Federal Court Cour fédérale

Date: 20260501

Docket: T-255-24

Citation: 2026 FC 584

Ottawa, Ontario, May 1, 2026

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

TATIANA-ALEX PAGANO

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Ms. Pagano was suspended from her employment at Air Canada because she failed to comply with the company's mandatory COVID-19 vaccination policy [the Policy]. Her claim for Employment Insurance [EI] benefits was denied by the General Division of the Social Security Tribunal [SST], which found that she was disqualified under subsection 30(1) of the *Employment Insurance Act*, SC 1996, c 23 [the Act] because she lost her employment due to misconduct. The Appeal Division denied leave to appeal from the General Division's decision. She now seeks judicial review of the Appeal Division's decision.

[2] For the reasons that follow, I conclude that Ms. Pagano did not establish that the Appeal Division's decision is unreasonable. The Appeal Division did not misinterpret the Policy nor was it required to analyze whether Ms. Pagano left her employment for "just cause." Hence, the application will be dismissed.

I. Background

[3] In 2021, Ms. Pagano was employed by Air Canada. In the context of the COVID-19 pandemic, Air Canada issued a policy on August 25, 2021, requiring all employees to be vaccinated against COVID-19 and setting out a timeline for compliance. Under the Policy, employees were required to report their vaccination status via an internal reporting tool and receive their first dose by September 8. They were required to receive their second dose by October 16, such that they would be fully vaccinated by October 30. The Policy stated that failure to comply could result in consequences "up to and including unpaid leave or termination." It also provided a process for seeking exemption from the vaccination requirement, including on the basis of religious beliefs.

[4] Ms. Pagano submitted a request for exemption on religious grounds. The evidence does not reveal clearly whether she made her request on October 30 or 31, but the difference is immaterial and I will assume that the request was made on October 30. She completed her request by submitting supporting documentation on November 12. The request was denied on November 15. As a result of her non-compliance with the Policy, she was placed on leave of absence effective October 31, 2021.

[5] The General Division of the SST found that Ms. Pagano was disqualified from EI benefits because she lost her employment due to misconduct. It noted that Ms. Pagano was aware of the Policy and of the consequences of non-compliance. It also rejected Ms. Pagano's submission that she complied with the Policy by requesting a religious exemption, because it was submitted late.

[6] The Appeal Division denied leave to appeal, because there was no arguable case that the General Division adopted an unfair process, misinterpreted the concept of misconduct or made important factual errors. Among other things, the Appeal Division reviewed the Policy and found that merely asking for an accommodation was insufficient to comply. Rather, the employee must obtain the accommodation to be relieved from the vaccination requirement.

II. Analysis

[7] The standard of review on the merits of an Appeal Division's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*]. On judicial review, the Court's role is to review the Appeal Division's decision, including the justification offered for it: *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paragraphs 58–60. Reasons must not be assessed against a standard of perfection and must be read "holistically and contextually": *Vavilov* at paragraph 97. A reasonable decision is based on internally coherent reasoning and is justified in light of the relevant legal and factual constraints: *Vavilov* at paragraph 99.

[8] Ms. Pagano's grounds for judicial review are essentially twofold. First, she submits that the Appeal Division failed to appreciate that she complied with the Policy by requesting an accommodation before the October 31 deadline. In this connection, she argues that the Appeal Division failed to interpret the Policy as a whole and read it in a way that rendered the exception meaningless. Second, she contends that the Appeal Division failed to assess whether she left her employment for just cause, which, pursuant to section 29 of the Act, includes significant changes in the terms of her employment. None of these grounds persuades me to grant the application for judicial review.

[9] The reasonableness of the Appeal Division's decision must be assessed in light of the recent, abundant and consistent jurisprudence dealing with substantially similar cases. During the last three years, the Federal Court of Appeal issued no less than 16 decisions upholding the denial of EI benefits to persons who failed to comply with their employers' vaccination policies: *Francis v Canada (Attorney General)*, 2023 FCA 217; *Zhelkov v Canada (Attorney General)*, 2023 FCA 240; *Sullivan v Canada (Attorney General)*, 2024 FCA 7; *Lalancette v Canada (Attorney General)*, 2024 FCA 58; *Kuk v Canada (Attorney General)*, 2024 FCA 74; *Palozzi v Canada (Attorney General)*, 2024 FCA 81; *Khodykin v Canada (Attorney General)*, 2024 FCA 96; *Cecchetto v Canada (Attorney General)*, 2024 FCA 102 [*Cecchetto*]; *Zagol v Canada (Attorney General)*, 2025 FCA 40 [*Zagol*]; *Lance v Canada (Attorney General)*, 2025 FCA 41 [*Lance*]; *Besley v Canada (Attorney General)*, 2025 FCA 47; *Abdo v Canada (Attorney General)*, 2025 FCA 55; *Costea v Canada (Attorney General)*, 2025 FCA 57; *Wong v Canada (Attorney General)*, 2025 FCA 63; *Arnold v Canada (Attorney General)*, 2026 FCA 41 [*Arnold*];

Sturgeon v Canada (Attorney General), 2026 FCA 46. Leave to appeal to the Supreme Court of Canada was denied in *Cecchetto* and *Zagol*.

