



Citation: *MR v Canada Employment Insurance Commission*, 2023 SST 150

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

Decision

Appellant: M. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (539422) dated September 29, 2022 (issued by Service Canada)

Tribunal member: Stuart O'Connell

Type of hearing: Teleconference

Hearing date: March 31, 2023

Hearing participant: Appellant

Decision date: July 12, 2023

File number: GE-22-3703

Decision

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

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant didn't have just cause because he had a reasonable alternative to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant was placed on unpaid leave/suspension effective November 2, 2021, for refusing to comply with his employer's COVID-19 vaccination policy. Among other things, the policy required the Appellant to attest as to his vaccination status. The Appellant viewed the policy as unreasonable and divisive. He refused to comply with it.

[4] His employer did not indicate when (or if) the Appellant might be able to return to work. The indefinite suspension¹ created significant financial hardship for the Appellant. He tendered a resignation letter on February 24, 2022, and applied for EI benefits. He says that he had no choice but to resign because he needed to access his pension to maintain basic living and provide necessities for himself and his family.

[5] The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[6] I must decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

¹ Although the employer called the separation a "leave of absence," for the purposes of the *Employment Insurance Act*, the employer effectively suspended the Appellant in response to his non-compliance with its vaccination policy.

[7] The Commission says that a reasonable alternative to leaving would have been for the Appellant to declare his vaccination status and return to work.

[8] The Appellant disagrees and characterizes the policy as unsound, arbitrary, and polarizing. He could not, therefore, in good conscience comply with it.

Issue

[9] Is the Appellant disqualified from receiving benefits because he voluntarily left his job without just cause?

[10] To answer this, I must first address the Appellant's voluntary leaving. I then have to decide whether the Appellant had just cause for leaving.

Analysis

[11] I find as follows:

- The Appellant did not disclose his vaccination status and his employer had no way of knowing that he was vaccinated or not.
- The Appellant was notified of the policy, was aware what the policy required of him and of the possible consequences of not following the policy. The Appellant agrees.
- The Appellant made a conscious, deliberate, and personal choice not to comply with his employer's vaccination policy. He objected to it for several reasons and therefore refused to follow it.
- The Appellant took active steps to challenge or seek changes to the policy. He contacted his union and was instructed that the union was trying to address the matter through a grievance procedure.
- The Appellant's resignation was motivated solely by his pressing need to obtain income.

- The Appellant remained suspended while he was not in compliance with the policy. However, the Appellant had an opportunity to return to his employment if he fulfilled the requirements of the policy. After he resigned, the employer reversed its policy and brought back all the employees.

The parties agree that the Appellant voluntarily left

[12] I accept that the Appellant voluntarily left his job. The Appellant agrees that he offered his resignation on February 24, 2022. I see no evidence to contradict this.

The parties don't agree that the Appellant had just cause

[13] The parties don't agree that the Appellant had just cause for voluntarily leaving his job when he did.

[14] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.² Having a good reason for leaving a job isn't enough to prove just cause.

[15] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.³

[16] It is up to the Appellant to prove that he had just cause.⁴ He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his only reasonable option was to quit. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit.

[17] The Appellant says that he left his job because he could not financially sustain himself and his family throughout the extended unpaid leave period. The Appellant says that he had no reasonable alternative to leaving at that time because of the financial

² Section 30 of the *Employment Insurance Act* (Act) explains this.

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

hardship that resulted from not having a paycheque for several months quit. He quit as he needed to access to his pension.

[18] The Appellant believed that his employer's policy was not reasonable. In his view, if the objective of the policy was to protect health and safety, it was not effective; nor was the policy supported by good evidence. A month after the Appellant quit his job, the employer reversed the policy. The Appellant points to this as an indication that even his employer ultimately recognized the shortcomings of its policy.

[19] Further, the Appellant says that requiring staff to disclose their vaccination status created a workplace controversy on the issue of vaccination. This negatively affected the work environment. The Appellant says that in good conscience, he could not support such a divisive process.

[20] The Commission says that the Appellant did not have just cause for leaving his employment because he failed to exhaust all reasonable alternatives prior to leaving. The Commission says that a reasonable alternative to leaving would have been for the Appellant to declare his vaccination status and return to work. According to the Commission, the Appellant's belief that his employer's policy was unreasonable or did not make sense is not relevant.

[21] I am guided by *RR v Canada Employment Insurance Commission*, 2023 SST 367, a decision of this Tribunal's Appeal Division:

[32] The Federal Court has determined that it lies beyond the scope of the General Division to assess the merits, legitimacy, or legality of an employer's vaccination policy. That being the case, then the same should also apply when the issue of the reasonableness of a vaccination policy arises.

[33] This would mean that the General Division should have no role in deciding whether a vaccination policy is reasonable, whether it is for the purposes of assessing misconduct, or for some other purposes, such as in examining whether an employer can unilaterally impose a rule or policy in the workplace.

[Emphasis mine.]

[34] After all, it would seem unreasonable if, on the one hand, the General Division has no mandate or jurisdiction to decide on the merits, legitimacy, or legality of a vaccination policy, but then, on the other hand, it was to have a broad mandate to decide on the reasonableness of that policy.

[22] While *RR v Canada Employment Insurance Commission* considered the issue of whether an employer could unilaterally impose a new rule or policy in a unionized setting, I find the Appeal Division's reasoning, as set out above, to be sound and applicable to the matter before me.

[23] I agree with the Commission that this Tribunal does not have jurisdiction to weigh in on vaccine efficacy or to determine if the employer acted fairly or reasonably by instituting mandatory vaccination and/or attestation policies. That an employer's policy generally lacks merit is not, without more, a sufficient basis on which a claimant can establish just cause.

[24] The financial hardship which led to the resignation of the Appellant was an unfortunate consequence of the Appellant's personal choice not to comply with his employer's policy. The Appellant had a reasonable alternative to resigning available to him in the circumstances: comply with the policy and resume his employment.

Conclusion

[25] The Appellant has not proven that leaving his job was the only reasonable thing left he could do in his circumstances. I find that the Appellant is disqualified from receiving benefits having voluntarily left his job without just cause.

[26] This means that the appeal is dismissed.

Stuart O'Connell
Member, General Division – Employment Insurance Section