



Citation: *CP v Canada Employment Insurance Commission*, 2023 SST 1259

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: C. P.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (472499) dated May 19, 2022 (issued by Service Canada)

Tribunal member: Amanda Pezzutto
Type of hearing: In person
Hearing date: May 25, 2023
Hearing participant: Appellant
Decision date: June 12, 2023
File number: GE-22-2057

Decision

[1] C. P. is the Appellant. The Canada Employment Insurance Commission (Commission) says she can't get Employment Insurance (EI) benefits. The Appellant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Appellant's appeal. I find that she stopped working because her employer suspended her. And I find that the reason for her suspension is misconduct under the meaning of the law. This means that she can't get EI benefits during her suspension.

Overview

[3] The Appellant worked for an airline. Her employer introduced a COVID-19 vaccination policy. Under the policy, the employer expected all employees to either show proof of vaccination against COVID-19 or have an approved exemption from the policy. The Appellant asked for an exemption from the policy, but the employer refused her request. The Appellant didn't show her employer proof of vaccination by the deadline, and so her employer put her on an unpaid leave of absence.

[4] The Commission says this means that her employer suspended her. And the Commission says the reason for her suspension is misconduct. The Commission says this is because the Appellant knew and understood her employer's COVID-19 vaccination policy. She knew that her employer would suspend her if she didn't follow the policy. The Commission says she acted deliberately when she decided not to follow the employer's policy.

[5] The Appellant disagrees. She says that she didn't do anything wrong. She says she gave her employer all the information they asked for when she asked for an exemption from the policy. She says the employer violated the terms of her collective agreement. And she says the COVID-19 vaccine isn't safe.

Matter I have to consider first

I will accept the documents submitted during the hearing

[6] At the hearing, the Appellant submitted news articles about the COVID-19 vaccine, the Canadian government's vaccine requirements, and a press release about the lifting of a vaccine requirement for travellers.

[7] I will accept these documents, although I address their relevance to the issues I have to decide later in this decision. I decided to accept them because I didn't think there would be any unfairness to the Commission if I accepted the documents.

Issue

[8] Did the Appellant stop working because of misconduct?

Analysis

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

Why did the Appellant stop working?

[10] The Commission says I should treat the Appellant's loss of employment as a suspension. And the Commission says that her employer suspended her because she didn't follow the employer's COVID-19 vaccination policy.

[11] The Appellant agrees that she stopped working because of her employer's COVID-19 vaccination policy. But she says her employer forced her onto an unpaid leave of absence. She says a forced leave of absence isn't the same thing as a suspension.

[12] I agree with the Commission. I will treat the Appellant's loss of employment as a suspension. And I find that her employer suspended her because she didn't follow its COVID-19 vaccination policy.

[13] At the hearing, I asked the Appellant for more information about why she stopped working. She said she didn't choose to take a leave of absence and she didn't quit her job. She says that the employer didn't fire her. She says she returned to work on August 1, 2022. And she said she didn't stop working because of a shortage of work.

[14] I agree that the Appellant didn't choose to leave her job. I agree that she didn't stop working because the employer didn't have enough work for her. I agree that the employer didn't fire her. Instead, the Appellant stopped working because her employer chose to temporarily end her employment. I find that this is the same as a suspension.

[15] I understand that the Appellant refers to parts of the *Digest of Benefit Entitlement Principles* (Digest) that talk about forced lay-off and voluntary leaving. But I don't think these parts of the Digest are relevant to the Appellant's circumstances. This is because she didn't choose to stop working. And she didn't stop working because of a workplace shutdown or some other shortage of work.

[16] So, I find that the Appellant stopped working because of a suspension.

[17] Both the Appellant and the Commission agree that the Appellant stopped working because of the employer's COVID-19 vaccination policy. They both agree that the Appellant didn't show proof of vaccination by the deadline, and that this caused her suspension. There isn't anything in the appeal file that suggests the Appellant stopped working for any other reason.

[18] So, I will treat the Appellant's loss of employment as a suspension. And now I have to decide if the reason for her suspension is misconduct under the meaning of the law.

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

[19] I find that the Appellant stopped working because of misconduct.

[20] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.¹ Misconduct also includes conduct that is so reckless that it is almost wilful.² 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.³

[21] 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 let go because of that.⁴

[22] The Commission has to prove that the Appellant lost 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 lost her job because of misconduct.⁵

[23] The Commission says the reason for the Appellant's suspension is misconduct. The Commission says that she knew about her employer's COVID-19 vaccination policy. She knew the employer would suspend her if she didn't follow the policy. She knew the employer had refused her request for an exemption. The Commission says she acted deliberately when she decided not to follow the employer's policy. So, the Commission says the reason for her suspension is misconduct.

