



Citation: *HC v Canada Employment Insurance Commission*, 2023 SST 1380

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

Decision

Appellant: H. C.
Representatives: Regini David
Jasmine Singh

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (530783) dated April 3, 2023
(issued by Service Canada)

Tribunal member: Elyse Rosen

Type of hearing: Videoconference

Hearing date: April 4, 2023

Hearing participants: Appellant
Appellant's representatives

Decision date: April 24, 2023

File number: GE-22-3805

Decision

[1] The appeal is allowed, in part.

[2] The Appellant was suspended because of misconduct (as that term is explained, below). This means that the Appellant is disentitled from receiving Employment Insurance (EI) benefits from March 8, 2022, to May 12, 2022 (the suspension period).¹

[3] The Appellant then left her job voluntarily. She has shown just cause (in other words, a reason the law accepts) for leaving her job when she did. This means she isn't disqualified from receiving Employment Insurance (EI) benefits after May 12, 2022.

Overview

[4] The Appellant was employed by the government of Canada (government).

[5] The government introduced a policy requiring all employees to be vaccinated and to prove their vaccination status by a certain date.

[6] The Appellant is Indigenous. She asked for an exemption from the requirement to be vaccinated on religious grounds. She believes that vaccination is forbidden by the Creator.

[7] The government didn't grant the exemption she asked for. It gave her until March 8, 2022, to meet the requirements of the policy. She was told if she didn't get vaccinated and prove her vaccination status, she would be put on unpaid leave (in other words, she would be suspended).

[8] The Appellant didn't get vaccinated. So, she was suspended effective March 8, 2022. She applied for EI benefits.

¹ Section 31 of the *Employment Insurance Act* (Act) says that claimants who are suspended because of misconduct are disentitled from receiving benefits during their suspension.

[9] After several weeks of being without any income and looking, unsuccessfully, for another job, she took her retirement so that she could access her pension. She says she needed to do this to be able to continue to support herself and her children, grandchildren, and great-grandchild, all of whom live with her.

[10] The Commission says it can't pay her EI benefits. It decided she was suspended because of her misconduct and then left her job voluntarily without just cause.

[11] The Appellant argues that not following the policy because of her religious beliefs isn't misconduct. She claims she was a model employee. She says her request for a religious exemption was sincere. She believes her employer should have accepted it. Or, it should have accommodated her by allowing her to continue working from home.

[12] She says she only left her job because she had no other choice. It was the only way for her to be able to continue to feed and house herself and her family.

[13] I have to decide whether the Commission has proven that the Appellant was suspended because of misconduct. I also have to decide if the Appellant has proven that she had no reasonable alternative to leaving her job when she did.

Matter I have to consider first

There was no reconsideration decision in the record

[14] The Tribunal's jurisdiction to decide an appeal comes from the Commission's reconsideration decision.² If there's no reconsideration decision, there can be no appeal to the Tribunal.

[15] The Appellant indicated in her Notice of Appeal that she was verbally advised on October 19, 2022, that the Commission was maintaining its original decisions following her request for reconsideration. However, there was no decision letter in the record. And, there was no call log confirming that a decision had been made on the Appellant's reconsideration request.

² See section 113 of the Act.

[16] The Tribunal asked the Commission to provide a copy of the reconsideration decision, or to explain why a decision letter hadn't been issued.

[17] The Commission responded that it hadn't issued a decision letter. It said this was an error, which it would correct by asking the original reconsideration agent to issue one. Because the Commission didn't confirm that a decision had been made, it remained unclear whether the Tribunal had jurisdiction to decide the appeal.

[18] At the time of the hearing, the Tribunal had not yet received the decision letter. So, at the opening of the hearing I told the Appellant that I might not have jurisdiction to decide her appeal. I offered to go forward with the hearing, nonetheless. I told the Appellant that I would need to have the Commission's decision letter and hear her testimony about what she had been told by the Commission to be able to decide whether I had jurisdiction. The Appellant agreed to proceed with the hearing.

[19] At the hearing, the Appellant testified that the Commission's agent had explained its decision on her reconsideration request in a conversation held on October 19, 2022. She said the agent made it clear that the Commission was maintaining its original decisions.

[20] After the hearing, the Tribunal received a decision letter dated April 3, 2023, confirming that the Commission's original decisions on misconduct and voluntary leaving were maintained.

