Citation: *DS v Canada Employment Insurance Commission*, 2023 SST 921

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	D. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (498763) dated October 21, 2022 (issued by Service Canada)

Tribunal member:	Elizabeth Usprich
Type of hearing:	Videoconference
Hearing date:	May 10, 2023
Hearing participant:	Appellant
Decision date:	May 26, 2023
File number:	GE-22-3812

Decision

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

[2] The Canada Employment Insurance Commission (Commission) has proven that the Appellant lost his job because of misconduct (in other words, because he did something that caused him to lose his job). This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.[1]

Overview

[3] The Appellant lost his job. The Appellant's employer says that he was let go because he went against its vaccination policy: he didn't have an exemption and didn't say whether he had been vaccinated.

[4] Even though the Appellant doesn't dispute that this happened, he says that going against his employer's vaccination policy is not misconduct. The Appellant feels that he should have been given a religious accommodation/exemption. The Appellant feels that what he did is not misconduct. The Appellant has a right to his bodily autonomy. The Appellant feels that these policies were not in place when he was hired so he questions the ability of his employer to unilaterally impose a policy.

[5] The Commission accepted the employer's reason for the dismissal. It decided that the Appellant lost his job because of misconduct. Because of this, the Commission decided that the Appellant is disqualified from receiving EI benefits.

[1] Section 30 of the *Employment Insurance Act* (Act) says that Appellants who lose their job because of misconduct are disqualified from receiving benefits.

Matters I have to consider first

Documents submitted after the hearing

[6] During the hearing, the Appellant referred to several documents. I informed the Appellant during the hearing that I couldn't follow links to websites. He was given an opportunity to submit documents that he discussed during the hearing.

[7] These documents/submissions were received and coded as GD7 and GD8.

[8] The Appellant also sent in an additional document that was not discussed at the hearing. This document is a filing for judicial review.[2] That means that this is not a court decision, but rather someone requesting review of their case.

[9] Because this document had not been discussed, I requested that both parties make submissions about the relevance of the document and whether it should be accepted or not. I asked for submissions to be received no later than May 22, 2023. As of the date of issuance of this order, neither party has made any submissions.

[10] I find that while the application for judicial review may have some similarity to the present case, it is not a decision. This means that there is no requirement for me to follow it as it is not from a binding court. These are simply arguments. Moreover, the document is dated April 17, 2023, and considering the many opportunities that the Appellant had to submit and/or discuss documents he could have done so at an earlier time. In other words, it was open for the Appellant to raise the judicial review application during his hearing.

[11] As I am not clear on what the Appellant's arguments are surrounding this document, I am not going to accept it. I find that its value is not clear as it is simply someone's arguments.

[2] Its style of cause is shown as Abdo and Attorney General of Canada and is an Application for Judicial Review.

Issue

[12] Did the Appellant lose his job because of misconduct?

Analysis

[13] 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.[3]

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

Why did the Appellant lose his job?

[15] I find that the Appellant lost his job because he went against his employer's vaccination policy.

[16] The Appellant says that he was first put on a leave of absence because of this. The Appellant said that because of his religion he didn't want to get vaccinated. The Appellant didn't disclose to his employer whether he was vaccinated or not. The Appellant says that he tried to get a religious exemption, but the employer denied his exemption. The Appellant doesn't feel it is misconduct for not following the policy. The Appellant says that the burden for misconduct is high and that his single act of not consenting to receiving COVID-19 vaccines had no impact on his ability to carry out duties to his employer. There is no science to show that COVID-19 vaccines prevented infection or transmission. The mandate was unreasonable as he had personal safety concerns and sincerely held religious beliefs that should have been considered. The mandatory COVID-19 vaccination policy was not in place when he was hired. The Appellant feels he should be entitled to benefits.

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[3] See sections 30 and 31 of the Act.

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

[17] The reason for the Appellant's dismissal is misconduct under the law.

[18] The *Employment Insurance Act* (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 Act. It sets out the legal test for misconduct—the questions and criteria to consider when examining the issue of misconduct.

