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

[TRANSLATION]

Citation: *A. Y. v Canada Employment Insurance Commission*, 2020 SST 754

Tribunal File Numbers: GE-20-942 and GE-20-943

BETWEEN:

A. Y.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: May 12, 2020

DATE OF DECISION: May 15, 2020

Canada

DECISION

[1] The appeal is dismissed. I find that, for each of his two benefits periods—one starting July 1, 2018,[1] and the other June 30, 2019[2]—the Appellant did not have good cause for not applying for a suitable employment that was offered to him after learning that it was vacant or becoming vacant, or for failing to accept it, or for not taking advantage of an opportunity to obtain such employment, under section 27 of the *Employment Insurance Act* (Act).

[2] The Appellant's disqualification from benefits for a 12-week period starting July 1, 2018, for his claim for benefits starting that same day,[3] and for another 12-week period starting August 25, 2019, for his benefit period starting June 30, 2019,[4] is therefore justified under section 28 of the Act.

[3] I find that the Appellant has to repay the money that he was overpaid as benefits (overpayment).

OVERVIEW

[4] The Appellant has been a teacher with the Commission scolaire de Montréal [Montréal school board] (Employer) since 2008. During the 2017–2018 school year, he worked from January 9, 2018, to June 27, 2018, inclusive. On June 29, 2018, the Appellant filed a claim for benefits effective July 1, 2018. During the 2018–2019 school year, the Appellant worked for the same employer, from November 20, 2018, to June 26, 2019, inclusive. On July 14, 2019, the Appellant filed a claim for benefits effective June 30, 2019.

[5] On December 23, 2019, in two similar decisions, the Canada Employment Insurance Commission (Commission) informed the Appellant that it had reconsidered his claims for benefits starting July 1, 2018, and June 30, 2019. It explained to him that it could not pay him Employment Insurance benefits for 12 weeks, starting July 1, 2018, for his benefit period starting

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[1] Benefit period starting July 1, 2018 (GE-20-943).
[2] Benefit period starting June 30, 2019 (GE-20-942).
[3] Benefit period starting June 30, 2019 (GE-20-942).
[4] Benefit period starting June 30, 2019 (GE-20-942).

July 1, 2018.[5] It also could not pay him benefits for 12 weeks, starting August 25, 2019, for his claim for benefits starting June 30, 2019.[6]

[6] The Commission told him that, in each case, he did not show that he had good cause for not taking advantage of an opportunity for suitable employment that the Commission scolaire de Montréal offered him, first on July 1, 2018,[7] then on July 1, 2019.[8]

[7] Regarding the claim for benefits starting July 1, 2018, the Commission told him that he had to repay the amount of benefits to which he was not entitled.[9]

[8] The Appellant argues that he did not refuse a job offer from the Commission scolaire de Montréal, on July 1, 2018, or July 1, 2019. He says that he did not receive job offers from the Employer or sign a contract with it to start teaching at the beginning of the 2018–2019 and 2019–2020 school years. The Appellant argues that the assignment sessions the Employer held at the end of the school year do not represent actual job offers. He says he is entitled to benefits under section 33 of the *Employment Insurance Regulations* (Regulations). The Appellant also argues that, if the Employer had offered him a job, he would not have been able to start teaching in August 2018 (beginning of the 2018–2019 school year), or in August 2019 (beginning of the 2019–2020 school year) because he had planned to be outside Canada at the beginning of each of those school years due to family obligations. He would not have been able to respect his commitments if a contract had been assigned to him or if he had obtained a teaching position. He says that his disqualification from benefits is not justified and that the notice of debt the Commission sent about the amount of benefits that he was overpaid must be cancelled. On March 19, 2020, the Appellant disputed the Commission's reconsideration decisions. Those decisions are the subject of this appeal before the Tribunal.

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[5] GD3-72 and GD3-73 of file GE-20-943.
[6] GD3-69 and GD3-70 of file GE-20-942.
[7] Benefit period starting July 1, 2018 (GE-20-943).
[8] Benefit period starting June 30, 2019 (GE-20-942).
[9] GD3-72 and GD3-73 of file GE-20-943.

PRELIMINARY MATTERS

[9] I note that the appeals with the file numbers GE-20-942 and GE-20-943 were joined under section 13 of the *Social Security Tribunal Regulations* because they raise common questions of law and fact, but for different benefit periods, and concern the same Appellant. In this case, the question of law or fact that is common to both appeal files relates to the Appellant's disqualification from benefits because he did not have good cause for not applying for a suitable employment that was offered to him, or for failing to accept it, or for not taking advantage of an opportunity for suitable employment.

ISSUES

[10] In this case, I must determine whether, for each of his two benefit periods—one starting July 1, 2018, and the other June 30, 2019—the Appellant had good cause for not applying for a suitable employment that was offered to him after learning that this employment was vacant or becoming vacant, or for failing to accept it, or for not taking advantage of an opportunity for suitable employment, under section 27 of the Act. I must also determine whether, in each case, disqualifying the Appellant from benefits for a 12-week period is justified under section 28 of the Act.

[11] To make this finding, and for each of the benefit periods in question, I must answer the following questions:

a) Did the Appellant apply for a suitable employment or take advantage of an opportunity for suitable employment that was offered to him?

b) If not, did the Appellant have good cause for not applying for a suitable employment after learning that it was vacant or becoming vacant, for not taking advantage of an opportunity for suitable employment, or for failing to accept it when it was offered to him?

c) Is the Appellant's disqualification from benefits justified?

d) Does the Appellant have to repay the benefits he was overpaid?