[21] In light of this evidence, it's clear that a decision was made on the Appellant's reconsideration request. So, I find that I have jurisdiction to decide the Appellant's appeal.

Issues

[22] Was the Appellant suspended for misconduct?

[23] Did the Appellant voluntarily leave her job without just cause?

Analysis

[24] The law says that you can't get EI benefits if you're suspended from your job because of misconduct.³

[25] 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. Then, I have to determine whether EI law considers that reason to be misconduct.

[26] The law also says that you're disqualified from receiving benefits if you leave your job voluntarily and you don't have just cause.⁴

[27] To answer the question of whether the Appellant voluntarily left her job without just cause, I have to decide two things. First, I have to determine whether the Appellant voluntarily left her job. Then, I have to determine if she had just cause to leave.

Why was the Appellant suspended?

[28] The parties agree that the Appellant was suspended because she didn't comply with the government's vaccination policy. There is nothing before me that would point to another reason for her suspension. So, I accept this as fact.

[29] In her written submissions, the Appellant appears to suggest that her suspension was really a voluntary leave of absence. She relies on a decision of the Tribunal to justify her argument.⁵ She didn't expand on this argument during the hearing.

[30] I am not bound by (in other words, I don't have to follow) the decision she cites, and don't consider it to apply in this case. From the evidence, it is clear to me that the Appellant had no choice but to accept a suspension in this case. And, unlike the

³ See section 31 of the Act.

⁴ See section 30 of the Act.

⁵ See GD9-8, where she cites *LA v Canada Employment Insurance Commission*, 2022 SST 219.

claimant in the case she cites, she had no assurance of being called back and has not been called back. So, I find she didn't take leave voluntarily.⁶

Is the Appellant's decision not to comply with the policy misconduct?

[31] I find that the Appellant's decision not to comply with the government's policy is misconduct, as that term is used in EI law.

– What is misconduct under the *Employment Insurance Act*?

[32] The *Employment Insurance Act* (Act) doesn't say what **misconduct** means. But case law (decisions from courts and tribunals) explains how to determine whether someone was fired or suspended because of misconduct. It sets out the legal test (in other words the facts to consider and the questions to ask) for deciding whether their conduct is misconduct under the Act.

[33] Case law says that to be misconduct, the conduct has to be wilful (in other words, conscious, deliberate, or intentional).⁷ Misconduct also includes conduct that is so reckless that it is almost wilful.⁸ The employee doesn't have to have wrongful intent (in other words, they don't have to mean to be doing something wrong) for their behaviour to be misconduct under EI law.⁹

[34] There is misconduct if the employee knew or should have known that their conduct could get in the way of carrying out their duties toward their employer and that there was a real possibility of being let go or suspended because of that.¹⁰

[35] Case law says that deliberately not respecting an employer's policy is misconduct under the law if the employee knew or should have known they could be terminated or suspended as a result.¹¹

⁶ See *Canada (Attorney General) v Peace*, 2004 FCA 56. This is a decision that I am bound by, because it comes from the Federal Court of Appeal.

⁷ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

⁸ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

⁹ See *Attorney General of Canada v Secours*, A-352-94.

¹⁰ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹¹ See *Canada (Attorney General) v Bellavance*, 2005 FCA 87, and *Canada (Attorney General) v Gagnon*, 2002 FCA 460.

[36] When the Commission takes the position that a claimant was suspended due to misconduct, it has to prove that on a balance of probabilities. This means it has to show that it is more likely than not that the person was suspended because of misconduct.¹²

– **Was the Appellant’s decision not to follow the policy misconduct?**

[37] I find that the Appellant’s decision not to follow the policy is misconduct. She wilfully decided not to do something her employer required of her. And, she knew it would result in her suspension.

[38] The Commission says that there was misconduct in this case for the following reasons:

- The government set out a clear expectation of its employees in its vaccination policy.
- The Appellant was aware of the policy and understood what was required of her.
- She asked for an exemption on religious grounds, but her request was refused.
- She was given more time to comply with the policy and was warned that if she didn’t comply by the deadline she’d be suspended.
- She deliberately chose not to comply with the policy, knowing what the consequence of that would be.

[39] The Appellant readily admits that she was aware of and understood the policy, had been advised she would be suspended if she didn’t comply with it, and made a deliberate decision not to comply despite the consequences.

[40] However, she disagrees that her conduct was misconduct.