[19] Case law says that, to be misconduct, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.[4] Misconduct also includes conduct that is so reckless that it is almost wilful.[5] The Appellant 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.[6]

[20] There is misconduct if the Appellant 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.[7]

[21] The law doesn't say I have to consider how the employer behaved.[8] Instead, I have to focus on what the Appellant did or failed to do and whether that amounts to misconduct under the Act.[9]

[22] The Commission has to prove that the Appellant 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 Appellant lost his job because of misconduct.[10]

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[4] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[5] See *McKay-Eden v Her Majesty the Queen*, A-402-96.
[6] See *Attorney General of Canada v Secours*, A-352-94.
[7] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[8] See section 30 of the Act.
[9] See *Paradis v Canada (Attorney General)*, 2016 FC 1282; *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[10] See *Minister of Employment and Immigration v Bartone*, A-369-88.

[23] I can decide issues under the Act only. I can't make any decisions about whether the Appellant has other options under other laws. And it is not for me to decide whether his employer wrongfully let him go or should have made reasonable arrangements (accommodations) for him.[11] I can consider only one thing: whether what the Appellant did or failed to do is misconduct under the Act.

[24] In a Federal Court of Appeal (FCA) case called *McNamara*, the Appellant argued that he should get EI benefits because his employer wrongfully let him go.[12] He lost his job because of his employer's drug testing policy. He argued that he should not have been let go, since the drug test wasn't justified in the circumstances. He said that there were no reasonable grounds to believe he was unable to work safely because he was using drugs. Also, the results of his last drug test should still have been valid.

[25] In response, the FCA noted that it has always said that, in misconduct cases, the issue is whether the employee's act or omission is misconduct under the Act, not whether they were wrongfully let go.[13]

[26] The FCA also said that, when interpreting and applying the Act, the focus is clearly on the employee's behaviour, not the employer's. It pointed out that employees who have been wrongfully let go have other solutions available to them. Those solutions penalize the employer's behaviour, rather than having taxpayers pay for the employer's actions through EI benefits.[14]

[27] In a more recent case called *Paradis*, the Appellant was let go after failing a drug test.[15] He argued that he was wrongfully let go, since the test results showed that he wasn't impaired at work. He said that the employer should have accommodated him based on its own policies and provincial human rights legislation. The Court relied on

[11] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[12] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[13] See *Canada (Attorney General) v McNamara*, 2007 FCA 107 at paragraph 22.
[14] See *Canada (Attorney General) v McNamara*, 2007 FCA 107 at paragraph 23.
[15] See *Paradis v Canada (Attorney General)*, 2016 FC 1282.

McNamara and said that the employer's behaviour wasn't relevant when deciding misconduct under the Act.[16]

[28] Similarly, in *Mishibinijima*, the Appellant lost his job because of his alcohol addiction.[17] He argued that his employer had to accommodate him because alcohol addiction is considered a disability. The FCA again said that the focus is on what the employee did or failed to do; it is not relevant that the employer didn't accommodate them.[18]

[29] These cases aren't about COVID-19 vaccination policies. But what they say is still relevant. My role is not to look at the employer's behaviour or policies and determine whether it was right to let the Appellant go. Instead, I have to focus on what the Appellant did or failed to do and whether that amounts to misconduct under the Act.

[30] There is also a very recent Federal Court decision, *Cecchetto*,[19] where the Tribunal denied benefits to the appellant because he did not follow his employer's vaccination policy. The Court found that the Tribunal's role was narrow and was to consider "misconduct" under the EI Act.

What the Commission and the Appellant say

[31] The Commission and the Appellant agree on the key facts of the case. The key facts are the facts that the Commission must prove to show the Appellant's conduct is misconduct within the meaning of the Act.

[32] The Commission says that there was misconduct because:

- the employer had a vaccination policy
- the employer clearly notified the Appellant about its expectations about getting vaccinated / telling it whether he had been vaccinated

[16] See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 31.
[17] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[18] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[19] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.

- the employer sent letters to the Appellant / spoke to the Appellant several times to communicate what it expected
- the Appellant knew or should have known what would happen if he didn't follow the policy

[33] The Appellant says that there was no misconduct because:

- the employer's vaccination policy was unfair/went against the law
- the common law confirms that he has a legal right to not accept medical treatment
- the common law confirms that he has a right to sincerely held religious beliefs.

