[TRANSLATION]

Citation: *ZE v Canada Employment Insurance Commission*, 2022 SST 168

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	Z. E.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (442852) dated December 3, 2021 (issued by Service Canada)

Tribunal member:	Normand Morin
Type of hearing:	Videoconference
Hearing date:	January 27, 2022
Hearing participant:	Appellant
Decision date:	February 15, 2022
File number:	GE-21-2522

Decision

[1] The appeal is allowed. I find that the Appellant has proven her availability for work for the period from January 11, 2021, to May 21, 2021, inclusive, during which she was taking training.[1] This means that she is entitled to receive Employment Insurance (EI) regular benefits for the period in question. Because of this, the Appellant should not have to pay back the amount of money that the Canada Employment Insurance Commission (Commission) is asking her to repay and that it mentions in the October 26, 2021, decision affecting her and in a notice of debt that was sent to her on October 30, 2021.[2]

Overview

[2] On August 30, 2020, after returning to Canada a few weeks earlier, the Appellant began full-time training at the Cégep[3] de Chicoutimi. The training leads to a college diploma in natural sciences. She completed her fall 2020 term from August 30, 2020, to January 2021 and her winter 2021 term from January 18, 2021, to May 22, 2021.[4] In the fall of 2021, she continued her training at the Université du Québec à Chicoutimi in an administration program.[5]

[3] Since late August 2020, she has had several periods of employment for two different employers. From August 27, 2020, to December 22, 2020, inclusive, and from February 8, 2021, to April 3, 2021, inclusive, she worked as a sales associate for the employer X (X store).[6] From April 10, 2021, to August 7, 2021, she worked as a customer service representative for the employer X, a furniture and appliance store.[7]

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[1] See section 18(1)(a) of the *Employment Insurance Act* (Act), section 153.161 of Part VIII.5 of the Act, and sections 9.001 and 9.002(1) of *the Employment Insurance Regulations* (Regulations).
[2] See GD3-27 to GD3-30.
[3] General and vocational college.
[4] See GD3-13 to GD3-26.
[5] See GD2-5 and GD2-9.
[6] See the Records of Employment issued by the employer on January 6, 2021, and April 8, 2021—GD9-3 to GD9-6. See also GD3-13 to GD3-19.
[7] See GD9-1 and GD9-2.

[4] On January 7, 2021, after the period of employment from August 27, 2020, to December 22, 2020,[8] the Appellant made an initial claim for EI benefits (regular benefits).[9] A benefit period was established effective December 20, 2020.[10]

[5] On October 26, 2021, the Commission told her that it was not able to pay her EI benefits from January 11, 2021, to May 21, 2021, because she was taking a training course on her own initiative and had failed to prove that she was available for work. It also told her that, if she owed money, she would receive a notice of debt.[11]

[6] On December 3, 2021, after a request for reconsideration, the Commission told the Appellant that it was upholding the October 26, 2021, decision about her availability for work.[12]

[7] The Appellant says that she was available for work during the relevant period. She explains that, when she returned to Canada in August 2020, after living in Morocco, she worked while in school. She says that she stopped working in December 2020 after the Government of Quebec introduced health restrictions associated with the COVID-19 pandemic,[13] including business closures. She explains that she looked for a job. The Appellant says that she went back to work in early February 2021. She argues that she contacted the Commission to make sure she was entitled to benefits, given that she was studying and working part-time. The Commission told her that she was entitled to benefits and not to worry. The Appellant says that she was very transparent by providing accurate information in each of her claimant reports. She explains that, several months after she started receiving benefits, the Commission told her that she was not entitled to them and sent her a notice of debt. Although the Commission explained to her that her reports had been processed using automated systems, which explained why she had received benefits she was not entitled to, the Appellant argues

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[8] See GD9-3 and GD9-4.
[9] See GD3-3 to GD3-12.
[10] See GD4-1.
[11] See GD3-27 and GD3-28.
[12] See GD2-10, GD3-36, and GD3-37.
[13] Coronavirus disease 2019.

that she should not have to suffer the consequences of a badly programmed system. The Appellant says that she finds it highly unfair and very unpleasant to see a debt of several thousand dollars in her file. She argues that this situation will get in the way of her plans and undermines her right to security, reputation, and a [translation] “good image.” On December 14, 2021, the Appellant challenged the Commission’s reconsideration decision. That decision is now being appealed to the Tribunal.