¹² See *Minister of Employment and Immigration v Bartone*, A-369-88.

[41] This is her position:

- Because she had a number of medical conditions, she had received an accommodation in 2012 that allowed her to work on an entirely remote basis. She had been working solely from home for almost 10 years when the policy was put in place. Because she was never present at the workplace, and hadn't been for nearly a decade, not being vaccinated didn't present a threat to her colleagues or clients. She believes the government should have allowed her to continue working from home, unvaccinated, because doing so wouldn't impact her ability to continue fulfilling her duties.
- As an Indigenous woman, she believes that she is forbidden by the Creator from putting anything that is not a sacred medicine in her body. Getting vaccinated would violate that belief. She asked for an exemption from the application of the policy on religious grounds, but it was refused.
- Given her medical condition and religious beliefs, she had good reasons to refuse to be vaccinated. In light of the government's refusal to exempt her from the application of the policy for those reasons, her decision not to be vaccinated can't be considered to be wilful.
- The government was wrong to refuse her exemption request and wrong to suspend her. She has filed two grievances through her union contesting the decision to refuse her exemption request and the subsequent decision to suspend her.
- The policy is unreasonable, and the government has itself failed to respect many of its terms.
- Requiring the Appellant to be vaccinated created a danger to her health, as she suffers from a number of medical conditions.
- By suspending her for failing to comply with the policy, the government failed to consider her personal circumstances. These include her medical conditions,

religious beliefs, work from home status, and the fact that she suffers from intergenerational trauma and is in a position of vulnerability.

- The government's decision to suspend her made it impossible for her to support her family.
- The Commission failed to consider all the facts when it concluded the Appellant had been suspended because of misconduct.

[42] I don't have the authority to decide many of the issues that the Appellant has raised.

[43] The Tribunal's authority to decide whether a claimant's conduct is misconduct is limited to what the Act, and the case law explaining it, says.

[44] It's been well established by the courts that when the Tribunal considers whether a claimant's dismissal or suspension results from their misconduct, it can only look at one thing: whether the conduct that led to the dismissal or suspension was willful, and whether they knew or should have known they could be dismissed or suspended because of that conduct.

[45] The employer's conduct isn't something the Tribunal can consider under EI law when it has to determine if a claimant was dismissed or suspended because of their misconduct.¹³

[46] So, the Tribunal can't decide whether a claimant's employer should have acted differently, made a mistake when it suspended or dismissed them, or should have made accommodations (in other words, reasonable arrangements) for them.¹⁴ It's for other forums (in other words other courts or deciding bodies) to decide whether the employer's conduct was wrongful, or if the claimant's rights under other laws, such as laws pertaining to human rights or employer-employee relations, were breached.

¹³ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 107.

¹⁴ See *Canada (Attorney General) v McNamara*, 2007 FCA 107.

[47] The Federal Court recently confirmed the limits of the Tribunal's authority in misconduct cases in a case where the claimant, Mr. Cecchetto, contested the legitimacy of his employer's vaccination policy.¹⁵

[48] In its judgement, the Court explained that the Tribunal doesn't have the authority to decide many of the legal and moral issues that Mr. Cecchetto had raised regarding the fairness and validity of his employer's policy and of the decision it made to dismiss him. The Court confirmed that the Tribunal was limited to deciding why Mr. Cecchetto was dismissed from his employment, and whether that reason was misconduct, as that term is used in EI law.¹⁶

[49] I must respect what case law from the Federal Court and Federal Court of Appeal says about the extent of my authority.¹⁷ So, I can't decide if the government was wrong to refuse the Appellant's request for an exemption, to not allow her to continue working from home unvaccinated, to not consider the impact that getting vaccinated might have on her health, or to suspend her for not complying with the policy.

[50] As I've noted, there are other forums that may be able to decide those things, and to apply the appropriate solutions.¹⁸ Unfortunately, as frustrating as this may be to the Appellant, I can't. I can only consider whether the government imposed a clear requirement that it communicated to the Appellant, whether she wilfully didn't fulfil that requirement, and whether she understood, or should have understood, it would lead to her suspension.

[51] I find that the Appellant's decision not to comply with the expectations set out in the policy was wilful and that she knew she would be suspended as a result.

¹⁵ See *Cecchetto v Canada (Attorney General)*, 2023 FC 102. The Appellant can find that decision here: <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/522847/index.do>. In this case, Mr. Cecchetto made many of the same arguments the Appellant has made here.