ANALYSIS

[12] Sections 27(1)(a) and 27(1)(b) of the Act state that a claimant is disqualified from receiving benefits if, without good cause since the interruption of earnings giving rise to the claim, the claimant has not taken advantage of an opportunity for suitable employment.

[13] Section 28(1)(a) of the Act states that a disqualification under sections 27(1)(a) and 27(1)(b) is for the number of weeks that the Commission may determine, but that the number of weeks of a disqualification is not fewer than 7 weeks or more than 12 weeks.

[14] Section 9.002(1) of the Regulations states that the criteria for determining what constitutes suitable employment are the following:

a) The claimant’s health and physical capabilities allow them to commute to the place of work and to perform the work;

b) The hours of work are not incompatible with the claimant’s family obligations or religious beliefs; and

c) The nature of the work is not contrary to the claimant’s moral convictions or religious beliefs.

[15] In a case of a refusal of employment, the following four factors must be considered: 1) whether there was a refusal of employment; 2) whether the employment was suitable; 3) whether the Claimant had good cause for refusing the employment; 4) what should be the duration of the disqualification from Employment Insurance benefits?

Did the Appellant apply for a suitable employment or take advantage of an opportunity for suitable employment that was offered to him?

[16] No. The Appellant did not apply for a suitable employment or take advantage of an employment opportunity that the Commission scolaire de Montréal offered him for the 2017–2018 and 2018–2019 school years.

[17] I find that, in each case, the Appellant made the choice not to apply for a job or not to take advantage of an opportunity to obtain a job, when he knew that they were vacant or becoming vacant.

[18] In a statement to the Commission on July 23, 2019, the Employer gave the following clarifications about the hiring of teachers and the assignment of teaching contracts:

a) Contracts are offered to qualified teaching staff based on their eligibility pool from a priority hiring list by teaching field;

b) Priority is given to teachers on the priority list;

c) To be on the priority list, the teacher must have obtained a contract of one hundred (100) days or have had two (2) contracts totaling one hundred forty (140) days over the last three (3) years and had a positive evaluation if they were evaluated;

d) Online assignment sessions were held from June 8 to 11, 2018, and a placement assembly was held on June 27, 2018, for staff on the priority hiring list;

e) Unfilled positions were offered from June 29, 2018, to July 3, 2018, to qualified teaching staff that were not on the priority list;

f) Placement assemblies also took place in August 2018, before the start of the school year.[10]

[19] In his September 18, 2019, statement to the Commission, the Employer explains that, based on the Appellant's place on the priority list, he could have obtained a teaching position at each of the assignment sessions held in June of each year, since 2013. The Employer states that, for the 2018–2019 school year, the Appellant was in 17th place on the priority list for his teaching field (field 3103), and he could have chosen from a minimum of three regular positions starting July 1, 2018. The Employer specified that, for the 2019–2020 school year, the Appellant was in 13th place on the priority list for his teaching field (field 3103) and that he also could

[10] GD3-17 and GD3-18 of file GE-20-943.

have chosen from a minimum of three regular positions starting July 1, 2019. The Employer mentions that, during the 2017–2018 school year, the Appellant completed full-time contracts (100% of his teaching assignment or full assignment) over the following periods: April 23 to 27, 2018; April 10, 2018, to June 28, 2018; and May 22, 2018, to June 27, 2018. During the 2018–2019 school year, the Appellant completed a full-time contract (100% of his teaching assignment or full assignment), from January 25, 2019, to June 26, 2019.[11]

[20] The Appellant says he has taught at the Commission scolaire de Montréal since 2008. He explains that he was added to a priority list after having worked a minimum of 140 days over the course of two school years. He was added to a priority list in the teaching field of high school math, science, and technology (field 13 [3113]) toward the month of April 2010. The Appellant was then added to a priority list at the elementary level, as a permanent teacher (field 3103) toward the end of the 2012–2013 school year. He says that being on the priority list gives him an advantage when teaching positions are awarded. He says that it gives him a choice among the contracts that the Employer offers from one year to another. The Appellant says that he was in 17th place (field 3103) at the end of the 2017–2018 school year.[12]

[21] The Appellant explains that, during the 2017–2018 school year, he was employed on a casual or substitute basis at different schools in the Commission scolaire de Montréal, starting January 9, 2018. He notes that, although it is stated that his contract had ended on June 27, 2018, he did not sign a contract, but worked as a substitute until that date. As a substitute, he was not able to sign a contract with the Commission scolaire de Montréal. He notes that he had signed a contract to teach during the period from April 23, 2018, to June 27, 2018, but that the contract was cancelled because the teacher he was replacing was returning to her position. He says that, on May 14, 2018, he received an assignment for the period from May 22 to June 27, 2018.[13]

[11] GD3-18 and GD3-19 of file GE-20-942; GD3-20 and GD3-21 of file GE-20-943.
[12] GD3-17 of file GE-20-942; GD3-19 of file GE-20-943; GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[13] GD3-17 and GD3-71 to GD3-79 of file GE-20-942; GD3-19 and GD3-75 to GD3-83 of file GE-20-943; GD5-1 to GD5-12, GD8-1 to GD8-7, GD11-1 to GD11-12, and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.

