Federal Court of Appeal | Cour d'appel fédérale

Date: 20250219

Docket: A-28-24

Citation: 2025 FCA 40

CORAM: **GLEASON J.A.**
LOCKE J.A.
HECKMAN J.A.

BETWEEN:

MICHAL ZAGOL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the Registry on November 27, 2024.

Judgment delivered at Ottawa, Ontario, on February 19, 2025.

REASONS FOR JUDGMENT BY: HECKMAN J.A.

CONCURRED IN BY: GLEASON J.A.
LOCKE J.A.

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REASONS FOR JUDGMENT

HECKMAN J.A.

I. INTRODUCTION

[1] The Applicant was released from the Canadian Armed Forces (CAF) because he failed to comply with the CAF's mandatory COVID-19 vaccination policy (Policy). In a decision reported as *MZ v. Canada Employment Insurance Commission*, 2023 SST 1873 (General Division

Decision), the General Division of the Social Security Tribunal (SST) found that he was disqualified from receiving Employment Insurance (EI) benefits under subsection 30(1) of the *Employment Insurance Act*, S.C. 1996, c. 23 because he had lost his employment due to misconduct. The Applicant now seeks judicial review of the decision of the Appeal Division of the SST, reported as *MZ v. Canada Employment Insurance Commission*, 2024 SST 54 (Appeal Division Decision), which affirmed the General Division's decision.

[2] For the reasons that follow, I am of the view that the Applicant has not established that the Appeal Division's decision is unreasonable and that this application for judicial review should therefore be dismissed.

II. BACKGROUND

[3] The Applicant, a member of the CAF's 423 Maritime Helicopter Squadron at the time, sought an exemption from the Policy based on his religious belief that receiving a vaccine whose development or testing for safety and efficacy involved foetal cells would violate the tenets of his Roman Catholic faith. He offered to take vaccines whose development and testing did not involve the use of foetal cells if and when these were approved by Health Canada.

[4] The CAF accepted that the Applicant had a sincere religious belief. Although it observed that foetal cell lines were not used to manufacture the Health Canada-approved Pfizer and Moderna vaccines, it recognized that a sample of these vaccines had undergone testing against a human embryonic kidney cell line to confirm their safety and efficacy prior to Health Canada

approval. On that basis, it decided that the Applicant "did demonstrate in their representations how this confirmatory testing would infringe upon their belief." However, it decided that the risk posed by an unvaccinated member to other CAF members at the squadron was too great and noted that there was no timeline or expectation that a new vaccine, approved by Health Canada and not tested against foetal cell lines, would be made available to CAF members. Accordingly, the CAF denied the Applicant's request for accommodation.

[5] The Applicant took no steps to receive the Pfizer or Moderna vaccines and was subsequently released by the CAF.

[6] The Canada Employment Insurance Commission found that, since the Applicant had been dismissed for failing to follow his employer's Policy, he had committed misconduct under subsection 30(1) of the Act and was disqualified from receiving EI benefits. The Applicant appealed the Commission's decision to the SST.

[7] The General Division summarized the legal principles, formulated by this Court, that apply to a determination of misconduct under subsection 30(1) of the Act: General Division Decision at paras. 14-15. It noted that to constitute misconduct, the claimant's conduct had to be wilful, in the sense that it was conscious, deliberate or intentional; misconduct would be made out if the claimant knew or should have known that his conduct could get in the way of carrying out his duties towards his employer and that there was a real possibility that he could be dismissed as a result (*Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36, 279 D.L.R. (4th) 121 at para. 14, leave to appeal to SCC refused. [*Mishibinijima*]). It also observed that the

focus of the inquiry is on the employee's rather than the employer's behaviour (*Canada (Attorney General) v. McNamara*, 2007 FCA 107, 366 NR 201 at paras. 22-23, *Paradis v. Canada (Attorney General)*, 2016 FC 1282, 273 A.C.W.S. (3d) 322 at paras. 30-31).

