



Citation: *DR v Canada Employment Insurance Commission*, 2022 SST 1585

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

## Decision

**Appellant (Claimant):** D. R.

**Respondent (Commission):** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (462239) dated March 30, 2022 (issued by Service Canada)

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**Tribunal member:** Gerry McCarthy

**Type of hearing:** Videoconference

**Hearing date:** August 11, 2022

**Hearing participants:** Appellant  
Observer (C. R.)

**Decision date:** August 22, 2022

**File number:** GE-22-1465

## Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) has proven that the Claimant was suspended because of misconduct (in other words, because he did something that caused him to be suspended). This means that the Claimant is disentitled from receiving Employment Insurance (EI) benefits.<sup>1</sup>

## Overview

[3] The Claimant's employer ("X") issued a Record of Employment that indicated the Claimant quit his employment and his last day paid was October 21, 2021.

[4] The Claimant's employer said the Claimant worked on the "Hydro One" site and there was a policy that required employees to be fully vaccinated.

[5] The Claimant says he didn't quit his job. He says he felt he didn't need to be vaccinated.

[6] The Commission initially accepted the employer's reason for the dismissal and determined the Claimant didn't show just cause for leaving his job. However, the Commission later decided that the Claimant was suspended job because of misconduct. Because of this, the Commission decided the Claimant was disentitled from receiving EI benefits.

[7] The Commission says the Claimant's ongoing refusal to comply with the Covid-19 vaccination policy of the employer was misconduct. Specifically, the Commission says

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<sup>1</sup> See Section 31 of the *Employment Insurance Act* (EI Act): 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  
(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.

there was a clear and obvious causality between the Claimant's ongoing willful refusal to comply with the policy and his continued suspension.

[8] The Commission says he only learned about the employer's vaccination policy on October 21, 2021, when he received his paystub in the regular mail. He says he didn't quit his job. He further says he didn't refuse the employer's policy, but felt he didn't need to be vaccinated.

## **Issue**

[9] Was the Claimant suspended because of misconduct?

## **Analysis**

[10] To answer the question of whether the Claimant was suspended because of misconduct, I have to decide two things. First, I have to determine why the Claimant was suspended from his job. Then, I have to determine whether the law considers that reason to be misconduct.

## **Why was the Claimant suspended?**

[11] I find the Claimant was suspended from his job, because he didn't comply with the employer's vaccination policy (GD2-15).

[12] The Commission initially accepted that the Claimant quit his employment. However, the Commission then concluded the Claimant was suspended from his employment for refusing to comply with the employer's vaccination policy.

[13] The Claimant says he didn't quit his job. He says he was only advised about the employer's vaccination policy on October 21, 2021. He further says he didn't refuse the employer's policy, but felt he didn't need to be vaccinated.

[14] I find the Claimant didn't quit his job, but was suspended from his employment because he didn't comply with the employer's vaccination policy. On this matter, I agree with the Commission that the Claimant's refusal to comply with the employer's policy prevented him from returning to work (GD4).

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

[15] The reason for the Claimant's suspension was misconduct under the law.

[16] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>2</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>3</sup> The Claimant doesn't have to have wrongful intent (in other words, he doesn't have to mean to be doing something wrong) for his behaviour to be misconduct under the law.<sup>4</sup>

[17] There is misconduct if the Claimant knew or should have known that his conduct could get in the way of carrying out his duties toward his employer and that there was a real possibility of being suspended or let go because of that.<sup>5</sup>

[18] The Commission has to prove that the Claimant was suspended 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 was suspended because of misconduct.<sup>6</sup>

[19] The Commission says that there was misconduct because of the clear and obvious causality between the Claimant's ongoing willful refusal to comply with the employer's vaccine policy and his continued suspension.

[20] The Claimant says there was no misconduct, because he wasn't advised about the employer's vaccine policy until October 21, 2021. He further says he didn't refuse the employer's policy, but felt he didn't need to be vaccinated.

[21] I find the Commission has proven there was misconduct, because the Claimant made a personal and intentional decision not to comply with the employer's vaccination

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<sup>2</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>3</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>4</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>5</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>6</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

policy. Specifically, the Claimant testified that he didn't agree with the employer's policy and felt he didn't need to be vaccinated for his work. The Claimant also indicated to the Commission in the Appeal Record that he didn't wish to be vaccinated (GD3-21 to GD3-25). I realize the Claimant testified he didn't know about the employer's vaccination policy until he received a letter (dated October 4, 2021) on October 21, 2021.

Nevertheless, the Claimant made a personal and intentional decision not to comply with the employer's vaccination policy when he told his supervisor he couldn't report to work on October 22, 2021, because he wasn't vaccinated. In short, the Claimant was fully aware on October 21, 2021, that failing to comply with the employer's vaccination policy would prevent him from working for the employer.

### **Additional Testimony and Submissions from the Claimant**

[22] I realize the Claimant testified numerous times that he wasn't advised by the employer about their vaccination policy until October 21, 2021. However, the Claimant was advised by the employer about their vaccination policy in the letter he received on October 21, 2021. Nevertheless, the Claimant made an intentional decision not to comply with the employer's policy knowing it would prevent him from working (GD2-15)

[23] I further recognize the Claimant offered other arguments in his Notice of Appeal (GD2). For example, the Claimant argued he had a human right to refuse vaccination. I realize the Claimant had his own personal view about not needing to be vaccinated. Still, the question before me is whether the Claimant's suspension was the result of his misconduct. As mentioned, I find the Claimant did know about the employer's policy and made an intentional choice not to comply with that policy. In other words, the Claimant's unwillingness to comply with the employer's policy prevented him from working for the employer.

[24] I also realize the Claimant cited the "Canadian National Report" on immunization. I do wish to emphasize that I have reviewed all the material the Claimant submitted in his Notice of Appeal. Nevertheless, I agree with the Commission that the material cited by the Claimant had no direct connection to the EI Act (GD4).

[25] Finally, I agree with the Commission that the Claimant filed documentation out of context because that information specifically related to emergency medical decisions in regards to urgent health care situations (GD2-12 and GD2-13). In this case, the Claimant's suspension was based on his personal choice not to comply with his employer's vaccination policy.

### **So, was the Claimant suspended because of misconduct?**

[26] Based on my findings above, I find the Claimant was suspended because of misconduct.

### **Conclusion**

[27] The Commission has proven that the Claimant was suspended job because of misconduct. Because of this, the Claimant is disentitled from receiving EI benefits.

[28] This means that the appeal is dismissed

*Gerry McCarthy*

Member, General Division – Employment Insurance Section