Citation: *CL v Canada Employment Insurance Commission*, 2023 SST 1383

# Social Security Tribunal of Canada
## Appeal Division

# Decision

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| **Appellant:** | C. L. |
| **Respondent:** | Canada Employment Insurance Commission |
| **Representative:** | J. Lachance |

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| **Decision under appeal:** | General Division decision dated November 10, 2022 (GE-22-1910) |

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| **Tribunal member:** | Jude Samson |
| **Type of hearing:** | Videoconference |
| **Hearing date:** | April 26, 2023 |
| **Hearing participants:** | Appellant<br>Respondent's representative |
| **Decision date:** | October 16, 2023 |
| **File number:** | AD-22-922 |

## Decision

[1] C. L. is the Claimant in this case. For the reasons below, I'm dismissing her appeal. This means that she's disentitled from receiving Employment Insurance (EI) benefits from October 17, 2021, to January 30, 2022. She's also disqualified from receiving EI benefits from January 31, 2022.

## Overview

[2] The Claimant worked as a research associate at a hospital. As part of its response to the COVID-19 pandemic, the hospital made efforts to protect the safety of its patients, family, and staff. The hospital said that it was going "above and beyond" to protect the vulnerable patients it serves.[1] As a result, the hospital adopted a COVID-19 vaccination policy for all its employees, staff, volunteers, students, observers, and contractors. This included the Claimant.

[3] However, the Claimant refused to be vaccinated because of safety concerns: she has a history of allergic reactions to medications (and many other things). She also questioned the fairness, reasonableness, and need for a one-size-fits-all vaccination policy. She noted other effective (and possibly better) ways of protecting people in the hospital community.

[4] Regardless of the Claimant's arguments, the hospital said it was putting her on a leave of absence without pay. The Claimant says that Ontario law deemed her to be on an unpaid infectious disease emergency leave. After more than three months on leave without pay, the Claimant says she was left with no choice but to quit her job.

[5] While the Claimant was off work, she applied for Employment Insurance (EI) regular benefits. However, the Canada Employment Insurance Commission (Commission) refused to pay her benefits saying that she had been suspended for misconduct and then voluntarily quit her job without just cause.

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[1] The employer's COVID-19 vaccination policy starts on page GD3-31 of the appeal record. These words, taken from the Policy Statement, are on page GD3-32.

[6] The Claimant appealed the Commission's decision to the Tribunal's General Division, but it dismissed her appeal. She's now appealing the General Division decision to the Tribunal's Appeal Division.

[7] The Claimant argues that the General Division acted unfairly, made errors of law and jurisdiction, and based its decision on important mistakes about the facts of her case.

[8] I've considered all the Claimant's arguments in depth. I have sympathy for her situation. And while I agree that the General Division made some errors, I've reached the same conclusion. As a result, I'm dismissing the Claimant's appeal.

## Issues

[9] The issues in this appeal are:

a) Did the General Division make an error of law or base its decision on an important mistake about the facts of the case when it concluded that the Claimant was "suspended from [her] employment because of [her] misconduct"?[2]

b) Did the General Division make an error of law or base its decision on an important mistake about the facts of the case when it concluded that the Claimant voluntarily left her job without "just cause"?[3]

c) Did the General Division provide the Claimant with a fair process?

d) How should I fix the General Division's errors in this case?

e) Can the Claimant receive EI benefits?

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[2] These words are from section 31 of the *Employment Insurance Act* (EI Act).
[3] Section 30 of the EI Act disqualifies a person from receiving EI benefits if they voluntarily left a job without "just cause." Section 29(c) of the EI Act defines "just cause."

## Analysis

[10] I can intervene in this case if the General Division made at least one of the errors described above.[4]

[11] However, it's worth remembering that I have to give the General Division some leeway when reviewing its findings of fact. In other words, I can't intervene just because the General Division made a mistake about a minor detail in the case. Instead, the law only allows me to intervene if the General Division "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."[5]

[12] So, the following questions arise when reviewing the findings (facts) that the General Division relied on to reach its decision:[6]

- Does the evidence squarely contradict the General Division's findings?
- Is there no evidence that could rationally support the General Division's findings?
- Did the General Division overlook critical evidence that contradicts its findings?

