Citation: *AR v Canada Employment Insurance Commission*, 2023 SST 1126

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. R.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (544767) dated November 3, 2022 (issued by Service Canada)

Tribunal member:	Elizabeth Usprich
Type of hearing:	Teleconference
Hearing date:	May 17, 2023
Hearing participants:	Appellant Appellant's support person
Decision date:	May 23, 2023
File number:	GE-22-3947

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 say whether she had been vaccinated.

[4] Even though the Appellant doesn't dispute that this happened, she says that going against her employer's vaccination policy isn't misconduct. The Appellant feels that the employer's policy went against the collective agreement, that the policy violates many different laws and that she has the right to refuse hazardous work. The Appellant says she did nothing wrong and her employer isn't saying she committed misconduct. She also says that she has a right to her medical privacy and there are laws that the employer has to follow. The Appellant also says that the employer had no right to put her on a leave without pay as only an employee can request that.

[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.

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[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

The Appellant's support person

[6] The Appellant said that she had her phone on "speaker" so that her husband, her support person, could hear. I explained the role of the support person and explained that they don't give testimony. The Appellant understood and wanted to proceed.

The Appellant had links in her submissions

[7] I explained to the Appellant that in a recent submission she had a document that contained many website links. I explained to the Appellant that I had reviewed all of her documents but that we don't follow links. I told the Appellant that she could explain anything she wanted to that was contained in the links. The Appellant said that she understood.

Issue

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

Analysis

[9] 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.[2]

[10] 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?

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

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

[12] The Appellant says that she was put on a leave without pay because of this. The Appellant said that because she felt that the policy went against her rights (under numerous pieces of legislation and caselaw) and her collective agreement, she felt that she didn't have to follow the policy. The Appellant chose not to attest to her vaccination status, again because she felt that the requirement to do so went against her rights (under numerous pieces of legislation and caselaw). The Appellant feels that because her employer said that her leave without pay was administrative, and not based on discipline, that the Commission had no right to say that by not attesting that she committed misconduct. The Appellant feels she should be entitled to benefits.

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

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

[14] The Appellant's Record of Employment (ROE)[3] indicates that the reason for issuing the ROE is due to "leave of absence". I am not bound by how the employer and employee characterize their separation.[4] Section 31 refers to a "suspension" from employment due to misconduct.[5] 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.

[15] 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.

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[3] See GD3-23.
[4] See, for example, *Canada (Attorney General)* v. *Morris*, 1999 CanLII 7853 (FCA).
[5] See section 31 of the Act.

[16] Case law says that, to be misconduct, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.[6] Misconduct also includes conduct that is so reckless that it is almost wilful.[7] 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.[8]

[17] 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.[9]

[18] The law doesn't say I have to consider how the employer behaved.[10] Instead, I have to focus on what the Appellant did or failed to do and whether that amounts to misconduct under the Act.[11]

[19] 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.[12]

[20] 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 isn't for me to decide whether her employer wrongfully let her go or should have made reasonable arrangements (accommodations) for her.[13] I can consider only one thing: whether what the Appellant did or failed to do is misconduct under the Act.

[21] 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.[14] He lost his

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

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.

[22] 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.[15]

[23] 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.[16]

[24] In a more recent case called *Paradis*, the Appellant was let go after failing a drug test.[17] 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.[18]

[25] Similarly, in *Mishibinijima*, the Appellant lost his job because of his alcohol addiction.[19] 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 isn't relevant that the employer didn't accommodate them.[20]

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[15] See *Canada (Attorney General) v McNamara*, 2007 FCA 107 at paragraph 22.
[16] See *Canada (Attorney General) v McNamara*, 2007 FCA 107 at paragraph 23.
[17] See *Paradis v Canada (Attorney General)*, 2016 FC 1282.
[18] See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 31.
[19] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[20] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

[26] These cases aren't about COVID-19 vaccination policies. But what they say is still relevant. My role isn't 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.

[27] There is also a very recent Federal Court decision, *Cecchetto*,[21] where the Tribunal denied benefits to the appellant because he didn't 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

[28] 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.

[29] 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 she had been vaccinated
- the employer sent letters to the Appellant / and had telephone calls placed 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

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

- the employer's vaccination policy is against many laws

[21] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.

