Citation: *AM v Canada Employment Insurance Commission*, 2023 SST 1218

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. M.
Representative:	James S.M. Kitchen
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:	Elizabeth Usprich
Type of hearing:	Videoconference
Hearing date:	August 4, 2023
Hearing participants:	Appellant Appellant's representative
Decision date:	August 15, 2023
File number:	GE-23-1374

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 her job because of misconduct (in other words, because she did something that caused her to be suspended from her job). This means that the Appellant is disqualified from receiving Employment Insurance (EI) benefits.[1]

Overview

[3] The Appellant was suspended from her job. The Appellant's employer says that she was suspended because she went against its vaccination policy: she didn't have an exemption and she didn't get vaccinated.

[4] Even though the Appellant doesn't dispute that this happened, she says that going against her employer's vaccination policy is not misconduct. The Appellant feels that her employer could have allowed her to work remotely. She feels some workers were allowed to test but she wasn't allowed to do so. She feels the religious exemption policy wasn't true and that her employer didn't really accommodate workers.

[5] The Commission accepted the employer's reason for the suspension. It decided that the Appellant was suspended from her 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

This case was returned to the General Division

[6] This case was previously dealt with by summary dismissal at the General Division (GD) of this Tribunal.[2] The Appellant then appealed the GD decision to the Appeal Division (AD) of this Tribunal.[3]

[7] The AD held a hearing in writing and agreed with the parties that an error happened at the GD level.[4] The AD decided that the case had to be returned to the GD, to a new member, for reconsideration.

[8] At the new GD hearing, the Appellant understood that, while I had reviewed all previous material, this was a brand-new hearing.

The Appellant was given an opportunity to submit additional information

[9] On June 23, 2023, the Appellant was given a chance to submit "any additional information you may want to submit prior to the hearing of your case".[5] This information was requested by July 7, 2023.

[10] The Appellant's Representative requested more time.[6]

[11] A hearing date of August 4, 2023 was set and the Appellant permitted until July 21, 2023 to submit any additional information for the hearing.

The Appellant's Representative submitted documents after the hearing

[12] The Appellant's Representative didn't submit any case law prior to the hearing. During the hearing he said he would submit all of his authorities on the same day of the

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[2] See GD decision dated November 9, 2022 at AD1A-1 to AD1A-6.
[3] See request for leave to appeal at AD1-2 to AD1-20.
[4] See AD decision dated May 4, 2023. The AD said that the GD made an error because they didn't follow a fair process.
[5] See RGD02 dated June 23, 2023.
[6] See Appellant correspondence RGD03 dated June 28, 2023.

hearing August 4, 2023. The authorities weren't submitted until August 9, 2023. Despite the documents being received late, I will accept them as the Appellant's Representative referred to most of the cases during the hearing. The Book of Authorities has been coded as GD6.

Issue

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

Analysis

[14] 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.[7]

[15] To answer the question of whether the Appellant was suspended from 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 that reason to be misconduct.

Why was the Appellant suspended from her job?

[16] I find that the Appellant was suspended from her job because she went against her employer's vaccination policy.

[17] The Appellant says that she was put on a leave of absence because of this. The Appellant says because of her religion she didn't want to get vaccinated. The Appellant says she followed her employer's policy and tried to get a religious exemption, but the employer denied her exemption. The Appellant doesn't feel it is misconduct for not following the policy. The Appellant feels her employer allowed some people to test for COVID-19 instead of getting vaccinated. The Appellant feels she should be entitled to benefits.

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

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

[18] The reason for the Appellant's suspension is misconduct under the law.

[19] The Appellant's Record of Employment (ROE)[8] indicates the reason for issuing the ROE is due to a "leave of absence". I am not bound by how the employer and employee characterize their separation.[9] Section 31 refers to a "suspension" from employment due to misconduct.[10] In other words, when it was the employer's decision to place an employee on an unpaid leave of absence, due to misconduct, it is typically the same, as a suspension for the purposes of the *Employment Insurance Act* (Act). I will be referring to the Appellant's unpaid leave of absence as a suspension because that is the word used by the Act.

[20] The Appellant's Representative argues that a suspension means that there is discipline. For reasons that follow, I find the Appellant's leave of absence was a suspension.