[34] The Appellant says that since the start of the pandemic he had been working 100% from home. The Appellant says that prior to the pandemic he had the option of working from home but because of his role he felt it was better to go in and be with his team.

[35] On September 13, 2021, the Provincial Health Officer (PHO) announced that all employees in the public health sector were going to be required to be fully vaccinated against COVID-19 by October 26, 2021.[20]

[36] On October 14, 2021, the PHO issued another order to help clarify their previous order.[21] This order stated that to continue working staff needed to have at least one dose of a COVID-19 vaccine by October 25, 2021.

[37] The employer also sent out a memo on October 15, 2021, explaining their expectations and the consequences for not following the policy.[22] The employer's memo also says that if an employee has not received their first dose of a COVID-19 vaccine

[20] See GD2-33.
[21] See GD2-33.
[22] See GD7-12.

that the employee "will not be permitted to work, on-site or remotely".[23] The memo also says failure to have a vaccine dose before October 26, 2021, will mean that the employee is placed on an unpaid leave. The memo also says that "employees who have not received a first dose of COVID-19 vaccine by Nov. 15, should anticipate that their employment and/or contractual arrangements with [employer] may be terminated".[24]

[38] The Appellant applied for a religious exemption and it was not granted. The Appellant was placed on a leave of absence on October 26, 2021. On November 16, 2021, the Appellant was let go from his job.[25]

Medical or other exemption

[39] The Appellant was aware that his employer required that if he did not get vaccinated, he had to get an exemption to remain employed.[26]

[40] The employer's memo includes information on vaccine exemptions. It says, "the only exception to the mandatory vaccination order is for those who are seeking approval from the PHO for a medical deferral or exemption".[27]

[41] On October 24, 2021, the Appellant wrote to his employer to ask for a religious exemption.[28]

[42] On October 25, 2021, his employer responded and confirmed that "a request for exemption from the PHO Order must be made to the PHO and may only be made on medical grounds".[29] The response goes on to say that "employers have no authority to

[23] See GD7-12.
[24] See GD7-12.
[25] See GD2-33.
[26] See GD7-13.
[27] See GD7-13.
[28] See GD2-29.
[29] See GD2-31.

grant any exemption/accommodation from the provisions of the PHO Order whether on medical, religious, or any other grounds".[30]

[43] The Appellant then confirmed with his employer that this meant that he would be placed on a leave of absence the following day.

[44] The Appellant testified about his genuinely held religious beliefs about vaccinations. The Appellant supported his religious beliefs with several documents.[31] I accept that the Appellant is refusing to have the COVID-19 vaccine due to his religious beliefs.

[45] The Appellant agreed that he did not have an exemption under his employer's mandatory policy. There is no evidence to the contrary so I accept that the Appellant's testimony on these points.

Breach of contract

[46] The Appellant says that his employer violated the employment contract by implementing a vaccination policy unilaterally. The Appellant says that the Commission had no evidence of his original contract and therefore the Commission hasn't proven a breach of the original contract.

[47] I agree that the Commission didn't provide the original contract that the Appellant says he signed. Yet, the Appellant agrees that his employer had a policy about getting vaccinated for COVID-19. The Appellant agrees that there was an Order from the PHO that required those in healthcare settings to be vaccinated. This means that there was a policy in place about COVID-19 vaccination.

[48] As noted above, in *McNamara*, *Paradis* and *Mishibinijima,*[32] these Court cases make it clear that the focus must be on what an appellant has or has not done.

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[30] See GD2-31.
[31] See for example, GD2-25; GD2-35; GD2-130; GD2-137 and GD2-140.
[32] See paragraphs 26 to 30 of this decision above.

[49] Recently, the Federal Court decided *Cecchetto*.[33] In that case, the Tribunal (both the General and Appeal division) had denied the appellant's appeal for benefits because he did not follow his employer's vaccination policy. The Federal Court found that the Tribunal has a "narrow and specific role to play in the legal system".[34] In that case it was to decide why the appellant had been dismissed and if it was "misconduct" under the EI Act.