[13] While the Claimant alleges that the General Division made numerous errors of fact, most of her allegations don't meet the test needed for me to intervene in her case.

[14] I'll now consider the Claimant's arguments in more detail.

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[4] The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).
[5] This is in section 58(1)(c) of the DESD Act.
[6] This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

## The General Division didn't make any errors when it concluded that the Claimant was suspended for misconduct

[15] The General Division concluded that the Claimant wasn't entitled to EI benefits from October 17, 2021, to January 30, 2022, because she was suspended for misconduct.[7] The General Division made the following key findings:[8]

- The hospital adopted a COVID-19 vaccination policy to help protect the health and safety of its workers and patients (among others);
- The Claimant was aware of the policy and the consequences of not complying with the policy;
- The Claimant was given time to get vaccinated or to ask for an exemption from the vaccine requirement for medical reasons;
- The Claimant did not provide a note from a medical professional with her request for a medical exemption, and the hospital refused her request;[9]
- The Claimant deliberately chose not to get vaccinated, and knew the consequences of her choice; and
- While the hospital says it put the Claimant on an unpaid leave of absence, the legal effect was the same as if she had been suspended for misconduct.

### – It doesn't matter how the Claimant's leave is characterized for other purposes

[16] I understand the Claimant's concern about the General Division's conclusion that she was suspended for misconduct. These words suggest that she's done something wrong or bad, but the hospital said she could choose whether to get vaccinated. Plus,

[7] See section 31 of the EI Act.
[8] See, for example, paragraphs 18, 32, and 35 to 42 of the General Division decision.
[9] The Claimant argued that the exemptions were too narrow and that it was impossible for her to get a note for various reasons, including because she had a new doctor who didn't know her entire medical history.

they're not the words her employer used. Rather, the hospital says that it put the Claimant on an unpaid leave of absence.[10]

[17] The Claimant now says that she wasn't put on an unpaid leave of absence either. Instead, she argues that Ontario law deemed her to be on "job-protected unpaid infectious disease emergency leave."[11] This argument wasn't presented to the General Division and is largely based on new evidence that the Appeal Division can't accept.[12]

[18] Regardless, the Tribunal has to apply the *Employment Insurance Act* (EI Act) and doesn't have to adopt the specific words used by the Claimant's employer, on her record of employment, or by provincial laws.[13]

[19] "Suspension" and "misconduct" aren't defined in the EI Act.[14] And while the Commission's guidance documents, like the *Digest of Benefit Entitlement Principles*, can help to guide the Commission's employees, it's not the Tribunal's job to police how the Digest is applied.

[20] Rather, the Tribunal has to interpret and apply the EI Act in a way that aligns with its purposes. In particular, the EI scheme pays benefits only to people who **involuntarily** find themselves without work. The EI Act does not pay benefits to people who have provoked or been responsible for their unemployment.[15]

[21] So, decisions interpreting the EI Act have said that an employee is suspended for misconduct if they deliberately violate one of their employer's policies knowing that their

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[10] See, for example, the employer's policy and emails on pages GD2-44 to 45, GD3-31 to GD3-62, and the Claimant's record of employment on pages GD2-22 to 23.
[11] See page AD1-11 and section 50.1 of Ontario's *Employment Standards Act*.
[12] The restrictions on the Appeal Division's ability to consider new evidence were recently discussed by the Federal Court of Appeal in *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 31-39.
[13] See, for example, *Canada (Attorney General) v Nguyen*, 2001 FCA 348 and *Canada (Attorney General) v Boulton*, 1996 CanLII 11574 (FCA).
[14] Section 31 of the EI Act disentitles people from receiving benefits if they've been suspended from employment because of their misconduct.
[15] See, for example: *Canada (Canada Employment and Immigration Commission) v Gagnon*, 1988 CanLII 48 (SCC), *Canada (Attorney General) v Langlois*, 2008 FCA 18, *Canada (Attorney General) v Wasylka*, 2004 FCA 219 at paragraph 3, *Smith v Canada (Attorney General)*, 1997 CanLII 5451 (FCA) at paragraphs16-19, and *Tanguay v Unemployment Insurance* Commission (1985), 10 CCEL 239.

