Citation: *AP v Canada Employment Insurance Commission*, 2023 SST 356

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. P.
Representative:	S. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (0) dated November 3, 2022 (issued by Service Canada)

Tribunal member:	Raelene R. Thomas
Type of hearing:	Teleconference
Hearing date:	February 14, 2023
Hearing participant:	Appellant's representative
Decision date:	March 13, 2023
File number:	GE-22-3634

Decision

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

[2] The Canada Employment Insurance Commission (Commission) has proven the Appellant was suspended from her job because of misconduct (in other words, because she did something that caused her to lose her job). This means that the Appellant is disqualified from receiving EI benefits.[2]

Overview

[3] The Appellant's employer put in a place a policy requiring all employees to have received a first dose of the COVID-19 vaccine by October 19, 2021. Employees who were not vaccinated by that date would be placed on leave without pay. The Appellant's employer placed her on leave without pay because she did not comply with its policy.[3]

[4] The Commission looked at the reasons the Appellant was not working. It decided the Appellant was suspended from her job because of misconduct within the meaning of the EI Act.[4] Because of this, the Commission decided the Appellant is disentitled and disqualified from receiving EI benefits.

[5] The Appellant does not agree with the Commission. The Appellant's Representative says the Commission has not met its burden to prove misconduct. He says the Commission's decision was unreasonable because the Appellant's collective agreement does not justify the action taken by the employer. There are number of laws that justify the Appellant's position. Employers have been reversing their policies on

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[1] The *Employment Insurance Act* (EI Act) refers to a person who applies for employment insurance (EI) benefits as a "claimant." A person who appeals a decision of the Commission is called an "Appellant."
[2] Section 30 of the EI Act says claimants who lose their job because of misconduct are disqualified from receiving benefits.
[3] The Record of Employment (ROE) shows the last day for which the Appellant was paid was October 17, 2021.
[4] See section 31 of the EI Act

vaccination. The Commission should take a precautionary approach and allow benefits in this unprecedented time.

Matters I considered first

– **The Appellant was not at the hearing**

[6] The Appellant did not attend the hearing because she was working. A hearing can go ahead without the Appellant if the Appellant got the notice of hearing.[5] I think that the Appellant got the notice of hearing because she sent a Representative, her spouse, to attend on her behalf. So, the hearing took place when it was scheduled, but without the Appellant.

– **The hearing was adjourned**

[7] The hearing was originally scheduled for February 9, 2023. At the start of the hearing, it became clear the Appellant's Representative did not have all the appeal documents. I adjourned the hearing to allow time for the documents related to appeal to be sent to the Appellant's Representative. The hearing was then rescheduled to take place on February 14, 2023 and went ahead on that date

– **The Appellant's appeal was returned to the General Division**

[8] The Appellant first appealed the denial of EI benefits to the Tribunal's General Division in March 2022. Her appeal was summarily dismissed.[6] The Appellant appealed that decision to the Tribunal's Appeal Division.

[9] The Tribunal's Appeal Division ordered the appeal be returned to the General Division for a hearing on the merits by a different Tribunal member.[7]

[10] This decision is a result of the hearing on the merits.

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[5] Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.
[6] See *AP v. Canada Employment Insurance Commission*, 2022 SST 1147.
[7] See *AP v. Canada Employment Insurance Commission*, 2022 SST 1146

– **The employer is not an added party to the appeal**

[11] Sometimes the Tribunal sends an appellant'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.

[12] 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 Appellant was not on a leave of absence**

[13] In the context of the 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.[8]

[14] In the Appellant's case, her employer initiated the stoppage of her employment when she was placed on unpaid leave.

[15] There is no evidence in the appeal file to show the Appellant requested or agreed to taking a period of unpaid leave from her employment.

[16] The section of the EI Act 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.[9]

[17] As found below, the evidence shows it was the Appellant's conduct, of refusing to comply with the vaccine policy that led to her not working after October 17, 2021. I am satisfied that, for the purposes of the EI Act, the Appellant's circumstances the period of unpaid leave after October 17, 2021 can be considered as a suspension.[10]

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[8] See section 32 of the EI Act.
[9] See section 31 of the EI Act.
[10] A suspension under the EI Act does not necessarily mean a suspension from a disciplinary perspective.

