



[TRANSLATION]

Citation: OB v Canada Employment Insurance Commission, 2022 SST 1372

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: O. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (453927) dated February 25,
2022 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: June 23, 2022
Hearing participant: Appellant
Date of decision: July 22, 2022
File number: GE-22-1098

Decision

[1] The appeal is allowed. I find that the Canada Employment Insurance Commission (Commission) didn't exercise its discretion judicially in deciding to verify and reconsider the Appellant's claim for benefits.¹ This means that the Commission could not retroactively determine that the Appellant wasn't entitled to Employment Insurance (EI) benefits.

Overview

[2] In September 2020, the Appellant began full-time training at University X. This leads to a bachelor's degree in literary studies. He completed his 2020 fall session from September 8, 2020, to December 21, 2020, and his 2021 winter session from January 15, 2021, to May 4, 2021.² He then completed his full-time 2021 fall session at the same institution from September 7, 2021, to December 16, 2021.³

[3] From October 9, 2019, to March 18, 2020, inclusive, and from June 30, 2020, to September 25, 2020, inclusive, the Appellant worked as a customer service representative for X (X or employer) and stopped working for that employer because of a shortage of work.⁴

[4] On October 6, 2020, the Appellant made an initial claim for EI benefits (regular benefits). A benefit period was established effective October 4, 2020.

[5] On December 2, 2021, the Commission told him that it wasn't able to pay him EI benefits as of October 5, 2020, because he was taking training on his own initiative and hadn't shown that he was available for work. The Commission also told him that he would receive a notice of debt and that it could deduct the amount he owes from future benefits.⁵

¹ See sections 52 and 153.161 of the *Employment Insurance Act (Act)*.

² See GD3-15, GD3-16, GD3-20, GD3-21, GD3-25, GD3-26, GD3-33, and GD3-50 to GD3-52.

³ See GD3-30, GD3-31, GD3-33, and GD3-50 to GD3-52.

⁴ See GD6-6 to GD6-9.

⁵ See GD3-34 and GD3-35.

[6] On February 25, 2022, after a reconsideration request, the Commission told the Appellant that a new decision had replaced the December 2, 2021, decision. The Commission explained that, according to this new decision, it could not pay him EI benefits from October 5, 2020, to December 21, 2020; January 15, 2021, to May 4, 2021; and September 7, 2021, to October 1, 2021, because he was taking training on his own initiative and hadn't shown that he was available for work. The Commission told him that he would receive a notice of debt and would have to repay the benefits he wasn't entitled to.⁶

[7] The Appellant explains that he stopped working on September 25, 2020, after the Government of Quebec adopted health restrictions related to the COVID-19 pandemic, including closing businesses such as movie theatres.⁷ He argues that he has always indicated in his statements to the Commission that he was taking training and that he was available for work depending on his course schedule. He says that his statements to the Commission have always been honest and made in good faith. The Appellant says that, when he stopped working on September 25, 2020, he waited for his employer to call him back to work. When he went back to work for this employer in February 2021, his work hours were reduced because of the pandemic. He objects to the fact that the Commission contacted him more than a year after he started receiving benefits, in December 2021, to tell him he would have to repay the benefits he wasn't entitled to. The Appellant says that he learned, also in December 2021, that he could have received Canada Recovery Benefit (CRB) benefits, but he didn't apply for this type of benefit because he was sure he was entitled to EI benefits. He is asking to receive retroactive CRB benefits to enable him to repay the amount he owes the Commission or to substantially reduce this debt or cancel it entirely. On March 27, 2022, the Appellant challenged the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

⁶ See GD2-9, GD3-53, and GD3-54.

⁷ Coronavirus disease 2019.

Preliminary matters

[8] In this case, the Appellant disputes having to repay the benefits he was overpaid, when he had indicated that he was taking full-time training and the hours he spent on it. He says that the Commission waited more than a year before telling him that he wasn't entitled to benefits and that he had to repay the benefits he was overpaid.