[22] During the 2018–2019 school year, the Appellant worked from November 20, 2018, to June 26, 2019.[14] He notes that, on January 14, 2019, he accepted a contract to teach at an elementary school from January 25, 2019, to June 26, 2019.[15]

[23] The Appellant says he never refused a suitable employment, under the Act, during the periods when he made claims for benefits.[16]

[24] The Appellant's testimony and statements to the Commission indicate the following:

a) The Appellant says he did not receive a verbal or written offer of employment to teach at the beginning of the 2018–2019 and 2019–2020 school years.[17]

b) The Appellant explains that the Commission found that he could have known as early as July 1, 2018, that a job was available for him at the Commission scolaire de Montréal when school started in August 2018 and this that job would be reserved for him.[18] He argues that, if a job had actually been reserved for him, that job would have been offered directly or personally. The Appellant explains that he did not receive a direct or personal job offer from the Employer to which he would have had to respond yes or no for the Employer to know whether he had agreed to teach at a specific establishment. According to the Appellant, since the Employer did not make him a personal offer of employment that he then refused, it cannot be considered a refusal of employment.[19]

c) The Appellant says that he did not sign a contract for the beginning of the 2018–2019 school year and that there was no agreement or commitment, written or verbal, with the Employer.[20]

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[14] GD3-4 and GD3-16 of file GE-20-942.
[15] GD3-4 to GD3-17 of file GE-20-942 and GD3-19 of file GE-20-943.
[16] GD3-25 to GD3-48 of file GE-20-942 and GD3-27 to GD3-50 of file GE-20-943.
[17] GD3-8 of file GE-20-942 and GD3-9 of file GE-20-943.
[18] GD4-13 of file GE-20-943.
[19] GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[20] GD3-25 to GD3-48 and GD3-71 to GD3-82 of file GE-20-942; GD3-27 to GD3-50 and GD3-75 to GD3-86 of file GE-20-943; GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.

d) The Appellant says that he knew the Employer had held online assignment sessions.[21] He notes that an assignment session program is established for the entire school year. The Appellant says that he did not participate in the assignment sessions or attend the placement assemblies that the Employer held at the end of the 2017–2018 and 2018–2019 school years (assignment sessions from June 8 to 11, 2018; from June 13 to 18, 2019; and from June 28, 2019, to July 2, 2019; and June 27, 2018, placement assembly).[22]

e) The Appellant says he did not receive notice to participate in the assignment sessions. He explains that, to his knowledge, the online assignment sessions like those of June 8 and 11, 2018, were not intended for teachers on the priority list, but that it could depend on the teaching field in which teachers are enrolled. He says that those sessions are also intended for teachers asking for a transfer. The Appellant says that, to his knowledge, only the placement assemblies were held at the end of the school year (for example, the June 27, 2018, placement assembly) where teachers have to then go to a school. He says that it is at the placement assembles that teaching positions and contracts are awarded. He says he does not know whether he would have gotten a contract if he had attended the Employer's end-of-year placement assemblies. The Appellant notes that, to his knowledge, the only assembly he was allowed to attend was a placement assembly like the one held on June 27, 2018.

f) The Appellant says he believes that applying for a position does not guarantee that the position will be assigned to him. According to him, even the Commission scolaire de Montréal cannot guarantee the assignment of a suitable job to a teacher in their field of qualification (teaching field). He submits that not applying at the end of the school year in anticipation of the next school year cannot be considered a refusal of employment.[23]

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[21] GD3-17 of file GE-20-942 and GD3-19 of file GE-20-943.
[22] GD3-17 of file GE-20-942 and GD3-17 to GD3-19 of file GE-20-943.
[23] GD3-25 to GD3-48 and GD3-71 to GD3-79 of file GE-20-942; GD3-27 to GD3-50 and GD3-75 to GD3-83 of file GE-20-943.

g) The Appellant argues that section 33 of the Regulations on the additional conditions for teachers does not apply to his case. He submits he is entitled to Employment Insurance benefits during the non-teaching period under section 33 of the Regulations. The Appellant notes that the so-called employment opportunity offered by the Commission scolaire de Montréal on July 1, 2018, was not for the summer non-teaching period, but for the beginning of the 2018–2019 school year.[24]

h) The Appellant argues that an assignment session does not constitute an actual job offer, as indicated in the *Digest of Benefit Entitlement Principles* (Chapter 14 – Section 3), referring to section 33 of the Regulations.[25] He argues that this document gives the following clarifications: "[...] A claimant whose contract of employment for teaching has terminated can receive benefits during any non-teaching period. [...] A simple promise of a job does not count as a genuine offer of employment. For example, an invitation to a general recruitment session during the summer non-teaching period does not constitute a genuine offer of employment even though there is a strong possibility that a teacher will be offered a teaching contract for the next school year. [...]."[26] According to the Appellant, the information contained in the *Digest of Benefit Entitlement Principles* clearly demonstrates that the so-called employment opportunity offered by the Montréal, school board on July 1, 2018, cannot be considered a genuine offer of employment. He notes that the Commission accuses him of failing to take advantage of a so-called employment opportunity that the Act does not consider a genuine offer of employment.[27]

i) The Appellant submits that the Commission should not have applied the sections of the Act to his case in a selective and preferential way. He asks why section 27 of the Act (Chapter 9 of the *Digest of Benefit Entitlement Principles*) must take precedence in assessing his case without considering section 33 of the Regulations, when his file

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[24] GD3-71 to GD3-79 of file GE-20-942; GD3-75 to GD3-83 of file GE-20-943; GD2-3, GD5-1 to GD5-12, GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[25] GD3-71 to GD3-79 of file GE-20-942 and GD3-75 to GD3-83 of file GE-20-943.
[26] Excerpt from the *Digest of Benefit Entitlement Principles* (Chapter 14 – Section 3) – GD3-25 to GD3-48 of file GE-20-942; GD3-27 to GD3-50 of file GE-20-943; and GD7-2 to GD7-14 of files GE-20-942 and GE-20-943.
[27] GD2-3, GD5-1 to GD5-12, GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.