Issues

[8] I have to decide whether the Appellant has proven that she was available for work during the period from January 11, 2021, to May 21, 2021, while taking training.[14]

[9] To decide this, I have to answer the following questions:

- Has the Appellant rebutted the presumption that she was not available for work based on the principles related to returning-to-studies cases, such as the attendance requirements of the course, the claimant’s willingness to give up their studies to accept employment, whether the claimant has a history of being employed at irregular hours, and the existence of “exceptional circumstances”?
- Did the Appellant show a desire to go back to work as soon as a suitable job was available?
- Did the Appellant express that desire through efforts to find a suitable job?
- Did the Appellant set personal conditions that might have unduly limited her chances of going back to work?

[10] I also have to decide whether the Appellant should pay back the benefits that she received and that the Commission is asking her to repay.[15]

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[14] See section 18(1)(a) of the Act, section 153.161 of Part VIII.5 of the Act, and sections 9.001 and 9.002(1) of the Regulations.
[15] See sections 43, 44, and 52 of the Act.

Analysis

Availability for work

[11] The Federal Court of Appeal (Court) has held that a person who is in school full-time is presumed to be unavailable for work.[16] This is called "presumption of non-availability." It means we can suppose that this person is not available for work when the evidence shows that they are taking training full-time.

[12] But this presumption can be rebutted if certain conditions are met. The Court tells us that principles related to returning-to-studies cases can help rebut the presumption of non-availability.[17] These principles include:

- the attendance requirements of the course
- the claimant's willingness to give up their studies to accept employment
- whether the claimant has a history of being employed at irregular hours
- the existence of "exceptional circumstances" that would enable the claimant to work while taking their course[18]

[13] Although this presumption of non-availability can be rebutted, the student still has to show that they are actually available for work.

[14] Two sections of the *Employment Insurance Act* (Act) indicate that claimants have to show that they are available for work.[19] Both sections deal with availability, but they involve two different disentitlements.

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[16] See the Federal Court of Appeal (Court) decision in *Cyrenne*, 2010 FCA 349.
[17] The Court established or reiterated these principles in the following decisions: *Lamonde*, 2006 FCA 44; *Cyrenne*, 2010 FCA 349; *Wang*, 2008 FCA 112; *Gagnon*, 2005 FCA 321; *Rideout*, 2004 FCA 304; *Boland*, 2004 FCA 251; *Loder*, 2004 FCA 18; *Primard*, 2003 FCA 349; and *Landry*, A-719-91.
[18] The Court established or reiterated these principles in the following decisions: *Lamonde*, 2006 FCA 44; *Cyrenne*, 2010 FCA 349; *Wang*, 2008 FCA 112; *Gagnon*, 2005 FCA 321; *Rideout*, 2004 FCA 304; *Boland*, 2004 FCA 251; *Loder*, 2004 FCA 18; *Primard*, 2003 FCA 349; and *Landry*, A-719-91.
[19] See sections 18(1)(a) and 50(8) of the Act.

[15] First, a claimant is not entitled to receive benefits for a working day in a benefit period for which the claimant fails to prove that, on that day, the claimant was capable of and available for work and unable to find a suitable job.[20]

[16] Second, to prove availability for work, the Commission may require the claimant to prove that they are making reasonable and customary efforts to find a suitable job.[21]

[17] In response to a request from the Tribunal, the Commission indicated that it considered section 50(8) of the Act when making its decision.[22] It explained that it found that the Appellant had not shown that she had made reasonable and customary efforts to find a suitable job.[23] The Commission said that, on December 3, 2021, it asked the Appellant to explain her job search efforts.[24]

