Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *P. D. v. Canada Employment Insurance Commission*, 2018 SST 1008

Tribunal File Number: GE-17-2836

BETWEEN:

P. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: March 13, 2018

DATE OF DECISION: April 5, 2018

REASONS AND DECISION

OVERVIEW

[1] The Appellant made an initial claim for employment insurance benefits on September 1, 2016. On February 17, 2017, the Respondent disentitled the Appellant from receiving benefits after finding he failed to prove that he was available for work. On May 4, 2017, the Respondent notified the Appellant that it had concluded that he knowingly made a false representation and that it was imposing a penalty and issuing a notice of violation. The Appellant requested a reconsideration of these decisions, and on July 27, 2017, the Respondent maintained its initial decisions concerning availability and imposing a penalty, but overturned its decision to issue a notice of violation. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on August 25, 2017.

[2] The Tribunal must decide whether the Appellant is disentitled from benefits pursuant to paragraph 18(1)(a) of the *Employment Insurance Act* (Act) for failing to prove that he was capable of and available for work and unable to find suitable employment. The Tribunal must also decide whether the Respondent properly imposed a penalty pursuant to section 38 of the Act because the Appellant knowingly provided false or misleading information.

[3] The hearing was held by videoconference for the following reasons:

a) The fact that credibility is not anticipated to be a prevailing issue.

b) The fact that the Appellant will be the only party in attendance.

c) The request of the Appellant.

d) The form of hearing respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[4] The following people attended the hearing: the Appellant and his witness, M. D..

[5] The Tribunal finds that the Appellant has not proven that he was capable of and available for work and unable to find suitable employment. The Tribunal finds that the Respondent did not properly impose a penalty pursuant to section 38 of the Act, and that the Appellant did not make a representation that he knew was false or misleading. The reasons for this decision follow.

EVIDENCE

[6] On September 1, 2016, the Appellant made an initial claim for benefits and a benefit period was established effective August 28, 2016. In his initial claim, the Appellant completed a training questionnaire in which he indicated that he was taking a Bachelor of Business Administration program course that started on September 7, 2016, and ended on December 17, 2016, and that the total number of hours he spent per week on his studies, including time spent on studying as well as time spent in class was one to nine hours.

[7] On January 27, 2017, the Appellant completed a training questionnaire in which he indicated that he spent 25 or more hours per week on his studies and that he was taking five courses at a cost of $6,005, all of which started January 4, 2017 and ended April 7, 2017, and that he attended classes Monday to Friday. The Appellant indicated that he was available for work and that if he found full-time work that conflicted with his program, he would change his course schedule to accept the job. He stated that he had worked 10 hours per week from February 4, 2016 to January 4, 2017, while studying 40 hours per week.

[8] On February 17, 2017, the Appellant told the Respondent that he was taking a four-year business program at university. He said that he had been in the business program since January 2013, had taken four courses each semester since then, and hoped to graduate in April 2018. The Appellant said of the current semester, that his classes were held in the mornings and afternoons, Monday to Friday. The Appellant said that he could take most of his courses online if he had a full-time job offer, but said that he had not checked with the university about this possibility. He said that he was not actively seeking full-time employment. The Respondent notified the Appellant that it was unable to pay him employment insurance benefits from January 4, 2017, because he was taking a training course on his own initiative and had not proven his availability for work.

[9] On February 22, 2017, the Respondent asked the Appellant about his availability for work since his benefit period commenced on August 28, 2016. When asked about his training schedule, the Appellant said that he is in class on Mondays from 9:30 a.m.to 10:20 a.m., Tuesdays from 10:00 a.m. to 12:45 p.m., Wednesdays from 9:30 a.m. to 10:20 a.m. and 4:30 p.m. to 5:45 p.m., Thursdays from 10:00 a.m. to 12:45 p.m. and Fridays from 9:30 a.m. to 10:20 a.m. The Appellant said that he would not drop his training if offered a full-time job, stating that he would not have to drop courses because he could change his training schedule to accommodate any work schedule. The Appellant said that he had worked while attending classes previously, but said that it was summer work, including with the university.