concerns the fact that he works as a teacher. He does not see why one section of the Act would be given more importance than another.[28]

j) The Appellant explains that he followed the recommendations of the *Digest of Benefit Entitlement Principles* and based his claim for benefits on this document. He argues that, if his case is not reviewed under section 33 of the Regulations, then he was misled by the Employment Insurance website and the information in the *Digest of Benefit Entitlement Principles* on teachers' eligibility for benefits. The Appellant says he understands that the *Digest of Benefit Entitlement Principles* is not the Act. He notes that the Employment Insurance website is a reliable source for recommendations and that, if he was misled, it is not all his responsibility.[29]

k) The Appellant asks whether the Commission checked the nature and characteristics of the so-called positions offered by the Commission scolaire de Montréal to see whether they were suitable jobs under the Act. He asks whether the Commission looked at the requirements of the positions in question to confirm that these positions were suitable under the Act and whether they were compatible with his moral and ethical convictions. The Appellant notes that the Commission does not know his beliefs and his moral or religious convictions to be able to confirm that they were suitable jobs and that it was satisfied with the Employer's statements.[30]

l) The Appellant argues that the employment offered has to correspond to his morals. He says that he explained to the Commission that his conscience does not allow him to teach in a discipline that he does not know. The Appellant indicates that he had mentioned to the Commission that the positions offered by the Commission scolaire de Montréal could not all be suitable under the Act, due to the specific characteristics and requirements of each of those positions for which he does not necessarily have the required skills (for example, field of qualification, skills, workplace demands, nature of the position, multidisciplinary positions, students' needs, etc.). He says he

[28] GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[29] GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[30] GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.

> had also mentioned to the Commission that it was against his moral and ethical convictions and against his professional conscience to accept certain unsuitable positions out of respect for students and their parents, for society, and for his profession. According to him, the Commission did not consider this. He notes that, sometimes, for certain contracts, it can be a question of teaching both math and another subject like [translation] "Ethics and Religious Culture," for example. The Appellant says that he would have liked to have a position in math, where he could have given the best of himself and felt as useful as possible.[31]

[25] In this case, I put the most weight on the Employer's statements about the Appellant's opportunity to apply for a suitable job that was offered to him, or to take advantage of an opportunity to obtain a suitable job. The Employer provided clarifications on the process for assigning teaching contracts and teaching positions. He notes that, during the online assignment sessions that it held at the end of the 2017–2018 and 2018–2019 school years, or at the very beginning of the summer non-teaching period, in each case, the Appellant had the opportunity to obtain, each time, a regular teaching position.

[26] I do not give weight to the Appellant's statement that he did not receive actual job offers to teach at the beginning of the 2018–2019 and 2019–2020 school years.

[27] The Appellant has been on a priority list since 2010. He was in 17th place on that list in the teaching field 3103—that is, permanent elementary school teacher—at the end of the 2017–2018 school year. He was in 13th place on that list at the end of the 2018–2019 school year. Being on that list entitles him to choose a teaching contract or teaching position based on his place on that list and the teaching field in which he is enrolled, according to the Employer's terms and conditions for awarding those contracts or positions, including holding assignment sessions and placement assemblies.

[28] The Appellant knows that assignment sessions are held by the Employer at the end of a school year and that placement assembles are held during which contracts or teaching positions

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[31] GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.

are offered. I find that he was aware that suitable jobs were vacant or becoming vacant at the end of the 2017–2018 and 2018–2019 school years.

[29] I find that, by choosing not to take part in the assignment sessions the Employer held for the periods in question and not to attend the placement assemblies, the Appellant demonstrated that he did not want to take advantage of each of the opportunities he was offered to obtain a suitable job.

[30] The Appellant chose to opt out of the Employer's process for assigning teaching contracts and teaching positions that would have been offered to him.

[31] Even though the Appellant argues that he did not refuse employment because the Employer did not offer him a job directly or personally, he still had the opportunity to obtain a position for the beginning of both the 2018–2019 and 2019–2020 school years.

[32] If the Appellant had participated in the Employer's assignment sessions at the end of the 2017–2018 and 2018–2019 school years, or if he had attended one of the placement assemblies, like the one on July 27, 2018, he could have obtained a suitable job. I note that the Employer stated that, for each of the assignment sessions it held, the Appellant would have had the choice between a minimum of three regular positions.

[33] Although the Appellant says he did not sign any contract with the Employer according to which he would work at the beginning of the 2018–2019 and 2019–2020 school years, and had no written or verbal agreement or commitment with the Employer, it does not change the fact that the Employer offered him jobs.

[34] I find that these positions represent opportunities for suitable employment at the Commission scolaire de Montréal, under section 9.002 of the Regulations. In each case, it was suitable employment because the Appellant's health and physical capabilities allowed him to commute to the place of work and to perform the work, the hours of work were not incompatible with his family obligations or religious beliefs, and the nature of the work was not contrary to his moral convictions or religious beliefs, as stated in section 9.002 of the Regulations.

[35] I do not accept the Appellant's arguments that because the Commission does not know his beliefs and his moral or religious convictions, it cannot confirm that the positions offered by the Commission scolaire de Montréal represented suitable jobs under the Act or Regulations.

[36] I find that, if the Appellant had chosen to take part in the assignment sessions or to attend the placement assemblies, the positions to which he would have had access would have represented the same type of work that he had been doing at the Employer since 2008—that is, teaching—and would have guaranteed him a regular full-time job.

