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

Citation: *A. D. v Canada Employment Insurance Commission*, 2020 SST 755

Tribunal File Number: AD-20-609

BETWEEN:

A. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: August 14, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed in part. I have substituted my decision for that of the General Division. The Claimant is not disentitled from benefits from December 31, 2018 up to and including March 17, 2019, but remains disentitled from March 18, 2019, until July 3, 2019. To the extent that the General Division may have confirmed the Claimant's disentitlement after July 3, 2019, that disentitlement is rescinded.

OVERVIEW

[2] The Appellant, A. D. (Claimant), lost his job when his employer decided to move its operations. The Claimant had been working towards a career in real estate so he continued to take real estate agent courses while he looked for work. He applied for Employment Insurance benefits, but the Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant was not entitled to benefits. It found that the Claimant was not available for work because he was busy with his training. The Commission would not change its decision when the Claimant asked it to reconsider.

[3] The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal. He is now appealing to the Appeal Division.

[4] The appeal is allowed in part. I have found that Claimant is not disentitled from December 31, 2018 to March 17, 2019, but that he is disentitled from March 18, 2019, to the date of the General Division hearing on July 3, 2019.

ISSUES

[5] Did the General Division make an error of law by requiring the Claimant to look for full-time employment?

[6] Did the General Division make an error of law when it failed to consider whether the Claimant's school schedule was an unreasonable limit on his chances of returning to the labour market?

[7] Did the General Division make an error of fact by finding that the Claimant was only seeking part-time employment?

[8] Did the General Division make an error of fact by finding that the Claimant would only accept full-time employment if he could delay the work start date to avoid conflict with his school schedule?

[9] Did the General Division make an error of law by making a finding that suggested the Claimant remained unavailable for work after the hearing?

ANALYSIS

Did the General Division make an error of law by requiring the Claimant to look for full-time employment?

[10] The Claimant argued that the General Division made some kind of error of law. He did not specify the nature of the error of law. He just believed that he should be entitled to benefits when he was only going to school part-time, had taken a part-time job, and continued to look for another job.

[11] Even so, I find that the General Division made an error of law when it rejected the sufficiency of the Claimant's job search because it was not a search for full-time employment.

[12] The General Division found that the Claimant limited his chances of returning to the labour market because he looked for work that fit within his educational schedule rather than for immediate *full-time employment*.[1]

[13] The *Employment Insurance Act* (EI Act) says that a claimant is not entitled to benefits for any working day of the claimant's benefit period unless the claimant can prove that her or she was capable of and available for work and unable to find suitable employment.[2]

[14] "Availability" is assessed according to three factors[3]:

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[1] General Division decision, para 20.
[2] Section 18(1)(a) of the EI Act.
[3] *Faucher v Canada (Attorney General),* A-56-96

a) A claimant must have a desire to return to work as soon as a suitable job is offered;

b) A claimant must express that desire through efforts to find employment, and;

c) A claimant must not set conditions that unduly limit his or her chances of returning to the labour market.

[15] Neither the EI Act not *the Employment Insurance Regulations* (Regulations) require a claimant to seek full-time employment. A claimant must prove his or her availability on each working day, which the Regulations define as any day of the week except Saturday or Sunday.[4] That means that a claimant must be available for work Monday to Friday.

[16] However, that does not mean that the claimant must be available *for the entire working day* on each of these days. The EI Act and Regulations do not require this. Likewise, I am not aware of any binding case authority that requires a claimant to be available for the entire day of each working day.

[17] The General Division found that the Claimant was disentitled from December 31, 2018, onwards. It justified this finding in part because the Claimant was not seeking full-time employment. This mistakes the meaning of section 18(1)(a) of the EI Act which disentitles a claimant for failing to prove his or her availability on a day-to-day basis. The Claimant must be available for work each workday. That means that the Claimant must show that he is making some kind of effort to find employment on each day, but it does not mean that he must necessarily be searching for a full-time job.

Did the General Division make an error of law when it failed to consider whether the Claimant's school schedule was an unreasonable limit?

[18] The Claimant argued to the Appeal Division that the General Division made an error of law. He also argued that his training was just part-time and that he was applying for work at the same time.

[19] Once again, the Claimant has not framed his argument in terms of a specific error of law. However, I agree that the General Division made an error of law. The *Faucher* decision sets out

[4] Section 32 of the Employment Insurance Regulations

three factors that the Commission must always consider when it assesses a claimant's availability. One of those factors is whether the claimant set conditions that unduly limited his chances of returning to the labour force.

