



[TRANSLATION]

Citation: *CC v Canada Employment Insurance Commission*, 2022 SST 1786

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

**Decision**

**Appellant:** C. C.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (485469) dated May 20, 2022  
(issued by Service Canada)

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**Tribunal member:** Normand Morin  
**Type of hearing:** Videoconference  
**Hearing date:** October 18, 2022  
**Hearing participant:** Appellant  
**Decision date:** November 10, 2022  
**File number:** GE-22-2068

## 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] In September 2019, the Appellant began full-time training at X University in X. The training leads to a bachelor's degree in international development. His winter 2021 term ran from January 7 to April 30, his fall 2021 term from September 1 to December 20, and his winter 2022 term from January 5 to April 15.<sup>2</sup> In the fall of 2022, he continued his training full-time at the same institution and in the same program of study.

[3] From June 17, 2020, to January 22, 2021, the Appellant worked as a facilitator for the employer X. He stopped working for that employer because of a shortage of work.<sup>3</sup>

[4] On January 17, 2021, he made an initial claim for EI benefits (regular benefits).<sup>4</sup> A benefit period was established effective January 17, 2021.<sup>5</sup>

[5] On August 14, 2021, he applied to renew his benefit period.<sup>6</sup> His benefit period was renewed effective August 8, 2021.<sup>7</sup>

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

<sup>2</sup> See GD3-7 to GD3-9, GD3-20 to GD3-22, GD3-27 to GD3-30, GD3-41 to GD3-43, GD3-51 to GD3-53, GD3-64, GD3-65, GD3-73, and GD3-74.

<sup>3</sup> See GD2-11, GD2-12, GD10-18, and GD10-19.

<sup>4</sup> See GD3-3 to GD3-18.

<sup>5</sup> See GD3-1 and GD4-1.

<sup>6</sup> See GD3-24 to GD3-39.

<sup>7</sup> See GD3-1.

[6] On January 10, 2022, he applied to renew his benefit period again.<sup>8</sup> His benefit period was renewed effective December 26, 2021.<sup>9</sup>

[7] On March 28, 2022, the Commission told him that it was unable to pay him EI benefits from January 17, 2021, because he was taking training on his own initiative and hadn't proven his availability for work.<sup>10</sup>

[8] On May 20, 2022, after a request for reconsideration, the Commission told him that a new decision had replaced the March 28, 2022, decision. It explained to him that, according to that new decision, it could not pay him benefits for the periods from January 18, 2021, to April 30, 2021, from September 1, 2021, to December 20, 2021, and from December 21, 2021, because he hadn't shown his availability for work while he was taking training.<sup>11</sup>

[9] The Appellant explains that after his job at X ended on January 17, 2021, he visited the Commission (Service Canada) website to find out whether he might be entitled to benefits. He says that he contacted the Commission in mid-January 2021 and that one of its representatives helped him fill out his application for benefits. He explains that on his application, he indicated that he was taking training, that he spent 25 hours per week on it, and that he was available for work. He argues that the Commission representative never told him that he would not be able to get benefits given the answers he had provided about his training, or that a computer system was going to process his application because of the COVID-19<sup>12</sup> pandemic. He explains that after losing his job at X in August 2021, he followed the same steps as in January 2021 to claim benefits. He says that he answered the same questions about his training as in January 2021 and got the same response from the Commission. He says that he received benefits for the periods from January 2021 to April 2021 and from September 2021 until the end of December 2021. He explains that it was after he made a renewal

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<sup>8</sup> See GD3-47 to GD3-63.

<sup>9</sup> See GD3-1.

<sup>10</sup> See GD3-66.

<sup>11</sup> See GD2-2, GD2-3, GD3-75, and GD3-76.

<sup>12</sup> Coronavirus disease 2019.

claim for benefits in January 2022 that he learned that he hadn't been entitled to benefits since applying in January 2021. He argues that he always reported studying full-time, that he answered the questions related to his training correctly, and that he received benefits. He says that the Commission made an error when analyzing and processing his file. He says it isn't fair that he has to pay back the money that the Commission says he owes in overpaid benefits, given the administrative errors that it made. He says that he is unable to come up with the money he owes. On June 17, 2022, the Appellant challenged the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

