Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 210

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. A.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (442746) dated November 25, 2021 (issued by Service Canada)

Tribunal member:	Linda Bell
Type of hearing:	Videoconference
Hearing date:	January 18, 2022
Hearing participant:	Appellant
Decision date:	January 24, 2022
File numbers:	GE-21-2485 and GE-21-2486

Decision

[1] I am dismissing the appeal.

[2] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving her job when she did. This is because she had reasonable alternatives to leaving. This means she is disqualified from receiving Employment Insurance (EI) benefits as of November 22, 2021.

[3] The Appellant hasn't shown that she meets the availability requirements for EI benefits. This means she is indefinitely disentitled as of Monday December 7, 2020.

Overview

[4] When the Appellant learned that one of her co-workers had tested positive for COVID-19, she told her manager she was quitting her job. She agreed to work her four remaining shifts on the schedule. Her last day worked was December 11, 2020.

[5] The Appellant had never collected EI benefits before so she requested assistance from a counsellor at a non-profit organization. The counsellor assisted the Appellant by completing her on-line application while the Appellant spoke with her over the telephone. The application was submitted stating that the Appellant had quit her job to go to school. The Commission established her claim effective December 6, 2020.

[6] Several months later, the Commission conducted a review of the Appellant's claims. It determined that the Appellant didn't qualify for benefits because she had voluntarily left her employment without just cause. The Commission acknowledges that it didn't adjudicate the Appellant's reasons for quitting sooner, so it decided not to impose the disqualification retroactively. Instead, it imposed the disqualification effective November 22, 2021.

[7] The Commission also determined that the Appellant wasn't entitled to receive EI benefits as of December 6, 2020. This is because the Commission determined she didn't provide credible information regarding whether she met the availability

requirements for benefits. The Commission imposed an indefinite retroactive disentitlement effective December 6, 2020.

[8] The Commission's decisions result in a $15,382.00 overpayment of benefits. The Commission reconsidered their decisions and maintained them.

[9] The Appellant disagrees with the Commission. She appeals to the Social Security Tribunal (Tribunal). She says that she quit for reasons relating to COVID-19 and not because of her training. She started her course three months before she quit her job. Her training was entirely on-line and self-paced allowing her the flexibility to continue to work full-time. She says the Commission made several errors when documenting what she told them.

Matters I must consider first

Joining two appeals

[10] As the Member of the EI General Division assigned to determine both appeals (GE-21-2485 and GE-21-2486), I decided to join them. This is so the Appellant could present the merits of each appeal during the same hearing. This also means that I will issue only one decision. Here is what I considered when deciding to join the appeals.

[11] The law states that the Tribunal may deal with two or more appeals together (jointly) if a common question of law or fact arises in the appeals when it will not cause injustice.[1]

[12] In the matters at hand, I found that there is a common fact pattern relating to the reasons why the Appellant left her employment at X and her availability for work.

[13] I also found that there would be no injustice with hearing these appeals together. Determining these appeals together will allow them to proceed more quickly, while

[1] Section 13 of the *Social Security Tribunal Regulations* (*SST Regulations*).

upholding the principles of fairness and natural justice.[2] I have considered all relevant evidence when determining all the issues under appeal.

Potential added party

[14] The Tribunal identified the Appellant's employer as a potential added party to the appeal. It sent a letter to the employer asking if it wanted to be an added party.[3] To be an added party, the employer has to show it had a direct interest in the appeal. The employer did not respond to the Tribunal's letter. As there is nothing in the appeal file to indicate the employer has a direct interest in the appeal, I have decided not to add it as a party to this appeal.

English as a second language

[15] At the hearing, the Appellant explained that she immigrated to Canada six years ago. When she arrived, she was in grade 9. She attended school and graduated from high school in June 2019, while living in Canada.

