



[TRANSLATION]

Citation: *ER v Canada Employment Insurance Commission*, 2022 SST 1379

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

Decision

Appellant: E. R.
Respondent: Canada Employment Insurance Commission
Representative: Jessica Grant

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (0) dated August 16, 2022
(issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: Videoconference
Hearing date: December 6, 2022
Hearing participants: Claimant
Commission's representative
Observer
Decision date: December 7, 2022
File number: GE-22-2785

Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) was justified in verifying the Claimant's claim for benefits, and it exercised its discretion judicially when it verified the Claimant's file.

Overview

[3] The Claimant applied for regular benefits on March 25, 2020. On November 30, 2020, she indicated that she would be a full-time student from January 11, 2021, to June 23, 2022.

[4] On July 6, 2021, the Commission decided that the Claimant was disentitled to Employment Insurance (EI) regular benefits as of January 11, 2021, because she was taking non-referred training and wasn't available for work.

[5] The Claimant challenged that decision before the Tribunal's Appeal [sic] Division.

[6] On October 28, 2021, the Tribunal's General Division decided that the Claimant was available for work as of January 11, 2021, and that she was entitled to benefits.

[7] The Commission challenged that decision before the Tribunal's Appeal Division.

[8] The Appeal Division decided to give the decision that the General Division should have given. On August 15, 2022, the Appeal Division found that the Claimant wasn't available and unable to find a suitable job, since her availability was unduly restricted by the requirements of her program of study. Given that the General Division hadn't decided the Claimant's argument concerning the Commission's power to reconsider, the Appeal Division sent the file back to the General Division to decide only that issue.

[9] I have to decide whether the Commission was justified in verifying the Claimant's benefit period after paying her benefits.

Preliminary matter

[10] A first hearing was held on October 11, 2022. The Commission's representative wasn't there because she hadn't gotten the notice of hearing. So, the hearing was adjourned, and the Commission's representative was given time to prepare the case. The second hearing was held on December 6, 2022.

Issue

[11] Was the Commission justified in verifying the Claimant's benefit period?

Analysis

[12] The power to reconsider a benefit period is set out in section 52 of the *Employment Insurance Act* (Act). The Commission may reconsider a claim for benefits within 36 months after the benefits have been paid. If, in the opinion of the Commission, a false statement has been made, the time can be extended to 72 months.¹

[13] In the Claimant's case, the temporary measures to facilitate access to benefits that were introduced in response to the exceptional situation of the COVID-19 pandemic apply to the claim for benefits she made on March 25, 2020. Section 153.161 of the Act is a temporary addition to the Act that I have to consider.

[14] In this case, to facilitate access to benefits, the Commission paid the Claimant benefits and later verified her entitlement in more detail.²

[15] Section 153.161(1) of the Act says that a claimant who is taking training full-time isn't available for work within the meaning of the Act and isn't entitled to benefits.

[16] Section 153.161(2) of the Act says that the Commission may, at any point after benefits are paid to a claimant, verify the claimant's entitlement by requiring proof that they are capable of and available for work on any working day of their benefit period.

¹ Section 52(5) of the *Employment Insurance Act* (Act).

² Section 153.161 of the Act.

The wording of this provision suggests that, like a section 52 reconsideration, this is at the Commission's discretion. So, I will consider this aspect in the next section.

[17] The Commission's representative argues that the Appeal Division mischaracterized the concept of reconsidering a claim. She says that section 153.161 of the Act more closely resembles section 18(1)(a) of the Act because, when making its initial decision, the Commission was deciding the Claimant's claim for the first time within the time allowed (section 153.161(2) of the Act). The Claimant asked the Commission to reconsider that decision, and it upheld its initial decision. The Commission's representative says that the claim wasn't reconsidered, but that, during that period, section 153.161(2) of the Act allowed it to verify entitlement for a claim after paying benefits.

[18] The Commission's representative says that the temporary measures introduced during that period helped get benefits more quickly to claimants who met the basic criteria under section 7 of the Act. That is, when a claimant had enough insurable hours and had an interruption of earnings, benefits could be paid quickly, and section 153.161(2) of the Act allowed the Commission to verify the file afterwards.

[19] So, she argues that the temporary measures made it possible to facilitate the payment of benefits, but not to give benefits to people who weren't entitled to them. She says that section 153.161 of the Act makes it clear that full-time students aren't entitled to benefits, and since the Act allowed the Commission to verify the Claimant's claim for benefits after paying her benefits, it verified her entitlement and found that she wasn't entitled to benefits as of January 11, 2021, because she wasn't available for work from then on.