[8] Applying these principles to the facts before it, the General Division found that, after denying the Applicant's request for religious accommodation, the CAF informed him that it considered that he fell under the "unwilling" to be vaccinated category of employees under the Policy. This category included individuals for whom an accommodation for, *inter alia*, a religious ground was not granted and who were still unwilling to be vaccinated. It found that the Applicant was informed by his employer that if he continued to remain unvaccinated, he would be released from service, and thus knew that there was a real possibility that he would be dismissed. It held that by failing to get vaccinated in the circumstances, the Applicant had committed misconduct under the Act as that term was defined in the applicable jurisprudence: General Division Decision at paras. 62-68.

[9] The Appeal Division observed that, under section 58(1) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34 (the DESD Act), it was bound to dismiss the appeal unless the Applicant established that the General Division had (1) failed to observe a principle of natural justice, (2) erred in law or (3) based its decision on an erroneous finding of fact that it made in a perverse and capricious manner or without regard for the material before it: Appeal Division Decision at para. 9.

[10] The Appeal Division reviewed the decision of the Federal Court in *Abdo v. Canada (Attorney General)*, 2023 FC 1764 [*Abdo*] which, following the decision of this Court in *Francis v. Canada (Attorney General)*, 2023 FCA 217 [*Francis*], dismissed arguments that, in the Appeal Division's view, were similar to those raised by the Applicant. It concluded that it was bound by these decisions and saw no reason not to follow them in deciding the Applicant's appeal: Appeal Division Decision at para. 25.

[11] Turning to the General Division's decision, the Appeal Division found that the preponderant evidence before the General Division showed that the Applicant had voluntarily decided not to follow the Policy and that this resulted in his dismissal. Moreover, it decided that the General Division had committed no reviewable error when it decided the issue of misconduct solely within the parameters set out by this Court in defining misconduct under the Act. Accordingly, it dismissed the appeal: Appeal Division Decision at paras. 50-51.

III. ISSUE AND STANDARD OF REVIEW

[12] The only issue in this application for judicial review is whether the Appeal Division erred in upholding the General Division's decision confirming the Commission's finding that he should be disqualified from receiving EI benefits by reason of misconduct.

[13] The standard of review on the merits of the Appeal Division's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*]. The Applicant bears the burden to show that the decision is unreasonable by

establishing that it suffers from sufficiently central or significant shortcomings or flaws: *Vavilov* at para. 100. One such fundamental flaw is where a decision, read holistically, fails to reveal a rational chain of analysis or is based on an irrational chain of analysis: *Vavilov* at para. 102; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at para. 65, 485 D.L.R. (4th) 583 [*Mason*]. Another is where the decision maker does not justify the decision in relation to the legal and factual constraints that bear on the decision: *Mason* at para. 66.

IV. PARTIES' ARGUMENTS

A. *The Applicant's arguments*

[14] The Applicant submits that the decisions of the General Division and the Appeal Division are unreasonable because they fail to meaningfully grapple with the central argument supporting his claim that he had not committed misconduct under the Act: that his sincerely held religious belief rendered his conduct involuntary.

[15] The Applicant argued before both divisions of the SST that he had established that he had a sincerely held religious belief which called for a particular line of conduct and that his employer had accepted this claim. According to the Applicant, the Supreme Court recognized in *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at para. 56, [2004] 2 S.C.R. 551 [*Amselem*], that religious belief is inseparable from the particular religious conduct that it governs. This, he claimed, was a recognition that a person who holds religious beliefs has no choice but to manifest these beliefs through this particular religious conduct.

[16] The Applicant submitted to both divisions of the SST that his interpretation of *Amselem* as holding that persons have no choice but to engage in the conduct that is dictated by their religious beliefs was supported by the Supreme Court's decision, in *Corbière v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 at para. 13, 173 D.L.R. (4th) 1 [*Corbière*], that religion, one of the prohibited grounds of discrimination listed in subsection 15(1) of the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [*Charter*], is a constructively immutable personal characteristic. He also relied on the reasons of Justice Abella in *Quebec (Attorney General) v. A.*, 2013 SCC 5 at para. 335, [2013] 1 S.C.R. 61 [*Quebec v. A*] (dissenting but not on this point), that analogous grounds under subsection 15(1) of the *Charter* that are immutable personal characteristics "are not deemed immutable in some legislative contexts and as a matter of choice in others." According to the Applicant, this means that immutable characteristics are immutable in all legislative contexts, including the employment insurance context.