[16] Although English may be the Appellant's second language, she was capable of presenting her evidence clearly by herself in English. She said she had read and understood all of the appeal documents. She spoke clearly in English and was fully responsive to everything I said in English. I had no problems understanding what the Appellant was saying during the hearing. At times, I asked her to clarify what she said to ensure that I understood what she was explaining. Each time my understanding of what she said was correct.

Issues

[17] Did the Appellant voluntarily leave her job? If so, has she shown just cause for leaving her job?

[18] Does the Appellant meet the availability requirements for EI benefits?

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[2] Paragraph 3(1)(a) of the *SST Regulations*
[3] See the GD5-1 to GD5-4.

[19] Does the Commission have the authority to review previous claims?

Analysis

[20] I acknowledge that the Appellant states there were numerous errors and inconsistencies in her application for EI benefits. For example, the application states she quit her job to go to school but now she says she quit due to reasons relating to COVID-19.

[21] I recognize that the Appellant says that someone else completed her application.[4] But this doesn't lessen her responsibility to ensure the information provided to the Commission is correct. In this case, the Appellant agrees that she authorized a counsellor to use her Social Insurance Number (SIN) and her personal information to submit an on-line claim for benefits on her behalf. She authorized this transaction so it doesn't change her responsibility to ensure the information contained in her application is correct.

[22] I find that the errors in the Appellant's application and inconsistencies in her statements are not prejudicial. The Appellant's appeal is currently before the General Division, which is *de novo.* This means the Appellant can present new evidence at the hearing that may not have been before the Commission. Specifically, she can clarify the errors in her application and inconsistencies in her statements to the Commission. She can also present new evidence relating to the issues under appeal.

[23] I find that the Appellant's evidence is credible because it is consistent and plausible. It is also supported by documentary evidence, as set out below.

Voluntary Leaving

[24] The law says the Commission has the burden to prove the Appellant voluntarily left her employment. If proven, then the burden of proof shifts to the Appellant to demonstrate she had just cause for leaving.[5]

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[4] See page GD3-17.
[5] *Green v. Canada (Attorney General)*, 2012 FCA 313.

[25] The parties don't dispute that the Appellant voluntarily quit her job. The Appellant agrees that she could have continued working at X but she made a personal choice to quit. Her last day worked was December 11, 2020. I see no evidence to dispute this. So I find as fact that the Appellant voluntarily left her employment.

Just Cause

[26] The parties don't agree that the Appellant had just cause for voluntarily leaving her job when she did.

[27] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[6] Having a good reason for leaving a job isn't enough to prove just cause.

[28] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.[7]

[29] It is up to the Appellant to prove that she had just cause. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that his only reasonable option was to quit.[8]

[30] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when she quit. The law sets out some of the circumstances I have to look at, such as working conditions that constitute a danger to health or safety.[9]

[31] After I decide which circumstances apply to the Appellant, she then has to show that she had no reasonable alternative to leaving at that time.[10]

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[6] Section 30 of the *Employment Insurance Act* (Act) explains this.
[7] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[8] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[9] See section 29(c) of the Act.
[10] See section 29(c) of the Act.

– **The circumstances that existed when the Appellant quit**

[32] The Appellant says that one of the circumstances set out in the law applies. Specifically, she says that having one of her co-workers test positive for COVID-19, constituted a danger to her and her mother's health and safety.

[33] The Appellant says that she was working in the produce and bakery departments at X for a total of full-time hours. When she learned that another store employee had tested positive for COVID-19 she told her manager she was quitting. She agreed to work her remaining three or four scheduled shifts. Her last day worked was December 11, 2020.

[34] The Appellant says she made a personal decision to quit her job when she did. She was scared she would catch COVID-19 and then infecting her mother who has serious breathing and health issues. She says she didn't speak to her doctor before quitting.

[35] In support of her appeal, the Appellant submitted a letter written by her medical doctor on October 22, 2021.[11] This letter states that she asked the doctor to write the letter to explain that she was concerned that COVID-19 would be detrimental to her mother's health, so she felt she had to leave her work. The letter also states that her mother is at home and has multiple health problems and low immunity.