[50] The Federal Court also made it clear that a claimant may not be satisfied with the Employment Insurance scheme, but "there are ways in which his claims can properly be advanced under the legal system".[35]

[51] This means there are other avenues open to appellants if they do not feel that their employer was acting within their employment contract. For that reason, I don't have the authority to decide the merits, legitimacy or legality of his employer's vaccination policy. That means I am not going to decide whether the employer breached a term in the contract as that is outside of my authority.

[52] Again, I have to focus on the Act only. I cannot make any decisions about whether the Appellant has other options under other laws.[36] I can only consider whether what the Appellant did, or failed to do, is misconduct under the Act.

[53] The Appellant argues that misconduct did not arise because he performed all of the duties required of him under the terms of his original employment agreement. He says that non-compliance with the vaccination policy did not prevent him from carrying out his duties and did not impact his ability to perform them.

[54] The Appellant entered into an employment relationship in May 2007. It is noted that this was before the pandemic. This means that the employer would not have pandemic policies in place.

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[33] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.
[34] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraphs 46 and 47.
[35] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraph 49.
[36] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.

[55] The Appellant doesn't dispute that there was a vaccination policy. The Appellant doesn't dispute that he didn't comply with it. The Appellant also didn't dispute that he knew what the consequences of not complying with his employer's policy was.

[56] An 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 an express condition of the Appellant's employment.[37]

[57] *Cecchetto* also makes it clear than an employer may unilaterally introduce a vaccination policy without an employee's consent.[38]

Work from home

[58] The Appellant argued that it is not fair for his employer to impose a policy to protect his health and safety when he is working from home. He says that there was no chance to have contact with any other employees or the public.

[59] The Appellant doesn't believe that it is fair that his employer's policy applied to him because he works from home.

[60] The Appellant feels that his employer's policy is unfair and shouldn't have applied to him. However, the policy clearly states that it applies to all staff. The policy also says that if there isn't compliance with the policy that an employee "will not be permitted to work, on-site or remotely".[39] The only exemption from the policy was a medically based one.

[61] It is not for me to decide if the employer's policy is reasonable or fair. As pointed out in case law the focus is on what the Appellant did or didn't do.

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[37] See *Canada (Attorney General) v Lemire,* 2010 FCA 314.
[38] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.
[39] See GD7-12.

Charter and other laws must be adhered to

[62] The Appellant referred to numerous cases and maintains that because he was following his religious beliefs it cannot be construed as misconduct.[40] The Appellant also says that he has a right to determine his own medical treatment and therefore has bodily autonomy.

[63] The Appellant feels that the employer's policy went against several pieces of legislation. The Appellant feels that his employer's policy is an infringement of his *Canadian Charter of Rights and Freedoms* (Charter). The Appellant feels that he has the right to religious freedom and bodily autonomy. He feels that his employer should have accommodated him. The Appellant also says that under the *Health Care (Consent) and Care Facility (Admission) Act*,[41] that he has the right to refuse consent to health care.

[64] In Canada, there are a number of laws that protect an individual's rights. The Charter is one of these laws. There is also the Canadian Bill of Rights, the *Canadian Human Rights Act*, and a number of provincial laws that protect rights and freedoms.

[65] These laws are enforced by different courts and tribunals. This Tribunal can consider whether a section of the Employment Insurance Act (or its regulations) infringes the rights that are guaranteed by the Charter. The Appellant hasn't stated that he is challenging any part of the *Employment Insurance Act*. Rather, he feels that his employer's policy infringed the Charter or human rights.

[66] It is beyond my jurisdiction (authority) to consider whether an action taken by an employer violates the Charter or human rights legislation. The Appellant would need to go to a different court or tribunal to address those types of issues.

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[40] See GD2-17 to GD2-19.
[41] See GD8-4 and *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c 181.

AL v. Canada Employment Insurance Commission[42]

[67] The Appellant says his employer violated his work contract by unilaterally implementing a mandatory vaccination policy. The Appellant is not unionized.