[10] The Appellant sent the Respondent a letter dated March 11, 2017, in which he indicated that he was enclosing copies of letters of confirmation that he had been actively seeking employment, but said that some prospective employers did not keep his résumé on file. He also indicated that he had met with the registrar's office and his current professors, and that they had confirmed that each professor can be flexible to accommodate working students. The Appellant attached copies of the following documents to his letter:

- a letter dated February 24, 2017, from a prospective employer who indicated that the Appellant had been actively seeking employment with its company since early fall of 2016;
- a memo from the university concerning a university career and summer job fair to be held on March 8, 2017;
- a notice of a summer job opportunity for a term position, tentatively from May 3 to September 1, 2017;
- a notice of a full-time job opportunity for 13 weeks, anticipated to start on June 5, 2017.

[11] On May 4, 2017, the Respondent prepared a rationale concerning misrepresentation and imposition of a penalty. The Respondent indicated that the Appellant had indicated in his availability questionnaire that he spent a total of one to nine hours on his studies and as a result, availability was allowed automatically and the Appellant received benefits from September 11,

2016 to December 31, 2016. The Respondent indicated that the Appellant had misreported his availability and the time spent on training. The Respondent noted that, by his own admission, the Appellant is in class a minimum of 11 hours per week, not including the time needed to get to and from classes, or the additional 4 to 5 hours on average spent weekly on his studies. The Respondent stated that it had asked the Appellant to provide a job search and a letter from the university, but he failed to do so. It said that it was reasonable to conclude that the Appellant ought to have known that he was required to accurately report his training and declare his availability, and that it was more probable than not that the Appellant made false statements knowingly. The Respondent noted that the Appellant did not give an explanation or any mitigating circumstances for his actions. The Respondent assessed the penalty at three times the Appellant's weekly benefit rate of $199 multiplied by the one misrepresentation, or $597. Concerning the notice of violation, the Respondent stated that the net overpayment amount was $2,920 and that it had classified the Appellant's misrepresentation as a first level misrepresentation. Because it concluded that the Appellant ought to have known that he was required to accurately report his training and availability, and did not provide an explanation of the discrepancy or any mitigating circumstances for his actions, and because the net overpayment amount is $2,920, the Respondent decided to issue a notice of violation that it classified as serious.

[12] On May 4, 2017, the Respondent notified the Appellant that it had concluded that he made a false representation. The Respondent imposed a penalty of $597 for one false representation. It also issued a notice of violation that it classified as serious.

[13] On May 6, 2017, the Respondent sent the Appellant a notice of debt in the amount of $3,517 that included $597 for the penalty, and $2,920 for the overpayment that resulted due to a definite disentitlement. The Respondent prepared a breakdown of the overpayment that showed $77 in benefits paid to the Appellant on September 18, 2016, $199 in benefits paid to the Appellant for each of the seven weeks from September 25, 2016 to November 6, 2016, $176 paid on November 13, 2016, $199 in benefits paid to the Appellant for each of the six weeks from November 20, 2016 to December 25, 2016, and $80 paid on January 1, 2017, for a total of $2,920.

[14] The Appellant sent an undated request for reconsideration to the Respondent. In his request, the Appellant said that other than a typing mistake or error on one of the questions, he did not know exactly what he had done wrong, and insisted that he had always been honest and forthright in his intentions.

[15] On July 4, 2017, the Appellant told the Respondent that he had reduced the number of courses he was taking from five to four in January 2017. He insisted that he had sent in a job search as requested previously by the Respondent, and that he spoke to the university registrar who said that he would have to speak to his professors about allowing him to be out of class if he was working, but that he did not do so because he had too many professors to contact. The Appellant said that the Respondent had not asked him for a job search or proof of his registration in school, so he did not send them, but he had provided a job search for the period January 2017 to April 2017. The Respondent told the Appellant that there was nothing on the file to show that he was looking for full-time employment while going to school from September to December 2016, and that there were four potential employers that were listed on the job search he sent, and three summer job placement opportunities.