[36] I agree with the Commission's submission that the medical letter doesn't say the doctor advised the Appellant to quit her job. The Commission also says that the letter simply appears to repeat what the Appellant told the doctor because contains no diagnosis in regard to her mother or what the Appellant was medically required to do to keep her mother safe.

[37] The Commission documented their October 26, 2021, conversation with the employer who said they have COVID-19 safety measures in place. Those measures include daily employee self-screening, wearing masks, encouraging customers to wear

[11] See page GD3-39.

masks, daily cleaning, installation of plexiglass, and social distancing. The employer also confirmed that the Appellant could have requested a leave of absence.

[38] The Appellant agrees that her employer has COVID-19 safety protocols in place. She says she didn't associate with or work closely with the other employee who tested positive. She also says that she doesn't know where that employee contracted the virus.

[39] The Appellant explained in detail how she shared the same break room, washroom, doorknobs and key pads as the other employee who had tested positive with COVID-19. She felt it was dangerous to stay working in that store once an employee tested positive. She was scared during this time when the government was telling everyone to stay home. So, she made the personal decision to quit and stay home.

[40] I understand the Appellant's desire to self-isolate at home to try to keep herself and mother safe. I also understand that she wanted to reduce the risk to herself and her family, especially given her mother's medical condition. However, she agrees that her employer complied with the government safety regulations. She also doesn't know where that employee contracted COVID-19. So, other than having to go into the store to work she didn't identify anything about her working conditions themselves that were dangerous to her health and safety.

[41] In spite of the Appellant's concerns for her own and her mother's health and safety, I don't find that the circumstances she refers to fall under those described in the law. She continued to work through the height of the COVID-19 pandemic from March 2020 through to December 11, 2020, despite her mother's conditions. She also worked another three or four shifts after learning of the other employee's positive COVID-19 test. So she hasn't proven that there was any urgency for her to stop working.

[42] Also, the Appellant didn't speak of her duties posing a danger to her health and safety. Although she spoke of having shared her work environment with another employee who had tested positive for COVID-19, her employer had safety and cleaning protocols in place. There is no evidence to support that her co-worker contracted the

virus while at work, or had been contagious while at work. For these reasons, I don't find that her work conditions constituted a danger to her health or safety.

[43] I must now look at whether the Appellant had no reasonable alternative to leaving her job when she did.

– Reasonable alternatives

[44] The Commission says the Appellant didn't have just cause because she had reasonable alternatives to quitting. It says that one such reasonable alternative was to request a leave of absence.

[45] The Appellant disagrees with the Commission. She says her employer didn't tell her she could request a leave of absence. She admits that she never asked her employer for options. Instead, she just told her manager she was quitting.

[46] The Appellant says she didn't speak to her doctor before she quit. She says was scared because she lives with her mother who has breathing problems. She didn't want her mother to get the COVID-19 virus. She says she made a personal choice to follow the government orders to stay home.

[47] After considering all of the circumstances presented by the Appellant, I find she failed to prove she had no reasonable alternative to quitting her job when she did. I find it would have been reasonable for the Appellant to talk with her employer about her concerns regarding the COVID-19 virus and her mother's health issues, before quitting. She also could have asked her doctor for a medical leave or other guidance.

[48] I also find that the Appellant could have secured another job before quitting. There doesn't appear to have been an urgency for her to quit, as she continued to work during the height of the pandemic from March to December 11, 2020. She also readily agreed to work three or four more shifts before terminating her employment.

[49] There is another alternative where the Appellant could have isolated herself from seeing her mother. She could have done this while she continued working or while she looked for another job where she felt more secure from catching the COVID-19 virus.

[50] I find that the Appellant had good reasons to quit her job for herself and her family. However, considering the circumstances that existed when she quit, I find that she had reasonable alternatives to leaving when she did, as set out above.

[51] After consideration of the totality of the circumstances submitted by the Appellant, and the reasonable alternatives to quitting that remained despite all of those circumstances, I find that the Appellant didn't have just cause for leaving her job at X, when she did.