[20] The General Division based its decision in part on a finding that the Claimant's school schedule limited his chances of returning to the labour force. It noted that the Claimant had found one part-time job and that he was looking for another part-time job that would work with his school schedule.

[21] However, *Faucher* does not disentitle every claimant who sets conditions that limit his or her chances of returning to the labour force. *Faucher* states that claimants should not set conditions that are *unduly* limiting. Therefore, it is important to assess whether the Claimant's conditions are reasonable or unreasonable limits.

[22] The General Division did not analyze whether the Claimant's school schedule was an undue or unreasonable limit. Furthermore, it is not obvious that the Claimant unreasonably limited his chances of employment by seeking employment that coordinated with his school schedule. The Claimant only had a classroom schedule from March 18 to April 4, 2019, and from April 29 to May 3, 2019, and not from December 31 onwards. When he was taking classroom training, the Claimant could leave class after lunch and take his work home with him. After he learned this, he had revised his estimate of the time he spent studying down to 10–14 hours per week.

Did the General Division make an error of fact by finding that the Claimant was only seeking part-time employment?

[23] The Claimant did not clearly state that he believed the General Division was wrong when it found that he was only seeking part-time employment. However, he told the Appeal Division that he had initially identified a limited number of hours in which he was available because he wanted to be "reasonable". He said that if he could find a job that would sustain him he would take it and that this was why he took the commission sales job. He added that his training was flexible, and he said that, "if [he] could find a full-time job, he would take it."

[24] The General Division acknowledged the Claimant's evidence that he was looking for part-time work only, during the time that he was in class and working on the contractual job.[5] The evidence that the Claimant was looking for part-time work was specific to the periods in which the Claimant was both in-class and working at his commission sales job. However, the General Division used its finding (that the Claimant wanted to obtain further part-time work that he would be able to do with his school schedule) to support an over-broad conclusion. It concluded that the Claimant did not demonstrate a desire to return to the labour market as soon as a suitable job was offered. This conclusion appears to have been applied to determine that the Claimant unavailable from "December 31, 2018, onwards."[6]

[25] The General Division made an important error of fact when it made a general finding that the Claimant did not demonstrate a desire to return to the labour market as soon as a suitable job was offered. This finding does not follow rationally from the evidence and is "perverse or capricious".[7] A claimant must be able to prove his availability for each working day in a benefit period. It is possible that evidence that the Claimant only sought part-time work in a certain period or periods would support a finding that the Claimant was not available for the working days—in those periods. However, it does not support a finding that the Claimant was not available at all times.

[26] In fact, the Claimant gave evidence that he was not just looking for part-time work during the times that he was not taking classroom training. He testified about a number of jobs to which he had applied since January 11, 2019. He stated that these were **all full-time jobs**.[8] The General Division gave the Claimant an opportunity to provide additional proof of his job applications after the hearing, and told him to identify whether they were for full-time or part-time. The Claimant provided a list of jobs from December 14, 2018, to March 13, 2019.[9] He identified the two of the positions as "Temp. P/T", and "Reg. P/T", which I take to mean "temporary part-

[5] General Division decision, para 17; this is found in the audio recording of the General Division hearing at timestamp 00:24:45; also 00:23:10.
[6] General Division decision, para 26.
[7] Section 58(1)9c) says that it is an error for the General Division to base its decision on an erroneous finding of fact that it made in a perverse or capricious manner.
[8] Audio recording of General Division hearing at timestamp 00:38:00.
[9] GD8

time" and "regular part-time" respectively. He did not identify any of the other positions as either part-time or full-time.

[27] The only evidence that the Claimant was not looking for full-time work concerned that time in which the Claimant was taking his training in the classroom. The Claimant took classroom studies from March 18, 2019, to April 4, 2019, and from April 29 to May 3, 2019. The General Division did not restrict its conclusion that the Claimant did not demonstrate a desire to return to the workforce to the period that he was taking the training in the classroom. Its conclusion was over-broad and unsupported by the evidence.

Did the General Division make an error of fact by finding that the Claimant would only accept full-time employment if he could delay the start date of the job?

[28] The Claimant argued that his training was flexible and that he would have taken a full-time job if it were offered. This argument is a reminder that he gave testimony at the General Division supporting his willingness to accept full-time work during his training.

