



[TRANSLATION]

Citation: *ML v Canada Employment Insurance Commission*, 2022 SST 1756

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

## Decision

**Appellant:** M. L.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (474071) dated May 8, 2022  
(issued by Service Canada)

---

**Tribunal member:** Normand Morin

**Type of hearing:** Teleconference

**Hearing date:** October 17, 2022

**Hearing participant:** Appellant

**Decision date:** November 4, 2022

**File number:** GE-22-1792

## 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 Employment Insurance (EI) benefits.<sup>1</sup> This means that the Commission could not retroactively determine that the Appellant wasn't entitled to EI benefits.

## Overview

[2] On July 6, 2021, after working for the employer X from July 8, 2019, to July 5, 2021, the Appellant made an initial claim for EI benefits (regular benefits).<sup>2</sup> A benefit period was established effective July 4, 2021.<sup>3</sup>

[3] In August 2021, the Appellant began full-time training at the Cégep<sup>4</sup> de X that leads to a college diploma (DEC) in nursing. Her fall 2021 term ran from August 20, 2021, to December 21, 2021, and her winter 2022 term ran from January 24, 2022, to May 25, 2022.<sup>5</sup> In the fall of 2022, she continued her training full-time at that institution.

[4] From February 9, 2022, to March 26, 2022, inclusive, while in training, the Appellant worked as a server for the employer X. She stopped working for that employer after voluntarily leaving her job.<sup>6</sup>

[5] On March 31, 2022, the Commission told her that it was unable to pay her EI benefits from August 20, 2021, because she was taking training on her own initiative and hadn't proven her availability for work. The Commission also told her that she wasn't entitled to EI benefits from March 20, 2022, because she voluntarily left her restaurant job with X on March 22, 2022, without just cause as defined in the

---

<sup>1</sup> See sections 52 and 153.161 of the *Employment Insurance Act* (Act).

<sup>2</sup> See GD3-3 to GD3-12, GD3-20, and GD3-21.

<sup>3</sup> See GD3-1 and GD4-1.

<sup>4</sup> General and vocational college.

<sup>5</sup> See GD3-14, GD3-15, GD3-18, GD3-19, GD3-23, GD3-26, GD3-36, and GD3-37.

<sup>6</sup> See GD3-24 and GD3-25.

*Employment Insurance Act* (Act). The Commission said that she would receive a notice of debt if she owed money.<sup>7</sup>

[6] On May 8, 2022, the Commission told her that it was upholding the March 31, 2022, decisions about her availability for work and voluntary leaving.<sup>8</sup>

[7] The Appellant explains that she went back to school to become a nurse. She points out that the Government of Canada website (canada.ca) says that claimants can take training and get benefits at the same time. She says that she followed all the steps given on this website to take the training. She argues that she declared her full-time training to the Commission and gave it all the related information and documents and her work availabilities. She explains that she continued receiving benefits after declaring her training. She says that she concluded she was entitled to benefits and that she had no way of knowing that she wasn't. She says that she didn't make any mistakes when she reported her situation to the Commission and that she thought everything was all right with her file. She says that she actively looked for a job while receiving benefits. She says that she disagrees with having to pay back the benefits she was overpaid. She points out that it took several months for the Commission to make its decision. She says that if she had been told sooner that she wasn't entitled to benefits, she would have contacted the Commission (Service Canada) to resolve the situation. She explains that she can't afford to go into debt to pay back the money she owes, which is several thousands of dollars. She says that she doesn't know how she will be able to pay back this much money while studying. On May 23, 2022, the Appellant challenged the Commission's reconsideration decision about her availability for work. That decision is now being appealed to the Tribunal.

---

<sup>7</sup> See GD3-27 and GD3-28.

<sup>8</sup> See GD2-9, GD2-10, GD3-38, and GD3-39.

## Preliminary matters

[8] My decision in this case focuses on the issue of the Appellant's availability for work and on the Commission's exercise of discretion. It doesn't deal with the Appellant's voluntarily leaving the job she had from February 9, 2022, to March 26, 2022.<sup>9</sup>

[9] In its arguments, the Commission indicates that it has submitted a reconsideration file dealing only with the issue of the Appellant's availability for work, since she is appealing only this issue and hasn't raised the issue of her voluntarily leaving the employer X.<sup>10</sup>

[10] In this case, the Appellant says she primarily disputes having to pay back the benefits she was overpaid, despite the fact that she declared her full-time training. She points out that if she had been told sooner that she wasn't entitled to benefits, she would have stopped claiming benefits.

