[TRANSLATION]

Citation: *SL v Canada Employment Insurance Commission*, 2022 SST 1538

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	S. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (460262) dated March 16, 2022 (issued by Service Canada)

Tribunal member:	Normand Morin
Hearing type:	Videoconference
Hearing date:	August 18, 2022
Hearing participant:	Appellant
Decision date:	September 9, 2022
File number:	GE-22-1265

Decision

[1] The appeal is allowed. I find that the Canada Employment Insurance Commission (Commission) didn't exercise its discretion judicially when it decided 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] On August 30, 2020, the Appellant began full-time training at the Université X in X. The training leads to an undergraduate certificate in addiction studies. She completed her fall 2020 term from August 31, 2020, to late December 2020, and her winter 2021 term from early January 2021 to April 30, 2021.[2]

[3] During her training, the Appellant says she worked for many employer, such as a chicken egg farm from December 14, 2018, to September 5, 2020, restaurant X from July 26, 2020, to October 17, 2020,[3] and X (restaurant X), from March 17, 2021, to June 30, 2021.[4]

[4] On November 8, 2020, the Appellant made an initial claim for EI benefits (regular benefits).[5] A benefit period was established effective October 11, 2020.[6]

[5] On January 17, 2022, the Commission told her that she wasn't entitled to EI regular benefits because she voluntary stopped working for employer X, on October 17, 2020, without good cause under the Act. The Commission also informed her that it wasn't able to pay her EI benefits from October 11, 2020, to April 30, 2021, because she was taking a training course on her own initiative and had failed to prove that she was available for work. Also, the Commission told her that it could not pay her

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[1] See sections 52 and 153.161 of the *Employment Insurance Act* (Act).
[2] See GD3-8, GD3-23, GD3-27, GD3-28, GD3-36, and GD14-1 to GD14-11.
[3] See GD11-14 and GD11-15.
[4] See GD11-16 and GD11-17.
[5] See GD3-3 to GD3-18.
[6] See GD3-1 and GD4-1.

EI benefits as of December 6, 2020, because she was only available for part-time work. It said that it didn't consider the Appellant was available for work. The Commission also informed her that, if she owed money, she would receive a notice of debt.[7]

[6] On March 16, 2022, after a request for reconsideration, the Commission told her that it rescinded the January 17, 2022, decision about her voluntary leave. It told her that it was upholding the January 17, 2022, decision about her availability for work. The Commission told her that it could not pay her benefits from October 11, 2020, to April 30, 2021, because she was taking training on her own initiative and didn't show that she was available for work.[8]

[7] The Appellant says she stopped working on October 17, 2020, after the Government of Quebec introduced health restrictions related to the COVID-19 pandemic,[9] such as business closures, which included restaurants. She says that, before applying for benefits, she sought information from the Commission on whether she could get the Canada Emergency Response Benefit (CERB) or the Canada Emergency Student Benefit (CESB). She was told to apply. The Appellant says that she did apply but she wasn't able to finalize it. She says she doesn't know where it was being [translation] "held up." So, she was unable to get this type of benefit. The Appellant says she then contacted the Commission to know whether she could apply for regular benefits. The Commission told her she could. She says that after applying, she contacted the Commission again to know whether she could get that type of benefit, since she didn't think she was entitled to it because she was in school. The Appellant says that she wanted to know whether she had to keep completing her claimant reports, and the Commission confirmed that she did. She says that she always reported taking training and the hours worked for the weeks when that had been the case. The Appellant points out that she was always honest in her reports. She disagrees with having to pay back the amount of money the Commission overpaid her in benefits

[7] See GD3-29 and GD3-30.
[8] See GD3-37 and GD3-38.
[9] Coronavirus disease 2019.

(overpayment). On April 8, 2022, the Appellant challenged the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

Preliminary matters

[8] In this case, the Appellant disputes having to pay back the benefits she was overpaid, when she reported that she was taking full-time training and indicated the days when she was available for work during that training.[10] She says that she finds it unfair that she has to pay back the amount the Commission is asking for the benefits she was overpaid.[11]

[9] The Commission, in turn, says that the overpayment of benefits in the Appellant's file is solely from being retroactively disentitled for being unavailable for work, as set out under section 153.161(2) of the *Employment Insurance Act* (Act).[12] It notes that this section was added to the Act specifically to allow it to retroactively impose a disentitlement to benefits for being unavailable for work.[13]

[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 used its discretion judicially when it decided to verify and reconsider her claim for benefits.[14]

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[10] See GD2-4.
[11] See GD2-4.
[12] See GD4-6.
[13] See GD4-7.
[14] See sections 52 and 153.161 of the Act.