[29] The General Division made an error of fact by ignoring or misunderstanding the Claimant's evidence to conclude that the Claimant had not demonstrated a desire to return to work. The General Division found that the Claimant would only accept full-time employment if he could delay the start date to avoid conflict with his school schedule. It based its finding on the information in the Claimant's original application for benefits as well as its understanding of his testimony.

[30] In the General Division hearing, the member asked the Claimant simply if he would have taken a full-time job if it had been offered to him in March 2019 while he was in the classroom training. The Claimant hesitated, apparently to reflect on whether he could adjust his schedule, but **he finally stated that he believed he would have accepted a full-time job if offered**.[10] . The Claimant did not qualify that assertion by saying that he would only accept a full-time job if he could put off its start date until he finished his classroom training.

[31] The General Division member then told the Claimant that his application for benefits stated that he would accept a full-time job that conflicted with his course if he could delay the

[10] Audio recording of General Division hearing at timestamp 00:28:30

start date to allow him to finish the course. The Claimant agreed that he would accept a full-time job if he could delay the start date.

[32] While the member made a significant effort to clarify the Claimant's testimony on several occasions throughout the hearing, I do not believe she was successful this time. Having listening to the audio recording, I can be certain that the Claimant confirmed that he would accept a full-time job that would allow him to complete his course. However, I do not find that he confirmed that this was the *only* circumstance in which he would have accepted an offer of full-time employment while he was in his course.

[33] In the Claimant's Training Questionnaire, which the Claimant submitted about a week after his application for benefits, the Claimant said that he would change his course schedule to accept a full-time job.[11] This was not the same as the answer he gave in his original application. The Claimant explained this by saying that he had learned that he was not required to be in class for all of the classroom hours and that he could leave after lunch.[12]

[34] The General Division was entitled to rely on any of the evidence to find that the Claimant would not have accepted a full-time job. However, it was also obliged to weigh evidence that challenged that finding. There was evidence before the General Division that the Claimant would have left his training for a full-time job. The General Division failed to consider that evidence.

Did the General Division make an error of law by finding that the Claimant remained unavailable for work without any evidence?

[35] The General Division made an error of law when it found that the Claimant had not proven his availability from December 31, 2018, **onwards**. The General Division had no evidence on which it could find that the Claimant was unavailable indefinitely.

[36] The General Division hearing took place on July 3, 2019. At the close of the hearing, the General Division member asked for list of job applications that the Claimant to which the Claimant had applied. The Claimant submitted a list of job applications on July 8, 2019, which the General Division considered.

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[11] GD3-21
[12] Audio recording of General Division hearing at timestamp 19:35

[37] It would be reasonable for the Claimant to understand the General Division to be asking him to document those jobs to which he had testified, or in the period to which his testimony related. This would mean that the General Division would have had no evidence of the Claimant's availability after it heard his testimony on July 3, 2019. However, even if the Claimant did not include any job applications after the date of the hearing because there had not been any, the General Division's request for evidence was specific. It could not assume that the Claimant had no other evidence of his availability in the period after July 3, 2019.

[38] The Claimant applied for benefits on January 16, 2019, and the General Division held his hearing about seven months later on July 3, 2019. At the time of his hearing, the Claimant was still within his benefit period. A claimant may only be disentitled for those working days in a benefit period in which the claimant fails to prove his or her availability.[13]

[39] The Claimant may still have weeks of benefits available to him under the claim and the General Division decision. I want to be certain that the Claimant has the opportunity to prove to the Commission that he was available on workdays from the date of his hearing to the end of his benefit period.

Summary of errors

[40] I have found that the General Division made an error of law and errors of fact in how it reached its decision. This means that I must now consider the appropriate remedy.

REMEDY

Nature of Remedy

[41] I have the authority to change the General Division decision or make the decision that the General Division should have made.[14] I could also send the matter back to the General Division for it to reconsider its decision.

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[13] This is taken from section 18(1)(a) of the EI Act.
[14] My authority is set out in sections 59(1) and 64(1) of the DESD Act.

[42] Both the Claimant and the Commission suggest that the General Division record is complete and that I should make the decision that the General Division should have made.

[43] I accept that the General Division has considered all the issues raised by this case and that I can make the decision based on the evidence that was before the General Division.

New decision

The Claimant's desire to return to work and his expression of that desire through his job search

[44] The Claimant gave evidence that he sought assistance from an employment agency after he learned he was losing his job but while he was still working. Based on what he learned, he determined to look for work rather than continue the realtor course that he had been taking by correspondence. He said that he began looking for work but could not find anything, so he decided to continue his realtor training after all.