- the Appellant hadn't thought that she could be suspended if she didn't tell her employer about whether she was vaccinated or not

[31] The employer's vaccination policy was implemented on October 28, 2021.[22] The policy required compliance by November 26, 2021. The policy includes requests for accommodation on medical or human rights grounds. The policy also says: "employees who do not attest to their vaccination status will be considered unwilling to be fully vaccinated and placed on leave without pay after November 26, 2021".[23]

[32] The Appellant agrees that the policy says those things. The Appellant agrees that her employer gave her the policy. The Appellant agrees that the policy required attestation about vaccination status.

[33] The Appellant agrees that she received many reminder "robo-calls" to both her home phone and her husband's phone about attesting. The Appellant didn't want to attest because she didn't want to accept the employer's terms.

[34] The Appellant says that she didn't ask for any type of exemption. She didn't believe that she would be granted one because she says hardly anyone was.

[35] The Appellant believes that her employer was trying to use scare tactics to try to have employees get vaccinated. The Appellant says that she didn't believe that she was going to be placed on a leave without pay because she felt that what her employer was doing was illegal.

[36] The Appellant says that her last day of work was on November 26, 2021. She says that she showed up for work on November 29, 2021 and told her employer that she was ready, willing and able to work. She says that she was told to go home. She showed up for three days and her supervisor told her that she couldn't stay.

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[22] See GD3-59.
[23] See GD3-60.

[37] The Appellant says that she is a unionized employee. She says that she spoke with the union president about the issues but didn't file any grievance.

[38] The Appellant says that she had no idea that the leave without pay would happen. Then after it did, she says she had no idea it would go on as long as it did.

[39] The Appellant says she returned to work as of July 11, 2022.[24]

[40] The Appellant believes the employer's policy went against the collective agreement. She says because the policy went against the collective agreement she chose not to attest.

[41] The Appellant doesn't believe her employer has the right to ask her to share her private medical information.[25]

[42] The Appellant says the Supreme Court has made rulings about informed consent and that no Canadian citizen is required to take medical treatment without informed consent.[26]

[43] The Appellant says the Commission doesn't have the right to call what she did "misconduct". The employer didn't call it this and she did nothing wrong, so it isn't right for the Commission to do so. She says this is fraudulent and defamation.

[44] She says she provided her work timesheets with the appeal to show her employer coded her leave as "9410". She says it is in her collective agreement that only an employee can ask for a leave of absence without pay. She says she didn't ask for any leave and therefore it is illegal for her to have been put on such a leave.[27]

[45] The Appellant says her collective agreement contains rules about how there is supposed to be progressive discipline.[28]

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[24] See GD3-39.
[25] See GD3-35 where the Appellant cites the Privacy Act.
[26] See GD3-36 and specifically the case *Hopp* v. *Lepp*, [1980] 2 SCR 192 that the Appellant referenced.
[27] See GD3-39 and GD7-2.
[28] See GD7-2.

[46] The Appellant says the collective agreement didn't have any conditions in it about taking this "gene altering vaccine" to stay employed.[29]

[47] The Appellant says immunization isn't mandatory in Canada. She says this means it can't be a condition of employment.[30]

[48] The Appellant says her employer was not in compliance with the Canada Labour Code or the Canadian Occupational Health and Safety Regulations. She says she has the right to refuse work if she believes that her workplace presents a danger to herself.[31]

[49] The Appellant says the Nuremberg Code says that a medical procedure can't be forced.[32] She also says that forced vaccines go against the Criminal Code of Canada.

[50] The Appellant also recited during the hearing some of the video content of Dr. McCullough. She says that Dr. McCullough testified at the National Citizen's Inquiry, 2023, and spoke about the spike proteins in the mRNA vaccines and that they are a source of danger and damage the vascular system.[33]

[51] The Appellant says that EI isn't higher than the United Nations.[34]

[52] The Appellant also asked me during the hearing if there was anywhere in the Act that required taking vaccines to get EI benefits. She also referred to this in her arguments.[35]

Medical or other exemption

[53] The Appellant was aware that her employer required that if she didn't get vaccinated, she had to get an exemption to remain employed. The Appellant testified

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[29] See GD7-4.
[30] See GD7-4.
[31] See GD7-4.
[32] See GD3-35
[33] See GD7-5.
[34] See GD3-36.
[35] See GD3-33.

that she didn't submit any request for any type of exemption. It is therefore unknown if the employer would have accepted her grounds for refusing to attest.

