

Case In Point

Federal Court: No Entitlement to EI Benefits Where Employee Fails to Comply With Employer's Vaccination Policy

Date: February 21, 2023

In [Cecchetto v. Canada \(Attorney General\)](#), the Federal Court recently considered a decision of the Appeal Division of the Social Security Tribunal (SST) which denied leave to appeal a finding of the General Division of the SST that the applicant was not entitled to employment insurance (EI) benefits when his employment was terminated for failure to comply with his employer's vaccination policy. It found the decision was reasonable and dismissed the application for judicial review.

The applicant applied for and was denied EI benefits by the EI Commission because his failure to comply with employer policy was "misconduct" and therefore he was not entitled to EI benefits. The General Division of the SST upheld the decision of the EI Commission, and the Appeal Division of the SST denied leave to appeal from the General Division decision.

The applicant brought this application for judicial review, arguing "that the decisions should be overturned because they did not deal with his fundamental questions about the legality of requiring employees to undergo medical procedures (i.e. vaccination and testing) where the efficacy and safety of such procedures have not been established." He asserted that he was fired because of his personal medical choices.

In dismissing the judicial review application, the Federal Court reiterated that employees who lose their jobs due to misconduct are not entitled to receive EI benefits:

[24] An employee who loses their job due to "misconduct" is not entitled to receive EI benefits; the term "misconduct" in this context refers to the employee's violation of an employment rule. The Federal Court of Appeal has stated that "the breach must have been performed or the omission made wilfully, that is to say consciously, deliberately or intentionally" (*Canada (Attorney General) v Bellavance*, 2005 FCA 87 [*Bellavance*] at para 9). ...

The Federal Court continued that the question of the safety and efficacy of the COVID-19 vaccines or tests is not for it to decide, despite the applicant's frustrations. The applicant failed to provide any basis for the Court to overturn the decision by the Appeal Division of the SST.

The Court confirmed the holding in *Bellavance* that misconduct arises from conscious, deliberate, or intentional acts or omissions rather than malicious intent. In this case, the applicant consciously and deliberately failed to follow the employer's vaccination policy and thus engaged in misconduct.

To date, the majority of cases of the EI Commission upheld by the General and Appeal Divisions of the SST have denied EI benefits where a person's employment has been suspended or terminated for failure to comply with their employer's vaccination policy, due to misconduct. The Federal Court has now confirmed that this approach is reasonable.