– The Appellant withdrew their Charter argument

[18] At the hearing on February 9, 2023, the Appellant's Representative said the Commission's decision to deny EI benefits violated multiple laws including the *Canadian Charter of Rights and Freedoms* (Charter). I explained to the Appellant's Representative th the process for a Charter which is different from the process for a regular appeal. I asked the Appellant's Representative if he wanted to proceed with a Charter appeal.

[19] The Appellant's Representative replied he did not want to make a Charter argument. This means I will not consider whether the Commission's decision to deny the Appellant EI benefits violated the Charter.

– The Commission made a clerical error

[20] The Commission said it made an errors in the decision letters it sent to the Appellant.

[21] It said the issue under appeal should have been addressed as a suspension from employment and not a voluntary leave of absence.

[22] Where an error does not cause prejudice or harm, it is not fatal to the decision under appeal.[11] Because the Commission's error did not prevent the Appellant from seeking reconsideration of the Commission's initial decision and later to appeal the reconsideration decision, I find that the error does not cause the Appellant any prejudice or harm

Issue

[23] Was the Appellant suspended from her job because of misconduct?

[11] *Desrosiers v. Canada (AG)*, A-128-89. This is how I refer to the courts' decisions that apply to the circumstances of this appeal.

Analysis

[24] The law says you can't get EI benefits if you lose your job because of misconduct. This applies whether the employer has dismissed you or suspended you.[12]

[25] To answer the question of whether the Appellant lost her job because of misconduct, I have to decide two things. First, I have to determine why the Appellant was suspended from her job. Then, I have to determine whether the law considers the reason the Appellant was suspended from her job to be misconduct.

Why was the Appellant suspended from her job?

[26] I find the Appellant was suspended from her job because she did not comply with his employer's COVID-19 vaccination policy.

[27] The Appellant's employer adopted a COVID-19 vaccination policy. The policy required all employees to be vaccinated against COVID-19 and to provide proof of vaccination by October 19, 2021.

[28] The Appellant's Representative, affirmed to give evidence, worked for the same employer as the Appellant. He said the employer had an online survey tool which employees used to state their vaccination status and to request an exemption. He said the Appellant reported in the online tool she was not vaccinated.

[29] A representative of the employer spoke to a Service Canada agent on January 24, 2022. The representative said the Appellant was not vaccinated and was placed on unpaid leave.

[30] The evidence tells me the Appellant was suspended from her job because she failed to be fully vaccinated as required by the employer's policy.

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[12] See sections 30 and 31 of the EI Act.

Is the reason for the Appellant's suspension misconduct under the law?

[31] Yes, the reason for the Appellant's suspension is misconduct under the law and within the meaning of the EI Act.

– What the law says

[32] The EI Act doesn't say what misconduct means. But case law (decisions from courts and tribunals) shows us how to determine whether the Appellant's dismissal is misconduct under the EI Act. Case law sets out the legal test for misconduct - the questions and criteria I can consider when examining the issue of misconduct.

[33] Case law says to be misconduct, the conduct has to be wilful. This means the conduct was conscious, deliberate, or intentional.[13] Misconduct also includes conduct that is so reckless that it is almost wilful.[14] The Appellant 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.[15] Put another way, misconduct as the term is used in the context of the EI Act and EI Regulations, does not require an employee to act with malicious intent, as some might assume.

[34] There is misconduct if the Appellant knew or should have known her conduct could get in the way of her carrying out her duties toward her employer and there was a real possibility of being suspended or let go because of that.[16]

[35] A deliberate violation of the employer's policy is considered to be misconduct.[17]

[36] The Commission has to prove the Appellant was suspended from her job because of misconduct. The Commission has to prove this on a balance of

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[13] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[14] See *McKay-Eden v Her Majesty the Queen*, A-402-96.
[15] See *Attorney General of Canada v Secours*, A-352-94.
[16] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[17] See *Attorney General of Canada v. Secours*, A-352-94; see also *Canada (Attorney General) v Bellavance*, 2005 FCA 87 and *Canada (Attorney General) v Gagnon*, 2002 FCA 460

probabilities. This means that it has to show it is more likely than not the Appellant was suspended from her job because of misconduct.[18]

– **What I can decide**

[37] I only have the power to decide questions under the EI Act. I can't make any decisions about whether the Appellant has other options under other laws or in other venues. Issues about whether the Appellant's Collective Agreement or the human rights code were violated, or whether the employer should have made reasonable arrangements (accommodations) for the Appellant aren't for me to decide.[19] I can consider only one thing: whether what the Appellant did or failed to do is misconduct under the EI Act.