[21] The Appellant's Representative says the Appellant's employer didn't consider the leave of absence to be disciplinary.[11] The Appellant's Representative argued this means that the Appellant should be entitled to EI benefits.

[22] The Act doesn't say what misconduct means. But case law (decisions from courts and tribunals) shows us how to determine whether the Appellant's suspension 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.

[23] Case law says that, to be misconduct, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.[12] Misconduct also includes

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[8] See GD3-14.
[9] See, for example, *Canada (Attorney General)* v. *Morris*, 1999 CanLII 7853 (FCA).
[10] See section 31 of the Act.
[11] See, for example, GD2-26 letter from employer to Appellant dated December 6, 2021 that states "this leave is not disciplinary and will not be reported as such to your professional college (if applicable)".
[12] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

conduct that is so reckless that it is almost wilful.[13] 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.[14]

[24] There is misconduct if the Appellant knew or should have known that her conduct could get in the way of carrying out her duties toward her employer and that there was a real possibility of being suspended because of that.[15]

[25] The law doesn't say I have to consider how the employer behaved.[16] Instead, I have to focus on what the Appellant did or failed to do and whether that amounts to misconduct under the Act.[17]

[26] The Commission has to prove that the Appellant was suspended from her 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 was suspended from her job because of misconduct.[18]

[27] 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 her employer wrongfully suspended her or should have made reasonable arrangements (accommodations) for her.[19] I can consider only one thing: whether what the Appellant did, or failed to do, is misconduct under the Act.

[28] 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.[20] 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

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[13] See *McKay-Eden v Her Majesty the Queen*, A-402-96.
[14] See *Attorney General of Canada v Secours*, A-352-94.
[15] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[16] See section 30 of the Act.
[17] See *Paradis v Canada (Attorney General)*, 2016 FC 1282; *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[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.

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.

[29] 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.[21]

[30] 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.[22]

[31] In a more recent case called *Paradis*, the Appellant was let go after failing a drug test.[23] 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 *McNamara* and said that the employer's behaviour wasn't relevant when deciding misconduct under the Act.[24]

[32] Similarly, in *Mishibinijima*, the Appellant lost his job because of his alcohol addiction.[25] 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.[26]

[33] 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

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[21] See *Canada (Attorney General) v McNamara*, 2007 FCA 107 at paragraph 22.
[22] See *Canada (Attorney General) v McNamara*, 2007 FCA 107 at paragraph 23.
[23] See *Paradis v Canada (Attorney General)*, 2016 FC 1282.
[24] See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 31.
[25] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[26] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

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.

[34] Recently, the Federal Court decided *Cecchetto*.[27] The Tribunal (both the General and Appeal division) had denied benefits to the appellant because he didn't follow his employer's vaccination policy. The Court found that the Tribunal has a "narrow and specific role to play in the legal system".[28] In that case it was to decide why the appellant had been dismissed and if it was "misconduct" under the EI Act.

What the Commission and the Appellant say

[35] 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.

[36] 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
- the employer sent letters to the Appellant several times to communicate what it expected
- the Appellant knew or should have known what would happen if she didn't follow the policy

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

- the employer's vaccination policy was unfair

[27] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.
[28] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 paragraphs 46 and 47.

- not following the employer's vaccination policy isn't misconduct because the consequences for not following the policy were not disciplinary
- the Appellant hadn't thought that she could lose her job (or get suspended) if she didn't get vaccinated

[38] The employer's vaccination policy had an initial effective date of September 14, 2021. It says, "effective October 31, 2021, all workers must be fully immunized against COVID-19".[29] The policy defines a fully immunized worker as someone who has received a full series of the COVID-19 vaccine.[30]

[39] The Appellant agrees that her employer had a vaccination policy and that she knew about it.

[40] The employer's policy also defines who a "worker" is.[31] The Appellant doesn't dispute that she was a worker for the employer. This means the policy applied to the Appellant.

[41] The policy also provides for workplace accommodation for those that can't be immunized due to a medical reason or another protected ground under the *Alberta Human Rights Act*.[32]

[42] The policy also says what the consequence is if there isn't compliance with the policy. The policy says if a worker doesn't have an accommodation and remains non-compliant with the policy the worker will be placed on an unpaid leave of absence for the period of time required to become fully immunized.[33]

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[29] See GD3-36.
[30] See GD3-38 where it says the type of COVID-19 vaccine will dictate whether the doses are singular or more than one.
[31] See GD3-38.
[32] See GD3-37.
[33] See GD3-37: Non-Compliance.