[17] In sum, the Applicant submits that the jurisprudence of the Supreme Court of Canada establishes that religious belief and the religious conduct that it governs are immutable and not a matter of choice ("the jurisprudential argument"). As a result, he contends, his abstention from vaccination was not voluntary and could not give rise to misconduct under subsection 30(1) of the Act.

[18] Counsel for the Applicant clarified at the hearing that the Applicant does not challenge the legal test for misconduct developed by this Court and that binds the SST. The Applicant argues that this test requires that his conduct be found to be voluntary, and that this key

requirement was not met because his abstention from the COVID-19 vaccines required by his employer was dictated by his immutable religious belief.

[19] At the hearing, Counsel for the Applicant submitted that it was unreasonable for the Appeal Division to have relied on *Abdo* and *Francis* to dismiss the Applicant's appeal from the General Division's decision because these decisions were both distinguishable. She argued that the Federal Court in *Abdo* failed to rule on the argument that religion is constructively immutable according to the *Corbière* and *Quebec v. A* decisions, and that this argument was not even placed before the Federal Court of Appeal in *Francis*.

B. *The Respondent's arguments*

[20] The Respondent submits that the Appeal Division reasonably found that the General Division identified the correct legal test under subsection 30(1) of the Act (misconduct is established where an employee is made aware of an employer's policy, exhibits conduct that is conscious, wilful or deliberate in non-compliance with the policy and is aware of the possibility of dismissal) and applied it to the facts to conclude that misconduct was present in the Applicant's case.

[21] The Respondent argues that the Appeal Division engaged the Applicant's arguments and reasonably dismissed these by reference to the binding decisions in *Abdo* and *Francis*, which establish that the test for misconduct focuses narrowly on whether the Applicant knew that his

conduct would impair the performance of the duties owed to his employer possibly resulting in dismissal.

V. ANALYSIS

[22] As noted at the hearing by counsel for the Applicant, this case is not about whether the CAF's policy was reasonable. Nor is it about whether the Applicant's human rights or *Charter* rights were violated by the vaccination policy. Indeed, the test for misconduct under subsection 30(1) of the Act focuses on the employee's knowledge and actions rather than the employer's behaviour or the reasonableness of its work policies, thereby ensuring that the Social Security Tribunal remains a forum to determine entitlement to social security benefits, not to adjudicate allegations of wrongful dismissal (*Sullivan v. Canada (Attorney General)*, 2024 FCA 7, 2024 CarswellNat 35 at para. 6). The sole issue in this case is whether it was reasonable for the Appeal Division, in light of the record before it and of this Court's jurisprudence interpreting subsection 30(1) of the Act, to uphold the General Division's decision confirming the Commission's finding that the Applicant had committed misconduct.

[23] Reasonableness review requires me to focus on the decision the Appeal Division made, including the justification offered for it: *Mason* at paras. 58-60. I must read its reasons "holistically and contextually", in light of the record and with due sensitivity to the administrative regime in which they are given: *Vavilov* at paras. 97, 103; *Mason* at para. 61.

[24] Following this approach, I will explain why the decision of the Appeal Division to uphold the General Division's decision confirming the Commission's finding of misconduct is reasonable. However, to properly put the reasons of the Appeal Division in context, I will first briefly describe the jurisprudence of this Court under subsection 30(1) of the Act that was applied by both divisions of the SST, to highlight that it sets a low bar for a finding of disqualifying misconduct.