[18] In this case, I am of the view that the Commission's finding that the Appellant was not available for work is based first and foremost on the application of section 18 of the Act. I find that, before disentitling her to benefits, the Commission did not require the Appellant to prove that she had made reasonable and customary efforts to find a suitable job.[25]

[19] To decide whether a claimant is available for work, I have to consider the specific criteria set out in the Act for determining whether their efforts to find a suitable job are reasonable and customary.[26] According to these criteria, the efforts must be 1) sustained, 2) directed toward finding a suitable job, and 3) compatible with nine specific activities that can be used to help claimants get a suitable job.[27] These activities include assessing employment opportunities, registering for job search tools or with

[20] See section 18(1)(a) of the Act.
[21] See section 50(8) of the Act.
[22] See GD6-1.
[23] See GD6-1.
[24] See GD6-2.
[25] See section 50(8) of the Act.
[26] See section 9.001 of the Regulations.
[27] See section 9.001 of the Regulations.

online job banks or employment agencies, contacting prospective employers, and submitting job applications.[28]

[20] The criteria for determining what constitutes suitable employment are the following: 1) the claimant's health and physical capabilities allow them to commute to the place of work and to perform the work, 2) the hours of work are not incompatible with the claimant's family obligations or religious beliefs, and 3) the nature of the work is not contrary to the claimant's moral convictions or religious beliefs.[29]

[21] The notion of "availability" is not defined in the Act. Court decisions have set out criteria for determining a person's availability for work and whether they are entitled to EI benefits.[30] These three criteria are:

- wanting to go back to work as soon as a suitable job is available
- expressing that desire through efforts to find a suitable job
- not setting personal conditions that might unduly limit the chances of going back to work[31]

[22] Whether a person who is taking a full-time course is available for work is a question of fact that must be determined in light of the specific circumstances of each case but based on the criteria set out by the Court. The claimant's attitude and conduct must be considered.[32]

[23] In this case, the Appellant has met the above criteria to prove that she was available for work during the period from January 11, 2021, to May 21, 2021. In addition

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[28] See section 9.001 of the Regulations, [*sic*]
[29] See section 9.002(1) of the Regulations.
[30] The Court established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.
[31] The Court established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.
[32] See the Court's decisions in *Carpentier*, A-474-97; *Whiffen*, A-1472-92; and *Rondeau*, A-133-76.

to rebutting the presumption of non-availability, she has shown that her efforts to find a job during that period were reasonable and customary.

Issue 1: Has the Appellant rebutted the presumption that she was not availability [*sic*] for work based on the principles related to returning-to-studies cases, such as the attendance requirements of the course, the claimant's willingness to give up their studies to accept employment, whether the claimant has a history of being employed at irregular hours, and the existence of "exceptional circumstances"?

[24] Among the principles related to returning-to-studies cases that can help a claimant rebut the presumption that they are unavailable for work while taking training full-time, I note that the Appellant has a history of being employed at irregular hours while in school full-time.

[25] The Appellant says that she began full-time training on August 30, 2020, and completed her fall 2020 term from August 30, 2020, to January 2021 and her winter 2021 term from January 18, 2021, to May 22, 2021.[33]

[26] Although one of her statements to the Commission indicates that her training was part-time during the winter 2021 term,[34] that was not the case. The training was full-time, as she indicated in several of her other statements.[35]

[27] On her application for benefits, the Appellant indicated that she had previously worked while taking training (a course or a program).[36]

[28] The evidence on file and the Appellant's testimony indicate that she has had several periods of employment since she started studying full-time.[37]

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[33] See GD3-13 to GD3-26.
[34] See GD3-13 to GD3-19.
[35] See GD3-20 to GD3-26.
[36] See GD3-18.
[37] See the Records of Employment issued by the employer X on January 6, 2021, and April 8, 2021—GD9-3 to GD9-6. See also GD3-13 to GD3-19, GD9-1, and GD9-2.