[68] The Appellant raised a recent decision from the Social Security Tribunal where the applicant was granted benefits because the employer was not allowed to simply unilaterally change a work contract. This is *A.L.* v. *Canada Employment Insurance Commission*.

[69] In that case, A.L. worked in a hospital's administration and was ultimately dismissed for failing to follow her employer's mandatory COVID-19 vaccination policy.

[70] The Tribunal Member found that A.L. did not lose her job because of her own misconduct. It was found that there was a collective agreement that the employer and employees were bound by. The Tribunal Member found that, absent specific legislation requiring a term, the employer was not entitled to unilaterally impose a new condition of employment as it was against the collective agreement. The reasoning was that because there was no legislation requiring mandatory vaccination that it was improper to unilaterally impose this new term.

[71] As a result, it was found that A.L. did not breach any duty owed to the employer by choosing not to be vaccinated as there was no legislation requiring a mandatory COVID-19 vaccination policy. It was noted that the collective agreement considered whether vaccinations other than the COVID-19 vaccination were mandatory. The Tribunal Member found that other vaccinations were contemplated in the collective agreement and were not mandatory. The Tribunal Member reasoned that the COVID-19 vaccinations should follow the same process as other vaccinations set out in the collective agreement.

[72] Additionally, the Tribunal Member found that A.L. had a right to choose whether or not to have a medical treatment. That choice was seen as a "right". The Tribunal

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[42] *AL* v *Canada Employment Insurance Commission*, 2022 SST 1428.

Member found that even if the choice (the action) was contrary to an employer's policy it was found that it could not be considered misconduct under the EI Act.[43]

[73] I am not bound by this decision, or other Tribunal decisions.[44] I can choose to adopt their reasoning if I find them to be persuasive or helpful. I will not be adopting the reasoning in that case for the reasons that follow.

[74] In the case before me, the Appellant isn't unionized and didn't say that he had a collective agreement. The Appellant also didn't submit his employment contract. But he says that there was no requirement in his employment contract to accept a medical procedure or be fired. This does not seem to be the same as the case the Appellant was referring to. This is one of the ways that it can be distinguished from *A.L.* v. *Canada Employment Insurance Commission*.

[75] However, my reasons for not following *A.L.* v. *Canada Employment Insurance Commission* go beyond the factual similarities or differences. One of the reasons for not following that decision is that it is contrary to other court decisions. As noted above, in *McNamara*, *Paradis, Mishibinijima and Cecchetto*[45] these Court cases make it clear that the focus must be on what an appellant has, or has not, done.

[76] The Appellant says his employer violated his work contract by implementing a policy unilaterally. This is a similar argument to the Tribunal Member's finding that an employer cannot put in place any new conditions (absent legislation requiring it) unless an employee explicitly or implicitly agrees to it. Yet, as indicated above, other Courts and Tribunals have considered this very issue and have found differently.

[77] There are other avenues open to an appellant if they do not feel that the employer was acting within an agreement. For that reason, although I find that the Appellant's situation can be distinguished from the one in *A.L.* v. *Canada Employment*

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[43] See *A.L.* v. *Canada Employment Insurance Commission* at paragraphs 76, 79 and 80.
[44] It should also be noted that this case is under appeal.
[45] See paragraphs 24 to 30 of this decision above.

Insurance Commission, I am not going to decide whether the employer breached a term of the employment contract as that is outside of my authority.[46]

[78] Again, I have to focus on the Act only. I cannot make any decisions about whether the Appellant has other options under other laws.[47] I can only consider whether what the Appellant did, or failed to do, is misconduct under the Act.

[79] The Appellant says his employer changing conditions of his employment and contract is unreasonable. But I don't find this means that the employer could not create and implement a policy to address an unprecedented pandemic. Again, the Appellant can go to another court or tribunal if he thinks his employer has violated his employment contract.

Digest of benefit entitlement[48]

[80] The Appellant says broadly that he should be entitled to benefits based on Employment Insurance Digest of Benefit Entitlement Principles (Digest). He says that he didn't commit misconduct within the meaning of the act.

[81] These digests are the Commission's internal policies. They are tools used by the Commission's staff for interpreting and applying the Act to decide EI claims. That means that it isn't law. I don't find that the Commission's general internal policies are instructive in this case.