[45] The realtor training was offered in five independent components. The Claimant started the third component by correspondence, at about the same time that he applied for Employment Insurance benefits in January 2019. Because he did not pass the component by correspondence, he re-enrolled to complete the third component through classroom instruction.

[46] This in-class third component of his realtor course was to run from March 18 to April 4, 2019. The Claimant originally thought that he would not be available for work while he was in class because he would have classes all day. He explained that this is why he initially stated that he was not available to work under the same or better conditions as before he started his course. However, he discovered that he could take assignments and worksheets home and could leave the class after lunch, so he submitted a training questionnaire in which he said that he was available on the same or better conditions. The Claimant testified that he was in class Monday to Thursday but actually left his training before 2:00 p.m.

[47] The Claimant started a commission sales job on January 22, 2019. He worked at this job after he finished his classroom work, and on Fridays.

[48] In his testimony, the Claimant listed a number of jobs to which he applied. He said these were all full-time jobs. After the Claimant listed some applications, the General Division

member asked him which jobs were full-time and which were part-time. His testimony was that they were all full-time.

[49] The General Division also asked the Claimant to provide a written list identifying the jobs to which he applied. The General Division asked him to identify if the applications were for full-time or part-time jobs. The Claimant submitted a list of 27 job applications between December 14, 2018 and March 13, 2019.

[50] As I noted above, the Claimant identified only two of them as part-time. Those two part-time applications were not among the applications that he had recalled when he was testifying (before he said that all of the jobs he had applied to were full-time). I infer that the Claimant's list identifies the only exceptions to his general practice of applying for full-time jobs when it notes two of them as "P/T" positions. This interpretation is consistent with the Claimant's testimony that he was looking for full-time jobs. The Claimant's list of job applications ends on March 13, a few days before he began his classroom instruction. While two of the three jobs on March 13 are said to be part-time, this would make sense if the Claimant were anticipating that his classroom commitment would interfere with his ability to work full-time.

[51] I find that the Claimant meets the first factor in the *Faucher* test, that is; I find that he had a desire to return to work. When he learned he was losing his job, he was not sure whether his best path to employment was to retrain or to seek a job. After consulting with an employment agency, he originally chose to focus on finding a job. However, he was unable to find work so he decided he should pursue the realtor training. The purpose of the training was to improve his employment prospects.

[52] The Claimant's acceptance of part-time work and his continued pursuit of other part-time work also supports a finding that he desired to return to work. When he first took the third component of the realtor training, he took it by correspondence, which would not interfere with full-time training. He continued to look for full-time employment. By January 22, 2019, he was already working at one part-time job, but his job was flexible enough that he could take the classroom training, which did not start until March. Once the Claimant started the classroom training, he sought another part-time job for Thursday, Friday and Saturday, the days on which he could be available.

[53] I find that the Claimant meets the second *Faucher* factor from December 31, 2018, to March 17, 2019. The Claimant expressed his desire to return to work through a sufficient job search *up to the point that he started the in-class training* for the third module of his realtor course. The Claimant provided a detailed list of actual job applications that he submitted from December, up to and including the week before his training started. He attended a resume workshop on January 31, 2019, with the same employment agency that he had contacted in November 2018. He also spoke in general about his job search through online sites and his willingness to accept work since he lost his job.

[54] However, there is little evidence that the Claimant was actively looking for work after he began his classroom studies on March 18, 2019. He says he continued to look for part-time jobs after he started the classroom training, but he did not document any actual applications or any other specific job search efforts. It may be that the Claimant continued to check online job sites after March 18, 2019, but the last job application on his list was on March 13, 2019. He has not explained why he was able to locate and apply to a number of job prospects before he started his training, but he apparently could not identify any prospects after he began the classroom training. (Or he did not apply to those prospects he identified.)

[55] I find that the Claimant did not express his desire to return to work through a sufficient job search from March 18, 2019, to the date of the General Division hearing on July 3, 2019.

Unduly restricting his chances of returning to the job market.

[56] The General Division noted that the Claimant limited his chances of re-entering the job market by only looking for work that coordinated with his school schedule. It did not consider whether this "unduly" limited his chances.

