Citation: *AD v Canada Employment Insurance Commission*, 2023 SST 1097

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (512796) dated August 17, 2022 (issued by Service Canada)

Tribunal member:	Elizabeth Usprich
Type of hearing:	Videoconference
Hearing date:	January 17, 2023 and May 2, 2023
Hearing participant:	Appellant
Decision date:	May 12, 2023
File number:	GE-22-3011

Decision

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

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

Overview

[3] The Appellant was suspended from, and then lost, his job. The Appellant's employer suspended, and then let go, the Appellant 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 has a sincerely held religious belief that should have exempted him from the policy. He feels that his employer unfairly denied him an exemption. He also feels that his employer could have done more to accommodate him. He feels that they could have allowed him to just test or work evenings and weekends. The Appellant also feels that the word "misconduct" has not been properly construed. He feels that denying him EI benefits for not getting vaccinated (or not disclosing his vaccination status) goes against other "jurisprudence, including from the Supreme Court of Canada".[2] He says that "a simple refusal to get a Covid-19 vaccine is not illegal activity and does not suffice as willful misconduct, particularly when an employer has not offered to accommodate an employee who refuses to disclose their status or to get vaccinated".[3]

---

[1] Section 30 of the *Employment Insurance Act* (Act) says that Appellants who lose their job because of misconduct are disqualified from receiving benefits.
[2] See GD2-2.
[3] See GD2-2.

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

Matter I have to consider first

This case was previously adjourned

[6] This case was first scheduled for a videoconference hearing on January 17, 2023. In the Appellant's submissions he had several arguments about the *Canadian Charter of Rights and Freedoms* (Charter). During that hearing, I asked the Appellant what he was arguing infringed the Charter. I asked whether he was arguing that a section of the *Employment Insurance Act* or whether he felt that his employer's policy went against the Charter. Initially the Appellant said that he was arguing only that his employer's policy infringed the Charter. I explained that I had no authority to deal with that issue. The Appellant said that he wanted to proceed with the hearing so, we did.

[7] Later, during the same hearing, the Appellant then changed his mind and said that he was challenging that a section of the *Employment Insurance Act* infringed the Charter.

[8] As a result, the hearing stopped at that time. I explained to the Appellant that the Tribunal has a separate process for Charter cases.

[9] A different Member of the Tribunal then sent the Appellant information about the Charter process.[4] On February 23, 2023, the Appellant returned the package containing his arguments to the Tribunal. After considering his arguments, that Member issued an interlocutory decision on March 4, 2023. The Member found that the appeal would proceed by a regular merit appeal, and not the Tribunal's Charter appeal process. The Member found that the Appellant was not challenging the constitutional validity, applicability or operability of any provision of the Employment Insurance Act, the

[4] This Charter package about making a constitutional challenge to the *Employment Insurance Act* was sent to the Appellant on January 24, 2023.

Employment Insurance Regulations or Part 5 of the Department of Employment and Social Development Act.[5]

[10] This means that the file was then returned to me to finish the hearing for the Appellant's appeal about his EI benefits. This also means, and I noted to the Appellant, that I would not be making any legal findings or determinations on the Charter issues raised in the Appellant's submissions.

[11] The hearing for this appeal was reconvened on May 2, 2023.

[12] It is noted that prior to the May 2, 2023 the Appellant had more opportunity to submit documents for his appeal which he did.

[13] During the May 2, 2023 hearing, the information the Appellant testified to in the first hearing, on January 17, 2023, was reviewed. The Appellant then had opportunities to make new submissions and also add any other additional information or arguments that he wished to.

[14] In making this decision, both days of testimony, and all of the Appellant's submissions, were considered.

Issues

[15] Is the Appellant disqualified from receiving benefits?

[16] To answer this, I must first decide whether the Appellant voluntarily left his job or whether he was dismissed. If I decide that the Appellant voluntarily left, then I will look at whether he had just cause for leaving.