A. *This Court's jurisprudence under subsection 30(1) of the Act*

[25] The purpose of the Act is to compensate persons whose employment is terminated involuntarily and who are without work: *Canada (Canada Employment and Immigration Commission) v. Gagnon*, [1988] 2 S.C.R. 29, 52 D.L.R. (4th) 42 at para. 13. Subsection 30(1) therefore provides that benefits are not received in circumstances where a person's loss of employment is not involuntary:

Disqualification — misconduct or leaving without just cause	***Exclusion : inconduite ou départ sans justification***
30 (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause (…)	**30 (1)** Le prestataire est exclu du bénéfice des prestations s'il perd un emploi en raison de son inconduite ou s'il quitte volontairement un emploi sans justification (…)

[26] "Misconduct" is not defined in the Act. Accordingly, this Court and the Federal Court have defined what conduct qualifies as misconduct and thereby disqualifies a claimant from receiving EI benefits:

> [T]here will be misconduct where the conduct of a claimant was wilful, i.e. in the sense that the acts which led to the dismissal were conscious, deliberate or intentional. Put another way, there will be misconduct where the claimant knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility.
>
> [*Mishibinijima* at para. 14.]

[27] This definition, since referred to by this Court as the "objective definition" of misconduct (*Nelson v. Canada (Attorney General)*, 2019 FCA 222, 308 A.C.W.S. (3d) 774 (CanLII) at para. 21, leave to appeal to SCC refused [*Nelson*]), sets a low bar to establishing disqualifying conduct under subsection 30(1). To establish misconduct pursuant to this provision, it is enough for a claimant to understand or to be aware that certain consequences would follow from his acts or omissions. Specifically, it is sufficient for the claimant to know that his conduct would mean that an express or implied essential condition of employment, relating "to a concrete or more abstract requirement" ceases to be met: *Canada (Attorney General) v. Brisette*, [1994] 1 F.C. 684 (C.A.), 46 A.C.W.S. (3d) 370 at para. 10 [*Brisette*]. Such conditions of employment can originate from various sources, including a law, a regulation, an ethical rule, a contract of employment or an employer policy: *Brisette* at para. 10; *Nelson* at para. 25; *Canada (Attorney General) v. Lemire*, 2010 FCA 314, 331 D.L.R. (4th) 247 at paras. 17, 19-20.

[28] Under this objective definition of misconduct, it is not necessary that a claimant's conduct be blameworthy or such that it might merit discipline. Rather, it is sufficient if the conduct in question is undertaken with the knowledge that dismissal might result. This low bar for a finding of misconduct is illustrated in a line of cases where this Court consistently held that employees could be guilty of misconduct even where the conduct leading to their breach of an

essential condition of employment arose from an addiction to alcohol or drugs (*Canada (Attorney General) v. Turgeon*, [1999] F.C.J. No. 1861, 254 N.R. 314 (FCA); *Canada (Attorney General) v. Wasylka*, 2004 FCA 219, [2004] F.C.J. No. 977 [*Wasylka*]; *Canada (Attorney General) v. Richard*, 2005 FCA 339, [2005] F.C.J. No. 1750; *Canada (Attorney General) v. Pearson*, 2006 FCA 199, [2006] F.C.J. No. 818; *Mishibinijima, supra*). Thus, while an employee's consumption of drugs may have been "irresistible", this Court held that, for the purposes of subsection 30(1), it was "voluntary in the sense that his acts were conscious and that he was aware of the effects of that consumption and the consequences which could or would result" (*Wasylka* at para. 4). These decisions also demonstrate that misconduct can be found in circumstances where discipline likely could not be imposed, including where an employee's consumption of alcohol or drugs constituted a disability under applicable human rights legislation and where the employer failed to accommodate him (*Mishibinijima* at para. 23).

B. *The Appeal Division's decision to uphold the General Division's finding of misconduct*

[29] I turn now to the question of whether the decision of the Appeal Division to uphold the General Division's decision confirming the Commission's finding of misconduct is reasonable. I examine first the Appeal Division's conclusion that it should follow the *Francis* and *Abdo* decisions in deciding the appeal. I then turn to its conclusion that, in finding that the Appellant committed misconduct under subsection 30(1) of the Act, the General Division did not err in law or base its decision on an erroneous finding of fact made in a perverse and capricious manner or without regard for the material before it.

(1) The Appeal Division reasonably found that it was bound by *Francis* and *Abdo*

[30] In my view, in dismissing the Appellant' appeal from the General Division's decision, it was reasonable for the Appeal Division to rely on this Court's decision in *Francis* and the Federal Court's decision in *Abdo* because they involved factual circumstances and legal arguments similar to those present in this case.