[12] If that is the case, I also have to determine whether the Appellant has shown that she was available for work, during the period from October 11, 2020, to April 30, 2021, while taking training.[15]

[13] I also have to determine whether the Appellant has to pay back the benefits that she was overpaid and that the Commission says she owes.[16]

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 review the Appellant's claim for benefits?

[14] When it comes to the "reconsideration" of a claim, the Act says that the Commission has 36 months to reconsider a claim for benefits paid or payable to a claimant and that it has 72 months if, in its opinion, a false or misleading statement or representation has been made in connection with a claim.[17]

[15] If the Commission decides that a person has received an amount of money in benefits that they weren't qualified for or entitled to, it must calculate the amount of the money and notify the claimant of its decision.[18]

[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 included section 153.161 of Part VIII.5 of the Act. This section was in force from September 27, 2020, to September 25, 2021.

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[15] 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*.
[16] See sections 43, 44, and 52 of the Act.
[17] See section 52 of the Act.
[18] See section 52(2) of the Act.

[18] This section says that the Commission may, at any point after benefits are paid to a claimant, 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 benefit period.[19]

[19] The Tribunal's Appeal Division (Appeal Division) found 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.[20]

[20] In this case, the Appellant applied for benefits on November 8, 2020, and a benefit period was established effective October 11, 2020.[21]

[21] The Appellant received benefits for the period from October 11, 2020, to April 10, 2021.[22]

[22] On January 17, 2022, the Commission informed her of the decision about her availability for work.[23]

[23] The Commission argues as follows:

a) Section 153.161(2) of the Act allows it to verify, at any point after benefits are paid to a claimant, 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.[24]

[19] See section 153.161(2) of Part VIII.5 of the Act.
[20] See the Appeal Division decision in *GP v Canada Employment Insurance Commission*, 2021 SST 791.
[21] See GD3-1, GD3-3 to GD3-18, and GD4-1.
[22] See GD3-31 to GD3-33 and GD4-2.
[23] See GD3-29 and GD3-30.
[24] See GD4-4, GD4-5, GD4-10, and GD12-2.

b) Under section 153.161(2) of the Act, the Commission may retroactively impose a disentitlement to benefits.[25] That section was added to the Act to allow the Commission to impose it retroactively.[26]

c) To exercise its discretion to reconsider the decision that was made [translation] “by automated processing on May 13, 2021,” the Commission considered the factor that on January 12, 2022, the Appellant reported having quit her job to go back to school.[27]

d) If a Claimant reports that they aren’t available while taking non-referred training, the Commission makes a decision on their availability for work during training by following the [translation] “usual procedures.”[28] It is after the Appellant provided information by contacting the Commission that it conducted a review and made the decision under section 153.161 of the Act.[29]

e) When the Commission made its initial decision on the retroactive disentitlement, section 153.161 of the Act didn’t require it to reconsider by exercising its discretion judicially.[30]

[24] In the Appellant’s reports from November 8, 2020, to May 13, 2021, to the Commission (training questionnaire), she indicated that she was taking full-time training.[31]

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[25] See GD4-5.
[26] See GD4-7.
[27] See GD7-1.
[28] See GD12-2.
[29] See GD12-2.
[30] See GD12-2.
[31] See GD3-7 and GD3-23.

[25] For the fall 2020 term, she says that all of her course obligations happened outside of her normal work hours.[32] She says that she was obligated to attend scheduled classes or scheduled sessions (in-person, online, or by telephone).[33]

[26] When it comes to the winter 2021 term, she says in her May 13, 2021, report that all her course obligations didn't take place outside of her normal work hours, but that she was obligated to attend scheduled classes.[34]

[27] For the fall 2020 and winter 2021 terms, the Appellant reported that she was available for work and capable of working under the same or better conditions (for example, hours, type of work) as she was before she started her course or program.[35]

[28] For each of the terms in question (fall 2020 and winter 2021), she says that she made efforts to find a job since the start of her training or since being unemployed.[36]

[29] For the fall 2020 term, the Appellant says that if she got a full-time job, but that the job would conflict with her training, she would accept the job if she could put off the starting date to finish her training.[37]

[30] For the winter 2021 term, the Appellant says, in her May 13, 2021, report, that if she had gotten a full-time job, but that the job had conflicted with her training, she would have changed her course schedule to accept the job.[38]

[31] The Appellant says that before applying before benefits, she contacted the Commission to find out whether she could get EI regular benefits, since she wasn't able to receive the CERB or the CESB. The Appellant says that the Commission told her that she could apply.