[29] The Appellant explains that, from August 2020, while in school, her jobs were part-time jobs of around 13 to 15 hours per week. She says that she worked full-time or was available to do so on [translation] “holidays” (for example, the holiday season) or outside her training period.[38]

[30] I find persuasive the Appellant’s testimony that she can work while taking training full-time. Her testimony is also supported by compelling evidence that she is able to do this.[39]

[31] The Appellant does not dispute that she was in school full-time during the period she was disentitled from receiving benefits, that is, from January 11, 2021, to May 21, 2021.

[32] I find that the Appellant has a work-study history showing that she is able to balance part-time work with full-time studies.

[33] A decision by the Tribunal’s Appeal Division (Appeal Division) indicates that the law does not require that a claimant have a history of full-time employment while attending school to rebut the presumption that, as a full-time student, they are unavailable for work under the Act.[40]

[34] That decision was about a claimant (student) with a history of full-time studies and part-time employment indicating that she was working approximately 14 to 18 hours per week and looking for a part-time job of 16 to 20 hours weekly.[41]

[35] In that decision, the Appeal Division found that the nature of the claimant’s previous employment—part-time employment—and the fact that she had shown her ability to maintain part-time employment over the long term, while simultaneously

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[38] See GD3-26.
[39] See the Records of Employment issued by the employer X on January 6, 2021, and April 8, 2021—GD9-3 to GD9-6. See also GD3-13 to GD3-19, GD9-1, and GD9-2.
[40] See the Appeal Division decision in *JD v Canada Employment Insurance Commission*, 2019 SST 438.
[41] See the Appeal Division decision in *JD v Canada Employment Insurance Commission*, 2019 SST 438.

attending full-time studies, were an exceptional circumstance sufficient to rebut the presumption of the claimant's non-availability.[42]

[36] Although I am not bound by the Tribunal's decisions, I consider its findings persuasive in showing that a person can rebut the presumption that they are not available for work while taking training full-time, if the person can show that they have experience simultaneously studying full-time and working part-time (work-study history). As a result, I adopt the same approach in this case.

[37] So, I do not accept the Commission's argument that the Appellant has not rebutted the presumption of non-availability, for the reasons she gave it: she was taking a full-time course that limited her availability for work to non-school hours and days, she had to attend scheduled classes, she would not have withdrawn from her training to accept a job with a work schedule that conflicted with her training schedule, and she was available for full-time work only outside her training period.[43]

[38] The Commission argues that the Appellant's work history shows her limited availability while taking a training course and that she was available for full-time work during school breaks.[44]

[39] On this point, I am of the view that the Appellant has shown she has a significant work-study history that helps her rebut the presumption that she was not available for work, even though her availability for work was part-time while she was studying.

[40] Although the Commission also argues that the COVID-19 pandemic is not an exceptional circumstance that helps rebut the presumption of non-availability [translation] "created by the [Appellant]'s taking a training course on her own initiative,"[45] I am of the view that this is not the circumstance that helps her rebut the presumption that she was not available for work or that may have led to her decision to take training.

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[42] See the Appeal Division decision in *JD v Canada Employment Insurance Commission*, 2019 SST 438.
[43] See GD4-5 and GD4-6.
[44] See GD4-7 and GD4-8.
[45] See GD4-7.

[41] I find that the Appellant has rebutted this presumption because she has a work-study history showing that she is able to balance part-time work with full-time studies. In my view, this is an exceptional circumstance sufficient to allow the Appellant to rebut the presumption that she was unavailable.

[42] Although the Appellant has rebutted the presumption that she was unavailable for work, I now have to decide whether she was actually available for work under the Act.

Issue 2: Did the Appellant show a desire to go back to work as soon as a suitable job was available?

[43] I find that the Appellant showed her desire to go back to work as soon as a suitable job was available during the period from January 11, 2021, to May 21, 2021. I find that, even though the Appellant was in training during that period, her intention was also to keep working.

[44] The Appellant argues that she was available for work during the period in question, either part-time, on specific days during her training; or full-time, on holidays or when she was not in training.[46]

[45] She indicates that she has had several periods of employment since she started studying full-time in August 2020.