¹⁶ See *Cecchetto v Canada (Attorney General)*, 2023 FC 102, at paragraph 47.

¹⁷ This is called the *stare decisis* rule. Some of these cases include *Canada (Attorney General) v Marion*, 2002 FCA 185, *Canada (Attorney General) v McNamara*, 2007 FCA 107, *Fleming v Canada (Attorney General)*, 2006 FCA 16, *Dubeau v Canada (Attorney General)*, 2019 FC 725; *Houle v Canada (Attorney General)*, 2020 FC 1157.

¹⁸ In this case, the Appellant has already sought relief from another forum by filing grievances under her collective agreement.

[52] She told the Commission that:

- she understood the policy
- she knew what her employer expected of her
- she knew that the consequence of not doing what it expected would be suspension
- she nonetheless made a deliberate decision not to get vaccinated

[53] She confirmed these facts at the hearing.

[54] The Appellant argues that her conduct wasn't wilful because she had no alternative but to refuse to comply with the policy for health reasons and because of her beliefs.

[55] Under EI law, having no reasonable choice isn't a factor to consider when a claimant has lost, or been suspended from, their employment because of their misconduct.¹⁹

[56] She also argues that she didn't think the government would actually suspend her. She relies on the following facts to support her belief that she wouldn't be suspended:

- she was a model employee
- she had been working from home for nearly a decade
- her union was in discussions with the government about her situation and was trying to get it to change its mind about her exemption request

[57] I consider this to be wishful thinking. The policy clearly states what the consequences of non-compliance are. Following the refusal of her exemption request, she was given further time to comply with the policy and was told she would be

¹⁹ However, it is a factor the Tribunal must take into consideration when deciding if a claimant has voluntarily left or taken leave from their employment without just cause (see section 29(c) of the Act). I will explain this in greater detail, below, when I look at the Appellant's decision to retire on May 12, 2022.

suspended if she hadn't done so by the deadline. She says she received a letter to this effect.

[58] There isn't any evidence that suggests that the government gave her any indication that it wouldn't enforce the policy, that it would revisit her exemption request, or that it would accommodate her rather than suspend her.

[59] In the circumstances, I consider it unreasonable for her to have believed that the government wouldn't do what it had repeatedly said it would do, both verbally and in writing. If, as she says, she didn't know she would be suspended, based on the evidence, I find that she certainly should have known.

[60] The Appellant argues that the Commission failed to take all of the facts into account when it decided she had been suspended because of misconduct. This is beside the point. This is a hearing *de novo*. My role is to take a fresh look at the case, including any new evidence the parties choose to present, and to make my own decision as to how the law applies to the facts that are proven. It isn't to decide if the Commission made an error when it made its decision.

[61] If the Appellant felt there was additional evidence required to decide the issue of her misconduct, it was for her to present it in appeal.

[62] In all events, most of the facts that she argues the Commission failed to consider have no bearing on whether her conduct is misconduct under EI law. As a result, I too won't be considering any facts that aren't relevant to deciding whether the Appellant wilfully neglected to respect the policy, and whether she knew or should have known that that could lead to her suspension.

[63] Given what the law tells me I can look at when deciding if there has been misconduct, and given the evidence, I find that the Appellant's conduct meets the definition of misconduct under EI law. Her suspension was the result of that misconduct. Because of this, she is disentitled from receiving benefits during the suspension period.

[64] Now I will decide if she is disqualified from receiving benefits as of May 12, 2022, for having voluntarily left her job without just cause.

Did the Appellant voluntarily leave her job?

[65] I accept as fact that the Appellant voluntarily left her job. The Appellant says she retired on May 12, 2022. The Commission agrees, and I see no evidence to contradict this.

Did the Appellant have just cause to leave?

[66] I find that in the circumstances she was in, the Appellant had just cause to leave her job when she did.

– What is just cause under the *Employment Insurance Act*?

[67] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.²⁰ Having a good reason for leaving a job isn't enough to prove just cause.

[68] The law explains what it means by **just cause**. It says that you have just cause to leave if you had no other reasonable alternative at the time.

[69] To decide whether a claimant had just cause when they decided to leave, all the surrounding circumstances must be considered.²¹

[70] Unlike in the case of misconduct, here the law invites me to look at the employer's conduct and at whether the Appellant had no other choice but to do what she did.²²

²⁰ See section 30 of the Act.