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[32] See GD3-8.
[33] See GD3-8.
[34] See GD3-23 and GD3-24.
[35] See GD3-8 and GD3-25.
[36] See GD3-9 and GD3-25.
[37] See GD3-9.
[38] See GD3-25.

[32] She says that after applying for benefits on November 8, 2020, she contacted the Commission two or three times before calling again on April 20, 2021.[39]

[33] The Appellant says that during the calls before the one on April 20, 2021, she wanted to make sure that her file was in order.[40] She says that she also wanted to know if she had to keep completing her claimant reports, since she was in school and believed that because of that, she could not be entitled to benefits. She says that the Commission told her to keep doing so.

[34] The Appellant says that she contacted the Commission on April 20, 2021, because she was wondering if it was normal that she was still receiving benefits, since she had started a new job. She says that she had income since she was working and no longer needed to receive benefits.

[35] The Appellant says that she always indicated in her claimant reports that she was taking training and the hours worked for the weeks where that had been the case (for example, working at restaurant X).[41]

[36] In this case, for her claim made on November 8, 2020, the Appellant was subject to the provisions of section 153.161(2) of Part VIII.5 of the Act, despite the temporary nature of that section, and to those of section 52 of the Act.

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

[38] I find that, although the Commission doesn't say that it relied on section 52 of the Act in making its decision, the provisions of that section continue to apply despite those of section 153.161(2) of the Act.

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[39] See the summary of the conversation between the Appellant and a Commission representative dated November 16, 2020 – GD11-3.
[40] See GD2-4.
[41] See GD14-13.

[39] Section 52 of the Act shows that the Commission has the discretion to reconsider a claim for benefits.

[40] 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 discretion isn't time-limited, but it is in the case of a reconsideration under section 52(1) of the Act.

[41] Under section 153.161(2) of the Act, the Commission may, at any point after benefits are paid to a claimant, verify that the claimant is entitled to those benefits.[42] That section also shows that the Commission has the discretion to verify a claim for benefits.

[42] 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 representation has been made.[43]

[43] Even if section 153.161(2) is broader in time than section 52 of the Act, the question remains whether the Commission used its discretion to reconsider judicially.

[44] In making its decision, the Commission used its powers under section 153.161(2) of the Act. Upon verification, it 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.

[45] So, I don't accept the Commission's argument that section 153.161 of the Act didn't require it to reconsider by using its discretion judicially, when it imposed a retroactive disentitlement to benefits.[44]

[46] Also, I find that the Commission's explanations on this point are contradictory. I note that the Commission recognizes that it used its discretion to reconsider its

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[42] See section 153.161(2) of the Act.
[43] See sections 52(1) and 52(5) of the Act.
[44] See GD12-2.

decision. In its arguments, the Commission says that to exercise its discretion to reconsider the decision that was made [translation] “by automated processing on May 13, 2021,” it considered the factor that on January 12, 2022, the Appellant reported having quit her job to go back to school.[45]

[47] I also note that while section 153.161(2) of the Act says that the Commission may “at any point after benefits are paid to a claimant, verify” that a claimant is entitled to benefits, that section says that it may do so, but “by requiring proof” that they were capable of and available for work on any working day of their benefit period.[46]

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

[49] I find that, before making its decision on January 17, 2022,[47] more than a year after the Appellant applied for benefits, the Commission didn’t inform her of the job search required to show her availability for work or of the proof she had to provide, before retroactively disentitling her to benefits.

[50] 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, to reconsider it, and to change its decision.

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[45] See GD7-1.
[46] See section 153.161(2) of the Act.
[47] See GD3-29 and GD3-30.

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

[51] 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 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."[48]

[52] 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.[49]

[53] Since the Commission's power to reconsider is discretionary, its decisions can be interfered with only if it didn't exercise this power judicially.[50]

[54] 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.[51]

[55] The *Digest of Benefit Entitlement Principle*s, a document prepared by the Commission, sets out conditions for reconsideration to determine whether the Commission considered all relevant factors in exercising its discretion.

[56] 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

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[48] The Court established this principle in *Uppal*, 2008 FCA 388.
[49] 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.
[50] See the Court's decisions in *Chartier*, A-42-90 and *Uppal*, 2008 FCA 388.
[51] The Court established or reiterated this principle in the following decisions: *Hudon*, 2004 FCA 22; and *Gagnon*, 2004 FCA 351.

