Federal Court Cour fédérale

Date: 20260306

Docket: T-1769-25

Citation: 2026 FC 313

Ottawa, Ontario, March 6, 2026

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

JOSEPH HICKEY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Joseph Hickey seeks judicial review of a decision of the Appeal Division of the Social Security Tribunal [Appeal Division]. The Appeal Division concluded there was no arguable case that the General Division of the Social Security Tribunal [General Division] erred in finding he was ineligible for employment insurance benefits.

[2] Mr. Hickey began working for the Bank of Canada as a data scientist in June 2019. On October 6, 2021, the Bank of Canada implemented a COVID-19 Vaccination Policy [Vaccination Policy]. It required all employees, by November 22, 2021, to either (a) receive the COVID-19 vaccine or (b) provide proof of a legitimate medical, religious, or human rights-based reason for not being vaccinated.

[3] On November 12, 2021, Mr. Hickey requested an exemption from being vaccinated. He said there was no medical basis to require vaccination while he worked remotely, as he had been doing since March 2020. He also cited a number of published articles describing the risks of adverse impacts from the COVID-19 vaccine for people of his age and sex.

[4] Mr. Hickey's employer denied his request for an exemption. He was placed on administrative leave without pay. Mr. Hickey then applied for employment benefits.

[5] The Canada Employment Insurance Commission [Commission] denied Mr. Hickey's application for benefits, finding that he left his job without just cause. Upon reconsideration, the Commission upheld its decision but changed the reason. The Commission concluded that Mr. Hickey was suspended for misconduct.

[6] Mr. Hickey appealed to the General Division and filed a Notice of Constitutional Question. He argued that ss 30(1) and 31 of the *Employment Insurance Act*, SC 1996, c 23 [EI Act] violate ss 2 and 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter]. He

then amended his Notice of Constitutional Question to rely on the rule of law and constitutional doctrine of vagueness to challenge the same provisions of the EI Act.

[7] The General Division issued an interlocutory decision concluding that the Notice of Constitutional Question did not advance valid constitutional arguments. Regarding the merits, the General Division found that Mr. Hickey knew or ought to have known that his conduct would lead to suspension or dismissal. It therefore agreed with the General Division that Mr. Hickey was suspended for misconduct.

[8] Mr. Hickey sought leave to appeal to the Appeal Division. The Appeal Division bifurcated the proceeding and heard the appeal of the interlocutory decision before determining the application for leave to appeal on the merits. The Appeal Division dismissed the appeal of the interlocutory decision and also refused the application for leave to appeal on the merits.

[9] Only the decision to refuse leave to appeal on the merits is before this Court. The sole issue to be decided is whether the Appeal Division's decision was reasonable.

[10] The Appeal Division's decision is subject to review by this Court against the standard of reasonableness (*Sherwood v Canada (Attorney General)*, 2019 FCA 166 at para 7; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[11] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[12] In oral argument, Mr. Hickey abandoned his constitutional arguments and limited his submissions to the Appeal Division’s interpretation of misconduct under ss 30(1) and 31 of the EI Act. He says it was necessary for the Appeal Division to consider the risk of harm that would result from his compliance with the Vaccination Policy.

[13] The test for misconduct pursuant to s 30(1) of the EI Act has been addressed on many occasions in the context of non-compliance with COVID-19 vaccination policies (see, *e.g.*, *Besley v Canada (Attorney General)*, 2025 FCA 47 at para 5; *Kuk v Canada (Attorney General)*, 2024 FCA 74 [*Kuk*] at para 7; *Sullivan v Canada (Attorney General)*, 2024 FCA 7 [*Sullivan*] at paras 4-5; *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at para 15; *Palozzi v Canada (Attorney General)*, 2024 FCA 81 at para 6; *Cecchetto v Canada (Attorney General)*, 2024 FCA 102 at para 10). The Federal Court of Appeal’s most recent pronouncement on this issue is *Arnold v Canada (Attorney General)*, 2026 FCA 41 [*Arnold*].

[14] The jurisprudence clearly establishes that the only relevant question is whether the claimant knew or ought to have known that their conduct would result in suspension. Misconduct under the EI Act does not require blameworthiness, and the employer’s actions and policies need not be justified.

[15] Mr. Hickey states that this definition of misconduct is not readily apparent from the wording of the EI Act and can lead to absurd results. However, in *Sullivan*, Justice David Stratas explained as follows (at para 6):

> Were the applicant's submissions to be upheld, the Social Security Tribunal would become a forum to question employer policies and the validity of employment dismissals. Under any plausible reading of the legislation that governs the Tribunal, it is a forum to determine entitlement to social security benefits, not a forum to adjudicate allegations of wrongful dismissal.

[16] There are other forums for Mr. Hickey to pursue remedies for wrongful dismissal and human rights complaints (*Arnold* at para 6; *Kuk* at para 7; *Sullivan* at para 6).

[17] The Appeal Division reasonably distinguished Mr. Hickey's case from *Astolfi v Canada (Attorney General)*, 2020 FC 30 [*Astolfi*]. In that case, the applicant stopped attending work after alleging harassment by the employer. Justice Ann Marie McDonald held that it was unreasonable for the Appeal Division to ignore the employer's actions leading to the employee's misconduct, because these were relevant in assessing whether the employee's conduct was intentional.

[18] As the General Division and Appeal Division both found, the employer's actions in Mr. Hickey's case do not cast doubt on the intentionality of his conduct. The Appeal Division followed *Abdo v Canada (Attorney General)*, 2023 FC 1764 [*Abdo*], another case involving non-compliance with a COVID-19 vaccination policy. In *Abdo*, Justice Glennys McVeigh distinguished *Astolfi* and concluded that the "only relevant question before the [Appeal Division] was whether the Applicant knew that her voluntary decision not to get vaccinated might result in her termination" (*Abdo* at para 29). Here, the Appeal Division found that Mr. Hickey knew he

would be suspended for not being vaccinated after his request for an exemption was denied. This was a reasonable conclusion, and consistent with binding jurisprudence.

[19] The application for judicial review is therefore dismissed.

[20] The Respondent seeks costs. Mr. Hickey represented himself in this application, and his arguments were presented with care and conviction. However, this is the fourth time his arguments respecting his eligibility for employment benefits have been considered and rejected. A modest costs award in the amount of $200 is appropriate in the circumstances.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Costs are awarded to the Respondent, Attorney General of Canada, in the amount of $200.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1769-25
STYLE OF CAUSE:	JOSEPH HICKEY v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
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JUDGMENT AND REASONS:	FOTHERGILL J.
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APPEARANCES:

Joseph Hickey (on his own behalf)	FOR THE APPLICANT
Rebekah Ferriss Lucky Ingabire	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Gatineau, Quebec	FOR THE RESPONDENT