Breach of contract

[54] The Appellant says that her employer violated her the employment contract by implementing a vaccination policy unilaterally. As noted above, in *McNamara*, *Paradis* and *Mishibinijima,*[36] these Court cases make it clear that the focus must be on what an appellant has or has not done.

[55] Recently, the Federal Court decided *Cecchetto*.[37] In that case, the Tribunal (both the General and Appeal division) had denied the appellant's appeal for benefits because he didn't 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".[38] In that case it was to decide why the appellant had been dismissed and if it was "misconduct" under the EI Act.

[56] 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".[39]

[57] 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.

[58] Again, I have to focus on the Act only. I cannot make any decisions about whether the Appellant has other options under other laws.[40] I can only consider whether what the Appellant did, or failed to do, is misconduct under the Act.

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[36] See paragraphs 26 to 30 of this decision above.
[37] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.
[38] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraphs 46 and 47.
[39] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraph 49.
[40] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.

[59] 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 non-compliance with the vaccination policy didn't prevent her from carrying out her duties and didn't impact her ability to perform them.

[60] The Appellant entered into an employment relationship in June 2009. It is noted that this was before the pandemic. This means that the employer would not have pandemic policies in place.

[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.[41]

[62] *Cecchetto* also makes it clear than an employer may unilaterally introduce a vaccination policy without an employee's consent.[42]

Employment Insurance Digests/ Vaccines specifically in Act

[63] The Appellant says that I should follow section 6.5.10 of the Employment Insurance Digest of Benefit Entitlement Principles (Digest). It says an employee can expect their employer to respect the terms of the contract negotiated at the time they were hired.

[64] This 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 that it isn't law.

[65] As well, the Appellant agreed that she didn't voluntarily leave her employment. In other words, it wasn't the Appellant's choice to be put on a leave without pay (suspended). The section of the digest that the Appellant referred to, section 6.5.10, is about voluntary leaving and if a claimant had just cause of leaving, under the EI Act.

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[41] See *Canada (Attorney General) v Lemire,* 2010 FCA 314.
[42] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.

That means that this section of the Digest doesn't apply to misconduct cases. Voluntary leaving is a separate part of the Act with different rules than misconduct.

[66] This means section 6.5.10 of the Digest doesn't apply to the decision the Appellant is appealing. So, I don't find it helpful or instructive.

[67] The Appellant also argued that because vaccines are not specifically referred to in the Act that this means that it can't be required to have a vaccine to qualify for EI. Respectfully, I don't agree. The Act is written generally. The Act doesn't mention many things. Yet, caselaw shows how sections of the Act should be interpreted. Again, most recently, the Federal Court specifically discussed employer vaccine mandates and misconduct under the EI Act.[43]

Charter, Human Rights, and Canadian Bill of Rights

[68] The Appellant feels that the employer's policy went against several pieces of legislation. The Appellant feels that her employer's policy is an infringement of her *Canadian Charter of Rights and Freedoms* (Charter), Human Rights legislation, and the Canadian Bill of Rights.

[69] 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.

[70] As explained to the Appellant during the hearing, 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 stated at the hearing that she was not challenging any part of the *Employment Insurance Act*, rather she feels that her employer's policy infringed the Charter or human rights.

[71] It was explained to the Appellant that it is beyond my jurisdiction (authority) to consider whether an action taken by an employer violates the Charter or human rights

[43] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.

legislation. It was also explained to the Appellant that she would need to go to a different court or tribunal to address those types of issues. The Appellant said that she understood and wished to proceed the hearing.

Breach of collective agreement and AL v. Canada Employment Insurance Commission[44]

[72] The Appellant says that her employer violated the collective agreement by implementing a policy unilaterally. She says that her collective agreement does not have anything about a requirement to take a vaccines.

[73] 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*.

[74] 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.

[75] The Tribunal Member found that A.L. didn't 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.

[76] As a result, it was found that A.L. didn't 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

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

vaccinations should follow the same process as other vaccinations set out in the collective agreement.