## **Preliminary matters**

[10] In this case, the Appellant says he primarily disputes having to pay back the money he was overpaid in benefits even though he declared his full-time training and reported the hours spent on it.<sup>13</sup> He says that the Commission's decision that he can't receive benefits has to be overturned given the errors it made when analyzing and processing his file.<sup>14</sup>

[11] The Commission, meanwhile, says that it can retroactively disentitle a claimant to EI benefits under section 153.161(2) of the Act.<sup>15</sup> It says that under this section, it may, at any point after benefits are paid to a claimant, verify that the claimant was actually 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>16</sup>

[12] The Commission says that the benefit overpayment in the Appellant's file is solely from being retroactively disentitled under section 153.161(2) of the Act for being unavailable for work.<sup>17</sup>

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<sup>13</sup> See GD2-17 and GD2-18.

<sup>14</sup> See GD2-17 and GD2-18.

<sup>15</sup> See GD4-7.

<sup>16</sup> See GD4-7.

<sup>17</sup> See GD4-9.

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

## Issues

[14] 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 his claim for benefits.<sup>18</sup>

[15] If so, I have to determine whether the Appellant has shown his availability for work while in training for the periods from January 18, 2021, to April 30, 2021, and from September 1, 2021.<sup>19</sup>

[16] I also have to determine whether the Appellant has to pay back the benefit overpayment he owes the Commission.<sup>20</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?**

[17] 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>21</sup>

[18] 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>22</sup>

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<sup>18</sup> See sections 52 and 153.161 of the Act.

<sup>19</sup> See sections 18(1)(a) and 153.161 of the Act and sections 9.001 and 9.002(1) of the *Employment Insurance Regulations* (Regulations).

<sup>20</sup> See sections 43, 44, and 52 of the Act.

<sup>21</sup> See section 52 of the Act.

<sup>22</sup> See section 52(2) of the Act.

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

[20] 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.

[21] 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>23</sup>

[22] 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>24</sup>

[23] 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>25</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>26</sup>

[24] In this case, the Appellant made an initial claim for benefits on January 17, 2021, and a benefit period was established effective that same day.<sup>27</sup> He applied to renew his benefits on August 14, 2021, and his claim was renewed on August 8, 2021.<sup>28</sup>

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<sup>23</sup> See section 153.161(2) of Part VIII.5 of the Act.

<sup>24</sup> See the Appeal Division decision in *GP v Canada Employment Insurance Commission*, 2021 SST 791.

<sup>25</sup> See the Appeal Division decision in *Canada Employment Insurance Commission v ER*, 2022 SST 761, AD-21-393.

<sup>26</sup> See the Appeal Division decision in *Canada Employment Insurance Commission v ER*, 2022 SST 761, AD-21-393.

<sup>27</sup> See GD3-1, GD3-3 to GD3-18, and GD4-1.

<sup>28</sup> See GD3-1 and GD3-24 to GD3-29.

[25] The Appellant received benefits from January 17, 2021, to December 25, 2021.<sup>29</sup>

[26] He didn't receive benefits after making his renewal claim for benefits on January 10, 2022.

[27] On March 28, 2022, the Commission told him about the decision in his case on the issue of availability for work.<sup>30</sup>

[28] The Commission argues as follows:

- a) Section 153.161 of Part VIII.5 of the Act changed the Act when it comes to the availability for work of a claimant who is taking a training course.<sup>31</sup>
- b) Under section 153.161(1) of the Act, a claimant who is taking training on their own initiative is disentitled from receiving benefits for any working day in a benefit period for which they are unable to prove that they were capable of and available for work.<sup>32</sup>
- c) Section 153.161(2) of the Act allows the Commission to retroactively impose such a disentitlement at any point after benefits are paid.<sup>33</sup>

[29] The Appellant, meanwhile, indicated that he was taking training full-time in his January 17, 2021, August 14, 2021, and January 10, 2022, claims and in the training questionnaires<sup>34</sup> he completed on April 30, 2021, and January 7, 2022.<sup>35</sup> He reported spending 15 to 24 hours per week for his winter 2021 term<sup>36</sup> and 25 or more hours per week for his fall 2021 and winter 2022 terms.<sup>37</sup>

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<sup>29</sup> See GD4-3.

<sup>30</sup> See GD3-66.

<sup>31</sup> See GD4-6.

<sup>32</sup> See GD4-7.

<sup>33</sup> See GD4-7, GD4-9, GD6-2, and GD8-2.

<sup>34</sup> See the documents entitled "Course or training program."