[16] On July 24, 2017, the Respondent told the Appellant that he was supposed to have submitted an official document from his university showing what courses he was registered for and/or which courses he had dropped, and that he was supposed to have submitted his job search from September 2016 to December 2016, but had not done so.

[17] On July 27, 2017, the Respondent notified the Appellant that it was maintaining its decisions made on February 17, 2017 and May 4, 2017, concerning availability for work and the penalty it imposed, but that it had decided in his favour concerning the violation, and that the decision on this issue had been overturned.

[18] On August 25, 2017, the Appellant filed a notice of appeal with the Tribunal. The Appellant attached a letter dated July 4, 2017, from the university that confirmed that the Appellant was enrolled as a full-time student in the Bachelor of Business Administration program for the period September 2016 to April 2017. The letter noted that based on review of the Appellant’s timetables for that period, the author of the letter had determined that, in addition

to his class schedules, it was possible for the Appellant to work full-time during his period of study.

[19] At the hearing, the Appellant testified that from September 2016 to December 2016, he was in four courses, one online and three in class. He stated that each class was two and a half hours for a total of 7.5 hours, and that he had no classes on Fridays. He said that he sent the Respondent proof of job searches he conducted, job fairs he went to, and letters he sent to prospective employers. He said that he was looking for work with different organizations and in different industries. The Appellant stated that he would have dropped his courses if he had found a full-time, self-sustaining job from which he could make a stable income, and if not, he would have arranged the employment around his school schedule. Concerning his courses from January 2017, the Appellant said that he told the Respondent that he was in five classes, but that he would dropping one, at which time he would be in class for eight hours and 20 minutes.

[20] The Appellant testified that he had made his initial claim for benefits before he received his schedule, so he did not know how long he would be spending in class. The Tribunal asked the Appellant, considering that he said that he spent 7.5 hours a week in class between September 2016 and December 2016, how much time on average he would have spent outside class studying. The Appellant said that the time spent studying outside class would fluctuate, such that some weeks he would spend 40 minutes and others he would potentially spend more time than that. He explained that because he was in the final year of his program, most of his work was completed in class so that he had to do very little work at home. The Appellant maintained that he spent on average between one and nine hours on his studies. Concerning his work history while in school, the Appellant testified that in the 2015/2016 school year, he had worked 30 hours a week, working in residence services, helping new students with their classes and tutoring. He said that it was like an administrative assistant position.

[21] On March 19, 2018, the Appellant sent the Tribunal details of his job search efforts between September and December 2016. The details, which were broken down by week in each of the three months, included building his résumé, conducting internet job searches, searching the job bank, dropping off his résumé, and speaking to potential employers.

SUBMISSIONS

Availability

[22] The Appellant submitted that when he completed his bi-weekly report in January 2017, he indicated that he attended class 35 hours a week when he actually attended class 15 hours a week. The Appellant submitted that many students in his program work full-time hours and are able to hand in assignments and continue with the program. He stated that he had complied with the Respondent's requests by sending in his job search and a letter from his university's registrar.

[23] The Respondent submitted that it made a clerical error in the notice of initial decision that it sent to the Appellant. It stated that the notice should have stated that benefits could not be paid from August 29, 2016 to December 30, 2016, because the Appellant was taking a training course on his own initiative and had not proven his availability for work.