actions could result in suspension, dismissal, or otherwise leave them without income.[16] Blameworthiness is not a part of this legal test.[17]

[22] As a result, the General Division didn't make an error when it found that suspended for misconduct was broad enough to include the Claimant's situation. It was consistent with the context and purpose of the EI Act to conclude that the Claimant was suspended since she chose not to get vaccinated knowing that her employer's policy required that it put her on unpaid leave. In other words, the Claimant's choice caused her to lose her income and prompted her need for EI benefits.

### – The Tribunal applies a narrow legal test in misconduct cases

[23] The Claimant is making the following main arguments:

- The hospital was not entitled to unilaterally change her conditions of employment by imposing its COVID-19 vaccination policy;
- Based on past allergic reactions, the Claimant had legitimate concerns about her safety if she took the COVID-19 vaccine; and
- The Claimant did not work in the main hospital building and had no contact with patients or front-line hospital workers. As a result, the hospital's "one-size-fits-all" policy was an overreach and there were other — even better — ways of protecting the hospital community in her situation.

[24] In her arguments, the Claimant also relied on "Directive #6," a direction to hospitals and other employers about COVID-19 vaccination.[18]

[25] I've considered all the Claimant's arguments, but I cannot accept them. They go beyond what the Tribunal needs to decide in her case.

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[16] See, for example, *Cecchetto v Canada (Attorney General)*, 2023 FC 102, *Milovac v Canada (Attorney General)*, 2023 FC 1120, and the Appeal Division's recent decision in *Canada Employment Insurance Commission v AL*, 2023 SST 1032.
[17] See *Karelia v Canada (Human Resources and Skills Development)*, 2012 FCA 140 at paragraph 18.
[18] Directive #6 was issued by Ontario's Chief Medical Officer of Health under section 77.7 of the *Health Protection and Promotion Act*, RSO 1990, c H7.

[26] The Tribunal applies a narrow legal test in misconduct cases generally, and vaccine mandate cases specifically.[19] This means that the General Division couldn't assess the validity of the Claimant's medical concerns. Nor could it assess the effectiveness of her employer's COVID-19 policy.

[27] Instead, the General Division appropriately focused on why the Claimant was on an unpaid leave and whether that reason amounted to misconduct under the EI Act.

[28] The General Division found that the Claimant's choice led to her being on an unpaid leave. Specifically, the Claimant neither got vaccinated against COVID-19, nor did she get an exemption from the vaccine requirement. In the circumstances, the Claimant understood that she would find herself without income.

[29] The General Division also found that a deliberate act that results in a person's suspension under an employer policy amounts to misconduct under the EI Act. The General Division's conclusion is well supported by court decisions.[20]

[30] In addition, Directive #6 contradicts the Claimant's argument about the hospital's inability to unilaterally change her terms of employment: Directive #6 required that the hospital implement a policy about COVID-19 vaccination.

[31] And while the Claimant offered to continue doing "regular antigen point of care testing for COVID-19," as described in Directive #6, the General Division was entitled to focus on the hospital's policy, as communicated to its employees. Besides, the Directive did not require that the testing option be made available to everyone. Instead, it was only for people who had been validly exempted from getting vaccinated.

[32] Finally, the Claimant has other avenues that she can pursue if she wants to challenge the legality of her employer's policy or the way that it was implemented.[21] It

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[19] The Federal Court first considered a case like this one in *Cecchetto v Canada (Attorney General)*, 2023 FC 102. That decision has since been followed in *Milovac v Canada (Attorney General)*, 2023 FC 1120 and *Kuk v Canada (Attorney General)*, 2023 FC 1134.
[20] See, for example, *Nelson v Canada (Attorney General)*, 2019 FCA 222, *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36, *Canada (Attorney General) v Bellavance*, 2005 FCA 87, and *Canada (Attorney General) v Gagnon*, 2002 FCA 460.
[21] See paragraphs 46-49 of the decision in *Cecchetto v Canada (Attorney General)*, 2023 FC 102.

was not an error for the General Division to avoid deciding issues that it didn't have the power to decide.