- 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[52]

– **Benefits underpaid**

[57] I find that the benefit "underpayment" factor doesn't apply to the Appellant.

[58] Based on the documents the Commission submitted and its calculations after reviewing the Appellant's file, she was overpaid $11,154.00 (overpayment) in benefits.[53] In this case, it isn't that "benefits have been underpaid."

[59] The *Digest of Benefit Entitlement Principle*s says that the Commission always reconsiders if the claimant has been denied benefits that may become payable as the result of reconsideration.[54]

[60] In the case of an overpayment, the Commission may reconsider a claim for benefits, as the Act states.[55]

[61] The provisions of section 52 of the Act confirm the discretionary nature of the Commission's decisions about reconsidering benefit periods within the time allotted to it.

[62] 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**

[63] I find that, when the Appellant's claim was set up and she was paid benefits, this was done in accordance with the "structure of the Act," that is, in accordance with the related basic elements of the Act.

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[52] See section 17.3.3 of the *Digest of Benefit Entitlement Principles*.
[53] See GD3-31 to GD3-33 and GD4-2.
[54] See section 17.3.3 of the *Digest of Benefit Entitlement Principles*.
[55] See section 52 of the Act.

[64] The *Digest of Benefit Entitlement Principles* says that a "period of non-availability" falls outside the definition of *Structure of the Act*. But it says that this element can be reconsidered as long as it meets one of the other conditions set out under the policy that deals with this (Commission's Reconsideration Policy).[56]

[65] 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**

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

[67] 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.[57] If, in its opinion, a false or misleading statement or representation 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.[58]

[68] The Court tells us that the Commission may reconsider a claim for benefits within 72 months if, in its opinion, a false or misleading statement has been made.[59]

[69] The Commission says that it isn't accusing the Appellant of making a false statement.[60] It says that she did report her training.[61]

[70] The Commission says that the overpayment in the Appellant's file is solely from being retroactively disentitled for her non-availability for work, under the provisions of section 153.161(2) of the Act.[62]

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[56] See section 17.3.3.2 of the *Digest of Benefit Entitlement Principles*.
[57] See section 52(1) of the Act.
[58] See section 52(5) of the Act.
[59] The Court established this principle in the following decisions: *Dussault*, 2003 FCA 372; and *Pilote*, A-868-97.
[60] See GD4-6.
[61] See GD4-6.
[62] See GD4-6.

[71] The Appellant argues that she reported that she was taking full-time training when she applied for benefits.[63] She points out that she has always been honest when completing her claimant reports.[64] The Appellant says that when she completed them, she always said that she was taking training and the hours worked for the weeks when that had been the case.[65]

[72] In her application for benefits, the Appellant indicated that she was available for and capable of work under the same or better conditions as she was before she started her training. She specified that it was full-time training and that she dedicated 25 hours or more to it a week.[66]

[73] I find that the factor for benefits being paid as a result of a false or misleading statement doesn't apply to the Appellant. I find that she was always honest—in her claim for benefits, her claimant reports, and her statements to the Commission.

[74] The Commission also recognizes that the Appellant didn't make false or misleading statements.

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

The claimant ought to have known there was no entitlement to the benefits received (knowledge that there is no entitlement)

[76] In my view, there is no evidence that the Appellant ought to have known—and therefore had "knowledge"—that she wasn't entitled to the benefits received.

[77] The Commission argues as follows:

a) When it comes to the fact that the Appellant wasn't contacted about her training when she applied for benefits, the Commission says that "interim

[63] See GD3-36.
[64] See GD2-4 and GD3-36.
[65] See GD2-4 and GD3-36.
[66] See GD3-6 to GD3-8.

orders" were issued by the government on August 28, 2020, and September 25, 2020, to simplify the transition from the EI Emergency Response Benefit to the normal EI program.[67]

b) The goal of the "interim orders" was to avoid delays in the payment of benefits. Measures were introduced to make sure there were no delays in the payment of benefits.[68] Even though these measures enabled thousands of claimants to receive benefits to which they were entitled within a reasonable time frame, inevitably, there were situations or people, like the Appellant, who unfortunately were disentitled later on.[69]

c) Even if the claims involving training were set up and benefits were paid, the fact remains that claimants taking training not authorized by a designated authority were still required by the Act to prove that they were capable of working and ready to work. Section 153.161(2) of Part VIII.5 of the Act was added so that the Commission could retroactively impose disentitlements.[70]

d) When the Appellant completed the questionnaires about her training, a message reminded her that she always had to be available for work and be looking for work. The message also says to report training in claimant reports.[71]

e) The Commission made its decision objectively considering all the relevant facts. The decision was made per the provisions of the Act and existing case law.[72]

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[67] See GD4-6.
[68] See Part VIII.5 of the Act – Temporary Measures to Facilitate Access to Benefits.
[69] See GD4-6.
[70] See GD4-6 and GD4-7.
[71] See GD4-7.
[72] See GD4-7.