[24] The Respondent submitted that the Appellant's evidence of having contacted one employer and three job postings for summer employment does not indicate a desire to immediately return to the workforce full-time. It stated that although the Appellant said that his course of instruction only required 15 hours of his time per week, he did not make a genuine effort to immediately return to the workforce. The Respondent stated that the Appellant had not shown that any exceptional circumstances existed that would have allowed him to work full-time while attending his course of instruction, and said that the letter from the university does not change the fact that the Appellant has not conducted a sustained job search that could result in full-time employment while attending the course of instruction. It argued that the Appellant had failed to rebut the presumption of non-availability while attending a full-time course because he has not proven that he had been actively seeking employment for the period that he was in his course of instruction.

Penalty

[25] The Appellant submitted that when he completed his bi-weekly report in January 2017, he indicated that he attended class 35 hours a week when he actually attended class 15 hours a week. He stated that when speaking to the Respondent, in an effort to appear studious, he

exaggerated the hours he studied. He argued that he had not knowingly made false statements, but had just made honest mistakes.

[26] The Respondent submitted that the Appellant made a misrepresentation when he reported that he was in training for one to nine hours per week when he completed his initial claim for benefits, but he later admitted that his hours in school were for a longer period of time. It stated that the Appellant was aware that he was spending more time than one to nine hours on his studies and class time, therefore he knowingly made a false statement. The Respondent said that its policy when calculating the penalty amount is that for a first misrepresentation, the penalty amount may be up to 50% of the overpayment caused by the misrepresentation, and where a benefit period could not be established or was cancelled because the record of employment provided was inaccurate, for a first misrepresentation, the penalty amount may be up to the number of misrepresentations multiplied by one times the maximum weekly rate in effect when the misrepresentation occurred. It submitted that it rendered its decision in a judicial manner because all the pertinent circumstances were considered when assessing the penalty amount. The Respondent stated that this was the Appellant's first incident of misrepresentation and it was considered that he made one false statement, therefore the penalty was calculated as three times the benefit rate multiplied by the number of false statements, or 3 x $199 x 1 = $597.

ANALYSIS

[27] The relevant legislative provisions are reproduced in the Annex to this decision.

[28] The first issue to be decided is whether the Appellant was available for work.

[29] Paragraph 18(1)(a) of the Act states that a claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was capable of and available for work.

[30] The Tribunal is mindful of the presumption that a person who is enrolled in a course of full time study is not available for work and that this presumption is rebuttable in exceptional circumstances.

Landry v. Canada (AG), A-719-91; *Canada (AG) v. Gagnon*, 2005 FCA 321; Canada (AG) v. *Lamonde*, 2006 FCA 44

[31] The Tribunal finds that there is insufficient evidence of exceptional circumstances based on which it can conclude that the Appellant has rebutted this presumption. The Appellant indicated that he would not have to drop courses in order to accept a full-time job, because he could adjust his training schedule to accommodate any work schedule. He also stated that his professors confirmed that they could be flexible in accommodating working students, although he later said that he did not speak to his professors about allowing him to be out of class if he was working, because he had too many professors to contact. The Appellant submitted a letter from the university in which an opinion was offered that in addition to his class schedule, it was possible for the Appellant to work full-time during his period of study.

[32] In spite of the Appellant's evidence, the Tribunal is not satisfied that exceptional circumstances exist in this case. The Tribunal found inconsistencies in the Appellant's evidence concerning having worked while he was studying. The Appellant stated in his training questionnaire that he had worked 10 hours per week from February 4, 2016 to January 4, 2017, while studying 40 hours per week. He later told the Respondent that he had worked previously while attending classes, but said that it was summer work, including with the university. The Appellant then testified that in the 2015/2016 school year, he worked 30 hours a week. Given the inconsistency in this evidence, and in the absence of a credible history of working while attending school, the Tribunal does not find that the Appellant has rebutted the presumption that a person who is enrolled in a course of full time study is not available for work.

[33] The Federal Court of Appeal has stated that to prove availability for work, a claimant must

a) have a desire to return to the labour market as soon as a suitable employment is offered;

b) express that desire through efforts to find a suitable employment; and

c) not set personal conditions that might unduly limit their chances of returning to the labour market.

