



Citation: *RR v Canada Employment Insurance Commission*, 2022 SST 1719

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

Decision

Appellant (Claimant): R. R.
Respondent (Commission): Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (490301) dated July 12, 2022 (issued by Service Canada)

Tribunal member: Gerry McCarthy
Type of hearing: Teleconference
Hearing date: August 23, 2022
Hearing participants: Appellant
Decision date: August 29, 2022
File number: GE-22-2411

Decision

[1] The appeal is dismissed.

[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 the Claimant is disqualified from receiving Employment Insurance (EI) benefits.¹

Overview

[3] The Claimant lost his job on January 22, 2022. The Claimant had worked as a water treatment operator for the “City of X.” The Claimant was on an unpaid leave of absence for not complying with the employer’s Covid-19 vaccination policy. The Claimant had until January 21, 2022, to comply with the employer’s vaccination policy. The Claimant did not comply with the employer’s vaccination policy by January 21, 2022.

[4] The Commission decided the Claimant lost his job because of misconduct. Because of this, the Commission decided the Claimant was disqualified from receiving EI benefits as of January 23, 2022.

[5] The Commission says the Claimant was unable to return to work on January 21, 2022, because he had not complied with the employer’s COVID-19 vaccination policy. The Commission says the Claimant was aware he could be dismissed if he didn’t comply with the employer’s vaccination policy.

[6] The Claimant says the employer’s vaccination policy was unethical and unconstitutional. He further says the employer changed the collective bargaining contract with their mandatory vaccination policy.

¹ Section 30 of the *Employment Insurance Act* says that claimants who lose their job because of misconduct are disqualified from receiving benefits.

Issue

[7] Did the Claimant lose his job because of misconduct?

Analysis

[8] 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?

[9] I find the Claimant lost his job because he failed to comply with the employer's Covid-19 vaccination policy.

[10] The Commission says the Claimant was dismissed for failing to comply with the employer's Covid-19 vaccination policy by January 21, 2022.

[11] The Claimant doesn't dispute that he was dismissed for not complying with the employer's vaccination policy by January 21, 2022.

[12] I find the Claimant was dismissed for failing to comply with the employer's vaccination policy by January 21, 2022.

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.² Misconduct also includes conduct that is so reckless that it is almost wilful.³ 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.⁴

² See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

⁴ See *Attorney General of Canada v Secours*, A-352-94.

[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.⁵

[16] The Commission has to prove the Claimant lost his job 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 lost his job because of misconduct.⁶

[17] The Commission says there was misconduct because the Claimant was informed about the consequences of not complying with his employer's vaccination policy.

[18] The Claimant says there was no misconduct because there was no mention of a vaccine requirement in his collective bargaining agreement. He also says the employer's vaccination policy was unethical and unconstitutional.

[19] I find the Commission has proven there was misconduct, because they provided documentation from the employer that employees had to be fully vaccinated by November 15, 2021 (GD3-33). Furthermore, the Claimant confirmed to the Commission that he was aware of the employer's vaccination policy and the consequences of failing to comply. I realize the Claimant testified that his employer changed his collective bargaining contract with the vaccination policy. Nevertheless, the Claimant confirmed during the hearing he was aware he could be dismissed for failing to comply with the employer's vaccination policy. In other words, the Claimant made a conscious, deliberate, and personal choice not to comply with the employer's Covid-19 vaccination policy by January 21, 2022.

⁵ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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

Additional Testimony from the Claimant

[20] I further realize the Claimant testified that the employer's vaccination policy was unethical and unconstitutional. However, the matter of whether the employer's vaccination policy was fair, reasonable, or constitutional was beyond my jurisdiction. In short, other avenues existed for the Claimant to make these arguments.⁷

[21] Finally, I recognize the Claimant testified that the employer's vaccination policy lacked informed consent and was "coercion." I do realize the Claimant strongly disagreed with the employer's vaccination policy. However, the only issue before me was whether the Claimant lost his job because of misconduct. On this matter, I must apply the law.⁸

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

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

Conclusion

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

[24] This means the appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section

⁷ *Paradis v Canada (Attorney General)*, 2016 FC 1281.

⁸ *Knee v Canada (Attorney General)*, 2011 FCA 301.