[10] These decisions confirm that the failure to follow an employer's vaccination policy, when the employee knows that this may lead to dismissal, constitutes misconduct within the meaning of section 30 of the Act. See, for example, *Lance* at paragraph 8; *Zagol* at paragraphs 25–28; *Arnold* at paragraph 5; *Cecchetto* at paragraphs 8–10. Moreover, they hold that the SST does not have jurisdiction to review or assess the merits of an employer's policies, that a finding of misconduct does not require blameworthy or reprehensible conduct, and that an employee's religious beliefs do not render misconduct involuntary; see, for example, *Zagol* at paragraph 28; *Arnold* at paragraph 6. This Court is bound by these principles.

A. *Alleged Compliance with the Policy*

[11] Ms. Pagano's first ground for challenging the Appeal Division's decision essentially asserts that, contrary to the situation in the cases decided by the Federal Court of Appeal, she did comply with her employer's policy because she filed an accommodation request before October 31. She relies heavily on the following sentence in the Policy: "Until Air Canada directs otherwise, employees requesting accommodation do not need to be vaccinated or record their status via our Vaccination Status Reporting Tool."

[12] She argues that the Appeal Division erred in law by failing to consider the vaccination Policy as a whole, including its exception clauses. In her view, this led the Appeal Division to improperly interpret the rule in isolation, rather than alongside its exception, namely the religious

exemption she requested. In other words, she claims that her request for an exemption meant she was in compliance with the Policy, which expressly contemplated such requests. I do not agree with Ms. Pagano's view.

[13] At the hearing, Ms. Pagano acknowledged that the specific sentence she now relies on was not explicitly raised in her submissions before either the General Division or the Appeal Division. It is well established that a decision-maker is not required to address arguments that were not squarely put before them, and the failure to do so does not render a decision unreasonable: see, for example, *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paragraphs 22–23 [*Alberta Teachers' Association*]; *Tan v Canada*, 2026 FCA 36 at paragraph 36 [*Tan*]. The Appeal Division was not required to address the sentence quoted above.

[14] In any event, it was reasonable for the Appeal Division to hold that the General Division's finding of misconduct did not raise an arguable case. Its reasoning is consistent with the Federal Court of Appeal's jurisprudence. In its reasons, the Appeal Division relied on the General Division's findings of fact, including that Ms. Pagano was aware of the Policy and knew that non-compliance could lead to her being put on leave. The Appeal Division accepted that, properly read, the Policy required either full vaccination by October 31 or an approved exemption. On that basis, a mere request for accommodation did not amount to compliance with the Policy. Contrary to Ms. Pagano's submission, this interpretation does not render the exemption clause meaningless. An employee may request an exemption but must do so sufficiently ahead of time to be able to receive the vaccine if the exemption is denied.

Ms. Pagano was aware of the Policy as early as August 25 but did not request an exemption until October 30, leaving little time for her employer to assess the request before the compliance deadline the following day. Even on her own interpretation of the policy, she would have been in breach until October 30. In the end, it is not the Appeal Division's interpretation of the Policy that undermines the exemption clause, but the timing of Ms. Pagano's request.

B. *Alleged Failure to Assess the "Just Cause" Exception*

[15] The second issue raised by Ms. Pagano is whether the Appeal Division's decision is unreasonable for failing to address the "just cause" exception in section 30 of the Act in light of the definitions in section 29. According to her, this issue was never considered by the Federal Court of Appeal. It is useful to consider the interplay between sections 29 and 30 of the Act to properly situate her argument.

[16] Subsection 30(1) of the Act provides that a claimant is disqualified from receiving EI benefits "if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause." Thus, there are two disjunctive grounds for disqualification, namely, loss of employment for misconduct and leaving without just cause. Section 29, in turn, defines "just cause" and structures the analysis by asking whether, having regard to all the circumstances, the claimant had no reasonable alternative to leaving the employment. Paragraph 29(c) enumerates circumstances to be considered when assessing whether the claimant had any other reasonable alternative to leaving, including discrimination, "working conditions that constitute a danger to health or safety," "significant modification of terms and conditions respecting wages or salary" and "significant changes in work duties."

[17] Ms. Pagano submits that the Appeal Division ought to have assessed whether she had just cause for leaving her employment in light of section 29 of the Act. At the hearing, she claimed that several circumstances listed in subparagraph 29(c) applied to her situation.

[18] Her argument fails because the reason for her disqualification was misconduct, not leaving without just cause. Ms. Pagano did not resign nor take leave but was suspended from her employment due to misconduct. As mentioned above, misconduct and leaving for just cause are two separate grounds of disqualification. For this reason, the "just cause" analysis is not engaged. In any event, Ms. Pagano did not squarely raise this issue before the Appeal Division. As set out above, a decision-maker is not required to address arguments that were not clearly raised, and their omission does not render the decision unreasonable: *Alberta Teachers' Association* at paragraphs 22–23; *Tan* at paragraph 36. In those circumstances, it is difficult to fault the Appeal Division for not undertaking the analysis of a provision that was neither applicable nor meaningfully argued.

[19] I would also add that the end result of Ms. Pagano's submission would be to empower the SST to review the merits of the employer's vaccination policy, which is contrary to the Federal Court of Appeal's caselaw.

III. Disposition

[20] After reviewing Ms. Pagano's submissions, I am not satisfied that the Appeal Division's decision is unreasonable. The application for judicial review will therefore be dismissed. There is no reason to depart from the usual rule that costs are awarded to the successful party.

JUDGMENT in T-255-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Costs are awarded to the respondent.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-255-24
STYLE OF CAUSE:	TATIANA-ALEX PAGANO V THE ATTORNEY GENERAL OF CANADA
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