[9] The Commission argues that it was appropriate to reconsider the Appellant's file, impose a disentitlement to benefits for the periods from October 5, 2020, to December 21, 2020; January 15, 2021, to May 4, 2021; and September 7, 2021, to October 1, 2021, and ask him to repay the benefits he had received because he wasn't entitled to them.⁸

[10] So, my analysis and decision will take this situation into account.

Issues

[11] I have to determine whether the Commission had the power to retroactively decide whether the Appellant was entitled to benefits and, if so, determine whether it exercised its discretion judicially in deciding to verify and reconsider the Appellant's claim for benefits.⁹

[12] If that is the case, I also have to determine whether the Appellant has shown that he was available for work during the periods from October 5, 2020, to December 21, 2020; January 15, 2021, to May 4, 2021; and September 7, 2021, to October 1, 2021, when he was taking training.¹⁰

[13] I also have to determine whether the Appellant has to repay the benefits that he was overpaid (overpayment) and that the Commission says he owes.¹¹

⁸ See GD4-8 and GD4-11.

⁹ See sections 52 and 153.161 of the Act.

¹⁰ 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 *Employment Insurance Regulations*.

¹¹ See sections 43, 44, and 52 of the Act.

Analysis

Exercise of the Commission's discretion in deciding to verify and reconsider a claim for benefits

Issue 1: Did the Commission have the power to retroactively verify and reconsider the Appellant's claim for benefits?

[14] Concerning the “reconsideration” of a claim for benefits, the Act says that the Commission has 36 months to reconsider a claim for benefits paid or payable to a claimant and that the period is 72 months if it is of the opinion that a false or misleading statement or representation has been made in connection with a claim.¹²

[15] If the Commission decides that a person has received money by way of benefits that they weren't qualified for or entitled to, it must calculate the amount of money and notify the claimant of its decision.¹³

[16] Because of the COVID-19 pandemic, changes were made to the Act to facilitate access to benefits with the implementation of “temporary measures.”

[17] Those changes include section 153.161 of Part VIII.5 of the Act. This section was in effect from September 27, 2020, to September 25, 2021.

[18] This section says that the Commission may, at any point after benefits are paid, verify that the claimant is entitled to those benefits by requiring proof that they were capable of and available for work on any working day of their benefits period.¹⁴

[19] The Tribunal's Appeal Division (Appeal Division) determined that the Tribunal's General Division (General Division) could not refuse to exercise its jurisdiction to determine whether the Commission had the power to retroactively disentitle the claimant to benefits.¹⁵

¹² See section 52 of the Act.

¹³ See section 52(2) of the Act.

¹⁴ See section 153.161(2) of Part VIII.5 of the Act.

¹⁵ See the Appeal Division decision in *GP v Canada Employment Insurance Commission*, 2021 SCC 791.

[20] In this case, the Appellant applied for benefits on October 6, 2020, and a benefit period was established effective October 4, 2020.¹⁶

[21] The evidence on file indicates that the Appellant received benefits during the staggered period of the weeks beginning October 4, 2020, and August 22, 2021.¹⁷

[22] On December 2, 2021, the Commission informed him of the decision about the issue of availability for work.¹⁸

[23] The Commission argues as follows:

- a) Section 52(1) of the Act allows it to reconsider any claim for benefits paid, within 36 months of the payment.¹⁹
- b) Section 153.161(2) of the Act allows it to verify, at any point after benefits are paid, that the claimant is entitled to those benefits by requiring proof that they were capable of and available for work on any working day of their benefit period.²⁰
- c) According to its reconsideration policy, it reconsiders a claim in the following situations: benefits have been underpaid; benefits were paid contrary to the structure of the Act; benefits were paid as a result of a false or misleading statement; the claimant ought to have known there was no entitlement to the benefits received.²¹
- d) It reconsidered the benefits paid in accordance with its reconsideration policy and within the time limit set out in section 52 of the Act.²²

¹⁶ See GD3-3 to GD3-13 and GD4-1.

¹⁷ See GD3-36, GD3-37, GD3-55, and GD3-56.

¹⁸ See GD3-34 and GD3-35.

¹⁹ See GD4-7.

²⁰ See GD4-7.