²¹ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3, and section 29(c) of the Act.

²² I recognize that this may appear inconsistent to the Appellant. However, I must apply the law as it is written. See *Canada (Attorney General) v Knee*, 2011 FCA 301. Under the doctrine of *stare decisis*, I must also follow the interpretation given to the law by the Federal Court and Federal Court of Appeal.

[71] It is up to a claimant to prove that they had just cause. They have to prove this on a balance of probabilities. This means they have to show that it is more likely than not that their only reasonable option was to leave.²³

– **Do the Appellant’s circumstances establish just cause?**

[72] I have considered all of the circumstances that existed when the Appellant decided to retire. I find that they establish just cause for her decision.

[73] The Appellant testified that her suspension put her in an impossible financial situation. The Old Age Security and Canada Pension Plan monies she was receiving following her suspension were her only source of income. These amounts were insufficient for her to be able to cover her and her family’s basic living expenses. She supports several family members, all of whom live with her. None of them are able to work and contribute to the household expenses.

[74] She tried to look for other work. After several weeks of trying unsuccessfully to find another job, she opted to take her retirement in order to be able to access her pension, pay her bills, and look after her family.

[75] The Appellant argues that several of the circumstances that the law specifically says I have to consider when looking at just cause contributed to her decision to take her retirement. They are:

- discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act* (CHRA)²⁴
- working conditions that constitute a danger to health or safety²⁵
- the obligation to care for a child or a member of the immediate family²⁶

²³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

²⁴ See section 29(c)(iii) of the Act.

²⁵ See section 29(c)(iv) of the Act.

²⁶ See section 29(c)(v) of the Act.

- significant changes in work duties²⁷

[76] Based on the evidence in the record, I can't find that any of these specific circumstances existed in this case.

i. ***Discrimination based on religion***

[77] The CHRA protects against discrimination on a number of grounds, including religion.

[78] The notion of religion is typically understood to involve:²⁸

- a specific system of spiritual faith and worship
- a belief in a divine, superhuman or controlling power
- a personal belief that fosters a connection with the divine or with the subject or object of spiritual faith

[79] The Appellant testified that she follows a belief system that connects her to a divine power that she refers to as the Creator, and that she is sincere in her beliefs. She believes she is forbidden by the Creator from putting anything that is not sacred into her body. She swore an affidavit to this effect when she requested an exemption under the policy.

[80] She says that because of her beliefs, she doesn't use conventional western medicines. She gave an example of a situation where a respirologist had found nodes on her lungs. She chose to treat them through a traditional healer, rather than by taking western medicines. This is because taking western medicines goes against her religious beliefs.

[81] She says she refused to be vaccinated because she sincerely believes that taking the vaccine is contrary to her belief system and to what the Creator expects of

²⁷ See section 29(c)(ix) of the Act.

²⁸ See *Syndicat Northcrest v. Amselem*, 2004 SCC 47.

her. By requiring her to be vaccinated, her employer was requiring her to forgo her beliefs in order to keep her job and continue being paid. She argues that this is discrimination. She says rather than suspend her for failing to get vaccinated, the government should have accommodated her and allowed her to work from home.

[82] The Commission argues that she has failed to demonstrate that her religion dictates that she can't be vaccinated. I disagree.

[83] The Appellant's testimony about her religious beliefs was clear and credible. It is consistent with what she put in the affidavit she swore at the time she requested an exemption under the policy. It's also consistent with the other materials in the record, including those in support of her reconsideration request and her Notice of Appeal.

[84] Based on the evidence, I am satisfied that the Appellant truly believes that getting vaccinated is in conflict with her belief system and with what she understands to be the directives of the Creator.

[85] However, this is insufficient for me to find that there has been discrimination under the CHRA. To make such a finding, I would have to be satisfied that the government's decision to require the Appellant to be vaccinated was not a *bone fide* occupational requirement (in other words, a necessary work-related condition) and that the Appellant had not been accommodated to the point of undue hardship (in other words, a level of accommodation it would be fair or reasonable to expect).²⁹

[86] The government was not a party to these proceedings, was not present at the hearing, and was not provided with an opportunity to give evidence. From the evidence I do have, I know that the government didn't accept the Appellant's request for an exemption from the application of the vaccination policy.