[52] As stated above, the Commission acknowledges that it failed to adjudicate the Appellant's reasons for quitting sooner. So, it decided not to impose the disqualification retroactively to December 6, 2020. Instead, it imposed the disqualification effective November 22, 2021, which I find is reasonable.

[53] I find that the Appellant is disqualified from receiving regular benefits as of November 22, 2021. This is because she voluntarily left her job without just cause.

Availability

[54] Different sections of the law require Appellants to show that they are available for work.[12] The Commission says the Appellant was disentitled under both sections because she hasn't shown she was capable of and available for work and unable to find suitable employment while attending unapproved training.[13]

Reasonable and customary efforts to find suitable employment

[55] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary. I have to look at whether her efforts

[12] Paragraph 18(1)(a) of the Act provides that a Appellant is not entitled to be paid benefits for a working day in a benefit period for which he or she fails to prove that on that day he or she was capable of and available for work and unable to obtain suitable employment. Subsection 50(8) of the Act provides that, for the purpose of proving that a Appellant is available for work and unable to obtain suitable employment, the Commission may require the Appellant to prove that he or she is making reasonable and customary efforts to obtain suitable employment.
[13] See the Commission's submissions on page GD4-1.

are sustained and whether they are directed toward finding suitable employment (a suitable job). In other words, the Appellant has to have kept trying to find a suitable job.

[56] The Act doesn't define suitable employment. Instead, the law provides criteria I must consider when determining whether employment is not suitable or suitable for the Appellant.[14]

[57] I find that suitable employment for the Appellant was different from when she first quit her job in December 2020 to early September 2021. This is because her medical condition changed in September 2021.

[58] Prior to September 2021, suitable employment for the Appellant includes general labour and retail work, based her work experience. As of September 2021, suitable employment for the Appellant is a job she can do within her medical limitations.

[59] In their submissions to the Tribunal, the Commission references a disentitlement under subsection 50(8) of the Act.[15] This provision requires the Appellant to prove that she is making reasonable and customary efforts to obtain suitable employment by providing details of her job search.

[60] The Commission submits that the Appellant's job search records didn't begin until September 2021. This is when the issue of her availability had been under review.

[61] The Commission also says that the Appellant stated more than once that she was in a full-time course. The Commission asserts that the Appellant told them that she

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[14] Section 6 of the Act states that employment is not suitable for a claimant if: (a) it arises out of a work stoppage from a labour dispute; (b) it is in the claimant's usual occupation and is at a lower rate of earnings or on conditions less favourable than agreed upon between good employers and their employees; or (c) it's not in the claimant's usual occupation and is either at a lower rate of pay or on less favourable conditions that the claimant might reasonable expect to obtain, having regard to the conditions the claimant had in their usual occupation or would have had if they continued to be so employed. Section 9.002 of the Regulations states the criteria for determining suitable employment are: (a) the claimant's health and physical capabilities allow them to commute to the place of work and 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] See page GD4-5.

only wanted to work part-time on weekends but refused to provide details such as how many hours she spent on her course.

[62] The Appellant disputes the Commission's submissions. She consistently states that she wasn't in full-time attendance at school. The Appellant provided documentary evidence to support that she was taking one on-line biology course as of September 2020.[16] This course did not require the Appellant to attend regular glasses. Instead, she was able to complete the course at her own pace, on-line.

[63] In addition, the Appellant provided evidence that she was placed on the wait list for the Medical Lab Assistant program starting in September 2021.[17] This full-time training program is what she spoke about with the Commission. She wasn't offered a seat in this program until September 2022.[18]

[64] The Appellant says that when she quit her job in December 2020, she says she was scared and wanted to stay home. She says she talked to the counsellors at two non-profit organizations about jobs she could do from home. She says she told the counsellors she could work from home doing translation jobs or helping newcomers. She says the counsellors never contacted her about job opportunities. She never called them back to see if there were any jobs available. She admits that she has no experience doing these types of jobs or working from home.