²¹ See GD4-7 and GD4-8.

²² See GD4-9.

- e) Benefits were paid to the Appellant as of October 5, 2020, and his file was reconsidered. The Appellant was notified of this on December 2, 2021, within the 36-month time limit set out in the Act.²³
- f) It verified the Appellant's entitlement to benefits from the beginning of the benefit period and applied the decision retroactively in accordance with sections 52(1) and 153.161(2) of the Act.²⁴
- g) After this reconsideration, it was determined that the Appellant had received benefits he wasn't entitled to. He must therefore repay the benefits he was overpaid, as set out in sections 43, 44, 52(2), and 52(3) of the Act.²⁵
- h) It was appropriate to reconsider the Appellant's file, impose a disentitlement to benefits for the periods from October 5, 2020, to December 21, 2020; from January 15, 2021, to May 4, 2021; and from September 7, 2021, to October 1, 2021, and ask him to repay the benefits he was overpaid.²⁶

[24] In his October 14, 2020; January 15, 2021; May 7, 2021; and September 11, 2021, statements to the Commission (training questionnaires), the Appellant indicated that he was taking full-time training.²⁷

[25] For the fall 2020 and fall 2021 sessions (September 8, 2020, to December 21, 2020, and September 7, 2021, to December 16, 2021), he says that all of his course obligations were outside his normal working hours.²⁸

[26] For the 2021 winter session (January 15, 2021, to May 4, 2021), he says that all of his course obligations weren't outside his normal working hours.²⁹

²³ See GD4-8.

²⁴ See GD4-8.

²⁵ See GD4-8.

²⁶ See GD4-8 and GD4-11.

²⁷ See GD3-15, GD3-20, GD3-25, GD3-26, GD3-30, and GD3-31.

²⁸ See GD3-16 and GD3-31.

²⁹ See GD3-21, GD3-22, GD3-26, and GD3-27.

[27] For the fall 2020, winter 2021, and fall 2021 sessions, the Appellant also says that he was available for and capable of working in the same type of job and under the same or better conditions (hours of work, type of work) that he had before the start of his course or program.³⁰

[28] For each of the three sessions in question (fall 2020, winter 2021, and fall 2021), he also indicates that he didn't make any efforts to find a job after his training started or he became unemployed.³¹ In one of the questionnaires he completed, he indicated that he wanted to keep the job he had when the employer reopened and noted that it was a job with a flexible work schedule allowing him to take his training.³²

[29] For each of these sessions, the Appellant says that if he got a full-time job, but the job conflicted with his training, he would finish his training.³³

[30] He explains that, in his claimant reports, he also indicated that he was taking training and that he was available for work based on the available days mentioned in the training questionnaires he had completed.³⁴

[31] The Appellant says that, between when he applied for benefits on October 6, 2020, and when the Commission contacted him on December 1, 2021,³⁵ he didn't receive any communications from the Commission other than on October 23, 2020, as indicated in the appeal record.³⁶

[32] He says that he contacted the Commission himself because he had received a message to do so after completing his claimant reports. He says that he could not remember the dates of his appeals or whether it was the October 23, 2020, communication the Commission was referring to.³⁷

³⁰ See GD3-17, GD3-22, GD3-27, and GD3-31.

³¹ See GD3-17, GD3-22, GD3-27, GD3-31, and GD3-32.

³² See GD3-23.

³³ See GD3-17, GD3-22, GD3-27, and GD3-31.

³⁴ See GD3-21, GD3-22, GD3-26, and GD3-27.

³⁵ See GD3-33.

³⁶ See GD3-33.

³⁷ See GD3-18.

[33] In this case, the Appellant's October 6, 2020, claim for benefits was subject to both the provisions of section 52 of the Act, as well as those of section 153.161(2) of Part VIII.5 of the Act, despite the temporary nature of that section.

[34] I find that the Commission's decision is based on sections 52 and 153.161(2) of the Act.

[35] Section 52 of the Act sets out the Commission's discretionary power to reconsider a claim for benefits.