## The General Division made errors of fact and of law when it concluded that the Claimant voluntarily left her job without just cause

[33] The General Division concluded that the Claimant was disqualified from getting EI benefits starting January 31, 2022, because she voluntarily left her job without just cause.[22] The General Division made the following key findings:[23]

- The Claimant quit her job on January 31, 2022;
- The Claimant did not have a significant change in her work duties;
- The Claimant's employer did not act contrary to the law;
- The Claimant's employer did not put undue pressure on her to quit; and
- The Claimant had reasonable alternatives to quitting when she did. For example, she could have looked for other jobs, inside and outside of her regular field of work.

[34] I've considered all the Claimant's arguments and find that the General Division made three of the errors that the Claimant is alleging:

- it made an error of fact when it concluded that the Claimant agreed she voluntarily left her job;[24]
- it made another error of fact when it found that the Claimant hadn't considered searching for jobs outside her field;[25] and
- it made an error of law by overlooking section 29(c)(vii) of the EI Act.

[22] See sections 29(c) and 30 of the EI Act.
[23] See, for example, paragraphs 47 and 56 to 74 of the General Division decision.
[24] See paragraph 45 of the General Division decision, along with the heading that precedes it.
[25] See paragraph 74 of the General Division decision.

### – The General Division made errors of fact and of law

[35] The General Division made an error of fact when it referred, in paragraph 47 of its decision, to the Claimant's agreement that she quit her job voluntarily. Since the General Division considered this fact to be uncontested, it moved quickly to the next part of its decision, with little analysis of this important issue.

[36] While the Claimant might have initiated the separation from her job, she has always denied that it was voluntary.[26] On the contrary, the evidence showed that the Claimant wrote several letters to her employer and made efforts to keep working.[27]

[37] Rather, the Claimant argued that by putting her on an indefinite unpaid leave of absence, her employer put her in an impossible situation that resulted in financial and emotional strain: she had to resign as a matter of survival.

[38] The General Division should have considered these arguments in its decision.

[39] The General Division also made an error of fact when it concluded, in paragraph 74 of its decision, that the Claimant should have considered looking for work outside her field of specialization.

[40] The evidence contradicts this conclusion. Rather, the Claimant explained during the General Division hearing that she did consider applying for "simple" jobs in places that didn't have a vaccine mandate. However, she didn't apply for any of these jobs because they didn't seem like a good fit, either because of her age or physical abilities.[28]

[41] The General Division should have considered evidence that clearly contradicted its findings of fact about whether the Claimant voluntarily left her job and about the job search efforts she made while on leave.

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[26] See the Claimant's letter to her employer dated January 16, 2022, at page GD2-21.
[27] See, for example, pages GD2-14 to GD2-20.
[28] Listen to the recording of the General Division hearing starting at about 1 hr 29 min. Also, see pages GD8-2 to GD8-3.

[42] The General Division also made an error of law by overlooking the Claimant's arguments under section 29(c)(vii) of the EI Act.

[43] As part of its decision, the General Division considered whether the Claimant had just cause for leaving her job. Section 29(c) of the EI Act provides a list of factors that the Tribunal should consider as part of this assessment (if applicable).

[44] Here, the General Division considered the factors listed under sections 29(c)(ix), (xi), and (xiii) of the EI Act. However, the Claimant says that she never raised section 29(c)(ix) of the EI Act (significant changes in work duties). Instead, she argues that she raised section 29(c)(vii) (significant modification of terms and conditions respecting wages or salary), but the General Division never considered it.[29]

[45] I agree that the Claimant raised section 29(c)(vii) of the EI Act in front of the General Division and that it should have considered it.[30] The General Division considered other factors listed under section 29(c), but it overlooked the question of whether the Claimant had experienced a significant change to the terms and conditions of her work regarding wages or salary. This was an error of law.