[46] According to the Appellant, she stopped working during the relevant period only because businesses had to close due to the COVID-19 pandemic. She says that this is why she applied for benefits.[47]

[47] I find that, during the relevant period, and after being laid off on December 22, 2020, while working for X, the Appellant did not stop showing her desire to find work.

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[46] See GD3-20 to GD3-25, GD3-26, and GD3-35.
[47] See GD2-5 and GD2-9.

[48] I point out that the evidence on file also shows that the Appellant went back to work for this employer from early February 2021 to April 2021, and then accepted a different job with another employer.[48]

[49] I have no reason to doubt that the Appellant wanted to work and keep working during the period from January 11, 2021, to May 21, 2021—the period for which the Commission disentitled her from receiving benefits. She worked most of the time during that period.

[50] I find that, even though the Appellant chose to take training full-time, this situation did not affect her desire to go back to work as soon as a suitable job was available during the relevant period.

Issue 3: Did the Appellant express that desire through efforts to find a suitable job?

[51] I find that the Appellant expressed her desire to go back to work through efforts to find a suitable job during the period from January 11, 2021, to May 21, 2021.

[52] On her January 7, 2021, application for benefits, the Appellant said that, since becoming unemployed or since the start of her training, she had not made efforts to find work because COVID-19 health measures did not give her the flexibility.[49]

[53] The Appellant's statements to the Commission on April 22, 2021, and December 3, 2021, indicate that she looked for a job after becoming unemployed.[50] Her December 3, 2021, statement reports her as saying that she had a part-time job that suited her but that she still looked for a job in administration and finance, her field of study.[51]

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[48] See the Records of Employment issued by the employer X on January 6, 2021, and April 8, 2021—GD9-3 to GD9-6. See also GD3-13 to GD3-19, GD9-1, and GD9-2.
[49] See GD3-18.
[50] See GD3-25 and GD3-35.
[51] See GD3-35.

[54] The Appellant says that, after she stopped working for the employer X on December 22, 2020, she started working there again in early February 2021 (February 8, 2021). She explains that she worked for this employer until April 3, 2021.

[55] The Appellant says that she then left that job to work at X from April 10, 2021.

[56] The Appellant explains that, in April 2021, before working at that job, and in addition to applying for a job with X, she applied for a job with another employer, a X pharmacy.

[57] In her April 22, 2021, statement to the Commission, the Appellant explained that she had decided to change jobs to gain experience in another field.[52]

[58] The Appellant says that she continued looking for a job when she was working at X.

[59] She started working full-time on May 27, 2021.[53]

[60] In this case, I find that the Appellant made "reasonable and customary efforts" in the "search for suitable employment"—that is, sustained efforts directed toward finding a suitable job and compatible with nine specific activities that can be used to help claimants get a suitable job.[54]

[61] In assessing the Appellant's availability for work and her efforts to find a suitable job, I am taking into account the fact that she worked part-time for almost a year while in school full-time. I find that her part-time employment was her usual employment.

[62] I find credible the Appellant's testimony that she has been working since August 2020 and that she started working around the time she started studying full-time. Her

[52] See GD3-20 and GD3-24.
[53] See GD9-2.
[54] See section 9.001 of the Regulations.

statement is also supported by compelling evidence that she had several periods of employment while in school.[55]

[63] I find that the Appellant has shown that she worked most of the time during the period from January 11, 2021, to May 21, 2021.

[64] Although section 9.002(1) of the *Employment Insurance Regulations* (Regulations) describes the criteria for determining what constitutes suitable employment,[56] it does not otherwise or more clearly define the expression "suitable employment."

[65] I point out that, in addition to those criteria,[57] the Act also sets out characteristics describing what constitutes employment that is "not suitable."[58] I find that the criteria set out in the Regulations[59] and these characteristics[60] have to be considered together to be able to determine what constitutes suitable employment based on a claimant's circumstances.