[36] Section 153.161(2) of the Act gives the Commission a power similar to the one it has under section 52(1) of the Act. The only difference between these two sections is that, under the provisions of section 153.161(2) of the Act, the Commission's power isn't time-limited, whereas it is in the case of a reconsideration under section 52(1) of the Act.

[37] Under section 153.161(2) of the Act, the Commission may, at any point after benefits are paid, verify that the claimant is entitled to those benefits.³⁸ This section also sets out the Commission's discretionary power to decide to verify a claim for benefits.

[38] Under section 52 of the Act, the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable or within 72 months if, in its opinion, a false or misleading statement has been made.³⁹

[39] While section 153.161(2) is broader in scope than section 52 of the Act, it remains to be seen whether the Commission used its discretion to reconsider judicially.

[40] In making its decision, the Commission used its powers under section 153.161(2) of the Act. As a result of its verification, the Commission changed its decision, finding that the Appellant wasn't entitled to benefits. It made a new decision in accordance with the procedure set out in section 52(2) of the Act.

³⁸ See section 153.161(2) of the Act.

³⁹ See sections 52(1) and 52(5) of the Act.

[41] I also note that, even though section 153.161(2) of the Act says that the Commission may, “at any point” after benefits are paid, “verify” that the claimant is entitled to benefits, this section specifies that the Commission may do so, but “by requiring proof” that the claimant was capable of and available for work on any working day of their benefit period.⁴⁰

[42] I find that, in the Appellant’s case, the Commission didn’t verify his entitlement to benefits under section 153.161(2) of the Act. The Commission didn’t apply the related provisions of this section.

[43] The Commission didn’t ask the Appellant to prove his entitlement to benefits under section 153.161(2) of the Act.

[44] I find that, before making its decision on December 2, 2021—more than a year after the Appellant applied for benefits—the Commission didn’t inform him of the job search required to show his availability for work or of the proof he had to provide, before retroactively disentitling him from receiving benefits.

[45] Having established that the Commission reconsidered the Appellant’s claim for benefits under section 52 of the Act, while relying on the provisions of section 153.161(2) of the Act, I now have to determine whether it exercised its discretion judicially when it decided to retroactively verify the claim, reconsider it, and change its decision.

Issue 2: Did the Commission exercise its discretion judicially when it decided to retroactively verify the Appellant’s claim for benefits, reconsider it, and change its decision?

[46] The Federal Court of Appeal (Court) has held that there is no authority to interfere with discretionary decisions of the Commission unless it can be shown that the

⁴⁰ See section 153.161(2) of the Act.

Commission “exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it.”⁴¹

[47] It is up to the Commission to show that it exercised its discretion judicially. In other words, the Commission has to show that it acted in good faith, considered all relevant factors, and ignored irrelevant ones.⁴²

[48] Since the Commission’s power to reconsider is discretionary, its decisions can be interfered with only if it didn’t exercise this power judicially.⁴³

[49] The Court has recognized various times that the fact that the Commission has guidelines or guides dealing with its discretion helps to make that discretion consistent.⁴⁴

[50] The Digest of Benefit Entitlement Principles (Digest), a document prepared by the Commission, sets out conditions for reconsideration to determine whether the Commission considered all relevant factors in exercising its discretion.

[51] This document says that the Commission will reconsider a claim when:

- benefits have been underpaid
- benefits were paid contrary to the structure of the Act
- benefits were paid as a result of a false or misleading statement
- the claimant ought to have known there was no entitlement to the benefits received⁴⁵

⁴¹ The Court established or reiterated this principle in *Uppal*, 2008 FCA 388.

⁴² The Court established or reiterated this principle in the following decisions: *Uppal*, 2008 FCA 388; *Tong*, 2003 FCA 281; *Dunham*, A-708-95; and *Purcell*, A-694-94.

⁴³ See the Court’s decisions in *Chartier*, A-42-90 and *Uppal*, 2008 FCA 388.

⁴⁴ This principle was established or reiterated in *Hudon*, 2004 FCA 22 and *Gagnon*, 2004 FCA 351.

⁴⁵ See section 17.3.3 of the Digest of Benefit Entitlement Principles (Digest).