[38] There is a case from the Federal Court of Appeal (FCA) called *Canada (Attorney General) v. McNamara*.[20] Mr. McNamara, dismissed from his job under his employer's drug testing policy, argued he should get EI benefits because his employer's actions surrounding his dismissal were not right.

[39] In response to these arguments, the FCA stated it has consistently said the question in misconduct cases is "not to determine whether the dismissal of an employee was wrongful or not, but rather to decide whether the act or omission of the employee amounted to misconduct within the meaning of the EI Act." The Court went on to note the focus when interpreting and applying the EI Act is "clearly not on the behaviour of the employer, but rather on the behaviour of the employee." It pointed out there are other remedies available to employees who have been wrongfully dismissed, "remedies which sanction the behaviour of an employer other than transferring the costs of that behaviour to the Canadian taxpayers" through EI benefits.

[40] A more recent decision is *Paradis v. Canada (Attorney General)*.[21] Like Mr. McNamara, Mr. Paradis was dismissed after failing a drug test. He argued he was

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[18] See *Minister of Employment and Immigration v Bartone*, A-369-88.
[19] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[20] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[21] See *Paradis v. Canada (Attorney General)*, 2016 FC 1282.

wrongfully dismissed, the test results showed he was not impaired at work, and he said the employer should have accommodated him in accordance with its own policies and provincial human rights legislation. The Federal Court relied on the *McNamara* case and said that the conduct of the employer is not a relevant consideration when deciding misconduct under the EI Act.[22]

[41] Another similar case from the FCA is *Mishibinijima v. Canada (Attorney General)*.[23] Mr. Mishibinijima lost his job for reasons related to an alcohol dependence. He argued his employer was obligated to provide an accommodation because alcohol dependence has been recognized as a disability. The Court again said the focus is on what the employee did or did not do, and the fact the employer did not accommodate its employee is not a relevant consideration.[24]

[42] These cases are not about COVID-19 vaccination policies; however, the principles in these cases are still relevant.

[43] A recent Federal Court decision, *Cecchetto v Attorney General of Canada,* 2023 FC 102, (*Cecchetto*), relates to an employer's COVID-19 vaccination policy. Mr. Cecchetto, the Applicant, argued his questions about the safety and efficacy of the COVID-19 vaccines and antigen tests were never satisfactorily answered by the Tribunal's General Division and Appeal Division. He also said that no decision-maker had addressed how a person could be forced to take an untested medication or conduct testing when it violates fundamental bodily integrity and amounts to discrimination based on personal medical choices.[25]

[44] In dismissing the case, the Federal Court wrote:

> While the Applicant is clearly frustrated that none of the decision-makers have addressed what he sees as the fundamental legal or factual issues that he raises – for example regarding bodily integrity, consent to medical testing, the safety

[22] See *Paradis v. Canada (Attorney General)*, 2016 FC 1282 at para. 31.
[23] See *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36.
[24] *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36.
[25] *Cecchetto v Attorney General of Canada,* 2023 FC 102, at paragraphs 26 and 27.

> and efficacy of the COVID-19 vaccines or antigen testing … The key problem with the Applicant's argument is that he is criticizing decision-makers for failing to deal with a set of questions they are not, by law, permitted to address.[26]

[45] The Federal Court also wrote:

> The [Social Security Tribunal's General Division], and the Appeal Division, have an important, but narrow and specific role to play in the legal system. In this case, that role involved determining why the Applicant was dismissed from his employment, and whether that reason constituted "misconduct."[27]

[46] Case law makes it clear my role is not to look at the employer's conduct or policies and determine whether they were right in placing the Appellant on an unpaid leave of absence (suspension), failed to accommodate her, if the vaccination policy was in conflict with other employer policies or violated the Appellant's Collective Bargaining Agreement or offer of employment. Instead, I have to focus on what the Appellant did or did not do and whether that amounts to misconduct under the EI Act.