[11] The Commission, meanwhile, argues that section 153.161 of the Act gives it the authority to impose a retroactive disentitlement to benefits if the claimant can't prove their availability for work while taking "non-referred" training.<sup>11</sup> It points out that under this section, it can do such a review "at any point" and go all the way back to when the claimant's training period or period of non-availability started.<sup>12</sup>

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

## Issues

[13] 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 in deciding to verify and reconsider her claim for benefits.<sup>13</sup>

---

<sup>9</sup> See GD3-24 and GD3-25.

<sup>10</sup> See GD4-4.

<sup>11</sup> See GD4-6 and GD8-3.

<sup>12</sup> See GD8-2 and GD8-3.

<sup>13</sup> See sections 52 and 153.161 of the Act.

[14] If so, I have to determine whether the Appellant has shown that she has been available for work since starting her training on August 20, 2021.<sup>14</sup>

[15] I also have to determine whether the Appellant has to pay back the benefit overpayment she owes the Commission.<sup>15</sup>

## **Analysis**

### **The Commission's exercise of 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?**

[16] 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.<sup>16</sup>

[17] 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.<sup>17</sup>

[18] Because of the COVID-19<sup>18</sup> pandemic, changes were made to the Act to facilitate access to benefits with the implementation of "temporary measures."

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

---

<sup>14</sup> 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* (Regulations).

<sup>15</sup> See sections 43, 44, and 52 of the Act.

<sup>16</sup> See section 52 of the Act.

<sup>17</sup> See section 52(2) of the Act.

<sup>18</sup> Coronavirus disease 2019.

[20] 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.<sup>19</sup>

[21] In one of its decisions, 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.<sup>20</sup>

[22] In another decision, the Appeal Division found that the file should return to the General Division for it to decide whether the Commission had the power to retroactively disentitle a claimant to benefits.<sup>21</sup> The Appeal Division said that if the General Division were to find that the Commission had this power, it must also determine whether the Commission exercised this power judicially when it decided to reconsider the claimant's claim for benefits.<sup>22</sup>

[23] In this case, the Appellant applied for benefits on July 6, 2021, and a benefit period was established effective July 4, 2021.<sup>23</sup>

[24] The evidence on file indicates that the Appellant received benefits while in training, from the week of August 15, 2021, up to the week of January 16, 2022.<sup>24</sup>

[25] On March 31, 2022, the Commission told her about the decision in her case on the issue of availability for work.<sup>25</sup>

---

<sup>19</sup> See section 153.161(2) of Part VIII.5 of the Act.

<sup>20</sup> See the Appeal Division decision in *GP v Canada Employment Insurance Commission*, 2021 SST 791.

<sup>21</sup> See the Appeal Division decision in *Canada Employment Insurance Commission v ER*, 2022 SST 761, AD-21-393.

<sup>22</sup> See the Appeal Division decision in *Canada Employment Insurance Commission v ER*, 2022 SST 761, AD-21-393.

<sup>23</sup> See GD3-1, GD3-3 to GD3-12, and GD4-1.

<sup>24</sup> See GD3-29.

<sup>25</sup> See GD3-27 and GD3-28.

[26] The Commission argues as follows:

- a) Section 153.161 of the Act<sup>26</sup> gives it the authority to retroactively verify entitlement to benefits for a claimant who has taken non-referred training and to require them to provide proof of their availability for work.<sup>27</sup>
- b) It can go all the way back to when the claimant's training period or period of non-availability started.<sup>28</sup>
- c) Section 153.161 of the Act gives it the authority to impose a retroactive disentitlement to benefits if the claimant can't prove their availability for work while taking "non-referred" training. Under this section, it can do such a review "at any point."<sup>29</sup>
- d) Section 153.161 of the Act takes precedence over any other policy or general provision of the Act and has to be applied. This means that the Commission doesn't have to rely on section 52 of the Act or on its "Reconsideration Policy."<sup>30</sup>
- e) When non-availability is clear and a claimant indicates that they aren't available while taking non-referred training, the Commission decides availability in accordance with the usual procedures for decisions about training, even if the training was previously allowed.<sup>31</sup>

[27] The Appellant, meanwhile, indicated in the training questionnaire she completed on August 21, 2021,<sup>32</sup> and in her statement to the Commission on February 8, 2022, that she was taking training full-time and spent 25 or more hours per week on it.<sup>33</sup>

---

<sup>26</sup> See Part VIII.5 of the Act: Temporary Measures to Facilitate Access to Benefits.

<sup>27</sup> See GD4-6.

<sup>28</sup> See GD8-2.