[31] In *Francis*, the claimant requested an exemption from his employer's mandatory COVID-19 vaccination policy on the basis of creed, a prohibited ground of discrimination under the *Ontario Human Rights Code*, R.S.O. 1990, c.H.19 which encompasses discrimination based on religion (*R.C. v. District School Board of Niagara*, 2013 HRTO 1382 at para. 31). The employer refused his request and, when Francis failed to become vaccinated by the required date, terminated him. The Commission found that Francis had lost his job due to misconduct, and disqualified him from EI benefits. That decision was upheld by the General Division and the Appeal Division of the SST.

[32] Before the Appeal Division, Francis argued that "he had no real choice" to abstain from vaccination and that in religious matters, "being unable to do something is not the same thing as freely choosing not to [do] that thing": *RF v. Canada Employment Insurance Commission*, 2023 SST 185 at para. 91 [*Francis SST-AD*]. Applying the objective definition of misconduct, the Appeal Division nevertheless decided that Francis had committed misconduct, because he chose not to follow the vaccination requirement even though he knew his request for an exemption had

been refused and that failure to comply with the requirement could lead to termination*: Francis SST-AD* at para. 114.

[33] In his judicial review application before this Court, Francis raised once again the argument that he had no real choice in abstaining from vaccination. He submitted that it was unreasonable for the Appeal Division to determine that he deliberately failed to comply with the employer's policy. The Court rejected this submission, noting that the Appeal Division's determination "was adopted from the General Division's findings of fact" and that "this was reasonable, especially since the Appeal Division has a limited scope to interfere with these findings of fact." (*Francis* at para. 13). Moreover, the Court decided that the Appeal Division had grounded its decision on reasonable interpretations of the law: *Francis* at para. 6.

[34] In *Abdo*, the claimant's employer denied her request to be accommodated under the employer's COVID-19 vaccination policy on the basis of her religious beliefs and terminated her when she failed to receive the COVID-19 vaccine. The General Division found that Abdo had lost her position because she had refused to comply with her employer's vaccination policy, and in doing so, had committed misconduct under the Act, disqualifying her from EI benefits. The Appeal Division denied Abdo leave to appeal the decision.

[35] Before the Federal Court, Abdo argued that religion was an immutable characteristic and that both the General Division and the Appeal Division had acted unreasonably by failing to "meaningfully consider the jurisprudence on religion and immutable characteristics" that she had raised before them: *Abdo* at para. 15. Noting that Abdo had sought an exemption to the

vaccination policy for the same reason as Francis, the Federal Court held that Abdo's case was not distinguishable from *Francis*:

> Therefore, the FCA's reasoning must be followed. The FCA has endorsed that a voluntary refusal of an employer's mandatory COVID vaccine policy, which leads to the employee's dismissal after failing to receive an exemption for religious reasons, can constitute misconduct under the *EIA*.
>
> [*Abdo* at para. 20.]

[36] Moreover, the Federal Court held that even if *Francis* was distinguishable, the judicial review must still fail. It was reasonable for the Appeal Division to uphold the General Division's finding of misconduct based on its application of the objective definition of misconduct set out by the Federal Court of Appeal: *Abdo* at paras. 22-23, citing *Nelson* at para. 21.

[37] At the hearing, counsel for the Applicant submitted that the Appeal Division could not have relied on *Francis* and *Abdo* to dismiss the Applicant's claim that, in view of Supreme Court of Canada precedents, he could not commit misconduct because his conduct could not be wilful given the immutability of his religious beliefs. She noted that while a "tangential immutability argument" was made before the Court in *Francis*, it did not include any reference to the Supreme Court of Canada precedents in *Corbière* and *Quebec v. A.* While she acknowledged that the applicant in *Abdo* did refer to those precedents, she argued that because the Federal Court did not expressly mention them in its reasons, it "made no finding on immutability in light of [these precedents]" and did not grapple with the impact of these precedents on wilfulness. Accordingly, she reasoned, there was nothing in *Francis* or *Abdo* upon which the Appeal Division could rely to dismiss the Applicant's claim.