[37] Although the Appellant argues, based on his own criteria (field of qualification, skills, workplace demands, nature of the position, multidisciplinary positions, students' needs, etc.), that the positions offered by the Commission scolaire de Montréal may not be suitable, I am of the view that since positions were offered to him, he met the requirements of those positions. The criteria that the Appellant established do not demonstrate that the positions that were offered to him did not represent suitable jobs.

[38] Case law tells us that section 27 of the Act applies when a claimant fails to accept a suitable employment or does not take advantage of an opportunity for suitable employment.[32]

[39] I do not accept the Appellant's argument that section 33 of the Regulations and the information in the *Digest of Benefit Entitlement Principles* (Chapter 14 – Section 3) apply to his case because he is employed in the occupation of teaching. According to the Appellant, section 33 of the Regulations contains additional terms and conditions for teachers demonstrating that he did not receive offers of contracts for the 2017–2018 and 2018–2019 school years and that he therefore did not refuse a job offer from the Employer.

[40] I find that the provisions of section 33 of the Regulations and the information relating to this section in the *Digest of Benefit Entitlement Principles* that the Appellant argues are not relevant in this case.

[41] I note that the issue is not about establishing whether the Appellant was entitled to benefits during a non-teaching period by assessing whether his employment contract in teaching

[32] The Federal Court of Appeal (Court) established this principle in *Campeau*, 2006 FCA 376.

had ended according to section 33(2)(a) of the Regulations, and therefore whether there was continuity of his employment relationship with the Commission scolaire de Montréal when he stopped working at the end of the 2017–2018 and 2018–2019 school years. This issue is also not whether the Appellant's employment was on a casual or substitute basis for the school years in question, under section 33(2)(b) of the Regulations. This issue is also not whether the Appellant qualifies to receive benefits in respect of employment in an occupation other than teaching, as indicated in section 33(2)(c) of the Regulations.

[42] I note that, as a Tribunal member, I cannot decide on an issue that is not before me.

[43] In this case, the Commission gave decisions based on sections 27 and 28 of the Act. The issue is about determining whether, under these sections, the Appellant had good cause for not applying for a suitable job that was offered to him, or for failing to accept a job, or for not taking advantage of an opportunity to obtain a job, and, where appropriate, determining whether a disqualification from benefits applies to his case.

[44] I find that the evidence shows that, at the Employer's online assignment sessions at the end of the 2017–2018 and 2018–2019 school years, or at the very beginning of the summer non-teaching period in each case, or at the placement assembly like the one on June 27, 2018, the Appellant was offered a suitable job.

[45] However, on each of those occasions, the Appellant did not apply for one of the suitable jobs that he was offered, or take advantage of an opportunity to obtain a job, even though he knew that those jobs were vacant or becoming vacant.

[46] I now have to determine whether the Appellant had good cause for not applying for a suitable job or failing to accept a job each time one was offered.

Did the Appellant have good cause for not applying for a suitable employment after learning that it was vacant or becoming vacant, for not taking advantage of an opportunity for suitable employment, or for failing to accept it when it was offered to him?

[47] No. I find that the Appellant did not have good cause for not applying for a suitable job after learning that it was vacant or becoming vacant, for not taking advantage of an opportunity

for suitable employment, or for failing to accept it when such employment was offered to him for the 2017–2018 and 2018–2019 school years, or at the very beginning of the summer non-teaching period in each case.

[48] I find that the reasons the Appellant gave on this matter amount to a personal choice. The Appellant gives the following explanations:

a) The Appellant explains that he did not apply through the online assignment sessions held by the Employer and that he did not attend any of the placement assemblies at the end of the 2017–2018 and 2018–2019 school years. He argues that he relied on the recommendations in the *Digest of Benefit Entitlement Principles* (Chapter 14 – Section 3) and the provisions set out in section 33 of the Regulations, which the Commission submits is far from being a personal reason.[33]

b) The Appellant explains that he could not have upheld his commitment if a position had been assigned to him to start teaching at the beginning of both the 2018–2019 and 2019–2020 school years because of his absence from Canada due to family obligations.[34] He did not feel comfortable accepting a contract when he knew he was going away. The Appellant notes that he found it irresponsible to accept a position for the next school year—position that he could not have kept—given that he planned to be away for the beginning of his contract. He says that he does not make commitments that he cannot keep and that it would have been irresponsible of him to accept a position that he could not keep. It would have been irrational on his part to do so.[35]

c) Regarding his family obligations, the Appellant explains that he has to look after his mother and that he usually visits her in Algeria each year. After the 2017–2018 school year ended, he was absent from Canada from August 19, 2018, to

[33] GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[34] GD3-17 and GD3-25 to GD3-48 of file GE-20-942; GD3-19 and GD3-27 to GD3-50 of file GE-20-943.
[35] GD3-23, GD3-24 and GD3-71 to GD3-82 of file GE-20-942; GD3-25, GD3-26, and GD3-75 to GD3-86 of file GE-20-943.