## The General Division provided the Claimant with a fair process

[46] The Claimant argues that the General Division failed to provide her with a fair process. More specifically, she relies on these main arguments:

- the General Division member didn't review video clips of town hall meetings hosted by the hospital; and
- the General Division decision shows that the member was biased.

[47] I reject these arguments.

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[29] See, for example, pages GD14-16 and GD16-2, where this section was raised.
[30] For the need to make specific findings about the factors under section 29(c) of the EI Act, see *Bell v Canada (Attorney General)*, A-450-95 and *Mcfarlane v Canada*, 1997 CanLII 5163 (FCA). For the need to provide reasons that respond to the main arguments raised by the parties, see *Canada (Minister of Citizenship and Immigration)* v *Vavilov*, 2019 SCC 65 at paragraphs 127 to 128.

[48] First, the Claimant summarized the contents of the video clips.[31] Nobody, including the General Division member, seems to have disputed her summaries. There was no controversy about what was said at those meetings.

[49] However, the General Division doesn't need to mention every piece of evidence.[32] Indeed, the narrow test that the Tribunal was applying frankly means that the video clips were of little relevance to the issues the General Division needed to decide.

[50] And if the Claimant wanted the General Division to consider these video clips, she needed to ensure that they were properly added to the Tribunal's record.

[51] The Claimant now says that the video clips are available in a virtual drive on the Internet. This too is no substitute for adding documents to the Tribunal's record. For example, documents in virtual drives might later be modified or deleted. Instead, the Tribunal has to maintain the integrity of its record so that everyone can clearly see the evidence that it used to reach its decision. This is also critical when a Tribunal decision is being reviewed by the courts.

[52] Second, the Claimant hasn't met the high threshold needed to prove that the General Division member was biased.

[53] Allegations of bias are serious and members are presumed to be impartial.[33] This means that the legal test for proving bias is high. The Claimant needs evidence to prove bias; suspicion isn't enough.[34]

[54] Here, the Claimant disagrees with the outcome of her case. She argues that the General Division is full of errors that were made deliberately to justify the member's preconceived conclusions.

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[31] See pages GD14-2 to GD14-8.
[32] *Simpson v Canada (Attorney General)*, 2012 FCA 82 at paragraph 10.
[33] The Supreme Court of Canada discussed bias in the decision *Committee for Justice and Liberty et al* v *National Energy Board et al*, 1976 CanLII 2.
[34] See *SM* v *Minister of Employment and Social Development*, 2015 SSTAD 1050 at paragraph 17.

[55] I disagree. The General Division decision and three-hour-long hearing struck me as balanced and fair. Although the General Division rejected the Claimant's arguments and might have overlooked some of the nuances about the Claimant's case, I'm not convinced that an informed person viewing the matter realistically and practically would conclude that the General Division member decided the case unfairly, with a closed mind, or in pursuit of an alternative agenda.

## I will give the decision the General Division should have given

[56] The parties agree that I should give the decision the General Division should have given.[35] The Claimant acknowledges that the I am able to make a decision based on all the information in the General Division file.

[57] I agree that it's appropriate for me to give the decision the General Division should have given. I've found that the General Division provided a fair process. Plus, the essential facts of the case are not especially controversial.

[58] I've not found any errors in the General Division's conclusion that, for the narrow purposes of the EI Act, the Claimant was suspended from her job because of misconduct. As a result, she was disentitled from receiving benefits between October 17, 2021, and January 30, 2022.

[59] However, I found errors in the second part of the General Division decision. So, I will now turn my focus to the following questions:

- Did the Claimant voluntarily quit her job?
- Did the Claimant experience a significant change to the terms and conditions of her work regarding wages or salary?
- Did the Claimant have reasonable alternatives to quitting when she did?

[35] Sections 59(1) and 64(1) of the DESD Act give me the power to fix the General Division's error in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paragraphs 16–18.

## The Claimant is disqualified from receiving EI benefits

[60] As described above, section 30 of the EI Act disqualifies claimants from receiving benefits if they voluntarily leave their job without just cause.