> *Canada (AG) v. Boland*, 2004 FCA 251; *Canada (AG) v. Primard*, 2003 FCA 349; *Canada (AG) v. Bois*, 2001 FCA 175; *Faucher v. Canada (Commission)*, A-56-96; *Poirier v. Canada (Commission)*, A-57-96; *Canada (AG) v. Whiffen*, A-1472-92

Desire to return to the lab our market as soon as suitable employment is offered

[34] The Tribunal does not find that the Appellant has demonstrated a desire to return to the labour market as soon as suitable employment is offered. The Appellant told the Respondent that he was available for work and would change his course schedule and accept a full-time job if it conflicted with his program. Although he later told the Respondent that he was not actively looking for work, the Appellant testified that he had been looking for work with different organizations and in different industries, and that if he found a self-sustaining job he would have dropped his courses, and otherwise, he would arrange his employment around his school schedule. Because the Appellant said that he hoped to graduate in April 2018, and because he had paid $6,005 for the five courses he was scheduled to take starting in January 2017, the Tribunal does not find it reasonable that the Appellant would have dropped his courses to take a full-time job. Although he said that he would rearrange his course schedule to accommodate a full-time job, the Tribunal notes that, notwithstanding the opinion expressed in the university's letter that the Appellant would be able to work full-time hours with his course schedule, the Appellant did not confirm with his professors being allowed to be out of class.

[35] While the Tribunal accepts that the Appellant may have wanted to work while in school, in the absence of supporting evidence from the university, the Tribunal is not satisfied that the Appellant was not required to be in class, or that he would have been able to change his course schedule as he stated. In addition, given that the Appellant had been in the business program since January 2013, the Tribunal does not accept that he would have dropped his courses to accept suitable employment.

Efforts to find suitable employment

[36] The Appellant submitted details of his job search efforts between September 2016 and December 2016, that included activities such as building his résumé, conducting internet job searches, searching the job bank, dropping off his résumé, and speaking to potential employers. For the period after December 2016, the Appellant sent the Respondent a letter from a

prospective employer saying that the Appellant had been seeking employment with his company since early fall, 2016, a memo concerning a university career and summer job fair in the future, a notice of a future term summer job opportunity, and a notice of a future full-time 13-week job opportunity. Although the Appellant did engage in some activities consistent with reasonable and customary efforts as defined in section 9.001 of the Regulations, the Tribunal finds that it cannot be said that his efforts to find employment were sustained. The Tribunal agrees with the submission of the Respondent that contacting one employer and submitting three job postings for summer employment does not indicate a desire to immediately return to the workforce. As a result, the Tribunal is not satisfied that the Appellant has proven that he was making reasonable and customary efforts to obtain suitable employment.

No personal conditions that might unduly limit chances of returning to the labour market

[37] Having already referred to the absence of supporting evidence from the Appellant from the university that he was not required to attend classes, or that he could rearrange his course schedule, the Tribunal finds that the Appellant's attendance in full-time study at university created a personal condition that might unduly limit his chances of returning to the labour market. Although the Tribunal acknowledges that the Appellant's in-class time may have been only 15 hours as he indicated, the Tribunal is not satisfied that the Appellant's ability to return to the labour market was not limited by his studies.

[38] The Respondent submitted that it made a clerical error in one of its notices of decision sent to the Appellant, in that it did not refer to the disentitlement from August 29, 2016 to December 30, 2016. The Tribunal is guided by the Federal Court of Appeal in the decision *Desrosiers v. Canada (AG)*, A-128-89, that confirmed the principle established in *Desrosiers* CUB 16233 that an error which does not cause prejudice is not fatal to the decision under appeal. The Tribunal notes that the Respondent discussed with the Appellant not having anything to show that he was looking for full-time employment from September to December 2016, and that it sent the Appellant a notice of debt on May 6, 2017, that included an overpayment that resulted because of a definite disentitlement. Because of this, the Tribunal finds that the Appellant was aware that his availability from September 2016 to December 2016 was in question, and that the

Respondent's error in not identifying the disentitlement its initial decision letter to the Appellant does not cause prejudice.