November 13, 2018.[36] The Appellant notes that, if he had accepted a position assignment (2018–2019 school year), he could not have visited his mother in Algeria, and that was not realistic for him. He explains that his mother is ill, but that she is not bedridden or seriously ill. He says you should not wait until someone is bedridden or seriously ill to look after them. The Appellant says that his mother suffers from joint pain and anxiety due to his absence. She lives at home and does not receive special care or medical assistance. The Appellant explains that his father died in 1993 and, as the eldest in the family, he developed a special emotional bond with his mother. He explains that, although three of his sisters and one of his brothers live in Algeria and can visit his mother in his absence, his mother has anxiety about the absence of her eldest son in particular. The Appellant says that his mother always hopes that her children will spend the religious festival of Eid (Festival of Sacrifice) with her. He says that is what brings him and members of his family to go see his mother to make her happy. He says that, in 2018, Eid was celebrated on August 20 and 21, 2018, and, in 2019, between August 10 and 14, 2019—that is, before the beginning of the 2018–2019 and 2019–2010 school years. The Appellant explains that, in summer 2018, he did not visit his mother during the non-teaching period because she also wanted him to be there for his niece's wedding approximately two weeks after the celebration of Eid.[37]

d) The Appellant argues that the Commission did not seem to understand what a mother feels when she celebrates a religious holiday like Eid with her son and spends a few days with him. He says that visiting his mother and celebrating this festival with her represents emotional care, especially because he lives far away from her for long periods, sometimes 10 months, a year, or even two years.[38]

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[36] GD5-1 to GD5-12 of files GE-20-942 and GE-20-943.
[37] GD3-17, GD3-25 to GD3-48, GD3-66 to GD3-68 and GD3-71 to GD3-82 of file GE-20-942; GD3-19, GD3-27 to GD3-50, GD3-68 to GD3-70 and GD3-75 to GD3-86 of file GE-20-943; GD5-1 to GD5-12, GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[38] GD3-25 to GD3-48 and GD3-80 to GD3-82 of file GE-20-942; GD3-27 to GD3-50 and GD3-84 to GD3-86 of file GE-20-943; GD5-1 to GD5-12, GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.

e) Concerning the end of the 2018–2019 school year specifically, the Appellant indicates in his July 23, 2019, statement to the Commission that he did not apply for a position at the end of that school year because he was not going to be in Canada on August 23, 2019, for the beginning of the 2019–2020 school year. He says that he did not know when he was going to leave for Algeria because the cost of tickets was too high and he planned to return in September 2019.[39]

f) The Appellant says that, although his November 25, 2019, statement to the Commission indicates that he had asked to forward his mail to his brother's place for the period from August 19, 2019, to October 27, 2019, he had planned to go to Algeria before August 19, 2019. He wanted to leave before that date to be there for Eid, which in 2019 took place between August 10 and 14, 2019. However, circumstances prevented him from making that trip. He had to take care of a fraud of which he was the victim. This fraud had to do with gift cards from a commercial establishment and represented an amount of $500.00. The Appellant wanted to resolve this problem before he left for Algeria. In his November 25, 2019, statement, the Appellant also explained that he wanted to return to Algeria but that the letter from the Commission[40] had shocked him and sent him into a state of anxiety like the one he had already experienced after he was the victim of workplace discrimination in the past.[41]

g) The Appellant argues that, if he had accepted a contract that he would not have been able to respect, it would have been detrimental to his professional future. According to him, under his collective agreement, failing to honour a potential commitment or contract would lead to problems that could cause the termination of his employment

[39] GD3-17 of file GE-20-942 and GD3-19 of file GE-20-943.
[40] Questionnaire from the Commission addressed to the Appellant on October 9, 2019 – GD3-20 to GD3-22 of file GE-20-942 and GD3-22 to GD3-24 of file GE-20-943.
[41] GD3-66 to GD3-68 of file GE-20-942 and GD3-68 to GD3-70 of file GE-20-943.

prevent him from having reasonable assurance of another employment at the Commission scolaire de Montréal.[42]

h) The Appellant says he does not believe that he would have been granted leave during his contract to visit his mother abroad.[43]

i) The Appellant states that, contrary to what the Commission indicated in its arguments, the fact that he signed a contract in April 2018 and that it was cancelled a week later,[44] is not why he did not take part in the online assignment sessions or the placement assembly for the beginning of the 2018–2019 school year. He says the same goes for a teaching task that was assigned to him on February 20, 2017, then cancelled the next day.[45] According to him, the Commission ignored this point.[46]

j) The Appellant argues that the Commission should not give the Employer's statements so much credit. He notes that, if the Commission had reviewed his file with a little seriousness and diligence, it would have found that he could not have fulfilled two contracts at 100 % (full assignment), as the Employer had indicated, during the same period from May 22, 2018, until the end of the school year, and with two different end-of-year dates (June 27 and 28, 2018, at the same school board.[47]

k) The Appellant submits that, according to the Commission, respecting the recommendations of the *Digest of Benefit Entitlement Principles* is not good cause, but that it says that the notion of "good cause" is not defined in the Act. According to the Appellant, the Commission found that nothing he put forward represented good cause, but it gave decisions contrary to the Act and Regulations.[48]

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[42] GD3-25 to GD3-48 and GD3-71 to GD3-79 of file GE-20-942; GD3-27 to GD3-50 and GD3-75 to GD3-83 of file GE-20-943; GD5-1 to GD5-12 of files GE-20-942 and GE-20-943.
[43] GD3-80 to GD3-82 of file GE-20-942 and GD3-84 to GD3-86 of file GE-20-943.
[44] GD3-26 of file GE-20-942.
[45] GD3-32 and GD3-81 of file GE-20-943.
[46] GD3-66 to GD3-68 and GD4-10 of file GE-20-942; GD3-68 to GD3-70 and GD4-13 of file GE-20-943; GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[47] GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[48] GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.

[49] I find that the reasons the Appellant gave for not applying for a job through the online assignment sessions the Employer held, or not attending the placement assembly like the one held on June 27, 2018, do not amount to good cause for not taking advantage of an opportunity for suitable employment.