[77] 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 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.[45]

[78] I am not bound by this decision, or other Tribunal decisions.[46] 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.

[79] In the case before me, the Appellant didn’t submit her collective agreement. But she testified that it is silent on vaccinations. 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*.

[80] 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*[47] these Court cases make it clear that the focus must be on what an appellant has, or has not, done.

[81] The Appellant says that her employer violated the collective agreement 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.

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[45] See *A.L.* v. *Canada Employment Insurance Commission* at paragraphs 76, 79 and 80.
[46] It should also be noted that this case is under appeal.
[47] See paragraphs 26 to 30 of this decision above.

[82] 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 Insurance Commission*, I am not going to decide whether the employer breached a term in the collective agreement as that is outside of my authority.[48]

[83] Again, I have to focus on the Act only. I cannot make any decisions about whether the Appellant has other options under other laws.[49] I can only consider whether what the Appellant did, or failed to do, is misconduct under the Act.

– **Vaccine efficacy/reasonableness of policy/other legal infringements**

[84] The Appellant's other arguments[50] about various other pieces of legislation and how the employer's policy infringed them, including consent to treatment and medical privacy are not for me to decide.

[85] It is also not for me to decide the issues of vaccine efficacy/safety or the reasonableness of the employer's policy.

[86] Many of the court cases that the Appellant referred to are not specific to the EI Act and its interpretation.

[87] The Appellant also says that her timesheets were coded that she requested a leave without pay.[51] I agree that she didn't ask for the leave without pay. How her employer filled out timesheets or her ROE are not matters for me to decide on.

[88] The Appellant's argument that the Commission can't find misconduct when her employer has stated that her leave was not discipline but was administrative. These are two separate notions. The only thing before me is whether or not the Appellant's conduct is misconduct as set out by the EI Act and related caselaw.

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[48] 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.
[49] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[50] See paragraphs 40 through 52 above.
[51] See GD3-51.

[89] The Appellant may have options to pursue her other claims but they must be addressed by the correct court or tribunal. This was made clear by the Federal Court in *Cecchetto*.[52]

Elements of misconduct?

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

[91] 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 disclose her vaccination status to his employer. This means that the Appellant's choice to not to disclose her status was conscious, deliberate and intentional.

[92] The Appellant didn't have an accommodation exemption. Without an exemption the Appellant's employer made it clear that an employee that had not attested to vaccination status would be placed on a leave without pay.[53]

[93] 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 her vaccination status and had no exemption. This means that she was not in compliance with her employer's policy. That means that she could not go to work to carry out her duties owed to her employer. This is misconduct.

[94] The Appellant said that she didn't believe that her employer would place her on a leave without pay. The Appellant agreed the policy said that a leave without pay was what would happen. The Appellant also agreed that she received many phone calls and a letter about attesting. The deadline for attesting didn't change. There was nothing in the employer's communication that would lead someone to believe that they wouldn't enforce their policy. The Appellant believed that because the policy went against her collective agreement that she didn't have to follow it. I find that the Appellant knew, or should have known, that it was a real possibility by not disclosing her vaccination status

[52] See *Cecchetto v. Attorney General of Canada,* 2023 FC 102.
[53] See GD3-60.

that a leave without pay would occur. This means that the Appellant knew there was real possibility that she could be placed on a leave without pay (suspension).

[95] By not disclosing her vaccination status, the misconduct, led to the Appellant getting suspended.

[96] 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 would not be permitted to be at work. This means that she could not carry out her duties to her employer. The Appellant was also aware, or should have been aware, that there was a real possibility that she could be suspended for this reason.

Employment insurance benefits

[97] The Appellant also believes that because she has paid into employment insurance (EI) for years that she 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.[54]

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

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

[99] This is because the Appellant's actions led to her suspension. She acted deliberately. She knew, or should have known, that refusing to say whether she had been vaccinated was likely to cause her to be suspended from her job.

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[54] See *Pannu* v *Canada (Attorney General)*, 2004 FCA 90, at paragraph 3.

Conclusion

[100] 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.

[101] This means that the appeal is dismissed.

Elizabeth Usprich
Member, General Division – Employment Insurance Section