[65] The Appellant consistently says that she didn't actively look for jobs until after her mother received her vaccination for COVD-19 in June 2021. She says that near the end of June 2021 she started looking for a job by going to malls and handing out her resume at retail stores. Shortly afterwards she was offered a job at Shopper's Drug Mart, which she refused to accept.

[66] The Appellant says that she called the Commission to find out how much she could receive from her EI benefits if she accepted the part-time job at Shopper's Drug

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[16] See page GDJ2-1.
[17] See page GDJ2-3.
[18] See page GDJ5-1.

Mart. She says they told her that she had to be looking for full-time work so she refused to take the job at Shoppers Drug Mart.

[67] The Appellant submitted a medical note indicating that as of the beginning of September 2021, her medical condition changed.[19] She says her doctor told her she couldn't work in jobs that were labour jobs. She need to work in a job that allowed her to sit when needed.

[68] The Appellant says she signed up on the Indeed website and started applying for full-time medical office jobs as of September 22, 2021.[20] This is shortly after the Commission told her she was not entitled to receive EI benefits. She admits that she has no experience working in a medical office but is willing to be trained.

[69] I find that the Appellant hasn't shown that she kept trying to find a suitable job since she quit in December 2020. She readily admits that she didn't actively search for work between December 2020 and June 2021. This is when she was staying home due to her fear of catching COVID-19 and spreading it to her mother.

[70] I accept that the Appellant started looking for part-time work from June 2021, to early September 2021. However, she refused to accept the job offer from Shoppers Drug Mart when she learned it would affect her benefits. Although she says the Commission told her she had to be available for full-time work, I am not convinced that they told her she couldn't work multiple part-time jobs. She could have accept this part-time job while she continued to look for other work.

[71] I find that the Appellant wasn't actively seeking a full-time job because she had hoped she would get a seat in the September 2021 Medical Lab Assistant training program, but this didn't happen. Instead, she was placed on the wait list again. She provided evidence that she did get a seat in the September 2022 training program.

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[19] See page GDJ2-6.
[20] See page GD3-47.

Capable of and available for work and unable to find suitable employment

[72] I must consider whether the Appellant has shown she was capable of and available for work and unable to find suitable employment.[21] The Appellant has to prove three things to show she was available under this section:

a) A desire to return to the labour market as soon as a suitable job is available

b) That desire is expressed through efforts to find a suitable job

c) No personal conditions that might unduly limit their chances of returning to the labour market[22]

[73] I have to consider each of these factors to decide the question of availability,[23] looking at the attitude and conduct of the Appellant.[24]

– **Desire to return to work**

[74] I find that the Appellant hasn't shown a desire to return to the labour market as soon as a suitable job was available, during the entire period under review.

[75] The Appellant hasn't shown an ongoing desire to return to the labour market from December 2020, to June 1, 2021. Although she says she spoke with two counsellors about working from home, she readily admits that she took no action to follow up on those conversations or to look for other work she could do from home.

[76] I acknowledge that the Appellant says that since June 1, 2021, she updated her resume and applied for several part-time retail jobs, as listed above. She says that at that time she was only looking to work during the summer months (July and August). However, when Shopper's Drug Mart offered her a job she refused it. Then after she

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[21] Paragraph 18(1)(a) of the Act.
[22] *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[23] *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[24] *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

learned she wasn't entitled to EI benefits, she started applying for full-time jobs she wasn't qualified to do.

[77] I find that the Appellant didn't present evidence to prove she had a desire to return to the labour market, as soon as a suitable job was available from December 6, 2020 to June 1, 2021. She did provide evidence of a desire to work from June 1, 2021 to August 31, 2021.

– **Efforts to find a suitable job**

[78] I find that the Appellant didn't start making efforts to find a suitable job until June 1, 2021. I am not convinced that speaking casually to her counsellors about the possibility of working from home is truly making an effort to find work. As stated above, the Appellant says she looked for work in-person and on-line starting after June 1, 2021. She updated her resume and applied for several part-time jobs.