[17] If I decide that the Appellant was dismissed, then I will look at whether the reason for the suspension, and then dismissal, is misconduct under the law.

---

[5] See *Department of Employment and Social Development Act*, S.C. 2005, c. 34.

Analysis: Voluntary leaving or misconduct

[11] The Appellant says that the Commission made an error[6] by failing to apply section 29(c) of the Act to his situation. Section 29(c) sets out some examples of just cause for voluntarily leaving employment.[7]

[12] There is one section of the *Employment Insurance Act* that sets out two reasons why someone can be disqualified from being paid EI benefits: (1) voluntarily leaving a job without just cause and (2) being dismissed because of misconduct.[8] Sometimes it is not clear whether a person quit or voluntarily left work. The law says that, in these situations, I am not bound by how the Commission decided it.[9] The disqualification can be based on either of the two reasons, as long as it is supported by the evidence.[10]

[13] In other words, while the Commission decided that the Claimant was suspended, then let go, due to misconduct, I am able to look at evidence and decide whether it may in fact be a case of voluntary leaving.

[14] While the issue (whether the Appellant is disqualified) is the same, the questions of who has to prove what are different, depending on whether it is a case of voluntarily leaving without just cause or misconduct. So, I will first decide which kind of case it is.

Did the Appellant voluntarily leave his job or was the Appellant dismissed?

[15] If the Appellant had a choice to stay or leave his job, then he voluntarily left.[11]

[16] The Commission says that the Appellant was suspended and then let go.

[17] The Appellant told the Commission that he was dismissed for not following the employer's mandatory vaccination policy.[12]

---

[6] This was argued at the hearing on May 2, 2023 as well as in GD15-3.
[7] Section 29(c) of the *Employment Insurance Act*.
[8] Section 30 of the *Employment Insurance Act*.
[9] *Canada (Attorney General)* v *Desson*, 2004 FCA 303.
[10] *Canada (Attorney General)* v *Desson*, 2004 FCA 303.
[11] *Canada (Attorney General)* v *Peace*, 2004 FCA 56.
[12] See GD3-30.

[18] At the hearing, I asked the Appellant if he had the choice to stay or leave his job. He says that he felt that it could be looked at both ways. He says that the employer made the ultimate decision. He agreed that it was **not** his choice to be put on an unpaid leave of absence.

[19] I find that the Appellant did not have the choice to stay or leave in his employment. The Commission found that it was not voluntary. The Appellant agreed that it was not his choice to be put on an unpaid leave of absence. This means that the Appellant did not voluntarily leave his employment. This means that section 29 of the Act doesn't apply in this case.

Analysis: Misconduct

[18] 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.[13]

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

Why was the Appellant suspended from, and then lose, his job?

[20] I find that the Appellant was suspended from, then lost, his job because he went against his employer's vaccination policy.

[21] The Appellant says that he was put on a leave of absence because of this. The Appellant said that because of his religion he did not want to get vaccinated. The Appellant says that he followed his employer's policy and tried to get a religious exemption, but the employer denied his exemption. The Appellant feels that his employer discriminated against him by refusing to give him a religious exemption. The Appellant doesn't feel it is misconduct for not following the policy. The Appellant says that he didn't disclose his vaccination status. The Appellant says that this infringes on his bodily autonomy and

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

freedoms guaranteed by the Charter. The Appellant feels he should be entitled to EI benefits.

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

[22] The reason for the Appellant's suspension, and then dismissal, is misconduct under the law.

[23] The Appellant's Record of Employment (ROE)[14] also 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.[15] Section 31 refers to a "suspension" from employment due to misconduct.[16] 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.

[24] 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, and then 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.

[25] Case law says that, to be misconduct, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.[17] Misconduct also includes conduct that is so reckless that it is almost wilful.[18] 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.[19]

---

[14] See GD3-18.
[15] See, for example, *Canada (Attorney General)* v. *Morris*, 1999 CanLII 7853 (FCA).
[16] See section 31 of the Act.
[17] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[18] See *McKay-Eden v Her Majesty the Queen*, A-402-96.
[19] See *Attorney General of Canada v Secours*, A-352-94.