– **Benefits underpaid**

[52] I find that the benefit “underpayment” factor doesn’t apply to the Appellant’s case.

[53] Based on the documents the Commission submitted and its calculations after reconsidering the Appellant’s file, he was overpaid \$12,904.00 (overpayment) in benefits.⁴⁶ In this case, it isn’t that “benefits have been underpaid.”

[54] The Digest says that the Commission always reconsiders if the claimant has been denied benefits that may become payable as the result of reconsideration.⁴⁷

[55] In the case of an overpayment, the Commission may reconsider a claim for benefits as set out in the Act.⁴⁸

[56] The provisions set out in section 52 of the Act confirm the discretionary nature of the Commission’s decisions about reconsidering benefit periods within the time allotted to it.

[57] The provisions of section 153.161 of the Act also confirm the discretionary nature of the Commission’s power to decide to verify a claim for benefits.

– **Benefits were paid contrary to the structure of the Act**

[58] I find that when the Appellant’s claim was established and he was paid benefits, it was done in accordance with the “structure of the Act”—that is, in accordance with the related basic elements of the Act.

[59] The Digest says that a “period of non-availability” isn’t an element within the structure of the Act. But it says that this element may be reconsidered if it meets one of the conditions set out in the policy that deals with this (Commission’s Reconsideration Policy).⁴⁹

⁴⁶ See GD3-55 and GD3-56.

⁴⁷ See section 17.3.3 of the Digest.

⁴⁸ See section 52 of the Act.

⁴⁹ See section 17.3.3.2 of the Digest.

[60] I find that the Commission didn't make a decision contrary to the structure of the Act.

– **Benefits were paid as a result of a false or misleading statement**

[61] When benefits were paid as a result of false or misleading statements, the Commission may reconsider the claim.

[62] The Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable to a claimant.⁵⁰ If the Commission is of the opinion that a false or misleading statement has been made in connection with a claim, the Commission has 72 months after the benefits have been paid or would have been payable to reconsider the claim.⁵¹

[63] The Commission explains that benefits were paid to the Appellant because he indicated in his claimant reports that he was available for work.⁵² It says that, even though the Appellant made his reports in good faith, this information was inaccurate because he wasn't available within the meaning of the Act.⁵³ The Commission says that it reconsidered the Appellant's claim for benefits because benefits were paid to him as a result of his false statements.⁵⁴

[64] The Commission says that a false or misleading statement means any information submitted as part of a claim that is false.⁵⁵ It specifies that a false statement may be the result of an intentional, wilful, or negligent act, or an error made in good faith that results in the actual or possible payment of benefits.⁵⁶

⁵⁰ See section 52(1) of the Act.

⁵¹ See section 52(5) of the Act. See also the decisions of the Court in *Dussault*, 2003 FCA 372 and *Pilot*, A-868-97.

⁵² See GD4-8.

⁵³ See GD4-8.

⁵⁴ See GD4-8.

⁵⁵ See GD4-8.

⁵⁶ See GD4-8.

[65] The Appellant argues that he answered the questions in his claim for benefits in good faith by specifying, in the training questionnaires he completed, that he was studying.⁵⁷

[66] In the training questionnaires he completed, the Appellant indicated that he was available for and capable of working under the same or better conditions as before the start of his training, specifying that it was full-time training and the number of hours he spent on it.⁵⁸

[67] The Appellant explains that, when he completed his claimant reports, he indicated that he was taking training and was available for work based on the information provided in the training questionnaires.

[68] The Appellant says that he doesn't understand what the Commission means by false statements. He says that at no time did the Commission inform him of the alleged false statements. The Appellant says that, when the Commission contacted him in December 2021, it didn't tell him then that he had made false statements. He says that the Commission explained to him that he would have to repay the benefits it had overpaid him, since he wasn't entitled to them.

[69] I find that the Commission wasn't faced with false or misleading statements in connection with the Appellant's claim. I am of the view that it hasn't shown this.

[70] The factor for benefits being paid as a result of a false or misleading statement doesn't apply to the Appellant. I find that he was always honest in his training questionnaires and claimant reports.