Medical or other exemption

[43] The Appellant was aware her employer required that if she didn't get vaccinated, she had to get an exemption to remain employed.[34] The Appellant submitted a request for a religious-based exemption to her employer.[35] The Appellant says she submitted the request around October 12, 2021. On November 19, 2021, the employer refused the Appellant's accommodation/exemption request.[36] After the exemption request denial, the Appellant had until November 30, 2021 to become fully immunized. If the Appellant didn't do so, the letter says she will be placed on an unpaid leave of absence as of December 1, 2021.

[44] On December 6, 2021, the Appellant's employer wrote the Appellant and said, "in accordance with the policy, if you are not fully immunized by December 12, 2021, you will be placed on a general unpaid leave of absence effective December 13, 2021".[37] The letter goes on to say, "for clarity, you are not permitted to work any regularly scheduled, casual, or additional shifts during this general leave of absence".

[45] The same December 6, 2021 letter also says "this leave is not disciplinary and will not be reported as such to your professional college (if applicable). However, if you are registered with a professional college that has issued a statement that not adhering to this policy or immunization requirements is unprofessional conduct, we will be required to notify your professional body in accordance with s.54 of the Health Professions Act".[38]

[46] The Appellant testified about her genuinely held religious beliefs about vaccinations. I accept that the Appellant is refusing to have the COVID-19 vaccine due to her religious beliefs.

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[34] See GD3-37.
[35] See GD3-34.
[36] See GD3-43.
[37] See GD3-71.
[38] See GD3-71.

[47] The Appellant agreed that she didn't have an exemption under her employer's mandatory policy. There is no evidence to the contrary so I accept that the Appellant's testimony on these points.

Leave of absence and policy revision

[48] The Appellant was put on a leave of absence (suspension) on December 13, 2021. On December 29, 2021, the employer wrote the Appellant and offered that she could return to work if she would undergo temporary frequent COVID-19 testing.[39] The employer's revised policy took effect January 10, 2022, which is when the Appellant returned to work.[40]

[49] Eventually, on July 18, 2022, the employer rescinded the vaccination policy.[41]

[50] The Appellant's Representative argues the Appellant should be entitled to EI benefits for the time that she was suspended.

No Discipline

[51] The Appellant's Representative argues there can't be a finding of misconduct if there is no discipline. He also argued that it isn't possible for the Commission, or the Social Security Tribunal, to make a finding of misconduct where the employer hasn't.

[52] Respectfully, I disagree. The Courts have considered this and decided that how an employer characterizes an employee's dismissal does not determine whether or not the employee lost their job because of misconduct within the meaning of the Act.[42]

[53] As well, although the employer says putting their employee on an unpaid leave of absence is not disciplinary, it clearly is a consequence. I say this because the policy itself outlines what will happen to an employee if they don't follow the policy.

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[39] See GD2-30.
[40] See GD2-41.
[41] See GD2-56.
[42] See *Canada (Attorney General) v Boulton,* 1996 FCA 1682.

[54] The policy says if the policy isn't followed, an employee won't be allowed to work and they will be placed on an unpaid leave of absence.[43] This was reinforced by the employer in a letter directly to the Appellant.[44]

[55] The Appellant's Representative argued that the Appellant being placed on an unpaid leave of absence was the functional equivalent of being laid off and therefore she should be entitled to benefits.

[56] Again, I disagree. There isn't a suggestion that the employer didn't have work available for the Appellant. The issue was the Appellant's failure to comply with the employer's policy despite knowing that the consequence of non-compliance was to be put on a leave of absence (suspension).

[57] The Appellant argues the employer's policy was unfair because it didn't originally offer other accommodations to employees (such as testing). Yet, it is not for me to decide whether the Appellant's employer wrongfully suspended her or should have made reasonable arrangements (accommodations) for her.[45]

[58] 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 her 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.[46]

[59] 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.

[60] The Appellant argues that misconduct didn't arise because she performed all of the duties required of her under the terms of her employment agreement. She says that

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[43] See GD3-37 and GD3-71.
[44] See GD3-71.
[45] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[46] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraph 49.
[47] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.

non-compliance with the vaccination policy didn't prevent her from carrying out her duties and didn't impact her ability to perform them. She says, if the employer had allowed her, she could have worked from home. Yet, the employer didn't allow for her to work from home and required that she comply with its policy.