[50] I find that the Appellant did not demonstrate the need to care for his mother. I am of the view that it was actually a personal choice to visit during the period from August 19, 2018, to November 13, 2018, to look after her and spend the religious holiday of Eid (Festival of Sacrifice) on August 20 and 21, 2018, with her and other members of his family. I am of the view that the Appellant could have visited his mother earlier, during the summer 2018 non-teaching period.

[51] Although the Appellant argues that he wanted to be able to attend his niece's wedding, this does not represent a family obligation that could justify not taking advantage of an opportunity for suitable employment.

[52] I note that, during his absence from Canada from August 19, 2018, to November 13, 2018, the Appellant had planned this trip for several weeks because he did not attend the June 2018 assignment sessions and he left in August 2018. They were not unforeseen events requiring his immediate presence.

[53] I note that, if the Appellant had not planned this absence from Canada and if he had taken part in the online assignment sessions at the end of the 2017–2018 school year, or if he had attended the June 27, 2018, placement assembly, he would have obtained a regular teaching position for the 2018–2019 school year.

[54] I find that the reason why the Appellant did not take part in the assignment sessions held at the end of the 2018–2019 school year or the placement assembly planned for the same period is the same reason he gave when he was absent from Canada the year before. The Appellant wanted to visit his mother, look after her, and be able to spend Eid with her and his other family members, between August 10 and 14, 2019.

[55] Although the Appellant did not go to Algeria as he had planned in August 2019, this trip was the initial reason for his decision not to take part in the assignment sessions at the end of the 2018–2019 school year. This is not good cause for not taking advantage of an opportunity for suitable employment either.

[56] I do not accept the Appellant's argument that he did not apply for a teaching position at the end of the 2017–2018 and 2018–2019 school years because he knew he could not respect his commitment to his employer if a position was assigned to him because he was going to be absent from Canada at the beginning of the 2018–2019 or 2019–2020 school years. He argues that this could have caused him problems and resulted in the termination of his employment.

[57] I find that it is up to the Appellant not to make the deliberate choice to visit his mother in Algeria or to plan a visit right before the beginning of each of the school years in question, when he is a teacher.

[58] In this respect, I also find that the Appellant is anticipating a hypothetical situation, which he has not faced, by determining that being absent from work could jeopardize his job or professional future. Although the Appellant says he believes his employer would not give him leave, he does not demonstrate that asking for leave could lead to such a consequence if he had accepted one of the jobs that was offered to him.

[59] Case law tells us that the appropriate criterion for determining what constitutes good cause is knowing whether the Claimant has proven that he did what a reasonable person in his situation would have done to satisfy himself of his rights and obligations under the Act.[49]

[60] I am of the view that the Appellant did not do what a reasonable person would have done when he decided to opt out of the Employer's process for assigning available positions, by using a priority list, as well as by holding online assignment sessions and placement assemblies. Therefore, the Appellant made the choice not to take advantage of an opportunity for suitable employment.

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[49] This principle was established by the Court in *Paquette*, 2006 FCA 309.

[61] The Appellant knew perfectly well that by not participating in the assignment sessions held at the end of the 2017–2018 and 2018–2019 school years, and by not attending the placement assembly like the one held on June 27, 2018, he would not be offered a teaching contract or teaching position for the beginning of the 2018–2019 and 2019–2020 school years.

[62] The Appellant does not demonstrate that he had good cause for not applying for a suitable employment after learning that it was vacant or becoming vacant, for not taking advantage of an opportunity to obtain a job at the end of each of the 2017–2018 and 2018–2019 school years, or for refusing a job when it was offered to him, under sections 27(1)(a) and 27(1)(b) of the Act.

[63] I am of the view that the Appellant created his unemployment situation himself and that he cannot make all contributors to the Employment Insurance fund responsible for that decision.

Is the Appellant's disqualification from benefits justified?

[64] Yes. I find that the Appellant's disqualification from benefits, as of July 1, 2018, for the claim for benefits starting that same day, as well as the disqualification imposed as of August 25, 2019, for his claim for benefits starting June 30, 2019, for a 12-week period in each case, is justified.

[65] Case law tells us that a claimant is disqualified from receiving benefits if they failed to take advantage of an opportunity for suitable employment.[50]

[66] I find that, in making its decision, the Commission exercised its discretion judicially when it determined that the duration of the disqualification imposed on the Appellant would be 12 weeks in each case.

[67] Section 28(1)(a) of the Act states that a disqualification under section 27 is not fewer than 7 weeks or more than 12 weeks. I note that the power to determine the duration of the disqualification—that is, between 7 and 12 weeks—is a discretionary power of the Commission.

[50] The Supreme Court of Canada established this principle in *Martin Service Station Ltd.*, [1977] 2 SCR 996.

[68] On this point, case law tells us that a principle exists according to which the Tribunal and the Umpire cannot interfere unless they are satisfied that the Commission exercised its discretionary power in a "non-judicial manner" in determining the duration of the disqualification—that is, by considering irrelevant factors or disregarding relevant factors; in other words, unless the exercise of that discretion is tainted by a fundamental error.[51]

[69] I find that, in making its decision to impose a disqualification from benefits on the Appellant, the Commission considered all of the relevant factors and did not consider irrelevant factors. The factors the Commission considered are the following:

a) The Appellant was on the priority list in his teaching field (elementary school).

b) He had assurance of a full-time contract (assignment at 100% or full assignment) starting July 1, 2018, and July 1, 2019.

c) The Appellant chose not to attend each of the assignment sessions at the end of the 2017–2018 and 2018–2019 school years because he knew or anticipated that he would be outside Canada at the beginning of the next school years in each case (2018–2019 and 2019–2010 [*sic*] school years) for personal reasons.

d) He was aware of an opportunity for suitable employment, but he did not make reasonable efforts to obtain that employment.[52]

[70] I find that, at the hearing, the Appellant did not present new evidence that could have been considered factors relevant to the disqualification that was imposed on him for each of his two benefit periods. He repeats the arguments that he already presented to the Commission to argue his case.