[71] I find that, despite this situation, the Commission could reconsider or verify the Appellant's claim.

⁵⁷ See GD2-5 and GD3-41 to GD3-49.

⁵⁸ See GD3-14, GD3-15, GD3-17, GD3-19, GD3-20, GD3-22, GD3-24, GD3-25, GD3-27, GD3-29, GD3-30, and GD3-32.

– **Claimant ought to have known there was no entitlement to the benefits received (knowledge that there is no entitlement)**

[72] I find that there is no evidence that the Appellant ought to have known (had “knowledge”) that he wasn’t entitled to the benefits he was paid.

[73] The Commission argues as follows:

- a) The Appellant’s good faith isn’t in question. Even though the Appellant believed he was entitled to benefits, he wasn’t entitled to them during his studies because he wasn’t available for work within the meaning of the Act. The fact that other people have received benefits isn’t determinative, as each case is processed according to its own facts.⁵⁹
- b) Claimants whose claims have been established under the temporary measures to facilitate access to benefits⁶⁰ aren’t exempt from proving their availability.⁶¹ Section 153.161 of the Act specifies that a claimant taking non-referred training isn’t entitled to benefits if they can’t prove their availability. The legislation already takes into account the extraordinary situation of the pandemic, and the Commission doesn’t have the power to change the legislation.⁶²
- c) The benefits weren’t paid to the Appellant in error. They were paid to him because he applied for them, because he said he was available for work, and because no decision had yet been made as to his availability.⁶³
- d) Entitlement to benefits isn’t based on the individual’s personal needs or financial obligations. Entitlement is based on meeting the various conditions set out in the legislation. While I am sympathetic to the Appellant’s circumstances, he isn’t entitled to benefits during his studies because he

⁵⁹ See GD4-9.

⁶⁰ See Part VIII.5 of the Act.

⁶¹ See GD4-8.

⁶² See GD4-8.

⁶³ See GD4-9.

hasn't proven that he is available within the meaning of the Act. He must therefore repay the benefits he was overpaid.⁶⁴

- e) The Canada Revenue Agency (CRA) administers the payment of the CRB. The Commission is unable to determine the Appellant's entitlement to such benefits.⁶⁵

[74] The Appellant's testimony and statements indicate the following:

- a) In October 2020, after he lost his job because of the COVID-19 pandemic, the Appellant applied for benefits to support himself. Given the pandemic situation that was [translation] "extraordinary" and beyond his control, he believed he was entitled to benefits.⁶⁶
- b) He had no options other than to apply for benefits, since he was in school. The job that awaited him fully satisfied him and accommodated his studies.⁶⁷
- c) In applying for benefits, he acted in good faith, without malice, and to the best of his knowledge during a turbulent period related to the COVID-19 pandemic and without any doubt that he may have made a mistake.⁶⁸
- d) He was very surprised to learn more than a year after he applied for benefits that he was going to have to repay an absolutely [translation] "gigantic" amount for the benefits he was overpaid.⁶⁹
- e) The Commission should have warned him much earlier that he wasn't entitled to benefits. The Commission's decision jeopardizes not only his studies, but also his entire future. He says he can't spend his [translation] "twenties"

⁶⁴ See GD4-9.

⁶⁵ See GD4-9.

⁶⁶ See GD2-5 and GD3-41 to GD3-49.

⁶⁷ See GD3-41 to GD3-49.

⁶⁸ See GD2-5 and GD3-41 to GD3-49.

⁶⁹ See GD2-5 and GD3-41 to GD3-49.

repaying the amount of money he owes because of a pandemic beyond his control.⁷⁰

- f) He is asking to be able to receive retroactive CRB benefits he was entitled to but didn't apply for because he was sure that he was entitled to EI benefits. This would allow him to repay the amount of money he owes.⁷¹ If he is unable to receive CRB benefits, he also asks that his debt be substantially reduced or cancelled altogether.

[75] I find that the Commission hasn't shown that the Appellant could assume that there was no entitlement to the benefits received.