[38] The Applicant's argument elevates form over substance and must be rejected. In *Francis*, this Court upheld as reasonable a finding by the SST that, following the objective definition of misconduct, an employee's abstention from vaccination in violation of their employer's policy constituted misconduct even in the face of his argument that, in light of his religious belief, there was "no real choice" involved in his decision. In *Abdo*, the Federal Court came to the same conclusion where the employee raised a similar argument, this time supported by the very jurisprudence on religious freedom and immutable characteristics advanced by the Applicant. In my view, it was eminently reasonable for the Appeal Division to decide that, confronted with similar arguments and similar factual circumstances, it was bound to follow *Francis* and *Abdo* in deciding the appeal before it.

(2) The Appeal Division's decision that the General Division committed no reviewable error under section 58(1) of the DESD Act is reasonable

[39] The Appeal Division found that the General Division had concluded from the preponderant evidence that the Applicant's continued abstention from COVID-19 vaccinations was misconduct because the Applicant knew of the employer's vaccination policy, that he would not be permitted to work if he did not follow it and could therefore not carry out his employment duties and that there was a real possibility he could be dismissed for that reason: Appeal Division Decision at paras. 32, 40-41. It held that the preponderant evidence before the General Division showed that the Applicant had voluntarily "made the decision not to follow the Policy and this resulted in him being dismissed from work": Appeal Division Decision at para. 50. It concluded that the General Division had "correctly" applied case law to the facts of the Applicant's case and had made no reviewable error "when it decided the issue of misconduct solely within the

parameters set out by the Federal Court of Appeal, which has defined misconduct under the EI Act": Appeal Division Decision at paras. 51, 58.

[40] The Applicant has not satisfied me that the Appeal Division's decision presents any shortcomings or flaws sufficiently central or significant to render it unreasonable, either because it presents a failure of rationality in its reasons or because it is not justified in light of the legal and factual constraints: *Vavilov* at para. 100; *Mason* at paras. 65-66.

[41] As noted by the Appeal Division, the General Division clearly laid out in its decision the objective definition formulated by this Court. It stated that "there is misconduct if the Appellant knew or should have known that his conduct could get in the way of carrying out his duties toward his employer and that there was a real possibility of being let go because of that": General Division Decision at para. 15.

[42] The General Division then made the following findings of fact:

a) The employer's vaccination policy defined employees "unwilling to be vaccinated" as including employees for which an accommodation for a religious ground is not granted and where the employee is still unwilling to be vaccinated (General Division Decision at paras. 30–32);

b) The employer had refused the Applicant's request for accommodation for a religious ground (General Division Decision at para. 33);

c) The employer considered the Applicant to be unwilling to be vaccinated (General Division Decision at para. 37); and

d) The employer "repeatedly" informed the Applicant that he would be released if he continued to remain unvaccinated (General Division Decision at para. 66).

[43] Applying the objective definition of misconduct set out in the binding jurisprudence of this Court to these findings of fact, the General Division came to the following conclusion:

> I find that the Commission has proven, on a balance of probabilities, that there was misconduct because the Appellant knew there was a mandatory vaccination policy, and did not follow the policy or get an exemption for doing so. The Appellant knew that by not following the policy that he would not be permitted to be at work. This means that he could not carry out his duties to his employer. The appellant was also aware that there was a real possibility that he could be let go for this reason.
>
> [General Division Decision at para. 68.]

[44] The Applicant submits that the decisions of the Appeal Division and General Division failed to meaningfully grapple with his central argument: that the Supreme Court has held that his religious belief and the religious conduct it governs are immutable. As an immutable characteristic, he argues, his abstention from vaccination is not a matter of choice. Because his conduct is not voluntary, it cannot give rise to misconduct under subsection 30(1) of the Act.