[66] These characteristics indicate, for example, that employment is not suitable employment if it is not in the claimant's usual occupation.[61] Section 6(4)(c) of the Act also says that this employment in a different occupation, or that is not suitable, includes conditions less favourable or lower earnings than those that a claimant could reasonably expect to obtain, taking into account the conditions and earnings the claimant would have had if they had remained in their previous employment. Section 6(5) of the Act broadens the types of jobs that can be suitable, since the provisions of section 6(4)(c) of the Act no longer apply after a reasonable period.

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[55] See the Records of Employment issued by the employer X on January 6, 2021, and April 8, 2021—GD9-3 to GD9-6. See also GD3-13 to GD3-19, GD9-1, and GD9-2.
[56] The criteria are the following: 1) the claimant's health and physical capabilities allow them to commute to the place of work and to perform the work, 2) the hours of work are not incompatible with the claimant's family obligations or religious beliefs, and 3) the nature of the work is not contrary to the claimant's moral convictions or religious beliefs.
[57] See section 9.002(1) of the Regulations.
[58] See sections 6(4) and 6(5) of the Act.
[59] See section 9.002(1) of the Regulations.
[60] See sections 6(4) and 6(5) of the Act.
[61] See section 6(4)(c) of the Act.

[67] Based on the characteristics set out in the Act to describe what constitutes employment that is not suitable,[62] I am of the view that suitable employment includes employment that is in the claimant's usual occupation (for example, same nature, earnings, and working conditions).[63]

[68] With this in mind, I find that the fact that the Appellant worked part-time for about a year while studying full-time amounts to employment in her usual occupation, since it was her usual employment.

[69] The Court also tells us that the notion of suitable employment is defined in part with reference to the personal circumstances of the claimant.[64]

[70] So, in assessing the Appellant's availability for work, I am taking into account the specific characteristics of her case, namely that she worked part-time while studying full-time.

[71] I also find that the Appellant's personal circumstances were affected by the particular conditions prevailing in the job market in many sectors of the economy due to the COVID-19 pandemic. Because of the pandemic, the Government of Quebec has introduced health restrictions at different times since March 2020, including during the Appellant's training period. These restrictions included business closures. They also included reduced operating hours for businesses and specific customer capacity limits based on the space occupied by these businesses.

[72] The Commission argues that the Appellant's actual availability was for part-time work, outside her school hours and days.[65] According to the Commission, the Appellant had failed to show that she was available for work each working day, Monday to

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[62] See sections 6(4) and 6(5) of the Act.
[63] In English, sections 6(4)(b) and 6(4)(c) of the Act use the expression "claimant's usual occupation," which can also be translated as "*occupation habituelle d'un prestataire*."
[64] The Court established this principle in *Whiffen*, A-1472-92.
[65] See GD6-1 and GD6-2.

Friday.[66] As a result, the Commission found that the Appellant had not shown that she had made reasonable and customary efforts to find a suitable job.[67]

[73] I do not accept the Commission's arguments that the Appellant's efforts were not directed toward finding a suitable job, since her availability for work was for a part-time job, not each working day in her benefit period.

[74] I note that the Act does not specifically require a claimant to be available for full-time work. In addition, the Appellant's usual employment was part-time employment. I find that it was suitable employment in her case.

[75] In determining that the Appellant has proven her availability for work, and in addition to the fact that she worked part-time, I am also taking into account the fact that, when she stopped working in late December 2020, she went through a period of uncertainty as to when she would be going back to her job with the employer X. This period of uncertainty was caused by the situation created by the COVID-19 pandemic and by the government's closing businesses indefinitely.

[76] In my view, it is necessary to consider the unusual and unpredictable situation the Appellant faced when she had to stop working in late December 2020.

[77] I find that the situation created by the pandemic forced the Appellant to stop working in her usual employment, but that this situation lasted for only a few weeks in her case.

[78] Given this situation, I am of the view that she was entitled to a period of time to assess how she would be able to go back to her job with the employer X before making other efforts to work.

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[66] See GD4-6.
[67] See GD4-7 and GD6-1.

