



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *VA v Canada Employment Insurance Commission*, 2020 SST 958

Tribunal File Number: GE-20-1902

BETWEEN:

**V. A.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Teresa Jaenen

DATE OF DECISION: October 22, 2020

## REASONS AND DECISION

[1] On September 11, 2020, the Appellant (Claimant) filed an appeal of the Respondent's (Canada Employment Insurance Commission) (Commission) reconsideration decision. The issue before the Tribunal is whether the Claimant proved he was available for work. The Claimant has the burden of proving that he was available for work.

[2] On September 23, 2020, the Tribunal requested the Commission to confirm if the initial decision was rendered under Part 1 or Part VIII.4 under the *Employment Insurance Act* (EI Act).

[3] On October 13, 2020, the Commission confirmed that the initial decision was rendered under Part 1 of the Act, when Part VIII.4 should have been applied because the claim for benefits was established as of August 2, 2020, as a claim for *Emergency Response Benefits* per EIA S.153.8(1).

[4] The Tribunal's authority to decide an issue comes from the Commission's reconsideration decision.<sup>1</sup> While there is no reconsideration decision in the appeal file, the Commission, in their initial submissions<sup>2</sup> argues that it imposed a disentitlement for not being available for work under sections 6, 18, and 50 of the EI Act as well as sections 9.001 and 9.002 of the *Employment Insurance Regulations* for failing to prove his availability for work.<sup>3</sup>

[5] On October 13, 2020, the Commission provided additional submissions in which they conceded the appeal that section 18 (availability) of Part I is not applicable to claims established under Part VIII.4 of the EI Act and, as such, concedes on the issue of the Claimant's availability for work.

[6] The Tribunal has reviewed the evidence and submissions in the file. The Commission conceded on the appeal on the issue of availability under section 18 of the EI Act, because the provision is not applicable to the EI ERB, which is what the Claimant wants to be paid.

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<sup>1</sup> Section 113 of the *Employment Insurance Act*

<sup>2</sup> Submissions dated September 16, 2020

<sup>3</sup> GD4-1 to GD4-2

[7] I accept this submission and allow the appeal on availability.<sup>4</sup> Claimants do not have to prove availability under section 18 of the EI Act in order to be paid the ERB, because section 18 does not apply to that part of the Act (Part VIII.4).

[8] The appeal is allowed.

Teresa Jaenen  
Member, General Division – Employment Insurance

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<sup>4</sup> Section 18 of the *Employment Insurance Act*