



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

Decision

Appellant: Jean-Luc Sprunger

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (458843) dated March 4, 2022
(issued by Service Canada)

Tribunal member: Catherine Shaw

Decision date: May 25, 2022

File number: GE-22-1071

Introduction

[1] The Claimant lost his job for not getting the COVID-19 vaccination. His employer implemented a policy that required employees to get vaccinated. The Claimant asked for an exemption to this policy for religious reasons, but his employer refused the exemption request. The Claimant didn't provide the employer with an attestation form proving that he was vaccinated by the deadline, so he was suspended from his job and then dismissed.

[2] The Commission disqualified the Claimant from receiving EI benefits because it decided he lost his job due to his misconduct. The Claimant asked the Commission to reconsider this decision because he was a long-term employee and complied with all of the other conditions of his employment. The employer refused to accommodate his request for exemption from the mandatory vaccination policy. He believes this policy violates his rights under the *Canadian Charter of Human Rights*.

[3] The Commission maintained its decision because the Claimant was aware of the employer's policy that required him to be vaccinated, he knew that failing to comply with the policy would cause a loss of employment, and that he made the choice not to comply. The Claimant has appealed this decision to the Tribunal.

Issue

[4] I must decide whether the appeal should be summarily dismissed.

Analysis

[5] I must summarily dismiss an appeal if I am satisfied that it has no reasonable chance of success.¹ Before doing so, I have to give notice in writing to the Claimant and allow him a reasonable period to make submissions.²

¹ Section 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states this requirement.

² Section 22 of the *Social Security Tribunal Regulations*.

[6] The law says that claimants who are dismissed from their job because of misconduct are disqualified from receiving benefits.³

[7] The Claimant's employer put in place a policy, which stated "all employees must demonstrate that they are fully vaccinated, without exception, other than under the duty to accommodate protected grounds identified in the *Canadian Human Rights Act*." Employees had to attest to their COVID-19 vaccination status by November 30, 2021. Employees who failed to demonstrate that they were compliant with the policy by November 30, 2021, would be terminated from employment.⁴

[8] The Claimant received a company memo on September 15, 2021, saying that a policy would be coming into effect soon. On October 14, 2021, the policy was issued.⁵ On October 20, 2021, the Claimant asked the employer for an exemption to this policy for religious reasons. He provided a letter from his pastor. This letter states that the Claimant has "the firmly held conviction that, at this point in time, the COVID-19 vaccine(s) could cause him bodily harm."⁶

[9] The employer refused the Claimant's exemption request on November 9, 2021.⁷ It stated that the Claimant hadn't shown that his request falls within a protected ground identified in the *Canadian Human Rights Act*, but was based on his own personal preference.

[10] On November 12, 2021, the employer sent the Claimant a letter, which stated the Claimant was being placed on an unpaid leave of absence because he had failed to demonstrate that he was fully vaccinated in compliance with the policy.⁸ The Claimant had until November 30, 2021, to provide a completed attestation form. If he did not, the

³ See section 30 of the *Employment Insurance Act*.

⁴ See GD3-25.

⁵ See the Commission's notes of a conversation with the Claimant on November 30, 2021. These notes are found at GD3-27 to GD3-28.

⁶ See GD2-15 to GD2-16.

⁷ See the Claimant's email dated December 1, 2021, in which he details his request for a religious exemption and his employer's response. This email is found on GD3-29 to GD3-31.

⁸ See GD3-38.

employer would find the Claimant was out of compliance with the COVID-19 vaccination policy, and would terminate his employment.

[11] On November 19, 2021, the employer sent the Claimant a letter terminating his employment. It stated that the Claimant had not provided an attestation form indicating his compliance with the COVID-19 vaccination policy and did not have an approved accommodation. His lack of compliance with the policy has “frustrated [his] employment agreement” and has resulted in his employment being terminated.⁹

[12] The employer gave the Commission a copy of the Claimant’s offer of employment. It states that the Claimant is required to adhere to all company policies, rules, systems and procedures. And, that the company has the right to “change the provisions of any of these at any time.”¹⁰

[13] The Claimant told the Commission that he was dismissed because he refused to comply with the employer’s vaccine mandate.¹¹ He was aware of the policy and that failing to comply would result in termination. He follows a Christian-based religion and has a sincere religious belief that prevents him from taking the vaccine. He asked for a religious exemption but the employer denied his request. He was placed on unpaid leave and later terminated.

[14] For there to be misconduct under the *Employment Insurance Act*, the Commission has to show that the Claimant engaged in wilful conduct that he knew or reasonably should have known could get in the way of carrying out his duties to his employer and that there was a real possibility of being let go because of that.¹²

⁹ See GD3-36 to GD3-37.

¹⁰ See GD3-40 to GD3-46.

¹¹ See GD3-53.

¹² See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

[15] Wilful conduct means that the conduct was conscious, deliberate, or intentional.¹³ The Claimant 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.¹⁴

[16] As noted above, before summarily dismissing an appeal, I must send written notice to the Claimant and allow him time to make submissions.¹⁵

[17] Given that the evidence on record shows that the Claimant chose not to comply with the employer's mandatory vaccination policy and he was aware he could be terminated for that choice, I sent notice of my intention to summarily dismiss this appeal on May 3, 2022. The Claimant provided further submissions that I have taken into consideration in reaching my decision.

[18] From the evidence on file, I see that the employer put in place a policy that required the Claimant to be vaccinated against COVID-19, or to have an approved exemption. The Claimant was notified of this policy. He was told that he would be terminated if he did not comply with the policy.

[19] I understand that the Claimant asked for an exemption from the policy for religious reasons. However, the employer refused his exemption request. The Claimant was aware that the employer had not exempted him from the mandatory vaccination policy. Yet, he chose not to comply with the policy, regardless.

[20] The 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 a condition of the Claimant's employment. The Federal Court of Appeal has said that the Tribunal does not have to determine whether an employer's policy was reasonable or a claimant's dismissal was justified. The Claimant may have other recourse to pursue his claims that the employer's policy breached his human rights and unfairly dismissed him.

¹³ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

¹⁴ See *Attorney General of Canada v Secours*, A-352-94.

¹⁵ Section 22 of the *Social Security Tribunal Regulations*

But, these matters must be addressed by the correct court or -tribunal. They are not within my jurisdiction to decide.

[21] The Claimant made it clear to the employer that he would not be vaccinated. He was not in compliance with the employer's policy. And, at the time he was let go, he had no intention to become compliant. There is no evidence or testimony he could provide in a hearing that would change that.

[22] It is plain and obvious on the face of the record that the appeal is bound to fail.¹⁶ As a result, I find that this appeal has no reasonable chance of success. Accordingly, the law requires that I dismiss it.¹⁷

Conclusion

[23] I find that the appeal has no reasonable chance of success; so, the appeal is summarily dismissed.

Catherine Shaw
Member, General Division – Employment Insurance Section

¹⁶ The Federal Court of Appeal used this language to describe the test for summarily dismissing an appeal in *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147.

¹⁷ See section 22, *Social Security Tribunal Regulations*