[79] As a result, I find that the Appellant was entitled to a “reasonable interval” before accepting employment that was not in her usual occupation, as the Act states.[68]

[80] In the circumstances, I accept the Appellant’s explanation on her application for benefits dated January 7, 2021—a dozen days after she stopped working—that she had not yet made efforts to find work at that time because COVID-19 health measures did not give her the flexibility.[69]

[81] The Commission argues that suitable employment is not limited to the field of retail.[70] It explains that the field of customer service has faced a major labour shortage since January 2021.[71] The Commission says that, although some services were closed until February 8, 2021, some businesses operated in person and online, such as in food service.[72]

[82] I do not accept the Commission’s arguments on these points to show that the Appellant was not available for work during her training.

[83] I find that, even though the Appellant did not start looking for a job right after being laid off in late December 2020, she remained available to go back to work for the employer X and that she must have reached out to it for that purpose. I point out that the Appellant started working for this employer again a few weeks after it laid her off. I find that the Appellant made active efforts to continue working for it. I note that the January 6, 2021, Record of Employment from this employer indicates an “unknown” date of recall.”[73] This document does not say that the Appellant was not returning to work.[74]

[84] I also note that, in addition to going back to her sales associate job with this employer in early February 2021, the Appellant has shown that she continued to look for

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[68] See sections 6(4) and 6(5) of the Act.
[69] See GD3-18.
[70] See GD4-4.
[71] See GD4-5.
[72] See GD4-5.
[73] See GD9-3.
[74] See GD9-3.

work in another field, since she was able to work as a customer service representative for another employer from April 10, 2021.

[85] In addition, I find that there is no indication that, before making its decision on October 26, 2021, almost 10 months after the Appellant applied for benefits, the Commission informed her of specific requirements to prove that she was making reasonable and customary efforts to find a suitable job, as section 50(8) of the Act indicates.

[86] I also point out that, on October 26, 2021, when the Commission disentitled the Appellant as of January 11, 2021, it knew that the Appellant had gone without work for only a few weeks after being laid off in late December 2020 and that she had been continuously employed from the week beginning February 4, 2021.[75]

[87] The Court tells us that a claimant who was waiting to be called back to work after being laid off—for a three-month period in that case—should not, especially without being told about it, have been disentitled from receiving benefits because they had not been available for work since the start of their benefit period.[76]

[88] I also note that, in one of its decisions, the Appeal Division also found that, before disentitling a claimant from receiving benefits for not providing the proof of reasonable and customary efforts to find a suitable job that it requires, the Commission must first ask the claimant for the proof, and it must specify what kind of proof will satisfy its requirements.[77]

[89] Several Umpire decisions also indicate that a claimant is entitled to wait for a recall for a reasonable period of time before beginning to seek employment elsewhere,

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[75] See GD9-1 to GD9-6.
[76] See the Court's decision in *Carpentier*, A-474-97. In that case, the Court referred the matter back to a different Board of Referees to be decided again.
[77] See the decision of the Tribunal's Appeal Division in *LD v Canada Employment Insurance Commission*, August 10, 2020, 2020 SST 688, AD-20-575 (para 16).

or that they may not have to prove an active job search, at least for a certain period, if they can reasonably expect to be called back to work.[78]

[90] Although I am not bound by Appeal Division or Umpire decisions,[79] I find that these decisions are consistent with the provisions of the Act that say that a claimant is entitled to a reasonable period, depending on the circumstances, before having to actively look for a job.

[91] I find that, considering the obstacles the Appellant faced because of COVID-19 and the fact that she usually worked part-time, her availability for work led to concrete and sustained efforts to find suitable employment with prospective employers.

[92] I find that, during the period from January 11, 2021, to May 21, 2021, the Appellant fulfilled her responsibility of actively looking for a suitable job to be able to receive EI benefits.

Issue 4: Did the Appellant set personal conditions that might have unduly limited her chances of going back to work?

[93] I find that the Appellant did not set "personal conditions" that unduly limited her chances of going back to work during the period from January 11, 2021, to May 21, 2021. I find that the Appellant's decision to take training full-time did not hurt her desire and efforts to keep working.