[87] The government's vaccination policy is not in and of itself discriminatory. This is because it was intended, and considered necessary, to protect public health and safety. Without having a full understanding as to why the government made the decisions it

²⁹ *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3.

made with respect to the application of the policy to the Appellant, I'm not satisfied that discrimination exists in this case.

[88] That said, I do consider that the Appellant's sincere religious belief that she couldn't be vaccinated is a circumstance that creates just cause in this case, as I will explain further, below.

ii. Working conditions that constitute a danger to health and safety

[89] The Appellant testified that she suffers from many different medical conditions. She has cardio-pulmonary obstructive disease, fibromyalgia, hearing issues, arthritis, and Sjogren's syndrome.

[90] However, she has provided no evidence that getting vaccinated would be a danger to her health, or otherwise contra-indicated because of her conditions.

[91] In the absence of any evidence, I can't find that the imposition of a requirement to be vaccinated constituted a danger to her health or safety.

iii. The obligation to care for a child or a member of the immediate family

[92] The Appellant testified that she cares for three of her adult children, two grandchildren, and a great grandchild, all of whom live with her. She says that they all suffer from various ailments, including physical and psychological disabilities and mobility issues. She shops and cooks for them and accompanies them to medical appointments.

[93] However, this section of the law relates to the physical care of a child or family member.

[94] The Appellant didn't take her retirement in order to be physically present at home to care for her family. She was already at home caring for them when she made her decision to retire. And, even before her suspension, she had been working from home.

[95] The Appellant explained that she needed to take her retirement in order to be able to access her pension so that she could afford to care for her family. This isn't a situation that this section of the law covers.

[96] However, I nonetheless find it to be a relevant circumstance to consider when I decide if the Appellant had just cause to retire when she did. I will deal with this further when I consider whether the Appellant had no reasonable alternative but to retire, below.

iv. Significant changes in work duties

[97] This section of the law relates to changes in an employee's tasks and responsibilities.

[98] I find that the introduction of a policy aimed at protecting the health and safety of employees is not a change of work duties as contemplated by this section of the law.

– Did the Appellant have a reasonable alternative to taking her retirement when she did?

[99] In light of the circumstances that she was in, I find that the Appellant had no reasonable alternative but to retire so that she could access her pension.

[100] The Appellant testified that as soon as she was suspended, she began looking for other work. She says she was looking for remote work. This is because her medical conditions required that she work from home, and because she was not prepared to be vaccinated in light of her religious beliefs. And, most employers required vaccination when working in person.

[101] I am satisfied, based on the evidence regarding her health, and the fact that the government had provided her with an accommodation to work from home because of her health, that only remote work would have been suitable in her circumstances.

[102] The Commission says the Appellant had reasonable alternatives to leaving her job when she did. Specifically, it says that the Appellant could have:

- complied with the policy and resumed her employment
- remained on leave pending the outcome of her grievances

[103] I don't see these as reasonable alternatives in the circumstances.

[104] The Appellant was put in the impossible situation of remaining on leave, and being unable to feed her family and keep a roof over their heads, or renouncing what I have decided, based on the evidence I have, were sincerely held religious beliefs by getting vaccinated.

[105] Clearly, taking her retirement was a last resort in the circumstances she was in.

[106] She followed the terms of the policy by asking for an exemption. She completed the required affidavit. She testified that she explained her beliefs to her superiors and pleaded with them to consider her reasons for refusing to be vaccinated.

[107] She took all the measures available to her to contest the government's refusal of her exemption request and its decision to suspend her. This includes seeking the assistance of her union and filing grievances under her collective agreement.

[108] The Appellant says she has diligently looked for work since her suspension but has been unable to find a job. I believe her, and I have no evidence to the contrary.

[109] In light of the evidence, I find that the Appellant has proven that she exhausted all reasonable alternatives in the circumstances. She had just cause to take her retirement when she did. It was the only way she could stay true to her sincerely held religious beliefs and continue to support her family.

Conclusion

[110] I find that the Appellant was suspended due to her misconduct. Because of this, she is disentitled from receiving benefits during the suspension period.

[111] I find that the Appellant had just cause to take her retirement on May 12, 2022. Because of this, she isn't disqualified from receiving benefits after May 12, 2022.

[112] This means that the appeal is allowed, in part.

Elyse Rosen

Member, General Division – Employment Insurance Section