Vaccine efficacy and reasonableness of policy

[82] The Appellant says that there is no evidence that COVID-19 vaccines prevent infection or transmission of the virus.[49] It is not for me to decide the issues of vaccine efficacy or the reasonableness of the employer's policy, which applied to all staff.

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[46] The Federal Court of Canada in *Cecchetto v Canada (Attorney General)*, 2023 FC 102, has upheld the principle that the Tribunal must look at why an appellant has been dismissed and if it is "misconduct" under the EI Act.
[47] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[48] These are found at https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest.html
[49] See GD2-19.

[83] The Appellant also submitted a case about wrongful dismissal.[50] The decision is about a unilateral change to a contract. The Appellant says that the employer has no right to unilaterally impose a significant term to the employment contract.

[84] It is not for me to make a decision about whether or not the Appellant was wrongfully dismissed. The Appellant may have options to pursue his claims about wrongful dismissal. These matters must be addressed by the correct court or tribunal. This was made clear by the Federal Court in *Cecchetto*.[51]

Elements of misconduct?

[85] I find that the Commission has proven that there was misconduct for the reasons that follow.

[86] There is no dispute that the employer had a vaccination policy. The Appellant knew about the vaccination policy. I find that the Appellant made his own choice not to disclose his vaccination status or get vaccinated. This means that the Appellant's choice to not get vaccinated (or disclose his status) was conscious, deliberate and intentional.

[87] The Appellant didn't have an accommodation or an exemption from the policy. Without an exemption the Appellant's employer made it clear that an unvaccinated employee would be placed on an unpaid leave of absence and eventually dismissed.[52]

[88] The employer's policy requires all employees to disclose their vaccination status and to either have an exemption or get vaccinated. The Appellant didn't disclose his vaccination status, didn't get vaccinated and had no exemption. This means that he was not in compliance with his employer's policy. That means that he could not go to work to carry out his duties owed to his employer.[53] This is misconduct.

[89] The Appellant agreed that he was aware that by not disclosing his vaccination status, or by getting vaccinated (or having an exemption) that he would be placed on an

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[50] See GD7-3; *Wronko v Western Inventory Service Ltd.*, 2008 ONCA 327.
[51] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.
[52] See GD7-12.
[53] See GD7-12 where the policy says that "you will not be permitted to work, on-site or remotely".

unpaid leave of absence as of October 26, 2021. The Appellant also agreed that he knew if he continued to not comply with the policy that he would be let go. The Appellant was let go on November 16, 2021. This means that the Appellant knew there was real possibility that he could be placed on an unpaid leave of absence and then dismissed.

[90] By not disclosing his vaccination status, or getting vaccinated or by not getting an exemption, the misconduct, led to the Appellant losing his employment.

[91] I find that the Commission has proven, on a balance of probabilities, that there was misconduct because the Appellant knew there was a mandatory vaccination policy, and did not follow the policy or get an exemption for doing so. The Appellant knew that by not following the policy that he would not be permitted to be at work. This means that he could not carry out his duties to his employer. The Appellant was also aware that there was a real possibility that he could be let go for this reason.

Employment insurance benefits

[92] The Appellant says that the purpose of the Commission is to enable someone who involuntarily loses their employment to receive benefits.[54] The purpose of employment insurance isn't disputed.

[93] The Appellant also believes that because he has paid into employment insurance (EI) for years that he should be entitled to benefits. EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits. The EI system is to help workers who, for reasons beyond their control, find themselves unemployed and unable to find another job. I do not find that this applies in this situation.[55]

[54] See GD2-18 and *Canada (C.E.I.C.) v Gagnon*, [1988] 2 S.C.R. 29.
[55] See *Pannu* v *Canada (Attorney General)*, 2004 FCA 90, at paragraph 3.

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

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

[95] This is because the Appellant's actions led to his dismissal. He acted deliberately. He knew that refusing to get vaccinated or say whether he had been vaccinated was likely to cause him to lose his job.

Conclusion

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

[97] This means that the appeal is dismissed.

Elizabeth Usprich

Member, General Division – Employment Insurance Section