[79] While they are not binding when deciding this particular requirement, I have considered the list of job-search activities, outlined below, as guidance when deciding this second factor.

[80] The *Employment Insurance Regulations* (Regulations) lists nine job-search activities I have to consider. Some examples of those activities are[25]

- looking for jobs listed on-line
- creating a resume
- networking and dropping off a resume
- applying for a job

[25] See section 9.001 of the Regulations.

[81] I recognize that there is no formula to determine a reasonable period to allow a claimant to explore job opportunities. This means I must consider specific circumstances on a case-by-case basis.[26]

[82] I have also considered the economic effects caused by the global COVID-19 pandemic when determining the reasonable period to explore job opportunities. I have also considered the public health orders that closed business at different times in the Appellant's province.

[83] In this case, I find that the Appellant's efforts were enough to meet the requirements of this second factor from June 1, 2021, to August 31, 2021. Her efforts were not enough for the period from December 11, 2020, to June 1, 2021 and from September 1, 2021 onward.

[84] The Appellant consistently states she only asked her counsellors once about working from home, from December 11, 2020, to June 1, 2021. She also says she made the personal choice to stay home during this period for fear of getting the COVID-19 virus or giving it to her mother.

[85] The Appellant consistently says that she only wanted to work full-time during July and August 2021. This is because she thought she would be getting a seat in her full-time training program. After learning she was not entitled to EI benefits and that she was placed on the wait list again at school, she started applying for full-time jobs she knew she wasn't qualified to do. Specifically she was applying for medical office jobs.

– **Unduly limiting chances of going back to work**

[86] I find that the Appellant set personal conditions by restricting her availability. Specifically she made the choice to quit her job on December 11, 2020, and remain home until after her mother received her vaccination in June 2021. Although the Appellant says she would have been willing to work from home, she has provided

[26] See section 10.4.1.4 of the Digest of Benefit Entitlement Principles.

insufficient evidence to prove she actively sought work she could do from home. She admits that she has no experience working from home.

[87] I also find that the Appellant was unduly limiting her changes of going back to work by restricting her availability to working in the summer months, as she waited to find out whether she got a seat in the September 2021, session of her training program. When she learned she remained on the wait list and wasn't entitled to EI benefits, she started applying for jobs on September 22, 2021. This is when she started applying for medical office jobs despite having no experience working in an office or a medical office.

[88] The Commission submits that the Appellant's statements regarding her availability are not credible. It also says that her statements don't refute her previous statements that she was not available for full-time work. Instead, she said she was only interested in working part-time.

[89] I disagree with part of the Commission's submission. This is because the law doesn't stipulate that the Appellant must be seeking full-time work. Instead, she has to prove she is available for and seeking suitable employment.

[90] I am not convinced that the Appellant was available to accept a job during normal or typical business hours on Monday through Friday, prior to June 1, 2021. Nor am I convinced that she would have accepted a job in early September 2021, given that she was still waiting to find out if she got a seat off the wait list, in her training program. Also, her medical condition changed when she became pregnant.

[91] After consideration of the totality of the evidence before me, I find that the Appellant's efforts to find a job, which didn't start until after June 1, 2021, were initially restricted to work during the summer months. She then refused the job she was offered at Shoppers Drug Mart. Once she learned she was disentitled, the Appellant only started looking for a job she could work during regular workdays, Monday through Friday, on September 22, 2021. She only applied for medical office jobs for which she has no experience.

[92] The evidence, as set out above, supports a finding that the Appellant set personal restrictions that unduly limited her chances of returning to the labour market as of December 7, 2020.

Was the Appellant capable of and available for work and unable to find suitable employment?

[93] No. After considering my findings on each of the three factors together, I find that the Appellant hasn't shown that she was capable of and available for work and unable to find a suitable job as of December 7, 2020.[27] Although she was making efforts to find a job after June 1, 2021, the evidence supports that she was prioritizing her ability to collect EI benefits instead of working, while she waited to see if she got a seat in her training program.