[26] 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 suspended, and then let go, because of that.[20]

[27] The law doesn't say I have to consider how the employer behaved.[21] Instead, I have to focus on what the Appellant did or failed to do and whether that amounts to misconduct under the Act.[22]

[28] The Commission has to prove that the Appellant was suspended from, and then 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 was suspended from, and then lost, his job because of misconduct.[23]

[29] 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.[24] I can consider only one thing: whether what the Appellant did or failed to do is misconduct under the Act.

[30] 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.[25] 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.

---

[20] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.
[21] See section 30 of the Act.
[22] See *Paradis v Canada (Attorney General)*, 2016 FC 1282; *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[23] See *Minister of Employment and Immigration v Bartone*, A-369-88.
[24] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[25] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.

[31] 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.[26]

[32] 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.[27]

[33] In a more recent case called *Paradis*, the Appellant was let go after failing a drug test.[28] 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.[29]

[34] Similarly, in *Mishibinijima*, the Appellant lost his job because of his alcohol addiction.[30] 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.[31]

[35] 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.

---

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

[36] There is also a very recent Federal Court decision, *Cecchetto*,[32] 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

[37] 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.

[38] 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 and telling it whether he had been vaccinated
- the employer sent emails to the Appellant
- the Appellant knew or should have known what would happen if he didn't follow the policy

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

- the employer's vaccination policy was unfair/went against the law
- he has the right to bodily autonomy and to make decisions about medical procedures
- the employer should have allowed his religious exemption
- the employer should have accommodated him in some other way

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

- the Appellant hadn't thought that he could lose his job if he didn't disclose his vaccination status

[40] The employer's vaccination policy is dated October 28, 2021 and says that it applies to all employees.[33] This means that the policy applies to the Appellant.

[41] The policy requires that all employees provide proof of vaccination by January 1, 2022. The policy has a process for medical or religious exemption requests and requires that those requests be submitted by November 15, 2021.[34] The policy also requires that documentation from a medical doctor or religious leader is required for the exemption to be considered.[35]

[42] The policy says, "we will restrict access to the workplace and place employees who cannot demonstrate they are vaccinated or have an approved exemption, on an unpaid leave".[36]

[43] The Appellant agreed at the hearing that if an employee did not submit proof of vaccination that the policy/employer would consider the employee as unvaccinated.

[44] The Appellant says that he knew by November 8, 2021 what the policy required him to do. The Appellant says that, by the same date, he knew that he would be placed on an unpaid leave of absence if he didn't have an exemption, and didn't disclose his vaccination status or get vaccinated that he would be put an unpaid leave of absence.

Medical or religious exemption

[45] The Appellant was aware that his employer required that if he did not get vaccinated, he had to get an exemption to remain employed.[37] The Appellant submitted a request for a religious-based exemption to his employer.[38] The Appellant says that he submitted the request around November 9, 2021. On December 1, 2021, the employer

[33] See GD9-7 and GD9-9.
[34] See GD9-8.
[35] See GD9-8.
[36] See GD9-10.
[37] See GD9-8.
[38] See GD2-14.

refused the Appellant's accommodation/exemption request.[39] The denial says that there was no information from a religious leader which is a requirement of the policy. The employer then says that they consider the Appellant's request to be personal preference. The exemption denial letter reminds the Appellant that he has to provide proof of vaccination by January 1, 2022 or he will be placed on an unpaid leave of absence.

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

[47] 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/collective agreement

[48] The Appellant says that his employer violated the employment contract by implementing a vaccination policy unilaterally. As noted above, in *McNamara*, *Paradis* and *Mishibinijima,*[40] these Court cases make it clear that the focus must be on what an appellant has or has not done.

[49] Recently, the Federal Court decided *Cecchetto*.[41] 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".[42] In that case it was to decide why the appellant had been dismissed and if it was "misconduct" under the EI Act.