[61] 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.[48]

[62] *Cecchetto* also makes it clear than an employer may unilaterally introduce a vaccination policy without an employee's consent.[49]

[63] I don't need to consider whether or not the employer validly imposed a duty on the Appellant. I only need to consider whether or not a duty existed.[50] I find that it did.

Digest 7

[64] The Appellant's Representative says I should consider chapter 7 section 3 of the Employment Insurance Digest of Benefit Entitlement Principles (Digest). The Appellant's Representative argued that a simple breach of a policy isn't enough to find misconduct. He argued an individual must think there is such magnitude to the breach that an employee could predict, as a normal outcome, that she would be suspended or dismissed.

[65] First, the Digest is the Commission's internal policy. This is a tool used by the Commission's staff for interpreting and applying the Act to decide EI claims. That means it isn't law.

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[48] See *Canada (Attorney General) v Lemire,* 2010 FCA 314. See also *Dubeau* v *Canada (Attorney General)*, 2019 FC 725
[49] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.
[50] See *Canada (Attorney General)* v *Lemire*, 2010 FCA 314. See also *Canada (Attorney General)* v *Brissette* (C.A.), 1993 CanLII 3020 (FCA), [1994] 1 FC 684.

[66] Second, the Appellant should have expected the consequence that was clearly laid out in the employer's policy. Specifically, the policy clearly says what the consequence of non-compliance would be.

[67] The policy says, and the employer repeated this to the Appellant, that if she didn't have an exemption (accommodation) from the policy and she wasn't vaccinated the consequence would be an unpaid leave of absence. This is a suspension under the Act.

Other Arguments

[68] The Appellant's Representative submitted 17 cases as part of his arguments after the hearing concluded.

[69] The Appellant's Representative argued that an administrative leave can't be considered as disciplinary. He argued that disciplinary actions are unpaid. He also stated that administrative suspensions are supposed to be paid.

[70] He relies on two cases that stand for this proposition.[51] First, it must be noted that these are not EI cases. These are civil cases. This means the context is different. Further, although the employer might have said they won't report employees who don't follow the policy to their colleges, this doesn't mean that it wasn't a disciplinary action.

[71] Clearly, the employer set out a policy and expected workers to comply with the policy. The employer also set out a consequence for non-compliance with the policy.

[72] The cases the Appellant's Representative referred to are about employment contracts and whether employees have the right to be paid while suspended. These cases are not instructive here. Specifically, I find that these cases don't support that a claimant must be paid EI benefits.

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[51] See GD6-4 and GD6-107: *Cabiakman* v *Industrial Alliance Life Insurance Co.*, [2004] 3 S.C.R. 195 and *Potter v New Brunswick Legal Aid Services Commission*, 2015 SCC 10. See also *Fleming* v *Canada (Attorney General),* [2006] F.C.J. No. 31, 2006 FCA 16.

[73] As mentioned above, the Appellant may have other avenues of advancing her claims against her employer.[52] The Appellant says there is a grievance filed against the employer but it hasn't resolved yet. I must focus on the Appellant's actions, not the employer's.

[74] The Appellant's Representative argued that the misconduct must include a reprehensible act or omission.[53] As well, there must be a mental element the employee had to know that the act was reprehensible and that it would lead to dismissal.[54]

[75] The Appellant's Representative also submitted case law that the focus has to be whether or not the employee's conduct amounted to misconduct within the meaning of the Act.[55] I agree that this is the focus.

[76] The Appellant's Representative submitted the case of *Thibodeau*.[56] The particular paragraphs referenced by the Appellant's Representative were paragraph 50 and 51. These paragraphs talk about when a claimant is suspended from employment but then choose to voluntarily not return to their work. This is different than the present case. In this case, the Appellant was put on an involuntary leave of absence and then, once the employer revised their policy, the Appellant went back to work. I don't find this case helpful to this situation.