[39] Based on the foregoing, the Tribunal finds that the Appellant has not proven his availability for work from August 29, 2016.

Imposition of a penalty

[40] The second issue that must be decided is whether a penalty should be imposed because the Appellant knowingly provided false or misleading information to the Respondent.

[41] Paragraph 38(1)(b) of the Act states that the Commission may impose a penalty on a claimant if the Commission becomes aware of facts that, in its opinion, establish that the claimant, being required under the Act or the regulations to provide information, provided information or made a representation that the claimant knew was false or misleading.

Knowingly providing false or misleading information

[42] According to the Federal Court of Appeal, whether information is provided knowingly is determined on the balance of probabilities on the circumstances of each case or the evidence of each case. It must be decided whether the Appellant subjectively knew that the statement was false or misleading.

> *Canada (AG) v. Gates*, 1995 FCA 600; *Mootoo v. Canada (Minister of Human Resources Development)*, 2003 FCA 206

[43] The Respondent has the burden of proving a false statement was knowingly made. The burden then shifts to the claimant to provide a reasonable explanation why the representation was not knowingly.

> *Canada (AG) v. Purcell*, A-694-94; *Canada (AG) v. Gates*, A-600-94

[44] Although the Appellant did not appear to understand the exact false representation that the Respondent was alleging he had made, as demonstrated by his submissions, the Tribunal found that his testimony was credible concerning the amount of time that he spent on his studies.

The Appellant's evidence is that for the period September 2016 to December 2016, he took four courses, three of which were in-class, and the fourth which he did online. He said that he attended classes for seven and a half hours a week and that most of his work was completed in class, so that he spent sometimes 40 minutes a week studying outside of class and sometimes more than that. The Appellant maintained that the total time that he spent on his studies between September 2016 and December 2016, was between one and nine hours as he had indicated in his initial claim for benefits.

[45] The Respondent submitted that after having indicated that he was in training for one to nine hours per week, the Appellant later admitted that his hours in school were for a longer period of time and that the Appellant was aware that he was spending more time than one to nine hours on his studies and class time, therefore he knowingly made a false statement. The Respondent noted in its rationale concerning imposing a penalty, that the Appellant, by his own admission was in class a minimum of 11 hours per week, not including the time needed to get to and from class, or the additional four to five hours on average spent weekly on his studies.

[46] The Tribunal does not find the Respondent's evidence to be clear in respect of the period of time to which the Appellant was referring when he detailed his in-class time. When the Appellant spoke to the Respondent on February 22, 2017, he reported his in-class times, which totalled nine hours and 15 minutes, Mondays to Fridays. However, when speaking of his courses between September 2016 and December 2016, the Appellant testified that he did not have classes on Fridays. The Appellant also testified about his courses from January 2017, specifically that he had told the Respondent that he was in five classes, but that he would be dropping one, at which time he would be in class for eight hours and 20 minutes. The Tribunal finds that the nine hours and 15 minutes of in-class hours to which the Appellant referred in his February 2017 statement to the Respondent, correspond to his reduced course load after December 2016 about which he testified. Additionally, the Tribunal finds that there is insufficient evidence to conclude that the Appellant was in class a minimum of 11 hours per week as indicated by the Respondent.