[57] I find that the Claimant set conditions that unduly limited his prospects of additional employment, but only in the periods between March 18 and April 4, 2019, and between April 29 and May 3, 2019. During these periods, the Claimant combined his existing part-time job with classroom studies. This meant that he was not available for other employment except for Friday, Saturday and Sunday.

[58] The Claimant testified that he left his classes before 2:00 p.m. and that his school schedule did not interfere with his availability after 2:00 p.m. I accept that the Claimant was initially expecting that classes would run from 8:30 a.m. to 5:30 p.m., but that he later discovered that he only needed to be in class until after lunch. This was how he explained the difference between the training information on his initial application and the information on his second training questionnaire.

[59] However, the Claimant accepted the commission sales job on January 22, 2019. He said that after he left his classes, he worked the next four to six hours at his sales job, on Monday to Thursday and that he also worked full-time on Friday.[15] According to the Claimant, he could make himself free to work at another job on Friday as well as Saturdays and Sundays,[16] as he said in his initial claim application.[17] After the Claimant started his classroom studies, he was seeking a job that would coordinate with his existing schedule of school and work.

[60] The Claimant told the General Division that he would have accepted a full-time job if it was offered to him while he was taking classroom studies, but this seemed to depend on his ability to work around it. I do not accept that he could find additional employment that he could work in with all of his existing commitments. The Claimant had originally thought he had to be in class until 5:30 but he learned that he could leave the class before 2:00 p.m., which he did so that he could work at his commission sales job. His commission sales job involved several more hours after school during the weekdays so that he could meet with clients. He also spent additional time completing reports.

[61] In addition, the Claimant only had the flexibility to leave at 2:00 p.m. because he could take work home with him that he would otherwise be doing in class. This work had to be done sometime. I agree that the Claimant's classroom training gave him some flexibility, but the Claimant has probably already pushed that flexibility as far as it goes. The Claimant told the General Division that he would accept a full-time job if it were offered to him while he was taking his classes. However, I do not accept he could have accepted employment on days other than Friday, Saturday and Sunday, without abandoning his classes. The Claimant told the

[15] Audio recording of General Division hearing at timestamp 00:22; 30.
[16] Audio recording of General Division hearing at timestamp 00:25:45.
[17] GD3-9.

Commission that he would not abandon his course for a full-time job because he spent a lot of money on it, and I accept that this is true.[18]

[62] The General Division asked a number of questions that attempted to distinguish between the Claimant's availability while he was in training and afterwards. The Claimant talked about his availability for work generally and about how his work coordinated with his classroom time. However, the General Division member posed a question to the Claimant that described his training period as being from "January to June 30.[19] The Claimant agreed that he had been looking for work part-time but that this was no longer the case, and he agreed with the member that it was from January to June 30.[20]

[63] At face value, this evidence seems to contradict other evidence that the Claimant was looking for work full-time except the days that he was in classroom training. However, I do not accept that the Claimant meant to generalize his classroom experience to the entire period from January to June 30. The Claimant was clearly having difficulty following the member's questions. As I understand his testimony, the Claimant knew that he needed to finish all the components by June 2019. [21]He did agree with the General Division member that his realtor training was to take place between January and June 30. However, it was also clear that he enrolled in each component separately. He stated specifically that he did **not** remain in school from April 4 to June.[22] Much of his evidence about his availability while in the realtor course contrasted his availability for work while he was in the classroom training with his availability when he was not. Furthermore, there were times when he was quite clear that he was looking for full-time work from January forward,[23] except that he said he only looked for part-time work while he was in classroom training.

[64] I accept that the Claimant restricted his availability for work to Friday, Saturday and Sunday. The question is whether this restriction was "unduly" or unreasonably limiting. In *Canada (Attorney General) v Primard*,[24] the Federal Court of Appeal considered a claimant that

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[18] General Division decision, para 13; from GD3-26
[19]Audio recording of General Division hearing at timestamp 00:26:45.
[20] Audio recording of General Division hearing at timestamp 00:26:52.
[21]Audio recording of General Division hearing at timestamp 00:11:40.
[22] Audio recording of General Division hearing at timestamp 00:14:10
[23] Audio recording of General Division hearing at timestamp 00:38:00
[24] *Canada (Attorney General) v Primard*, 2003 FCA 349.

was taking courses and was only available weekends and evenings. However, she said that she could make herself more available if she found a job by changing her class schedule to part-time. The Court found that the Umpire should not have understood a possibility of availability to be actual availability. It said that her restricted availability to evenings and weekends "undoubtedly explains her lack of success in obtaining employment." In *Canada (Attorney General) v Gagnon*,[25] the Federal Court of Appeal considered a claimant who claimed to be available on Monday, Saturday and Sunday. In that case, the Court found that the claimant was actually able to work on Saturday and Sunday. However, it said the claimant was not available (within the meaning of the EI Act) because claimants must prove their availability on working days. Section 32 of the EI Act defines working days as the days from Monday to Friday.