[45] This argument is without merit. As noted earlier, the Appeal Division reasonably held that it was bound by *Francis* and *Abdo*, which had upheld as reasonable decisions of the SST that had concluded, in similar circumstances and in the face of substantially identical arguments, that

claimants had engaged in misconduct. The Appeal Division also held that the General Division did not ignore the Applicant's key issues or central arguments (Appeal Division Decision at para. 58). Its conclusion is amply supported by the General Division's reasons, which unequivocally demonstrate that it grasped the Applicant's jurisprudential argument, as illustrated in the following series of extracts:

> The [Applicant] says there is caselaw that supports that a religious belief is immutable, they are ingrained in him. He says he was not making a personal choice (General Division Decision at para. 10)
>
> The [Applicant] referred to numerous cases and maintains that because he was following his religious beliefs it can't be construed as misconduct [a footnote with numerous "non-exhaustive" citations is omitted]. The [Applicant] relies on [*Amselem*] that his employer was wrong for what they did. (General Division Decision at para. 44)
>
> The [Applicant] says that due to the decision in *Amselem*, that he should be entitled to EI benefits. (General Division Decision at para. 45)
>
> The [Applicant] argues that because his religion is so ingrained in him, he can't be seen as making a choice. He relies on *Amselem* to support his assertion. (General Division Decision at para. 48)
>
> The [Applicant's] main position is he believes that religion is not a choice. He says that his case is different from many other misconduct court cases. (General Division Decision at para. 57)

[46] The Applicant complains that the General Division did not expressly mention the *Corbière* and *Quebec v. A* decisions in its reasons. The written reasons given by an administrative body must not be assessed against a standard of perfection; that the reasons given for a decision do not include all the jurisprudence or other details the reviewing judge would have preferred is not on its own a basis to set the decision aside: *Vavilov* at para. 91. As reflected

in the preceding paragraph, the General Division's references to the concept of the immutability of religious beliefs throughout its reasons show that it clearly grasped the argument for which the Applicant had put these decisions forward.

[47] Notwithstanding the Applicant's jurisprudential argument, the General Division found that, on the evidence, the objective definition of misconduct was satisfied: the Applicant knew of the employer's vaccination policy and understood that failing to follow the policy would impair the performance of his employment duties and that dismissal was a real possibility: General Division Decision at paras. 65-68. In other words, it found that his conduct was conscious and constituted misconduct under subsection 30(1) of the Act.

[48] The Applicant's claim that his jurisprudential argument constitutes a legal constraint that bears on the decision of the Appeal Division and General Division as to whether misconduct was made out is without merit. The objective definition requires that the conduct be conscious, deliberate or intentional. Having applied the test and concluded that the Applicant's conduct was conscious, in the sense that he understood that his failure to follow the Policy would impair the performance of his duties and possibly lead to his dismissal, the General Division was not required to accept the Applicant's claim, based on his jurisprudential argument, that he had not committed misconduct because his conduct could not be the product of a "deliberate or intentional choice".

[49] Indeed, the General Division expressly rejected that claim and decided that the evidence before it established that the Applicant had in fact made a deliberate, personal choice to abstain from vaccination:

> I don't accept that the [Applicant] didn't make a conscious choice because his religion is so ingrained in him. I understand, and appreciate the Appellant's religious convictions, but I find that he understood what his choices were and made the choice to not get vaccinated due to his religious beliefs. I find that this was his own choice.
>
> [General Division Decision at para. 53.]

[50] The General Division's determination that the Applicant's abstention from vaccination was a deliberate choice is a finding of fact (*Francis* at para. 13). It is supported by two key documents in the record before the General Division.

[51] The first document is a letter authored by the Applicant's military chaplain and appended by the Applicant to his application for EI. The Applicant stated in his submissions to the General Division that the letter explained "the religious basis of my beliefs and how these beliefs do not permit me to take any of the presently available COVID-19 vaccines." In the letter, the military chaplain underlined that individual Catholics are expected to act so as to personally make moral decisions:

> At the core of the Church's teaching are the first and last principles listed above: vaccination is not a universal obligation and a person must obey the <u>judgment of his or her own informed and certain conscience</u>. (…)
>
> Therefore, <u>if Michal comes to an informed and sure judgment</u> in conscience that he should not receive a vaccine, then the Catholic Church requires that he follow this certain judgment of conscience and refuse the vaccine. The Catechism is

> clear: "Man has the right to act in conscience and in freedom so as personally to make moral decisions. 'He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters.'"
>
> [Emphasis added.]