<sup>29</sup> See GD8-3.

<sup>30</sup> See GD8-3.

<sup>31</sup> See GD8-3.

<sup>32</sup> See the "Course or training program" questionnaire—GD3-13 to GD3-17.

<sup>33</sup> See GD3-13, GD3-14, GD3-18, and GD3-19.

[28] For her fall 2021 and winter 2022 terms, she indicated that none of her course obligations occurred outside her normal work hours or on a different schedule than her job.<sup>34</sup>

[29] For the fall 2021 term, the Appellant indicated that she wasn't available for work and capable of working in the same type of job and under the same or better conditions (for example, hours, type of work) as she was before she started her course or program.<sup>35</sup> She indicated which days of the week she was available to work and when.<sup>36</sup> For her winter 2022 term, she indicated that she was available for work and capable of working in the same type of job and under the same or better conditions (for example, hours, type of work) as she was before she started her course or program.<sup>37</sup>

[30] In addition, for her fall 2021 term, the Appellant indicated that she had made efforts to find work since the start of her training or since becoming unemployed.<sup>38</sup> She sent the Tribunal documents showing her job search efforts since the start of her training.<sup>39</sup>

[31] For both terms, the Appellant indicated that if she found full-time work but the job conflicted with her course or program, she would finish her training<sup>40</sup> or would not leave it or change her training schedule.<sup>41</sup>

[32] The Appellant explains that after she stopped receiving benefits in February 2022, she contacted the Commission many times that month and the following month for information about the processing of her file. She says that the Commission told her that her file was being processed but that it could not give her more information.

---

<sup>34</sup> See GD3-15, GD3-18, and GD3-19.

<sup>35</sup> See GD3-16.

<sup>36</sup> See GD3-16.

<sup>37</sup> See GD3-18 and GD3-19.

<sup>38</sup> See GD3-16.

<sup>39</sup> See GD9-1 to GD9-34.

<sup>40</sup> See GD3-16.

<sup>41</sup> See GD3-18 and GD3-19.



[33] The Appellant says that it wasn't until late March 2022 that the Commission asked her about her training, only to later tell her that she could not receive benefits from August 21, 2021, because of this training.

[34] The provisions of section 52 of the Act and those of section 153.161(2) of Part VIII.5 of the Act, despite being temporary, applied to the Appellant's case for her July 6, 2021, claim for benefits.

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

[36] The Commission says that it relied on section 153.161(2) of the Act in making its decision, so it didn't have to rely on section 52 of the Act or on its "Reconsideration Policy."<sup>42</sup>

[37] Concerning the Commission's argument on this point, I find that the provisions of section 52 of the Act continue to apply despite those of section 153.161(2) of the Act.

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

[39] 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, but it is in the case of a reconsideration under section 52(1) of the Act.

[40] 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.<sup>43</sup> This section also shows that the Commission has the discretion to verify a claim for benefits.

---

<sup>42</sup> See GD8-3.

<sup>43</sup> See section 153.161(2) of the Act.

[41] 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.<sup>44</sup>

[42] While 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.

[43] In making its decision, the Commission used its powers under section 153.161(2) of the Act. As a result of its 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.

[44] I note that in its arguments, the Commission says that when it is of the opinion that a claimant is clearly unavailable for work, it decides availability [translation] "in accordance with the usual procedures for decisions about training," even if the training was previously allowed.<sup>45</sup>

[45] I note that even though section 153.161(2) of the Act says that the Commission may, "at any point" after benefits are paid to a claimant, "verify" that the claimant is entitled to those 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.<sup>46</sup>

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

[47] I find that before making its decision on March 31, 2022,<sup>47</sup> more than eight months after the Appellant applied for benefits, the Commission didn't tell her about the

---

<sup>44</sup> See sections 52(1) and 52(5) of the Act.

<sup>45</sup> See GD8-3.

<sup>46</sup> See section 153.161(2) of the Act.

<sup>47</sup> See GD3-27 and GD3-28.

job search required to show her availability for work or about the proof she had to provide, before retroactively disentitling her from receiving benefits.

[48] 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?**

[49] 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."<sup>48</sup>

[50] It is up to the Commission to show that it exercised its discretion judicially. In other words, it has to show that it acted in good faith, considered all relevant factors, and ignored irrelevant ones.<sup>49</sup>

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

[52] 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.<sup>51</sup>

---

<sup>48</sup> The Federal Court of Appeal (Court) established this principle in *Uppal*, 2008 FCA 388.

<sup>49</sup> 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.

