2</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>3</sup>

[29] 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>4</sup>

[30] 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

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<sup>1</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>2</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>3</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>4</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

means that it has to show that it is more likely than not that the Claimant lost her job because of misconduct.<sup>5</sup>

[31] The Commission says that the Claimant stopped working because of misconduct. The Commission says she acted deliberately by refusing to follow her employer's vaccination policy. The Commission says she should have known that she could lose her job if she didn't follow the employer's vaccination policy.

[32] The Claimant disagrees. She says her employer can't force her to take a vaccine. She says she has the right to make her own decisions about medical treatment. She says the COVID-19 vaccine isn't safe and it isn't effective.

[33] I agree with the Commission. I find that the reasons the Claimant stopped working amount to misconduct under the EI Act.

[34] At the hearing, the Claimant said she read the employer's vaccination policy. She said she was "fully aware" of what the policy said. She knew that the employer expected her to be fully vaccinated by October 29, 2021. She said she knew that the employer expected her to attest to her vaccination status. She also said she knew the policy said she could lose her job if she didn't attest to her vaccination status.

[35] The Claimant said she didn't think that the employer would actually put her on leave. She said there was a lot of work and she was already working from home.

[36] The Commission provided a copy of the employer's vaccination policy. According to the policy, the employer required all employees to be vaccinated against COVID-19. The policy says that all employees must attest to their vaccination status. The policy says that employees will be put on "administrative leave" without pay if they don't attest to their vaccination status by the deadline.

[37] So, I think the Claimant reasonably should have known that she could lose her job if she didn't follow the employer's vaccination policy. Even if she thought the employer might let her keep working, I think she ought to have known that there was a

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<sup>5</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

good chance that she would lose her job. This is because the policy clearly says that employees will be put on leave without pay. And the Claimant agrees that she read and understood the employer's vaccination policy.

[38] So, the Claimant knew about the employer's vaccination policy. She knew that the employer expected her to attest to her vaccination status by the deadline. She knew that the policy said she could lose her job if she didn't attest to her vaccination status. And then she acted deliberately because she didn't attest to her vaccination status by the employer's deadline. Her failure to attest to her vaccination status led directly to her suspension. This means that the reasons the Claimant stopped working amount to misconduct under the law.

[39] The Claimant provided documents and made arguments about the safety and effectiveness of the COVID-19 vaccine. She also made arguments about how her employer treated her. But it is not up to the Tribunal to decide if the employer acted fairly by introducing a vaccine policy.<sup>6</sup> It is not up to the Tribunal to decide if the COVID-19 vaccine is safe or effective. The Claimant can pursue other measures through a human rights tribunal or her union if she wants to make these arguments.

[40] My only role is to decide if the Claimant lost her job because of misconduct. And I find that the reasons the Claimant stopped working amount to misconduct under the EI Act. This means that the Claimant isn't entitled to EI benefits during her suspension.<sup>7</sup>

## **Analysis – voluntary leaving**

### **The Claimant and the Commission agree that she voluntarily left her job**

[41] The Commission says the Claimant voluntarily left her job because she resigned from her job on April 8, 2022.

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<sup>6</sup> See *Paradis v Canada (Attorney General)*, 2016 FC 1282, especially paragraphs 31 and 34.

<sup>7</sup> Section 31 of the *Employment Insurance Act*.

[42] At the hearing, the Claimant said she agreed. She said she chose to retire from her job on April 8, 2022. She said she chose to leave the job.

[43] Both the Claimant and the Commission agree that the Claimant chose to leave her job on April 8, 2022. Nothing in the appeal file makes me think otherwise. So, I find that the Claimant voluntarily left her job on April 8, 2022.

[44] At the hearing, the Claimant said she didn't expect EI benefits after she resigned. But she also made arguments about why she had just cause for leaving her job. The Commission has also made arguments about whether the Claimant had just cause. So, to be sure I cover all the issues before me, I will consider whether the Claimant had just cause for voluntarily leaving her job.

### **The Claimant and the Commission disagree about whether the Claimant had just cause for leaving her job**

[45] The Claimant and the Commission disagree about whether the Claimant had just cause for voluntarily leaving her job when she did.