---

[39] See GD9-29.
[40] See paragraphs 26 to 30 of this decision above.
[41] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.
[42] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraphs 46 and 47.

[50] The Federal Court also made it clear that a claimant may not be satisfied with the Employment Insurance scheme, “there are ways in which his claims can properly be advanced under the legal system”.[43]

[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.[44] 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 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 with his employer around 2008. It is noted that this was before the pandemic. This means that the employer would not have pandemic policies in place.

[55] The Appellant agreed when he was hired to follow all employer policies, not just those he agreed with.

[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.[45]

---

[43] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraph 49.
[44] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[45] See *Canada (Attorney General) v Lemire,* 2010 FCA 314.

[57] *Cecchetto* also makes it clear than an employer may unilaterally introduce a vaccination policy without an employee's consent.[46]

[58] The Appellant also says that the collective agreement addresses termination policies. He says that because he was given severance pay that defines how he was released from employment. He says that it was without cause. Again, I am not bound by how the employer and employee characterize their separation.[47]

[59] The Appellant also submits that what occurred for him was similar to constructive dismissal. He says that under the Canada Labour Code that the employer unilaterally changing the terms of employment is the same as constructive dismissal.

[60] He also says that his employer failed to adequately accommodate him. He feels that his employer should have accommodated him to the point of undue hardship.

[61] In addition to the constructive dismissal and accommodation arguments, the Appellant feels that his employer went against the Manitoba *Public Health Act (PHA)*.[48] Section 97 says that despite other provisions in the PHA, there is nothing requiring someone to receive treatment or be immunized. The Appellant says due to the PHA, he should not have been required to be immunized.

[62] The Appellant also says that his employer went against legislation by attempting him to give out his personal medical information. The Appellant was referring to whether or not he was vaccinated or not.

[63] 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.

[64] The Appellant may have options to pursue his claims about constructive dismissal. There are also other avenues open to the Appellant if he doesn't feel that the

---

[46] See *Cecchetto v Canada (Attorney General)*, 2023 FC 102.
[47] See, for example, *Canada (Attorney General)* v. *Morris*, 1999 CanLII 7853 (FCA).
[48] See GD10-214.
[49] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.

employer was acting within other laws like the PHA. I am not going to decide whether the employer ran afoul of another piece of legislation. These matters must be addressed by the correct court or tribunal. This was made clear by the Federal Court in *Cecchetto*.[50]

[65] Again, it is not my role to interpret the collective agreement or weigh-in on whether or not severance should have been payable and whether it means that he was dismissed without cause. I must look at the Employment Insurance Act, and related case law, and decide whether or not what happened was misconduct under the EI Act.

Charter and Human Rights

[66] 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) and Human Rights legislation. The Appellant feels that by being put on an unpaid leave of absence that it was equivalent to being constructively dismissed by his employer.

[67] 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.

[68] 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. As indicated under the preliminary matters, the Appellant made a Charter challenge about the Employment Insurance Act which was denied by an interlocutory order.

[69] The Appellant stated at the hearing that he also feels that his employer's policy infringed the Charter or human rights.

---

[50] See *Cecchetto v. Attorney General of Canada,* 2023 FC 102.

[70] 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 legislation. It was also explained to the Appellant that he would need to go to a different court or tribunal to address those types of issues.

[71] The Appellant also raised that he feels that the employer asking for his medical information is against the Alberta Health Information Act and Alberta Human Rights Act.

[72] Again, I have to focus on the Act only. I cannot make any decisions about whether the Appellant has other options under other laws.[51] I can only consider whether what the Appellant did, or failed to do, is misconduct under the Act.

Vaccine efficacy/reasonableness of policy/or employer offering accommodations

[73] It is not for me to decide the issues of vaccine efficacy or the reasonableness of the employer's policy, or whether or not the employer should have offered accommodations to the Appellant.