[94] The Employment Insurance scheme is not a pension fund or a needs-based program. Like other insurance plans, claimants have to meet terms in order to receive payment of benefits. In other words, the Employment Insurance system is an insurance scheme that provides benefits to those who meet the entitlement requirements set out in the Act.[28] So, even though the Appellant paid EI premiums, she doesn't meet the availability requirements to receive regular benefits. This means she is not entitled to the EI benefits she received.

Can the Commission review previous claims?

[95] Yes, I find that the Commission has the authority to review previous claims even though the Appellant reported inconsistent information on her application.

[96] The law states that the Commission may, at any point after benefits are paid to a claimant who is taking unapproved training, verify that they are entitled to those benefits by requiring proof that they were capable of and available for work on any working day of their benefit period.[29]

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[27] See section 18(1)(a) of the Act.
[28] See *Canada (Attorney General) v Lesiuk*, 2003 FCA 3; and *Tanguay v Canada (Unemployment Insurance Commission)*, [1985] F.C.J. No. 910.
[29] See section 153.161 of the Act.

[97] The law also states that the Commission has 36 months after paying EI benefits, to reconsider a claim for benefits.[30] This period is extended to 72 months in cases where, if in the opinion of the Commission, a false or misleading statement or representation has been made in connection to a claim.[31]

[98] The Federal Court of Appeal recognizes that the Commission can't review changes to claims at the exact time they happen. It is precisely for that reason that the Act allows the Commission time to rescind or amend any decision given in any particular claim for EI benefits.[32]

[99] There is no dispute that the Appellant's application for benefits states that she quit her job to attend training. Although the Appellant was attending one on-line course at the time her application was submitted, this is not the reason why she quit her job. I accept her explanations about the errors on her application and who completed it. This doesn't change the fact that the Appellant is responsible for ensuring that the information contained in her application is correct.

[100] I don't agree with the Appellant's assertion that the Commission was adjudicating her previous claims based on today's rules. Nor do I agree that the Commission ought to be prevented from reviewing her claims and availability simply because they had previously issued her payment. The Appellant readily admits that the information contained in her application and training questionnaire is not correct. She attempted to provide the Commission with the correct information but they didn't agree with her, so she appealed to the Tribunal.

[101] This is truly an unfortunate situation. I recognize that the Commission's lengthy delay (9 months) when reviewing the claims and the Appellant's reasons for quitting her job has created a large overpayment. The Appellant disclosed that she had quit her job in her application. The Commission didn't tell her there was a possibility she wouldn't be entitled to these benefits. Instead, it simply paid her the benefits. Any person would

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[30] Section 52 of the *Employment Insurance Act* (*Act*).
[31] See subsection 52(5) of the *Act.*
[32] *Canada (Attorney General) v Landry*, A-532-98.

reasonably assume in these circumstances that they were entitled to the benefits they were receiving.

[102] The Commission conducted its assessment in accordance with the law so the overpayment is valid. I do not have any authority to waive the overpayment.[33] That authority rests with the Commission.

[103] I also don't have any authority to order the Commission to waive an overpayment. This said, I would ask that the Commission consider waiving the overpayment in this case, given the lengthy delay in reconsidering the claim. Some delay is reasonable. However, even when considering the pandemic circumstances, a delay of 9 months is not reasonable. The overpayment would likely not have been as large as it is, had the Commission made its decision earlier.

Conclusion

[104] The appeal is dismissed.

[105] The Appellant is disqualified from EI benefits effective November 22, 2021. This is because she voluntarily left her job at X without just cause.

[106] The Appellant is disentitled from receiving EI benefits indefinitely, as of Monday December 7, 2020. The disentitlement remains in effect until such time that the Appellant proves she meets the availability requirements.

Linda Bell

Member, General Division – Employment Insurance Section

[33] See section 112.1 and 113 of the Act.