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[52] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraph 49.
[53] See GD6-57 *Canada (Attorney General)* v *Macdonald,* [1997] F.C.J. No. 499, [1997] A.C.F. no 499; see GD6-62 *Canada (Attorney General)* v *Tucker,* 1986 CanLII 6794 (FCA), [1986] 2 FC 329; see GD6-60 *Canada (Attorney General)* v *Secours,* [1995] F.C.J. No. 210, 179 N.R. 132; see GD6-88 *Joseph* v *Canada (Employment and Immigration Commission),* [1986] F.C.J. No. 169, [1986] A.C.F. No 169; See GD6-51 *Canada (Attorney General)* v *Gagnon,* 2002 FCA 460; See GD6-40 *Canada (Attorney General)* v *Bellavance*, [2005] F.C.J. No. 397, 2005 FCA 87; See GD6-77 *Canada (Attorney General)* v *Turgeon,* [1999] F.C.J. No. 1861, 1999 CanLII 9119 (FCA); See GD6-79 *Canada (Attorney General)* v *Wasylka,* [2004] F.C.J. No. 977, 2004 FCA 219; See GD6-90 *Mishibinijima* v *Canada (Attorney General)*, 2007 FCA 36. See GD6-81 Decision by Muldoon J., ITMO the *Unemployment Insurance Act* and ITMO an application to an umpire by Laurie J. MacDonald, claimant, for review of the decision of the board of referees, rendered in Vancouver, B.C., on February 15, 1994.
[54] See GD6-37: *Canada (Attorney General)* v *Bedell (F.C.A.),* [1984] F.C.J. No. 515, [1984] A.C.F. no 515; See GD6-43 *Canada (Attorney General)* v *Brissette (C.A.),* 1993 CanLII 3020 (FCA), [1994] 1 FC 684; See GD6-62 *Canada (Attorney General)* v *Tucker,* 1986 CanLII 6794 (FCA), [1986] 2 FC 329.
[55] *Canada (Attorney General)* v *Marion,* [2002] F.C.J. No. 711, 2002 FCA 185.
[56] See GD6-188 *Thibodeau* v *Canada (Attorney General),* [2015] F.C.J. No. 928, 2015 FCA 167.

[77] Finally, the Appellant's Representative refers to *Fleming.* The Appellant's Representative argued this case shows that a suspension can mean that there is discipline. But this case also shows that the focus should be on whether the applicant was guilty of misconduct, and whether that resulted in the applicant's suspension or dismissal from employment. [57] This means that I have to focus on the actions of the Appellant. If the Appellant feels her employer acted improperly, she has recourse through other avenues against her employer.[58]

Elements of misconduct?

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

[79] There is no dispute that the employer had a vaccination policy. The Appellant knew about the vaccination policy. I find that the Appellant made her own choice not to get vaccinated. This means that the Appellant's choice to not get vaccinated was **conscious, deliberate and intentional**.

[80] The Appellant didn't have an exemption (accommodation) 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.[59]

[81] The employer's policy requires all employees to either have an exemption or get vaccinated. The Appellant didn't get vaccinated and had no exemption. This means that she wasn't in compliance with her employer's policy. That means that she couldn't go to work to **carry out her duties** owed to her employer. **This is misconduct**.

[82] The Appellant agreed she was aware that by not getting vaccinated (or having an exemption) that she would be placed on an unpaid leave of absence. This means that

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[57] See GD6-85 *Fleming* v *Canada (Attorney General),* [2006] F.C.J. No. 31, 2006 FCA 16 at paragraph 10.
[58] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraph 49.
[59] See GD3-37.

the Appellant knew there **was a real possibility** that she could be placed on an unpaid leave of absence (a suspension).

[83] By not getting vaccinated, or by not having an exemption, the misconduct, **led to the Appellant getting suspended**.

[84] 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 didn't follow the policy or get an exemption for doing so. The Appellant knew that by not following the policy that she wouldn't be permitted to be at work. This means that she couldn't carry out her duties to her employer. The Appellant was also aware that there was a real possibility that she could be suspended for this reason.

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

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

[86] This is because the Appellant's actions led to her suspension. She acted deliberately. She knew that refusing to get vaccinated was likely to cause her to be suspended.

Conclusion

[87] The Commission has proven that the Appellant was suspended from her job because of misconduct. Because of this, the Appellant is disqualified from receiving EI benefits.

[88] This means that the appeal is dismissed.

Elizabeth Usprich
Member, General Division – Employment Insurance Section