[74] The Appellant may have options to pursue these different claims. These matters must be addressed by the correct court or tribunal. This was made clear by the Federal Court in *Cecchetto*.[52]

Dismissal

[75] The Appellant says that he did not know that he could be dismissed for not disclosing his vaccination status. The Appellant agrees he knew, well before it happened, that he could be placed on an unpaid leave of absence.

[76] The employer wrote to the Appellant on April 22, 2022 about the unpaid leave of absence.[53] The letter says that employment will terminate as of May 2, 2022 if the Appellant continues to choose to remain unvaccinated beyond April 30, 2022. The letter

[51] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[52] See *Cecchetto v. Attorney General of Canada,* 2023 FC 102.
[53] See GD9-20.

also says that if the Appellant chooses to become vaccinated and receive one dose prior to April 30, 2022, that he could return to work.

[77] The Appellant says that he accepted the severance pay, and the termination of employment, around April 29, 2022. The Appellant agrees that he made the decision to continue to not comply with the employer's vaccination policy.

[78] I find that the Appellant knew that he was going to be placed on an unpaid leave of absence. I also find that the Appellant was then given notice by the employer that if he continued to be unvaccinated (or not disclose his status) that his job would end. The Appellant agreed that he made the continued decision not to comply with his employer's policy. This means that he made a **conscious, deliberate and intentional choice**. This means his job came to an end.

Appellant's Other Arguments

[79] The Appellant submitted many different cases where he challenged how misconduct was being construed.[54] He argues that misconduct must have more than one action and relies on a labour arbitration case.[55] He also relies on R. v. Arthurs,[56] which again is a labour arbitration appeal. The Appellant says that this shows that employer's are required to accommodate religious beliefs. Again, respectfully, that is not the subject of the appeal. The other cases that the Appellant referred to are also similar. He argued that the cases show that he has the autonomy to decide if he gets vaccinated. He feels that there was a directive from the Federal Government to the Commission so they were not impartial in deciding his claim. He also feels that a Federal Minister making a directive is against the Charter. Again, all of these things are not for me to decide. As mentioned previously, the Appellant can decide if he wants to bring actions in a court or tribunal that has authority to deal with these issues.

---

[54] See for example GD8-19, GD10-3, GD13-4 to GD13-6, and GD15.
[55] Metropolitan Hotel and H.E.R.E., Loc. 75 (Bellan) (Re), 2002 CanLII 78919 (ON LA).
[56] *Regina* v. *Arthurs*, Ex parte *Port Arthur Shipbuilding Co.* [1967] 2 O.R. 49-73 (Ont. C.A.).

Elements of misconduct?

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

[81] 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 get vaccinated or not to disclose his vaccination status to his employer. This means that the Appellant's choice to not get vaccinated (or disclose his status) was conscious, deliberate and intentional.

[82] The Appellant did not have an accommodation exemption. Without an exemption the Appellant's employer made it clear that an unvaccinated employee would be placed on an unpaid leave of absence.[57]

[83] The employer's policy requires all employees to disclose their vaccination status and to either have an exemption or get vaccinated. The Appellant did not disclose his vaccination status, did not 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. This is misconduct.

[84] The Appellant agreed that he was aware that by not disclosing his vaccination status, or by not getting vaccinated, or by not having an exemption that he would be placed on an unpaid leave of absence. This means that the Appellant knew there was real possibility that he could be placed on an unpaid leave of absence (a suspension).

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

[86] 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

---

[57] See GD9-8.

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 suspended for this reason.

Employment insurance benefits

[87] 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.[58]

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

[88] Based on my findings above, I find that the Appellant was suspended from, and eventually lost, his job because of misconduct.

[89] This is because the Appellant's actions led to his suspension. He acted deliberately. He knew that refusing to say whether he had been vaccinated was likely to cause him to be suspended from his job.

Conclusion

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

[91] This means that the appeal is dismissed.

Elizabeth Usprich

Member, General Division – Employment Insurance Section

---

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