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

a) The Appellant applied for benefits after losing her job on October 17, 2020, because of the COVID-19 pandemic, and not after voluntarily leaving, like the Commission first found.[73]

b) She contacted the Commission to find out whether she was entitled to EI regular benefits, given that she was in school. The Commission told her to apply. The Commission didn't tell her that she could get the CERB or the CESB.

c) When she applied for benefits, she indicated that she was taking full-time training.[74]

d) The Appellant completed her claimant reports, indicating that she was taking training. She also reported the hours when she worked, when that had been the case.[75]

e) During her benefit period, she contacted the Commission many times to make sure her file was in order. The Commission told her to keep completing her reports.[76]

f) She could not have known that she wasn't entitled to benefits. She says she doesn't understand why the Commission didn't contact her when she applied for benefits.[77]

[79] In my view, the Commission hasn't shown that the Appellant could assume there was no entitlement to the benefits received.

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[73] See GD2-4 and GD3-34.
[74] See GD3-7 and GD3-36.
[75] See GD2-4.
[76] See GD2-4.
[77] See GD3-36.

[80] I find that the Commission didn't exercise its discretion judicially when it decided to verify and reconsider the Appellant's claim for benefits.

[81] I am of the view 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 of Benefit Entitlement Principles* to show that it has exercised its discretion judicially.

[82] 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.[78]

[83] In my view, all the elements were there for the Commission to set up the Appellant's claim and pay her benefits.

[84] I point out that the Commission had ample opportunity to verify what the Appellant reported when she applied for benefits, when she completed her claimant reports, and when it called her on November 16, 2020[79].From the moment the Appellant applied for benefits, the Commission knew that was taking full-time training by dedicating 25 hours or more a week.

[85] I find the Appellant's testimony credible and place the most weight on it. The Appellant was consistent in her statements about her training, the efforts to find out whether she was entitled to benefits, and her availability for work.

[86] I am of the view that the Appellant could reasonably believe that, when her claim for benefits was approved and she started getting benefits, this meant she was entitled to those benefits.

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[78] See section 17.3.3 of the *Digest of Benefit Entitlement Principles*.
[79] See GD11-3.

[87] I find that, despite the Commission's finding that the information on file doesn't support the Appellant's statements that she was available for work,[80] it hasn't shown that she ought to have known that she wasn't entitled to benefits.

[88] In summary, given the evidence and the particular circumstances of this case, I find that the Commission didn't use its discretion judicially when it decided to verify and reconsider the Appellant's claim for benefits.

[89] I find that the Commission didn't consider all relevant factors in doing so. These factors refer to all the information the Appellant gave about her training on her application for benefits, the claimant reports she completed by indicating that she was taking training, and when she contacted the Commission.

[90] In my view, the Commission failed to follow its own rules in exercising its discretion. I find that it misused its discretion.

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

[92] Because of this, I won't review the initial decision to grant the Appellant benefits.

Availability for work and repayment of benefits that were overpaid

[93] Since I have found that the Commission didn't exercise its discretion judicially when it decided to verify and reconsider the Appellant's claim for benefits, there is no need to review the initial decision in her case.[81]

[94] This means that there is no need to determine whether the Appellant was available for work from October 11, 2020, to the April 30, 2021, during her training.

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[80] See GD4-5 to GD4-8.
[81] See sections 52 and 153.161 of the Act.

[95] There is also no need to determine whether the Appellant has to pay back the benefits that she was overpaid and that the Commission says she owes.[82]

Conclusion

[96] I find that the Commission didn't use its discretion judicially when it decided 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.

[97] So, there is no need to determine whether she was available for work from October 11, 2020, to April 30, 2021, and whether she was entitled to benefits.

[98] There is also no need to decide whether the Appellant has to pay back the money that the Commission says she owes in overpaid benefits.

[99] This means that the appeal is allowed.

Normand Morin
Member, General Division – Employment Insurance Section

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