[47] Because the Appellant made his initial claim for benefits on September 1, 2016 for classes that started on September 7, 2016, the Tribunal is not satisfied that in stating that he would spend a total of between one and nine hours per week on his studies, the Appellant

knowingly made a false statement. Having already found that the Appellant's testimony was credible related to his hours of study, the Tribunal accepts his evidence in this regard. Whether the Appellant would ultimately spend on average more than nine hours per week on his studies, including the online course and studying related to the four courses that he took between September and December 2016, the Tribunal finds that the Respondent has failed to prove that the Appellant knowingly made a false statement. As a result, the Tribunal finds a penalty should not be imposed pursuant to section 38 of the Act.

[48] The Tribunal finds that as of August 29, 2016, the Appellant has not demonstrated that he was capable of and available for work. The Tribunal also finds that because the Respondent failed to prove that the Appellant knowingly made a false representation, no penalty should be imposed pursuant to section 38 of the Act for making a misrepresentation by knowingly providing false or misleading information to the Respondent.

CONCLUSION

[49] On the issue of availability, the appeal is dismissed.

[50] On the issue of imposing a penalty, the appeal is allowed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

18 (1) A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was

(a) capable of and available for work and unable to obtain suitable employment;

(b) unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work; or

(c) engaged in jury service.

(2) A claimant to whom benefits are payable under any of sections 23 to 23.2 is not disentitled under paragraph (1)(b) for failing to prove that he or she would have been available for work were it not for the illness, injury or quarantine.

38 (1) The Commission may impose on a claimant, or any other person acting for a claimant, a penalty for each of the following acts or omissions if the Commission becomes aware of facts that in its opinion establish that the claimant or other person has

(a) in relation to a claim for benefits, made a representation that the claimant or other person knew was false or misleading;

(b) being required under this Act or the regulations to provide information, provided information or made a representation that the claimant or other person knew was false or misleading;

(c) knowingly failed to declare to the Commission all or some of the claimant's earnings for a period determined under the regulations for which the claimant claimed benefits;

(d) made a claim or declaration that the claimant or other person knew was false or misleading because of the non-disclosure of facts;

(e) being the payee of a special warrant, knowingly negotiated or attempted to negotiate it for benefits to which the claimant was not entitled;

(f) knowingly failed to return a special warrant or the amount of the warrant or any excess amount, as required by section 44;

(g) imported or exported a document issued by the Commission, or had it imported or exported, for the purpose of defrauding or deceiving the Commission; or

(h) participated in, assented to or acquiesced in an act or omission mentioned in

paragraphs (a) to (g).

(2) The Commission may set the amount of the penalty for each act or omission at not more than

(a) three times the claimant's rate of weekly benefits;

(b) if the penalty is imposed under paragraph (1)(c),

(i) three times the amount of the deduction from the claimant's benefits under subsection 19(3), and

(ii) three times the benefits that would have been paid to the claimant for the period mentioned in that paragraph if the deduction had not been made under subsection 19(3) or the claimant had not been disentitled or disqualified from receiving benefits; or

(c) three times the maximum rate of weekly benefits in effect when the act or omission occurred, if no benefit period was established.

(3) For greater certainty, weeks of regular benefits that are repaid as a result of an act or omission mentioned in subsection (1) are deemed to be weeks of regular benefits paid for the purposes of the application of subsection 145(2).

50 (1) A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

(2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

(3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.

(4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

(5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.

(6) The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.

(7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.

(8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.

(8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.

(9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.

(10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.

Employment Insurance Regulations

9.001 For the purposes of subsection 50(8) of the Act, the criteria for determining whether the efforts that the claimant is making to obtain suitable employment constitute reasonable and customary efforts are the following:

(a) the claimant's efforts are sustained;

(b) the claimant's efforts consist of

(i) assessing employment opportunities,

(ii) preparing a resumé or cover letter,

(iii) registering for job search tools or with electronic job banks or employment agencies,

(iv) attending job search workshops or job fairs,

(v) networking,

(vi) contacting prospective employers,

(vii) submitting job applications,

(viii) attending interviews, and

(ix) undergoing evaluations of competencies; and

(c) the claimant's efforts are directed toward obtaining suitable employment.