– **The Commission's submissions**

[47] The Commission says the Appellant is not entitled to EI benefits because she willfully refused to comply with the employer's policy despite being aware that her non-compliance would result in a suspension. The Commission says the Appellant's employer was mandated by the ministry of health to have a COVID-19 vaccination policy. It says, in the case at hand, the employer's policy allowed limited exemptions to complying with the vaccination requirements. The Appellant did not ask for an exemption, so the Commission says it concluded her failure to adhere to the vaccination policy stemmed from a personal conscious choice and it was this deliberate action that led to her being suspended.

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[26] *Cecchetto v Attorney General of Canada,* 2023 FC 102, at paragraph 32.
[27] *Cecchetto v Attorney General of Canada,* 2023 FC 102, at paragraph 47.

– **The Appellant's submissions**

[48] The Appellant's Representative submitted the employer's policy violates the collective agreement and a number of laws. He says the Commission must make a determination as to whether the employer's policy was reasonable. He says the Commission has to follow the *Canadian Bill of Rights* when making its decision. The Appellant's Representative argued the Commission was aware the Appellant's union had a grievance ongoing against the policy that is waiting to be heard at arbitration. There was an arbitration decision in Alberta where the decision was in favour of the employee. The Appellant's Representative argued it is that venue that has the jurisdiction over grievances.

[49] The Appellant's Representative referred to several decisions of the court in support of his position. In particular, *Port Arthur Shipbuilding v Arthurs*, [1965] SCR 85, which he said supported the position that an employer cannot unilaterally change an employment contract. He also referred to *Dowling v. Ontario (Workplace Safety and Insurance Board)*, 2004 CanLII 43692. The Dowling decision addressed the alleged wrongful termination of Mr. Dowling. The Ontario Court of Appeal overturned the Superior Court's decision which had been in favour of Mr. Dowling.

[50] The Appellant's Representative argued the Commission had no jurisdiction to lower the bar as to what constitutes misconduct. He noted even the Digest of Benefit Principles (Digest), the Commission's policy book, says misconduct is not defined by the EI Act but by case law. He argued it is well established in law that the novel vaccine does not prevent infection and said that by acting without a basis in law and the violation of many other laws, the Commission is *ultra vires*.[28]

[51] The Appellant's Representative quoted the section from the Digest dealing with a refusal to carry out an order.[29] He said the Commission has the duty to look at the employer's policy to see if it is justifiable because it led to the dismissal. The

[28] *Ultra vires* means acting beyond one's legal power or authority
[29] See section 7.3.2.2. of the Digest

Appellant's Representative said the Commission must show if the dismissal is just and whether it constitutes misconduct.

[52] The Appellant's Representative said the Appellant asked for a medical exemption to vaccination. He referred to the provincial human rights legislation and suggested that the Commission has to apply that legislation to its decision in that the employer's actions must be considered against the standard of undue hardship. He said the when the employer put in place its policy rapid antigen testing it was sufficient enough to not breach the employer/employee relationship.

[53] The Appellant's Representative argued that all three cases referenced by the Commission in its submissions are not relevant. The cases refer to an employee selling drugs on the job, being intoxicated at work, none of these, he said, have any similarity to the Appellant's case.

[54] In support of his position the Appellant's Representative referred to *AL v. Canada Employment Insurance Commission*, 2022 SST 1428, (*AL v CEIC*). He said in that case it was noted there is no precedent and said that case was similar to the Appellant's.

[55] The Appellant's Representative, affirmed to give evidence, testified the Appellant worked for a health care facility providing security services. When the employer first introduced its COVID-19 policy it required rapid antigen testing and the Appellant agreed to test. He said the employer's policy required employees to be vaccinated against COVID-19. There was an on-line reporting form that all employees were expected to use to report their vaccination status. The same form had three reasons that could be ticked to ask for an exemption: religion, creed or medical.

