



Citation: *AM v Canada Employment Insurance Commission*, 2022 SST 1760

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

## **Decision**

**Appellant:** A. M.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (483132) dated July 12, 2022  
(issued by Service Canada)

---

**Tribunal member:** Catherine Shaw

**Decision date:** November 9, 2022

**File number:** GE-22-2684

## Introduction

[1] The Claimant was suspended from her job for not complying with her employer's COVID-19 vaccination policy. Her employer put in place a policy that required employees to get fully vaccinated or have an approved exemption. The Claimant wasn't vaccinated and didn't have an exemption by the deadline, so the employer placed her on an unpaid leave of absence (suspension).

[2] The Commission decided the Claimant couldn't be paid EI benefits because she was suspended due to her misconduct. The Claimant asked the Commission to reconsider this decision because the employer unreasonably denied her religious exemption request. The employer could also have accommodated her by allowing her to test for COVID-19, as an alternative to being vaccinated. And she could have performed the majority of her work functions remotely.

[3] The Commission maintained its decision because the Claimant was aware of the employer's requirement that she be vaccinated, she knew that failing to comply with the policy would cause her to be suspended, and she made the choice not to comply. The Claimant has appealed this decision to the Tribunal.

## Issue

[4] I must decide whether the appeal should be summarily dismissed.

## Analysis

[5] I must summarily dismiss an appeal if I am satisfied that it has no reasonable chance of success.<sup>1</sup>

[6] The law says that claimants who are dismissed from their job because of misconduct are disqualified from receiving benefits.<sup>2</sup>

---

<sup>1</sup> Section 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states this requirement.

<sup>2</sup> See section 30 of the *Employment Insurance Act*.

[7] It also says that claimants who are suspended from their job because of their misconduct are disentitled from receiving benefits until one of the following conditions is met:

- their period of suspension expires; or,
- they lose or voluntarily leave their job; or,
- they work enough hours with another employer after the suspension started.<sup>3</sup>

[8] On September 14, 2021, the Claimant's employer put in place a policy that required all employees of to be fully vaccinated against COVID-19 or have an approved exemption by October 31, 2021.<sup>4</sup> Employees who were not fully vaccinated against COVID-19 by the deadline would be placed on an unpaid leave of absence (suspension).<sup>5</sup>

[9] The employer later extended the deadline for compliance with the policy to November 30, 2021.<sup>6</sup> Then, in an effort to reduce workplace disruption, it allowed employees who were not compliant with the policy to continue working until December 12, 2021, while undergoing regular rapid antigen testing.<sup>7</sup>

[10] The employer sent the Claimant a letter dated December 6, 2021, stating that she would be placed on an unpaid leave of absence effective December 13, 2021, because she had not provided the employer with proof of her immunization.<sup>8</sup>

[11] The Claimant said she was aware of the requirement to be vaccinated and the consequences if she wasn't vaccinated by the deadline. She knew that failing to comply meant that she could not continue working.<sup>9</sup>

---

<sup>3</sup> See section 31 of the *Employment Insurance Act*.

<sup>4</sup> See GD3-35 to GD3-38.

<sup>5</sup> See GD3-37.

<sup>6</sup> See GD3-30 to GD3-31, and GD3-88 to GD3-92.

<sup>7</sup> See GD3-39 to GD3-40.

<sup>8</sup> See GD3-71.

<sup>9</sup> See GD3-23 and GD3-93.

[12] The Claimant asked the employer for an accommodation to the mandatory vaccination for religious reasons.<sup>10</sup> But, the employer denied her request.<sup>11</sup>

[13] The Claimant was placed on an unpaid leave of absence (suspended) from her job as of December 13, 2021.<sup>12</sup>

[14] For there to be misconduct under the *Employment Insurance Act*, the Commission has to show that the Claimant engaged in wilful conduct that she knew or reasonably should have known could get in the way of carrying out her duties to her employer and that there was a real possibility of being let go because of that.<sup>13</sup>

[15] Wilful conduct means that the conduct was conscious, deliberate, or intentional.<sup>14</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>15</sup>

[16] Before summarily dismissing an appeal, the Tribunal must send written notice to the Claimant and allow her time to make submissions.<sup>16</sup>

[17] Given that the evidence on record shows that the Claimant chose not to comply with the employer's mandatory vaccination policy and she was aware she could lose her job for that choice, the Tribunal sent notice of its intention to summarily dismiss this appeal on October 28, 2022.<sup>17</sup> I asked the Claimant to respond by November 7, 2022. No further submissions were received by the date of this decision.

[18] From the evidence on file, I see the Claimant's employer put in place a policy that required the Claimant to be vaccinated against COVID-19, or to have an approved exemption. The Claimant was notified of this policy. She was told that she would be suspended if she did not comply with the policy.

---

<sup>10</sup> See GD3-23, GD3-24 to GD3-25, and GD3-27.

<sup>11</sup> See GD3-43 to GD3-44.

<sup>12</sup> See GD3-14.

<sup>13</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>14</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>15</sup> See *Attorney General of Canada v Secours*, A-352-94.

<sup>16</sup> Section 22 of the *Social Security Tribunal Regulations*

<sup>17</sup> See GD6.

[19] The Claimant said the employer could have accommodated her another way. It was offering testing as an alternative to the mandatory vaccination at some worksites. She could have performed the majority of her duties remotely, so the employer could have offered her that option, as well. She also disagrees with the employer's decision to deny her religious accommodation request.

[20] The employer has a right to manage their daily operations, which includes the authority to develop and implement policies at the workplace. When the employer implemented this policy as a requirement for all of its employees, this policy became a condition of the Claimant's employment.

[21] The Federal Court of Appeal has said that the Tribunal does not have to determine whether an employer's policy was reasonable or a claimant's dismissal was justified.<sup>18</sup>

[22] It is equally not my role to determine if the employer could have offered the Claimant an accommodation from the policy. The Claimant asked for an exemption to the policy on religious grounds, but the employer denied it.<sup>19</sup> She knew that she was not exempted from her employer's policy. Regardless, she chose not to comply with it.

[23] It is well established that a deliberate violation of an employer's policy is considered misconduct within the meaning of the *Employment Insurance Act*.<sup>20</sup>

[24] The Claimant was not vaccinated and did not have an approved exemption. She was not in compliance with the employer's policy. And, at the time she was suspended, she had no intention to become compliant.

[25] If I accept the facts as true, there is no argument that the Claimant could make that would lead me to a different conclusion. There is no evidence that she could provide that would change these facts. As a result, I find her appeal is bound to fail, no

---

<sup>18</sup> See *Paradis v Canada (Attorney General)*, 2016 FCA 1281

<sup>19</sup> See GD3-19.

<sup>20</sup> See *Canada (Attorney General) v Bellavance*, 2005 FCA 87; *Canada (Attorney General) v Gagnon*, 2002 FCA 460.

matter what arguments or evidence she could bring to a hearing.<sup>21</sup> This means I must summarily dismiss her appeal.<sup>22</sup>

## **Conclusion**

[26] I find that the appeal has no reasonable chance of success; so, the appeal is summarily dismissed.

Catherine Shaw  
Member, General Division – Employment Insurance Section

---

<sup>21</sup> See *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147.

<sup>22</sup> See section 22, *Social Security Tribunal Regulations*