[52] The second document, the Applicant's Request for Religious or Spiritual Accommodation, records the Applicant's reasons for deciding why, in the circumstances as he saw them, accepting a COVID-19 vaccination would conflict with his religious beliefs and why his decision to abstain from vaccination was justified:

> Christians are required to honour the sanctity of human life, including pre-natal human life, and therefore to protect unborn children from medical experimentation in the production and verification of the presently available COVID-19 vaccines (Jer. 1:5, Gen. 1:27; Gen. 9:6; Eze. 18:20, Ps. 139:13-16). It is my sincerely held religious belief that elective abortion is always immoral and that the benefits resulting from such procedures (ie the development and testing of these vaccines) are likewise morally unjustifiable. While the Catholic Church does permit the use of vaccines developed using or being tested on fetal cells in extraordinary circumstances, the Church is careful to state that the decision to benefit from medical advancements gained as a result of immoral practices must be undertaken voluntarily by the recipient and only in cases where there are not alternatives available that do not violate the individual's covenant with God (Reference H). Furthermore, the Bible states that any moral decision must be made in accordance with the individual's conscience (1 Cor. 8:7, Rom. 13:5, Act. 24:16, Jam. 4:17) and thus the decision to utilize the products or benefits at the cost of innocent lives must be weighed by the individual. Given that other means for developing and testing vaccines are widely available and the mortality rate and instances of complications from COVID-19 infections or hospitalizations among those of military age and fitness is extremely low, I don't believe that moral capitulation of my deepest values is justifiable in this case while alternatives exist, which is in concordance with both my individual faith/beliefs as well as Church Doctrine.
>
> [Emphasis added.]

[53] These two documents are replete with professions of the right of individuals to make judgments and moral decisions. Indeed, after stating that the Bible requires that each individual weigh the decision to utilize vaccines or their benefits at the cost of innocent lives, the Applicant concluded that submitting to the vaccinations required by his employer was not justifiable "in this case" because, in his estimation, other means to develop and test vaccines were available and the risk posed by COVID-19 to the safety of persons of military age and fitness was low. The General Division's finding of fact that the Applicant *chose* not to get vaccinated was supported by the evidence before it and it was thus reasonable for the Appeal Division to hold that the preponderant evidence before the General Division showed that the Applicant had voluntarily decided not to follow the Policy, leading to his dismissal.

[54] The Applicant faults the General Division for not including a more detailed analysis of his jurisprudential argument. As noted by the Supreme Court, "[a]dministrative decision makers cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge – nor will it always be necessary or even useful for them to do so": *Vavilov* at para. 92. This reminder is particularly apt in the case at bar. On the facts before it, the General Division concluded that the objective definition for misconduct was met. Since the Applicant's conduct was conscious, it was neither necessary nor useful to further analyze the argument that, according to the jurisprudence of the Supreme Court of Canada, it is impossible for religious believers to make deliberate choices with regards to their religious conduct. This is particularly so where that argument was disproved by the General Division's finding, on the evidence before it, that the Applicant had in fact made a deliberate choice to abstain from vaccination.

[55] In light of the preceding analysis, the Applicant has not satisfied me that the decision of the Appeal Division that the General Division made no reviewable error in confirming the Commission's conclusion that the Applicant was disqualified from EI benefits due to misconduct is unreasonable.

[56] I would dismiss the application for judicial review and, in accordance with the parties' submissions, order that each party bear its own costs.

"Gerald Heckman"
J.A.

"I agree.
Mary J.L. Gleason J.A."

"I agree.
George R. Locke J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-28-24
STYLE OF CAUSE:	MICHAL ZAGOL v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HEARD BY ONLINE VIDEO CONFERENCE HOSTED BY THE REGISTRY
DATE OF HEARING:	NOVEMBER 27, 2024
REASONS FOR JUDGMENT BY:	HECKMAN J.A.
CONCURRED IN BY:	GLEASON J.A. LOCKE J.A.
DATED:	FEBRUARY 19, 2025

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