[94] According to the Appellant, she devoted 19 to 25 hours per week to her training, including time spent in class, studying, and doing assignments.[80]

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[78] See CUB 21239, CUB 54712, CUB 61516, and CUB 67674.
[79] See the decision of the Tribunal's Appeal Division in *LD v Canada Employment Insurance Commission*, August 10, 2020, 2020 SST 688, AD-20-575; and CUB 21239, CUB 54712, CUB 61516, and CUB 67674.
[80] See GD3-13 to GD3-19.

[95] The Appellant indicates that she was obligated to attend scheduled classes or scheduled sessions (in-person, online, or by telephone).[81] She says that all of her course obligations occurred outside of her normal work hours.[82]

[96] The Appellant says that, if she had found full-time work but the job conflicted with her course or program, she would have finished her training.[83]

[97] The Appellant also says that she was not approved for the training under an Employment or Skills Development program. She decided on her own to take it.[84]

[98] The Appellant indicates that she was able to work 13 to 15 hours per week while in school. She explains that she was available to do so on specific days. She says that, in addition to weekends, she was available for work all day on Thursdays and Friday mornings for her job with the employer X,[85] and Monday afternoons, all day on Thursdays, and Friday mornings for her job at X.[86]

[99] I find that, by choosing to take training full-time, the Appellant set personal conditions. But, in my view, they were not conditions that unduly limited her chances of going back to work.

[100] Objectively, despite taking training full-time, the Appellant made sustained efforts to keep working. In fact, she was able to do so the vast majority of the time during the period from January 11, 2021, to May 21, 2021.

[101] I find that the Appellant did not limit her employment prospects after being laid off in late December 2020 either. The Appellant went back to the job she had had since August 2020, which had conditions that allowed her to continue her training. As a result of her job search efforts, she started another part-time job in early April 2021.

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[81] See GD3-13, GD3-16, GD3-20, and GD3-23.
[82] See GD3-13, GD3-16, GD3-20, and GD3-23.
[83] See GD3-20 and GD3-24.
[84] See GD3-14 and GD3-21.
[85] See GD3-17.
[86] See GD3-24.

[102] I do not accept the Commission's arguments that the Appellant limited her availability for work to non-school hours and days and that she limited her job search to the field of administration and finance.[87]

[103] The fact remains that the Appellant's usual employment was part-time employment and that it was suitable employment in her case. In the circumstances, I accept the Appellant's explanation that she prioritized her training while working under conditions that allowed her to do so.

[104] I find that the Appellant did not limit her job search to the field of administration and finance either. In my view, while her December 3, 2021, statement to the Commission reports her as saying that she looked for work in that field,[88] her field of study since beginning her university studies in the fall of 2021, the fact remains that, during her training period from January 11 to May 21, 2021, she worked as a sales associate, then as a customer service representative. Her testimony also indicates that she applied for a job at a X pharmacy.

[105] I find that her changing jobs in April 2021 shows that the Appellant expanded the scope of her search to assess her prospects to work as something other than a sales associate and to accept another type of job—as a customer service representative.

[106] I find that the Appellant did not unduly limit her chances of going back to work despite the demands of her training.

[107] I find that, during the period from January 11, 2021, to May 21, 2021, the Appellant did not set personal conditions that unduly limited her chances of going back to work.

Liability to repay benefits paid

[108] Since I have found that the Appellant has proven her availability for work during her training, she should not have to pay back the benefits the Commission is asking her

[87] See GD4-5 and GD4-6.
[88] See GD3-35.

to repay. It is up to the Commission to resolve this matter with the Appellant in accordance with the provisions of the Act.[89]

Conclusion

[109] I find that the Appellant has proven that she was available for work within the meaning of the Act during the period from January 11, 2021, to May 21, 2021. The Appellant can receive EI benefits for that period. She should not have to pay back the benefits the Commission is asking her to repay for that period.

[110] This means that the appeal is allowed.

Normand Morin
Member, General Division – Employment Insurance Section

[89] See sections 43, 44, and 52 of the Act.