



[TRANSLATION]

Citation: *CS v Canada Employment Insurance Commission*, 2023 SST 1054

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** C. S.  
**Representative:** Dominique Goudreault

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Julie Meilleur

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**Decision under appeal:** General Division decision dated  
March 14, 2023 (GE-22-3590)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** In writing  
**Decision date:** August 9, 2023  
**File number:** AD-23-355

## **Decision**

[1] The appeal is allowed.

## **Overview**

[2] The Appellant (Claimant) stopped working. The employer stated that the Claimant was let go because he refused to provide a COVID-19 vaccination attestation in accordance with the employer's policy.

[3] The Respondent (Commission) found that the Claimant was let go from his job because of misconduct. It could not pay him EI benefits. The Claimant asked the Commission to reconsider its decision but the Commission upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant stopped working because of misconduct under the law. It found that he could not receive EI benefits.

[5] The Claimant was given permission to appeal the General Division decision. He says that the General Division refused to consider the evidence that his employer let him go while he was on sick leave and before the deadline set out in the policy. He says that the evidence shows that he had not yet made a decision about getting vaccinated when he was let go. The Claimant says that the General Division mistakenly found that he lost his job because of misconduct.

[6] I am allowing the Claimant's appeal.

## **Issue**

[7] Did the General Division make an error of law when it found that the Claimant lost his job because of misconduct?

## **Analysis**

[8] The Claimant says that the General Division refused to consider the evidence that his employer let him go while he was on sick leave and before the deadline set out

in the policy. He says that the evidence shows that he had not yet made a decision about getting vaccinated when he was let go. The Claimant says that the General Division mistakenly found that he lost his job because of misconduct.

[9] The Commission is of the view that the General Division did ignore some of the Claimant's evidence without providing an explanation. The Commission says that the evidence shows that the Claimant was undecided and on medical leave when he received the termination letter from his employer on November 4, 2021. But, the employer's policy gave him until November 12, 2021, to comply. The evidence also shows that he followed his doctor's instructions not to contact his employer to avoid making his situation worse.

[10] The Commission says that there is no causal link in this case between the Claimant's misconduct and the end of his employment and that it would be wrong to find that he was let go because of a breach of company rules. It wants to concede the Claimant's appeal.

[11] I note that the November 4, 2021, termination letter indicates that the Claimant would be let go on November 12, 2021, because he refused to be vaccinated. The letter does not tell the Claimant that he can still get vaccinated by the deadline set out in the policy to avoid dismissal.<sup>1</sup> Yet, the employer's earlier letter sent to the Claimant on October 14, 2021, says that he has until November 12, 2021, to get vaccinated.<sup>2</sup>

[12] The evidence shows that, at the time of the November 4, 2021, termination letter, the employer's policy gave him until November 12, 2021, to get vaccinated. At that time, the Claimant was undecided and on medical leave due to work-related anxiety and depression. He had been instructed by his doctor not to contact his employer to avoid making his situation worse.

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<sup>1</sup> See GD2-12 and GD2-13.

<sup>2</sup> See GD3-26.

[13] I agree with the parties that it is not possible to find from the evidence that the Claimant's actions constitute a breach of an implied duty under his employment contract and that, because of this, the Claimant could expect to be let go.

[14] For these reasons, I am justified in intervening. I am allowing the Claimant's appeal.

## **Conclusion**

[15] The appeal is allowed.

Pierre Lafontaine  
Member, Appeal Division