[20] Lastly, the Commission's representative says that the affidavits of Deanne Field and George Rae show Parliament's intent in enacting the temporary provisions. She argues that the affidavits clearly indicate that section 153.161 of the Act allowed the Commission to verify entitlement for a claim after paying benefits, specifically to

determine a claimant's availability for work.³ She also says that section 8 of Interim Order No. 10 specifically states that this provision applies "despite any provision of the *Employment Insurance Act* or any of its regulations."⁴

[21] The Claimant disagrees and is disappointed with the way things have gone. She says that she was honest and transparent about her student status and even discussed it with a Commission employee. She says that other students had their training formally recognized by a designated authority and were able to get benefits, but she was denied this option because she didn't meet the criteria even though she already had a diploma.

[22] The Claimant says that she has to support herself and her child and that the debt she has to repay is a lot of money for someone fresh out of school.

[23] I have to determine whether the Commission could verify the Claimant's claim for benefits after paying her benefits.

[24] The meaning of the word "verify" in section 153.161 of the Act is consistent with the attitude of the Commission, which assessed whether the Claimant was entitled to EI benefits.

[25] As the Commission argues, section 153.161 of the Act allowed it to verify entitlement to benefits that had already been paid, and it could ask the Claimant to pay back the benefits she wasn't entitled to.

[26] Specifically, section 153.161(2) of the Act makes it possible to defer the assessment of entitlement until after benefits have been paid. On the one hand, the temporary measures facilitated access to benefits during that period. On the other hand, they set out that entitlement to benefits can be verified once benefits have been paid.

[27] I find that section 153.161 of the Act allowed the Commission to verify the Claimant's entitlement after paying her benefits.

³ RGD06.

⁴ RGD6-12. See Canada Gazette, Part II, Volume 154, Number 21, p. 24727 [sic], Interim Order No. 10, section 8 [Canada Gazette].

Did the Commission exercise its discretion judicially when it verified the Claimant's file?

[28] Acting in a non-judicial manner may mean acting in bad faith [or] for an improper purpose or motive, taking into account irrelevant factors, ignoring a relevant factor, or acting in a discriminatory manner.⁵

[29] I find that the Commission considered all relevant factors when it decided to exercise its discretion to carry out a verification. It paid the Claimant benefits under the temporary measures introduced to facilitate access to benefits during the COVID-19 pandemic.

[30] Like the usual provisions of the Act, section 153.161(1) of the Act is clear on this point. Claimants aren't entitled to benefits when studying full-time, unless they rebut the presumption of non-availability and fulfill their job search responsibilities. Since the Appeal Division decided that the Claimant hadn't rebutted the presumption of non-availability and that her efforts to find a job weren't enough, this isn't the case for the Claimant.

[31] The Commission considered these aspects: It considered that the Claimant applied for benefits when the temporary measures applied and that she was paid benefits, and it considered the resulting overpayment. So, it considered that the Claimant might have received benefits before a more thorough review of her claim, before even telling her that she wasn't entitled to benefits.

[32] The Commission also considered the Claimant's student status when it made its decision, as well as her job search efforts. In addition, it considered that a designated authority hadn't authorized her to take the training.

[33] Moreover, the Commission considered the Claimant's precarious financial situation and the fact that other programs might have been better suited to her situation.

⁵ This concept is set out in the following decisions: *Dunham*, A-708-95; and *Purcell*, A-694-94.

On this point, the Claimant explained at the hearing that, because she had received EI benefits, the student aid program had also reviewed the support it could give her.

[34] I find that the Commission exercised its discretion judicially when making its decision after verifying the Claimant's file, since it considered all relevant factors before making its decision and ignored those factors that were less relevant.

[35] The temporary provisions introduced during the COVID-19 pandemic concerning a claimant's availability for work have to be considered. And, again, the Claimant hasn't shown that she made enough effort to find a job and hasn't rebutted the presumption of non-availability for that period. These are more aggravating factors than they are mitigating ones. In general, EI benefits are meant to address a temporary situation when a claimant is looking for a job. In her case, the Claimant was a full-time student, and a designated authority hadn't authorized her training.

[36] This situation resulted in an overpayment of benefits of \$8,780. I understand that this is a large amount for the Claimant and that she has to pay back a lot of money. The Tribunal doesn't have the power to write off an overpayment of benefits. Since the Commission didn't comment on this issue at the hearing, the Claimant's rights are reserved on this issue, and she could make such a request directly to the Commission. Factors related to her financial situation, like the fact that she has to support herself and her son, could be considered. The Claimant can also ask the Commission to arrange for payment in instalments.

[37] I find that the Commission exercised its discretion judicially.

Conclusion

[38] The Commission was justified in verifying the Claimant's claim for benefits.

[39] The appeal is dismissed.

Josée Langlois

Member, General Division – Employment Insurance Section