



Citation: *MZ v Canada Employment Insurance Commission*, 2022 SST 955

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** M. Z.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** A. Fricker

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**Decision under appeal:** General Division decision dated May 17, 2022  
(GE-22-908)

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**Tribunal member:** Jude Samson

**Type of hearing:** Teleconference  
**Hearing date:** September 29, 2022  
**Hearing participant:** Appellant

**Decision date:** September 29, 2022  
**File number:** AD-22-392

## Decision

[1] M. Z. is the Claimant in this appeal. I'm allowing his appeal based on an agreement between the parties. He's entitled to benefits starting January 3, 2022.

## Overview

[2] The Canada Employment Insurance Commission (Commission) refused to pay Employment Insurance (EI) regular benefits to the Claimant starting in January 2022 because his studies interfered with his availability for work.<sup>1</sup>

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. It assessed the Claimant's availability using three factors. However, it concluded that the Claimant hadn't shown a willingness to go back to work as soon as a suitable job became available and that he hadn't made suitable efforts to find a job. Specifically, the General Division focused on the Claimant's lack of effort to find work after February 28, 2022.

[4] The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division. As part of his appeal, he highlights how he returned to work on March 14, 2022. The Commission agrees that I should allow the appeal and that the Claimant was entitled to EI benefits.

## The parties agree on the outcome of the appeal

[5] The Commission says that I should allow the appeal because the General Division based its decision on an important mistake about the facts of the case. Specifically, it accepts that the General Division overlooked the Claimant's efforts to find work from December 18, 2021, to February 28, 2022, and the fact that he returned to work soon after that date.<sup>2</sup>

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<sup>1</sup> Section 18(1)(a) of the *Employment Insurance Act* says that availability for work is among the requirements for getting EI benefits.

<sup>2</sup> The Commission's concession is detailed in documents AD2 and AD4. In fact, the Claimant returned to work in mid-March 2022.

[6] The Commission also agrees that I can give the decision the General Division should have given: the Claimant was entitled to benefits starting January 3, 2022.

### **I accept the proposed outcome**

[7] While I accept the parties' proposed outcome, I prefer to reframe the General Division's error somewhat.

[8] The General Division found that the Claimant wasn't available for work starting on January 3, 2022. It based this conclusion on the Claimant's job search efforts after February 28, 2022. This was an error of law.<sup>3</sup> The General Division needed to assess the Claimant's availability for **each working day** that he was requesting benefits.<sup>4</sup> The General Division misunderstood the law when it disentitled the Claimant from receiving EI benefits during one period, based on his job search efforts during a later period.

[9] In the circumstances, I agree that I can give the decision the General Division should have given.<sup>5</sup>

[10] Based on the parties' agreement, I find that the Claimant has proven his availability starting January 3, 2022. He is entitled to EI benefits from that date.

### **Conclusion**

[11] I'm allowing the Claimant's appeal. The General Division made an error of law. This allows me to give the decision the General Division should have given. The Claimant was available for work and was entitled to EI benefits starting January 3, 2022.

Jude Samson  
Member, Appeal Division

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<sup>3</sup> Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) allows me to intervene based on this type of error.

<sup>4</sup> See *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

<sup>5</sup> Section 59(1) of the DESD Act gives me this power.