[76] I find that the Commission didn't exercise its discretion judicially in deciding to verify and reconsider the Appellant's claim for benefits.

[77] I find that the Commission hasn't shown that the Appellant ought to have known or had "knowledge" that there was no entitlement to the benefits received—one of the rules set out in the Digest to show that it has exercised its discretion judicially.

[78] I find that the Commission didn't follow the "Reconsideration Policy" it developed to ensure a consistent and fair application of section 52 of the Act and to prevent creating debt when the claimant was overpaid through no fault of their own, as the policy states.⁷²

[79] In my view, all the elements were there for the Commission to establish the Appellant's claim and pay him benefits.

[80] I note that the Commission had the opportunity to verify the Appellant's statements several times when he completed his training questionnaires on October 4,

⁷⁰ See GD2-5.

⁷¹ See GD2-5.

⁷² See section 17.3.3 of the Digest.

2020; January 15, 2021; May 7, 2021; and September 11, 2021,⁷³ in addition to contacting the Appellant on October 23, 2020.⁷⁴

[81] I find that the Appellant was transparent about his training and availability for work. He was consistent and accurate in his statements to the Commission.

[82] In each of the questionnaires he completed for the training periods in question, the Appellant indicated that it was full-time training and specified the number of hours he spent on it.⁷⁵

[83] He also said that he was available for and capable of working in the same type of job and under the same or better conditions (hours of work, type of work) as before the start of his course or program.⁷⁶

[84] The Appellant also said that he didn't make any efforts to find a job after his training started or he became unemployed and that if he got a full-time job, but the job conflicted with his training, he would finish his training.⁷⁷

[85] I also note that, when he completed his claimant reports, the Appellant continued to report that he was taking training.

[86] I am of the view that the Appellant could reasonably have believed that when his claim for benefits was accepted and he started receiving benefits, it meant that he was entitled to them.

[87] In summary, given the evidence presented and the particular circumstances of this case, I find that the Commission didn't exercise its discretion judicially in deciding to verify and reconsider the Appellant's claim.

⁷³ See GD3-14 to GD3-17 and GD3-19 to GD3-32.

⁷⁴ See GD3-18.

⁷⁵ See GD3-14 to GD3-17 and GD3-19 to GD3-32.

⁷⁶ See GD3-14 to GD3-17 and GD3-19 to GD3-32.

⁷⁷ See GD3-14 to GD3-17 and GD3-19 to GD3-32.

[88] I find that the Commission didn't consider all relevant factors. These factors refer to all of the information the Appellant provided about the training he had undertaken when he applied for benefits and completed the training questionnaires.

[89] I am of the opinion that the Commission failed to follow its own rules. I find that it didn't use its discretion judicially.

[90] I find that a reconsideration of the Appellant's claim for benefits is unwarranted, even if it is done within the time set out in the Act.

[91] Because of this, I won't reconsider the initial decision in Appellant's case.

Availability for work and repayment of benefits that were overpaid

[92] Since I have determined that the Commission didn't exercise its discretion judicially in deciding to verify and reconsider the Appellant's claim for benefits, there is no need to reconsider the initial decision in his case.

[93] This means that there is no need to determine whether he was available for work during the periods from October 5, 2020, to December 21, 2020; January 15, 2021, to May 4, 2021; and September 7, 2021, to October 1, 2021, when he was taking training.

[94] There is also no need to determine whether the Appellant has to repay the benefits that he was overpaid and that the Commission says he owes.

Conclusion

[95] I find that the Commission didn't exercise its discretion judicially in deciding to verify and reconsider the Appellant's claim for benefits. This means that the Commission could not retroactively determine that the Appellant wasn't entitled to EI benefits.

[96] So, there is no need to determine whether he was available for work during the periods from October 5, 2020, to December 21, 2020; January 15, 2021, to May 4,

2021; and September 7, 2021, to October 1, 2021, and whether he was entitled to benefits.

[97] There is also no need to decide whether the Appellant should repay the overpayment amount the Commission says he owes.

[98] This means that the appeal is allowed.

Normand Morin
Member, General Division – Employment Insurance Section