[56] The Appellant's Representative said he and the Appellant were told by their union the employer's COVID-19 policy was being contested through a grievance. He noted the policy said an employee "may" be terminated. The employer continued to talk about leave of absence while he and the Appellant continued to hope for a resolution through the grievance process. He and the Appellant did not think the employer would

go through terminations. Previously, in 2008 the employer had lost a grievance on the influenza vaccine and mask wearing. All of that information led the Appellant's Representative and the Appellant to believe there was going to be a resolution. The Appellant's union has grieved the unpaid leave of absence and the termination of employment.

[57] When asked by me, the Appellant's Representative clarified that he and the Appellant are covered by different collective agreements. He did not know if the Appellant's collective agreement had a management rights clause.

[58] The Appellant submitted that there was no ill-intention by the Appellant. There was no direct effect on the employer/employee relationship. The Appellant was able to perform her duties, she complied with the testing which shows she was ready and willing to work. On October 18, 2021 there was no difference in the risk of her continuing to work. He said it is hard to consider the Appellant's actions wilful when there is an element of coercion in the employer's policy. He said the employer cannot coerce anyone for treatment with a threat of job loss, suspension or leave of absence and suggested that technically that would fall under criminal law and be a violation of the *Consent of Treatment Act*, 1992, S.O. 1992, c. 31. He said the employer is not a physician or surgeon so it does not have the qualification to give treatment or discuss informed consent with its employees. The Appellant's Representative submitted the employer's actions were in violation of the provincial privacy legislation in that the Appellant had the right to not share her personal health information with the employer. He also suggested that there are a number of international laws that apply to the Appellant's circumstances.

– **My findings**

[59] I find the Commission has proven the Appellant was suspended from her job due to her own misconduct. My reasons for this finding follow.

[60] I have to follow the Federal Court's decisions. I would be making an error of law if I focused on the employer's conduct, which includes making determinations under other laws or a collective agreement as to whether the employer was correct or it was

legal for the employer to create, implement and enforce a policy. I do not have the jurisdiction to do that. The Tribunal has expertise in the interpretation and the application of the EI Act and EI Regulations to a appellant's circumstances and the Commission's decision. The Federal Courts' decisions, including its most recent decision in *Cecchetto,* has said this is all the Tribunal should do.

[61] Fundamental legal, ethical, and factual questions about COVID vaccines and COVID mandates put in place by governments and employers are beyond the scope of appeals to the Tribunal.

[62] I do not have the mandate or jurisdiction to assess or rule on the merits, legitimacy, or legality of government directives and employer's policies aimed at addressing the COVID pandemic. There are other ways a appellant can challenge these directives and policies.

[63] I note the Digest is a publication of the Commission. I am not bound by the Digest because it does not have legislative authority. As noted above, I must follow the law and render decisions based on the relevant legislation, and precedents set by the courts.

[64] The provisions of the Appellant's Collective Agreement are not relevant to the issue before me. This is because an allegation of a violation of a collective agreement is made and decided using a process contained in the collective agreement (as agreed to by the parties to that collective agreement). The legal tests applied in arbitrations to decide disciplinary penalties are different from the legal test applied when deciding whether misconduct has occurred within the meaning of the EI Act.[30]

[65] I would note as well, while the Collective Agreement does contain terms and conditions of employment there are, in my opinion, other documents, such as job descriptions and policies, that can impose a duty on an employee.

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[30] The legal test for misconduct within the meaning of the EI Act is stated above. It does not require a determination as to whether suspension and / or dismissal was imposed with just cause or was the appropriate penalty.

[66] The Appellant's Representative has argued I should follow *AL v. CEIC*, a decision made by another Tribunal member.

[67] In *AL v. CEIC* the appellant was employed by a hospital when her employer introduced a policy requiring all employees to be vaccinated for COVID-19. The Tribunal member allowed *AL's* appeal based on the member's interpretation of the collective agreement provisions to determine there had been no misconduct and a determination that *AL* had a "right to bodily integrity."