[46] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause.<sup>8</sup> Having a good reason for leaving a job is not enough to prove just cause. You have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.<sup>9</sup> It is up to the Claimant to prove this.<sup>10</sup> The Claimant has to show that it is more likely than not that she had no reasonable alternatives but to leave when she did.<sup>11</sup>

[47] When I decide that question, I have to look at all of the circumstances that existed when the Claimant quit. The circumstances I have to look at include some set

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<sup>8</sup> This is set out at s 30 of the *Employment Insurance Act*.

<sup>9</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and s 29(c) of the *Employment Insurance Act*.

<sup>10</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.

<sup>11</sup> *Canada (Attorney General) v White*, 2011 FCA 190, at para 4.



by law.<sup>12</sup> After I decide which circumstances apply to the Claimant, she then has to show that there was no reasonable alternative to leaving at that time.<sup>13</sup>

### **The circumstances that existed when the Claimant quit**

[48] The Claimant says that she had to leave her job because her employer was abusive. She says that the vaccination policy was abusive and the employer was treating her poorly.

[49] The Commission provided a copy of the employer's vaccination policy. The policy applied to all employees equally. There isn't any evidence showing that the employer was targeting the Claimant specifically when it introduced the vaccination policy.

[50] The vaccination policy had ways of requesting an exemption from the policy. And the employer says that it introduced the vaccination policy as a response to the COVID-19 pandemic. The policy was meant to protect workers and the public from the risks of COVID-19. On the face of it, the employer's vaccination policy appears to be reasonable. There is a reasonable explanation for the policy. And there are ways of asking for an exemption from the policy.

[51] The Claimant hasn't shown me that the employer acted abusively or unreasonably by introducing a vaccination policy. She hasn't shown me that the employer used the vaccination policy to target her or harass her.

[52] I understand that the Claimant disagreed with her employer's vaccination policy. But I don't think the Claimant has shown that the employer was abusive or treated her poorly.

[53] So, the only circumstance I will consider when I decide if the Claimant had just cause for leaving is the fact that she disagreed with her employer's vaccination policy.

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<sup>12</sup> Paragraph 29(c) of the *Employment Insurance Act*.

<sup>13</sup> Paragraph 29(c) of the *Employment Insurance Act*.

## **Reasonable alternatives**

[54] Now, given the Claimant's circumstances, I have to decide if she has shown whether she had reasonable alternatives to leaving her job when she did.

[55] The Claimant says that she had to leave her job because of how the employer treated her. She said she wanted to apply for her pension and other retirement benefits.

[56] The Commission says the Claimant had reasonable alternatives to leaving her job.

[57] I agree with the Commission. I find that the Claimant had reasonable alternatives. She hasn't proven that leaving her job was the only reasonable thing left she could do, given her circumstances.

[58] At the hearing, I asked the Claimant about alternatives. I asked if she looked for other work before she resigned. The Claimant said she looked at other job opportunities but didn't apply for anything. She said most jobs required vaccination.

[59] But I think it would have been reasonable to make a sincere job search effort before resigning.

[60] I asked the Claimant if she could have remained on leave until the employer lifted the vaccination policy. I noted that other employees on leave have since returned to work with her employer. The Claimant said she couldn't do this because she didn't want to work for her employer anymore.

[61] But I think it would have been reasonable for the Claimant to wait until her employer lifted the vaccination policy. She could have returned to work.

[62] The Claimant said she was grieving her suspension. So, I think it would have been reasonable for her to wait for her union to resolve the grievance process.

[63] So, I find that the Claimant had reasonable alternatives to leaving her job. She could have looked for other work, waited for her employer to lift the vaccination policy, or waited for her union to resolve the grievance process. The Claimant left her job even

though she still had reasonable alternatives available to her. So, I find that the Claimant hasn't proven that she had just cause for leaving her job.

[64] This means that the Claimant is disqualified from receiving EI benefits starting April 3, 2022. This is because she voluntarily left her job in this week.

## **Conclusion**

[65] I am dismissing the Claimant's appeal. I find that her employer suspended her because of misconduct. And then I find that she didn't have just cause for voluntarily leaving her job. Both of these decisions mean that the Claimant can't get EI benefits.

Amanda Pezzutto

Member, General Division – Employment Insurance Section