<sup>50</sup> See the Court's decisions in *Chartier*, A-42-90; and *Uppal*, 2008 FCA 388.

<sup>51</sup> This principle was established or reiterated in the following decisions: *Hudon*, 2004 FCA 22; and *Gagnon*, 2004 FCA 351.

[53] 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.

[54] 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 received<sup>52</sup>

– **Benefits underpaid**

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

[56] Based on the documents the Commission submitted and the calculations it made after reviewing the Appellant’s file, the Appellant was overpaid \$11,566 in benefits (overpayment).<sup>53</sup> In this case, it isn’t that “benefits have been underpaid.”

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

[58] In the case of an overpayment, the Commission may reconsider a claim for benefits, as set out in the Act.<sup>55</sup>

[59] 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.

---

<sup>52</sup> See section 17.3.3 of the Digest of Benefit Entitlement Principles (Digest).

<sup>53</sup> See GD3-29 to GD3-32.

<sup>54</sup> See section 17.3.3 of the Digest.

<sup>55</sup> See section 52 of the Act.

[60] 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**

[61] 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—in other words, its basic elements.

[62] The Digest 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).<sup>56</sup>

[63] 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**

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

[65] The Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable to the claimant.<sup>57</sup> If, in its opinion, a false or misleading statement or representation has been made in connection with a claim, the Commission may reconsider the claim within 72 months after the benefits have been paid or would have been payable.<sup>58</sup>

[66] The Commission hasn't presented any arguments to support that the Appellant made false or misleading statements or representations. It also hasn't shown any basis for finding that she may have made such statements or representations.

---

<sup>56</sup> See section 17.3.3.2 of the Digest.

<sup>57</sup> See section 52(1) of the Act.

<sup>58</sup> See section 52(5) of the Act. See also the following Court decisions: *Dussault*, 2003 FCA 372; and *Pilote*, A-868-97.

[67] The Appellant argues that she gave the Commission all the required information and documents related to her training.<sup>59</sup> She points out that she reported everything [translation] “properly” when she applied for benefits.<sup>60</sup>

[68] In her August 21, 2021, training questionnaire and her February 8, 2022, statement to the Commission, the Appellant indicated that she was taking training and spent 25 or more hours per week on it.<sup>61</sup>

[69] I find that the Commission wasn’t faced with false or misleading statements in connection with the Appellant’s claim.

[70] In my view, 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 with the Commission, whether in her August 21, 2021, training questionnaire or in her February 8, 2022, statement.

[71] I find that the Commission could nonetheless 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)**

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

[73] The Commission argues as follows:

- a) Concerning the Appellant’s argument that she received benefits despite declaring her training, the Commission says that the Government of Canada allowed prompt payment of benefits in light of the economic circumstances of

---

<sup>59</sup> See GD3-34.

<sup>60</sup> See GD3-36.

<sup>61</sup> See GD3-13, GD3-14, GD3-18, and GD3-19.

the pandemic and to avoid any payment delays for claimants who reported having taken training.<sup>62</sup>

- b) A transition measure was implemented to avoid EI payment delays for claimants who are in training. To do this efficiently, Automated Claims Processing (automated processing system) was changed to automatically allow any training declared between September 27, 2020, and September 25, 2021.<sup>63</sup>
- c) However, claimants had to show that they were capable of and available for work while taking non-referred training.<sup>64</sup>
- d) Once non-availability is clear and a claimant indicates that they aren't available for work while taking non-referred training, the Commission has to decide availability in accordance with the usual procedures for decisions about training, even if Automated Claims Processing previously allowed the training.<sup>65</sup>
- e) Section 153.161 of the Act gives the Commission the authority to retroactively verify entitlement to benefits for a claimant who has taken non-referred training and to require them to provide proof of their availability for work.<sup>66</sup>
- f) Under this section, the Commission can impose a retroactive disentitlement if the claimant can't prove their availability while taking "non-referred" training.<sup>67</sup>
- g) Concerning the Appellant's argument that a claimant can receive benefits while taking full-time training of their own choice, the Commission explains that this is possible only for "long-tenured workers." A "long-tenured worker" is someone who meets the following requirements: has received fewer than

---

<sup>62</sup> See GD4-6.

<sup>63</sup> See GD4-6 and GD8-3.

<sup>64</sup> See GD4-6.

<sup>65</sup> See GD8-3.

<sup>66</sup> See GD4-6, GD8-2, and GD8-3.

<sup>67</sup> See GD8-3.