[71] The Appellant submits that he should not be disqualified from benefits because he did not refuse a job. According to him, the Commission's decisions are unfair and the penalties imposed

[51] The Court established this principle in the following decisions: *Thompson*, A-8-95 and *Owen*, A-465-94.
[52] GD4-12 of file GE-20-942 and GD4-15 of file GE-20-943.

on him should be cancelled.[53] The Appellant states that the Commission exercised its discretion in a perverse manner.[54]

[72] Regarding his claim for benefits starting July 1, 2018, the Appellant says he does not understand and finds unfair the 12-week disqualification from benefits imposed on him starting July 2018, for weeks in the summer non-teaching period and before he left Canada, as well as during the holiday period. He notes that in July 2018, he had not signed a contract with the Employer and that, if he had accepted a position for the 2018–2019 school year, he would have started teaching only at the end of August 2018.[55]

[73] Regarding the Appellant's benefit period starting July 1, 2018, the Commission argues that the event that resulted in the Appellant's disqualification from benefits occurred on June 27, 2018.[56] It notes that this date corresponds to the last opportunity for teachers on the priority hiring list to receive an assignment for the 2018–2019 school year. The Commission explains that, under section 28(2) of the Act, the weeks of disqualification must be served during the weeks following the waiting period for which at least $1 in benefits would otherwise be payable if the disqualification had not been imposed.[57]

[74] The Commission also explains that, for the claim for benefits starting June 30, 2019, a disqualification should have been imposed on the Appellant for a 12-week period starting July 1, 2019, the date on which the Employer said the Appellant would have had his contract. The Commission says that the Appellant had an initial claim for benefits that was not finalized when it talked to him on July 23, 2019. It says the file was finalized on August 20, 2019, while it was waiting for information from the Employer to know whether the file would be subject to an investigation. The Commission says that, because an error was made in the processing of the

[53] GD3-71 to GD3-79 of file GE-20-942; GD3-75 to GD3-83 of file GE-20-943; GD2-3, GD5-1 to GD5-12 of files GE-20-942 and GE-20-943.
[54] GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[55] GD3-71 to GD3-82 of file GE-20-942; GD3-75 to GD3-86 of file GE-20-943; GD2-3, GD11-1 to GD11-12 and GD12-1 to GD12-12 of files GE-20-942 and GE-20-943.
[56] GD4-16 of file GE-20-943.
[57] GD4-16 of file GE-20-943.

Appellant's file, it imposed a disqualification on him starting August 25, 2019—that is, from the time the statements were not paid to him.[58]

Does the Appellant have to repay the benefits he was overpaid?

[75] Yes. The benefits the Appellant was overpaid must be repaid.

[76] Sections 43 and 44 of the Act state that, if a person received Employment Insurance benefits to which they were not entitled or because they were disqualified from receiving those benefits, they are required to repay them or to repay the overpayment that resulted.

[77] Section 52 of the Act also says that the Commission may reconsider a claim for benefits 36 months after the benefits have been paid or are payable to a claimant and 72 months when they are in the opinion that a false or misleading statement or representation has been made in connection with a claim.

[78] Although the Appellant disagrees with the fact that he has to repay an amount of $5,644.00 for benefits that were paid to him in connection with his benefit period starting July 1, 2018, and he asks that the notice of debt that he received[59] be cancelled, the fact remains that they are benefits to which he is not entitled.[60]

[79] Case law tells us that the overpayment indicated in a notice of debt becomes repayable, under section 43 of the Act, on the date of notification and that, according to section 44 of the Act, a person who receives an overpayment of benefits is required to repay it immediately.[61]

[80] The Appellant's situation does not exempt him from his obligation to repay the amount that was overpaid to him in benefits to which he was not entitled.

[58] GD3-85 and GD3-86 of file GE-20-942.
[59] Document entitled [translation] "Details on the Notice of Debt (DH009)," dated December 28, 2019, reproduced on March 30, 2020, and indicating that the total amount of the Appellant's debt was established at $5 644,00 – GD3-74 of file GE-20-943.
[60] Document entitled [translation] "Attestation Certificate – Full-text Screens – Payments," indicating the benefits paid to the Appellant over the period from the reporting week starting July 1, 2018, to the one ending January 26, 2019. This document shows that the Appellant received 13 weeks of regular benefits during this period – GD3-71 of file GE-20-943.
[61] The Court established this principle in *Braga*, 2009 FCA 167.

[81] I find that the Commission is justified in claiming the amount that was overpaid to the Appellant under sections 43, 44, and 52 of the Act.

CONCLUSION

[82] I find that the Appellant did not have good cause for not applying for a suitable job that was offered to him, or for failing to accept a job, or for not taking advantage of an opportunity to obtain a job at the end of his employment periods for the 2017–2018 and 2018–2019 school years, under section 27 of the Act.

[83] The Appellant's disqualification from benefits for a 12-week period starting July 1, 2018, for his claim for benefits starting that same day,[62] and for another 12-week period starting August 25, 2019, for his benefit period starting June 30, 2019,[63] is therefore justified under section 28 of the Act.

[84] The amount representing the overpayment of benefits paid to the Appellant and that the Commission claims from him must be repaid under sections 43, 44, and 52 of the Act.

[85] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	May 12, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	A. Y., Appellant

[62] GE-20-943.
[63] GE-20-942.