[61] The Claimant argues that she didn't quit her job **voluntarily**. Instead, she says that her employer forced her to quit by adopting an illegal and unreasonable policy and by putting her on leave without pay for an indefinite period.

[62] While there are parallels between the legal concepts of constructive dismissal and just cause, the two are not the same. And the Claimant has to pursue her constructive dismissal clams elsewhere; they're not relevant to whether she should be paid EI benefits.[36]

[63] In cases of this type, the Tribunal applies a two-part analysis. First, the Commission has to prove that the Claimant left her job voluntarily. If so, the Claimant then has to show that she had just cause for leaving her job.

### – The Claimant left her job voluntarily

[64] This assessment focuses on the actions of the Claimant. The relevant question is simply this: Did the Claimant have a choice to stay or to leave her job?[37]

[65] Although I understand the difficult situation that she was in, the Claimant initiated the separation from her employment. On January 16, 2022, the Claimant wrote to her employer and said: "**This letter is to confirm with you that my last day of being an employee of [the hospital] will be January 31, 2022.**"[38]

[66] In fact, the hospital confirmed that the Claimant remained an employee while on an unpaid leave of absence.[39]

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[36] See paragraph 35 of the General Division decision, *Kuk v Canada (Attorney General)*, 2023 FC 1134 at paragraph 35, and *WC v Canada Employment Insurance Commission*, 2017 STADEI 384.
[37] *Canada (Attorney General) v Peace*, 2004 FCA 56 at para 15.
[38] See the Claimant's letter to the hospital dated January 16, 2022, starting on page GD2-21. Bold and underlining in original.
[39] See, for example, the hospital's letter on page GD9-2 of the appeal record.

[67] The Claimant could have remained employed by the hospital. This means that the Commission has met its obligation of proving the first part of the legal test.

[68] Two other points are worth noting in support of this conclusion:

- The Appeal Division has rejected many of the Claimant's arguments in another case that was similar to this one;[40] and
- According to the Claimant's own arguments, she was on an unpaid infectious disease emergency leave and Ontario's *Employment Standards Act* prevented the hospital from ending her employment.[41]

### – The Claimant did not have a significant change to the terms and conditions of her work regarding wages or salary

[69] The Claimant now has to show that she had just cause for leaving her job. But proving just cause can be difficult. The Claimant has to show that, in all the circumstances of her case, she had no reasonable alternative but to quit.[42]

[70] As part of its assessment, the Tribunal has to consider all the relevant circumstances, including those listed under section 29(c) of the EI Act.

[71] The General Division considered the circumstances listed under sections 29(c)(ix), (xi), and (xiii) of the EI Act. It concluded that none of them applied in the Claimant's case, and I've not found any errors in those parts of the General Division decision.

[72] However, I decided that the General Division should have also considered the circumstances under section 29(c)(vii) of the EI Act. In other words, did the Claimant have a significant change to the terms and conditions of her work regarding wages or salary?

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[40] See *CK v Canada Employment Insurance Commission*, 2022 SST 1012.
[41] See the Claimant's arguments starting on page AD1C-50.
[42] See *Canada (Attorney General) v White*, 2011 FCA 190 at paragraph 3.

[73] For the reasons below, I've answered no to that question.

[74] It's true that the Claimant wasn't paid for many months. However, that's not because the hospital reduced her salary to zero. The Claimant wasn't paid because the hospital's policy said she had to be put on unpaid leave. In other words, she wasn't working.

[75] The Claimant was never guaranteed work or a salary in all circumstances. For example, she could be suspended for disciplinary reasons or for breaching the hospital's health and safety policies.

[76] I understand the Claimant's arguments about how the hospital's policy went too far and was too rigid. But as I've already said, it's not for me to second-guess the hospital's response to a global pandemic.

[77] In the circumstances, the Claimant did not have a significant change to the terms and conditions of her work regarding wages or salary. She wasn't being paid less for the work that she did. Instead, the employer ordered her not to work to protect the health and safety of its community. Section 29(c)(vii) of the EI Act doesn't apply in this situation.