36 weeks of EI regular and/or fishing benefits in the last 5 years and paid at least 30% of the maximum EI annual premium in 7 of the last 10 years.<sup>68</sup>

h) The Appellant's file shows that she isn't considered a "long-tenured worker."<sup>69</sup>

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

- a) When she applied for benefits on July 6, 2021, she had never gotten benefits before. It was her first claim for benefits.
- b) The Government of Canada website (canada.ca – Taking training while on EI with permission from Service Canada) says that as of August 5, 2018, a claimant doesn't have to be available or actively looking for work during training if Service Canada approves the training.<sup>70</sup> The information on the website shows that under these conditions, a claimant can continue receiving benefits while attending a full-time training program of their choice provided by an approved educational institution.<sup>71</sup>
- c) According to the Appellant, she understood from the information on the website that she could go back to school if she wanted to.
- d) Her educational institution is on the list of educational institutions approved by Service Canada.<sup>72</sup>
- e) She followed all the steps given on this website and gave the Commission all the requested information and documents related to her training (for example, training questionnaire, course schedule, and work availabilities).<sup>73</sup>

---

<sup>68</sup> See GD4-5 and GD4-6.

<sup>69</sup> See GD4-6.

<sup>70</sup> See GD2-5 and GD9-35 to GD9-41.

<sup>71</sup> See GD2-5 and GD9-39.

<sup>72</sup> See GD3-34.

<sup>73</sup> See GD2-5.



- f) Her online EI file (“My Service Canada Account”) indicates that updates were made on August 22, 2021, and February 8, 2022. Specifically, the dates of her training were added.<sup>74</sup>
- g) She continued receiving benefits after declaring her training. She took this to mean that her request for permission to attend the training had been approved. She thought that everything was all right and [translation] “correct.” She had no way of knowing that she wasn’t entitled to receive benefits while in training.<sup>75</sup>
- h) She says that she saw on the government’s website that she could not refuse a suitable job. She has looked for a suitable job in her field of study. There is evidence that she has made efforts to find employment with a number of potential employers since starting her training.<sup>76</sup>
- i) Since she didn’t make any mistakes when she told the Commission about her situation, she disagrees with having to pay back the benefits that she received and that the Commission says she owes.<sup>77</sup>

[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 when it decided to verify the Appellant’s claim for benefits and when it reconsidered the claim.

[77] In my view, the Commission hasn’t shown that the Appellant ought to have known (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.

---

<sup>74</sup> See GD2-11 and GD2-12.

<sup>75</sup> See GD2-5, GD3-33, and GD3-34.

<sup>76</sup> See GD2-5 and GD9-1 to GD9-34.

<sup>77</sup> See GD3-34.

[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.<sup>78</sup>

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

[80] I note that the Commission had ample opportunity to verify what the Appellant had indicated in her August 21, 2021, training questionnaire or in her February 8, 2022, statement.<sup>79</sup> From the moment she completed the training questionnaire, the Commission knew that she was taking training full-time, spending 25 or more hours per week on it, and the conditions she could work under. The training information she gave was even entered in her online EI file ("My Service Canada Account").

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

[82] I am of the view that the Appellant could reasonably believe that when she continued receiving benefits after completing the training questionnaire, this meant she was still entitled to benefits.

[83] 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 the Appellant's claim for benefits and when it reconsidered the claim.

[84] I find that the Commission didn't consider all relevant factors in doing so. These factors refer to all the training information given by the Appellant in her training questionnaire and in her February 8, 2022, statement to the Commission.

---

<sup>78</sup> See section 17.3.3 of the Digest.

<sup>79</sup> See GD3-13 to GD3-19.

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

[86] 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.

[87] 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**

[88] Since I have found that the Commission didn't exercise its discretion judicially when it decided to verify the Appellant's claim for benefits and when it reconsidered the claim, there is no need to review the initial decision in her case.<sup>80</sup>

[89] This means that there is no need to determine whether the Appellant has shown that she has been available for work since starting her training on August 20, 2021.<sup>81</sup>

[90] 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.<sup>82</sup>

### **Conclusion**

[91] I find that the Commission didn't use 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.

[92] So, there is no need to determine whether the Appellant has shown that she has been available for work since starting her training on August 20, 2021, and whether she was entitled to benefits as of that date.

[93] 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.

---

<sup>80</sup> See sections 52 and 153.161 of the Act.

<sup>81</sup> See sections 18(1)(a) and 153.161 of the Act and sections 9.001 and 9.002(1) of the Regulations.

<sup>82</sup> See sections 43, 44, and 52 of the Act.

[94] This means that the appeal is allowed.

Normand Morin  
Member, General Division – Employment Insurance Section