[65] That means that Friday was the only working day on which the Claimant was available when he was taking classroom instruction. I find that this is an unreasonable limit. Therefore, the Claimant unduly limited his chances of chances of returning to the labour market from March 18 to April 4, 2019, and from April 29 to May 3, 2019, when the Claimant was enrolled in classroom studies.[26]

[66] While the Claimant is responsible for proving his availability, I am persuaded that the Commission has the burden of proving that the Claimant placed an undue or unreasonable limit on his ability to return to work.[27] Presumably, the Claimant was available on every working day during those periods in which he was not enrolled in classroom studies. Without his classroom schedule, he would have been able to work Monday to Thursday until at least 2:00 p.m. as well as all day Friday. The Commission has not established that the Claimant placed any unreasonable limits on the kind of work that he might obtain, except during the weeks in which the Claimant was in classroom studies.

[67] In my leave to appeal decision, I considered that there was an argument that the Claimant could have demonstrated availability by adding the part-time hours of his commission sales job to the hours of the part-time job that he was still seeking. I was only interested in hearing

[25] *Canada (Attorney General) v Gagnon*, 2005 FCA 321.
[26] Audio recording of General Division hearing at timestamp 00:14:40 and 00:16:18
[27] See decisions of the Umpire, CUB 10436, 18824, and 13363A

argument on this question because the General Division decision had required the Claimant to be available for full-time work.

[68] I do not need to decide this now, because it does not make a difference to my decision. I have found that the Claimant was seeking full-time employment up to and including March 17, 2019. After March 18, 2019, I have found that the Claimant has not proven that he was available for either full-time or part-time work (aside from his existing job). This is because he did not prove that his job search expressed his desire to return to work as soon as a suitable job was offered.

The Claimant's disentitlement after the date of the General Division decision

[69] The General Division found that the Claimant was unable to prove his availability for work from December 31, 2018, onwards. This implies that the General Division decision had determined that the Claimant should not be entitled to benefits even after the General Division decision.

[70] The little evidence that is on the record does not suggest that the Claimant should be presumed to be disentitled after July 3, 2019. The Claimant said that he was still looking for a job when he testified at the General Division hearing. He said that he had finished the "first segment" of his training but he could not take the "second segment" because his wife had lost her job in the last month and they had no money.[28] He also attached a brief statement to his list of applications in which he said that he was "constantly looking and following up all of [his] previous job applications and it is still ongoing."[29]

[71] Regardless, the General Division was not in a position to assess fully whether the Claimant was available for work at any time after his oral testimony on July 3, 2019. Since I cannot consider evidence that was not before the General Division, I cannot determine when or if the Claimant was available after July 3, 2019.

[28] Audio recording of General Division hearing at timestamp 00:21:25.
[29] GD8

[72] To the extent that the General Division has found the Claimant to be unavailable after July 3, 2019, I rescind that decision.

Summary

[73] The Claimant was available for work within the meaning of section 18(1)(a) from December 31, 2018 up to and including March 17, 2019. He is not disentitled to benefits in that period. However, he remains disentitled from March 18, 2019, to the date of the hearing.

CONCLUSION

[74] The appeal is allowed in part. I have found errors in the General Division decision and made the decision the General Division should have made. The General Division decision is varied in part and rescinded in part. The Claimant is not disentitled to benefits under section 18(1)(a) of the EI Act from December 31, 2018 up to and including March 17, 2019. However, the Claimant remains disentitled to benefits in the period from March 18, 2019, to July 3, 2019.

[75] The portion of the Claimant's disentitlement that is after July 3, 2019, is rescinded. This does not mean that the Claimant is either entitled to benefits or not entitled to benefits at any time after July 3, 2019. It means that the Claimant should be prepared to prove his availability to the Commission if he expects to obtain any benefits on this claim after July 3, 2019.

Stephen Bergen
Member, Appeal Division

HEARD ON:	July 28, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. D., Appellant Susan Prud'homme, Representative for the Respondent