– **The Claimant had a reasonable alternative to quitting when she did**

[78] Although the Claimant's circumstances might not fall within those listed under section 29(c) of the EI Act, I still have to ask the following question: Having regard to **all the circumstances**, was quitting the Claimant's only reasonable course of action.[43] The test is not whether it was reasonable for the Claimant to quit, whether she had a good reason to quit, or whether she exhausted every possible alternative before quitting.[44]

[79] I recognize the difficult situation in which the Claimant found herself. Nevertheless, she had the reasonable alternative of obtaining a note from a medical

[43] The Federal Court of Appeal described the test this way in *Canada (Attorney General) v Laughland*, 2003 FCA 129.
[44] See *Canada (Attorney General) v Imran*, 2008 FCA 17.

professional to support her request for a medical exemption from the hospital's vaccination policy.

[80] Both Directive #6 and the hospital's COVID-19 vaccination policy make clear that requests for a medical exemption needed to be supported by a note from a medical professional describing a medical reason for not being vaccinated.[45] This makes sense. Otherwise, people could invent medical conditions to justify their request for an exemption.

[81] But the Claimant never provided the hospital with a note from a medical professional to support her application for a medical exemption.

[82] The Claimant argues that she was never told why her medical exemption request was denied. She also argues that the grounds for an exemption listed on the hospital's medical exemption request form were so narrow that it was impossible for her to qualify.

[83] While the Claimant's circumstances might have made it difficult for someone to sign the hospital's medical exemption form, the Claimant must have realized that her request wouldn't be accepted unless it was supported by a note from a medical professional. Plus, the seriousness of her allergies suggest that it should have been possible for a medical professional to do tests or review records and provide some reason in support of her exemption request.

[84] According to the Claimant, the hospital would only give medical exemptions to people who had had a severe allergic reaction to a previous dose of an mRNA vaccine or to one of its components. She said it was impossible for her to meet these requirements because mRNA vaccines were new and because she had not had any other vaccines in Canada because of her allergic reactions to so many other products.

[85] However, the hospital's letters to the Claimant showed an openness to considering other medical reasons for an exemption if they were supported by a medical professional. Indeed, the requirements in Directive #6 were not nearly so prescriptive. It

[45] See pages GD2-25 and GD2-35 of the appeal record.

simply required "a documented medical reason for not being fully vaccinated against COVID-19."[46]

[86] Some examples of the hospital's willingness to consider additional reasons for a medical exemption include the following:

- "If you can provide supporting medical documentation that aligns with Directive #6 set by the Ministry of Health, the committee would be happy to look at the medical information."[47]

- The submitted material does not provide the objective medical or meet the criteria required in accordance with Directive #6, set by the Ministry of Health."[48]

[87] Even if the Claimant's doctor couldn't sign the hospital's precise medical exemption form, it's reasonable for the Claimant to have provided the hospital with the strongest possible note from a medical professional to support her exemption request.

[88] Instead, the Claimant insisted that the hospital go through its records to find evidence of an allergic reaction that she had to a tuberculosis test she did when first hired by the hospital (around 2002). However, it was the Claimant's obligation to obtain information from a medical professional about her severe allergies.

[89] For these reasons, I've concluded that quitting was not the Claimant's only reasonable course of action.

[46] See page GD2-25.
[47] See the email from the hospital's COVID-19 Vaccine Exemption Review Committee on page GD8-28.
[48] See the email from the hospital's COVID-19 Vaccine Exemption Review Committee on page GD2-45.

## Conclusion

[90] I have sympathy for the Claimant and for her concerns about getting vaccinated. Nevertheless, I have to dismiss her appeal.

[91] I agree that the General Division made errors of law and of fact in its decision. Those errors allow me to give the decision the General Division should have given.

[92] The General Division reached the right conclusion, regardless of its errors. For the purposes of the EI Act, the Claimant was suspended from her job for misconduct and then voluntarily quit without just cause.

[93] This means that the Claimant is disentitled from receiving EI benefits between October 17, 2021, and January 30, 2022. She is also disqualified from receiving EI benefits from January 31, 2022.

Jude Samson
Member, Appeal Division