[68] I don't have to follow other decisions of our Tribunal. I can rely on them to guide me where I find them persuasive and helpful.[31]

[69] I am not going to follow *AL v CEIC* for two reasons. First, the circumstances of *AL* are not the same as those of the Appellant.[32] Second, in my opinion, the findings and reasoning relied upon by the member do not follow the Federal Court's rules I am required to apply when deciding whether an appellant was suspended from or lost their employment due to their own misconduct. If I were to follow the reasoning in *AL v CEIC*, by examining whether the employer's policy complied with the collective agreement or was mandated by legislation, I would be committing an error of law because my focus would be on the employer's actions – something which the courts have been very clear that I am not allowed to do.

[70] I think an employer has a right to manage their daily operations, which includes the authority to develop and implement policies at the workplace. When the Appellant's employer implemented its COVID-19 vaccination policy as a requirement for all of its employees, this policy became an express condition of the Appellant's employment.[33]

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[31] This rule (called *stare decisis*) is an important foundation of decision-making in our legal system. It applies to courts and their decisions. And it applies to tribunals and their decisions. Under this rule, I have to follow Federal Court decisions that are directly on point with the case I am deciding. This is because the Federal Court has greater authority to interpret the EI Act. I don't have to follow Social Security Tribunal decisions, since other members of the Tribunal have the same authority I have.
[32] The Appellant does not work with *AL*. She is a member of a different union and she is governed by a different collective agreement.
[33] See *Attorney General of Canada v. Secours*, A-352-94; *Canada (Attorney General) v Bellavance*, 2005 FCA 87, *Canada (Attorney General) v Gagnon*, 2002 FCA 460, and *Canada (Attorney General) v. Lemire*, 2010 FCA 314.

[71] The Appellant's employer introduced a policy giving its employees seven weeks to get a first vaccination for COVID-19 by October 19, 2021. Employees were required to report their vaccination status using an on-line form. The same form allowed an employee to tick a box indicating a reason for exemption from the policy for religious or medical reasons.

[72] The appeal file has a copy of the employer's COVID-19 Vaccination Policy. The policy provided for an exemption to vaccination for medical reasons or for religious reasons. The policy required employees provide documentation in support of a request for exemption. If the request for exemption employees were expected to be fully vaccinated or they would be found to be non-compliant with the policy.

[73] The Appellant spoke to a Service Canada agent on March 16, 2022. She told the agent that she became aware of the policy sometime in September 2021 and that she had to be vaccinated by October 19, 2021. This means she was aware her employer required her to be vaccinated.

[74] The Appellant wrote in her submission to the Appeal Division she requested an exemption to the policy. She said her employer failed to follow up with her request prior to her being placed on an unpaid leave of absence. The Appellant's Representative said he did not see the Appellant complete the on-line form advising her employer of her vaccination status or requesting the exemption. She also has not said on what grounds she requested an exemption.

[75] I note that the Appellant's argument her employer did not get back to her about her exemption request is not determinative of the issue before me. The policy said that those who were not vaccinated by October 19, 2021, had requested an exemption and were told they were not exempted, would not be in compliance with the policy. The employer's lack of response to the Appellant's request for exemption had the same effect of not agreeing to her request. So, that by October 19, 2021, she was not exempted from vaccination and remained unvaccinated which was a violation of her employer's COVID-19 Vaccination Policy.

[76] The evidence is clear the Appellant was aware she would be suspended (placed on an unpaid administrative leave of absence) if she was not vaccinated and did not have an exemption to vaccination.

[77] The Appellant was not vaccinated and did not have an exemption to vaccination. As a result, I find the Appellant made the conscious, deliberate and wilful choice to not comply with the employer's policy when she knew that by doing so there was a real possibility she could be suspended (placed on an unpaid leave of absence) and not be able to carry out the duties owed to her employer. Accordingly, I find the Commission has proven the Appellant was suspended due to her own misconduct within the meaning of the EI Act and the case law described above.

So, was the Appellant suspended from her job because of misconduct?

[78] Based on my findings above, I find that the Appellant was suspended from her job because of misconduct.

Conclusion

[79] The Commission has proven the Appellant was suspended from her job because of misconduct. Because of this, the Appellant is disentitled from receiving EI benefits during the period of the suspension.

[80] This means the appeal is dismissed

Raelene R. Thomas

Member, General Division – Employment Insurance Section