[24] The Appellant disagrees. She says that she followed her employer's process for asking for an exemption from the policy. She says that she asked for a spiritual exemption from the policy because of her beliefs. She says the employer's policy violated the terms of her collective agreement. And she says that she thinks the COVID-19 vaccine isn't safe.

¹ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

² See *McKay-Eden v Her Majesty the Queen*, A-402-96.

³ See *Attorney General of Canada v Secours*, A-352-94.

⁴ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁵ See *Minister of Employment and Immigration v Bartone*, A-369-88.

[25] I agree with the Commission. I find that the reason for the Appellant's suspension is misconduct under the meaning of the law.

[26] The Appellant and the Commission agree about many of the basic facts in this appeal.

[27] The Appellant's employer introduced a COVID-19 vaccination policy. Under the policy, the employer expected all employees to either show proof of vaccination against COVID-19 or have an approved exemption from vaccination. The deadline for following the policy was October 31, 2021. The policy said the employer would put employees on unpaid leave if they didn't follow the policy.

[28] The Appellant asked her employer for an exemption from the policy on spiritual grounds. But the employer refused her request for an exemption. So, the Appellant didn't have an approved exemption from the vaccination requirement. And she didn't show her employer proof of vaccination against COVID-19 by the deadline.

[29] Since there isn't any dispute about the above facts, I accept them as true. But this means that the reason for the Appellant's suspension is misconduct under the meaning of the law. This is because:

- The Appellant read and understood the employer's COVID-19 vaccination policy.
- She knew the employer expected her to show proof of vaccination or have an approved exemption by the deadline.
- She knew the policy said the employer would suspend her if she didn't follow the policy.
- She knew the employer had refused her exemption request. And she didn't show her employer proof of vaccination by the deadline. Her actions were deliberate.
- Her actions – failing to follow the employer's COVID-19 vaccination policy – led directly to her suspension.

[30] I understand that the Appellant has made arguments about her collective agreement. She says the employer's policy and decision to put her on an unpaid leave of absence violate the terms of her collective agreement. She has also made arguments about the employer's exemption process. She says she followed all the employer's instructions to ask for an exemption. And the Appellant has also made arguments about the safety of the COVID-19 vaccine itself. She also disagrees with how her employer and the government introduced vaccination requirements.

[31] But all of these arguments are outside of my decision-making power. I can't make decisions about whether the employer violated her collective agreement. I can't make decisions about whether the employer should have granted her request for an exemption. I am not making any decisions about whether the COVID-19 vaccine is safe or effective. And I can't make decisions about how her employer or the government introduced and then lifted vaccination requirements.

[32] I only have the power to make decisions about the Appellant's entitlement to EI benefits. This means I can only consider her own actions and whether they are misconduct under the meaning of the *Employment Insurance Act*.⁶ The Appellant can bring arguments about her collective agreement, the exemption process, or the safety of the COVID-19 vaccine to other tribunals or decision-making bodies.

[33] I also understand that the Appellant disagrees about whether certain Federal Court of Appeal decisions are relevant to her appeal.⁷ She says that her circumstances are different from these cases.

[34] Even if these decisions don't describe the exact same circumstances as the Appellant's, they are useful to me. This is because these decisions provide a broad definition of the meaning of misconduct under the meaning of the *Employment*

⁶ See *Paradis v Canada (Attorney General)*, 2016 FC 1282, especially paragraphs 31 and 34. Also see *Cecchetto v Canada (Attorney General)*, 2023 FC 102.

⁷ In her notice of appeal, the Appellant disagrees that *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36 or *Canada (Attorney General) v Lemire*, 2010 FCA 314 are relevant to the question I must decide in this appeal.

Insurance Act. These decisions form part of the law and I have to follow them when I make any decisions about misconduct.

[35] And when I follow the guidelines set out by these decisions, I have to find that the reason for the Appellant's suspension is misconduct under the meaning of the *Employment Insurance Act*.

Conclusion

[36] I am dismissing the Appellant's appeal. I find that she stopped working because her employer suspended her. And I find that the reason for her suspension is misconduct under the meaning of the law. This means she can't get EI benefits during her suspension.

Amanda Pezzutto

Member, General Division – Employment Insurance Section