



Citation: *FB v Canada Employment Insurance Commission*, 2022 SST 1660

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

## Decision

**Appellant:** F. B.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (492650) dated July 12, 2022 (issued by Service Canada)

---

**Tribunal member:** Peter Mancini

**Type of hearing:** Teleconference

**Hearing date:** November 17, 2022

**Hearing participants:**

- Appellant
- Respondent

**Decision date:** December 11, 2022

**File number:** GE-22-2667

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

## Overview

[3] The Claimant was dismissed without pay. The Claimant's employer said that he was dismissed because he refused to follow the employer's policy regarding vaccination during the Covid 19 pandemic and he did not seek an exemption from the policy on the grounds permitted by the employer.

[4] Even though the Claimant doesn't dispute that this happened, he says that it isn't the real reason why the employer dismissed him. The Claimant says that the employer dismissed him without pay because the employer did not provide him with an exception that he felt he should have been entitled to. He says the employer did not grant him an exemption he believed was reasonable, and that he should be entitled to, in the same way others were entitled to exemptions for grounds recognized in the policy. The Claimant also expressed concerns about the effects of the vaccine. The Commission accepted the employer's reason for the dismissal. It decided that the Claimant was dismissed because of misconduct. Because of this, the Commission decided that the Claimant is disentitled from receiving EI benefits.

---

<sup>1</sup> Section 31 of the *Employment Insurance Act* says that claimants who lose their job because of misconduct are disqualified from receiving benefits.

## **Issue**

[5] Was the Claimant dismissed from his job because of misconduct?

## **Analysis**

[6] 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.

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

## **Why did the Claimant lose his job?**

[8] I find that the Claimant was dismissed from his job because he refused to comply with the employer's policy that required him to be vaccinated. He did not seek an exemption based on those permitted in the policy. He sought an exemption on personal grounds.

[9] The Claimant and the Commission don't agree on why the Claimant was dismissed from his job. The Commission says that the reason the employer gave is the real reason for the dismissal. The employer told the Commission that it had instituted a covid 19 policy that required all employees to be vaccinated and clearly said that non compliance would result in suspension of employment. The employer said the Claimant knowingly refused to follow the policy.

[10] The Claimant disagrees. The Claimant says that the real reason he was dismissed is that the employer would not grant him an exemption from the policy even though it was a reasonable request for accommodation. The claimant said he worked remotely from home and that he was not a health threat to anyone. He also had objections to the vaccine requirement and felt the employer did not have sufficient information to impose the policy on its employees.

[11] I find that the employer instituted a policy to deal with the Covid 19 pandemic. This is not in dispute. I find that the Claimant worked from home remotely and had worked from home for some time. The Claimant felt that because he worked from home he should be accommodated and be exempt from the policy. He requested an exemption based on his personal situation. He did not seek an exemption on grounds recognized in the policy. The Claimant acknowledges that he was well aware of the policy. He acknowledges that he was aware of the consequences of not following the policy. The Claimant also had concerns about the type of vaccine the employer wanted him to take, and had concerns about its effects.

[12] Considering the above facts I find the Claimant was suspended because he did not follow his employer's vaccination policy.

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

[13] The reason for the Claimant's dismissal is misconduct under the law.

[14] 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>

[15] 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 let go because of that.<sup>5</sup>

[16] The Commission has to prove that the Claimant lost his job because of misconduct. The Commission has to prove this on a balance of probabilities. This

---

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

means that it has to show that it is more likely than not that the Claimant lost his job because of misconduct.<sup>6</sup>

[17] The Commission says that there was misconduct because the Claimant knew the employer's covid 19 policy required him to be vaccinated within a set time period. He knew that if he failed to be vaccinated, he would lose his job. He knew the exemption he was seeking was not considered a valid exemption by his employer and he willfully and deliberately refused to comply with the policy. The Claimant says that there was no misconduct because the policy was improperly implemented. The employer's policy was designed to protect the employees. Because the Claimant worked from home, he felt he should be exempt from the policy. He felt because he did not come in contact with other employees, there was no need for him to follow the policy. He felt this should be a legitimate exemption in the policy. He felt his personal reasons for not complying with the policy were of equal validity as those exemptions permitted by the employer. Those exemptions were for religious or health reasons. The Claimant did not seek any of the recognized exemptions from his employer.

[18] I find that the Commission has proven that there was misconduct, because the Claimant knowingly and willfully decided he would not comply with the employer's policy. This was a deliberate action by him. He expressed the reasons why he would not comply. He knew the consequences of not complying with the policy could result in the Claimant not being permitted to work.

[19] There is no real dispute on this issue. The law doesn't say I have to consider how the employer behaved. Instead, I have to focus on what the claimant did or failed to do and whether that amounts to misconduct under the Act.<sup>7</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

---

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

<sup>77</sup> See *Paradis v Canada (Attorney General)*, 2016 FC 1282; *Canada (Attorney General) v McNamara*, 2007 FCA 107

arrangements (accommodations) for the Claimant aren't for me to decide.<sup>8</sup> I can consider only on thing: whether what the Claimant did or failed to do is misconduct under the Act.

[21] The issue the Claimant raises is that he felt his personal reasons for being exempt from the policy should be recognized by his employer. However, he knew that the employer would not agree to his request and still refused to follow the policy even after his request for an exemption was denied.

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

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

### **Conclusion**

[23] The Commission has proven that the Claimant lost his job because of misconduct. Because of this, the Claimant is disentitled from receiving EI benefits.

[24] This means that the appeal is dismissed.

Peter Mancini

Member, General Division – Employment Insurance Section

---

<sup>8</sup> See *Canada (Attorney General) v McNamara*, 2007 FCA 107