<sup>35</sup> See GD3-7, GD3-20, GD3-28, GD3-41, and GD3-51.

<sup>36</sup> See GD3-6.

<sup>37</sup> See GD3-27 and GD3-40.

[30] For the winter 2021, fall 2021, and winter 2022 terms, he indicated that he was obligated to attend scheduled classes or scheduled sessions (in person, online, or by telephone).<sup>38</sup> He also indicated that all his course obligations occurred outside his normal work hours.<sup>39</sup>

[31] For those three terms, the Appellant indicated that he 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 he was before he started his course or program.<sup>40</sup>

[32] For all three terms, he indicated that he had made efforts to find work since the start of his training or since becoming unemployed.<sup>41</sup> He sent the Tribunal documents showing his job search efforts.<sup>42</sup>

[33] For his winter 2021 and winter 2022 terms, the Appellant indicated that if he found full-time work but the job conflicted with his training, he would change his course schedule to accept the job.<sup>43</sup> As for his fall 2021 term, he indicated that if he found full-time work but the job conflicted with his training, he would finish his course.<sup>44</sup>

[34] The Appellant says that he contacted the Commission in January 2021, before applying for benefits, to give information about his training and the number of hours spent on it. He did the same thing in August 2021, before making his renewal claim for benefits on August 14, 2021.

[35] He says that he always reported being in school on his claimant reports.

[36] 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 his

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<sup>38</sup> See GD3-9, GD3-22, GD3-30, GD3-43, and GD3-53.

<sup>39</sup> See GD3-9, GD3-22, GD3-30, GD3-43, and GD3-53.

<sup>40</sup> See GD3-9, GD3-22, GD3-30, GD3-43, and GD3-53.

<sup>41</sup> See GD3-10, GD3-23, GD3-31, GD3-44, and GD3-54.

<sup>42</sup> See GD10-3 to GD10-13.

<sup>43</sup> See GD3-9, GD3-10, GD3-23, GD3-44, and GD3-53.

<sup>44</sup> See GD3-30.



January 17, 2021, initial claim for benefits and his August 14, 2021, renewal claim for benefits.

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

[38] Even though the Commission says that it relied on section 153.161(2) of the Act in making its decision,<sup>45</sup> I find that the provisions of section 52 of the Act continue to apply despite those of section 153.161(2) of the Act.

[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 power 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.<sup>46</sup> This 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.<sup>47</sup>

[43] 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.

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<sup>45</sup> See GD4-6 to GD4-12, GD6-2, and GD8-2.

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

<sup>47</sup> See sections 52(1) and 52(5) of the Act.

[44] 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.

[45] 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 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>48</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 his entitlement to benefits under section 153.161(2) of the Act.

[47] I find that before making its decision on March 28, 2022,<sup>49</sup> more than a year after the Appellant made his claim for benefits, the Commission didn't tell him about the job search required to show his availability for work or about the proof he had to provide, before retroactively disentitling him 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.

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<sup>48</sup> See section 153.161(2) of the Act.

<sup>49</sup> See GD3-66.

**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>50</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>51</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>52</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>53</sup>

[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

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<sup>50</sup> The Federal Court of Appeal (Court) established this principle in *Uppal*, 2008 FCA 388.

<sup>51</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>52</sup> See the Court's decisions in *Chartier*, A-42-90; and *Uppal*, 2008 FCA 388.

<sup>53</sup> This principle was established or reiterated 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<sup>54</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 \$15,765 in benefits (overpayment).<sup>55</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>56</sup>

[58] In the case of an overpayment, the Commission may reconsider a claim for benefits, as set out in the Act.<sup>57</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.

[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 he 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

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<sup>54</sup> See section 17.3.3 of the Digest of Benefit Entitlement Principles (Digest).

<sup>55</sup> See GD3-67, GD3-68, and GD4-5.

<sup>56</sup> See section 17.3.3 of the Digest.

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

meets one of the other conditions set out under the policy that deals with this (Commission's Reconsideration Policy).<sup>58</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>59</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>60</sup>

[66] The Commission isn't accusing the Appellant of false statements. It says that he did declare his training.<sup>61</sup> It says that the overpayment in his file is solely from being retroactively disentitled under the provisions of section 153.161(2) of the Act for being unavailable for work.<sup>62</sup>

[67] The Appellant argues that he answered the questions about his training and his availability for work correctly.<sup>63</sup>

[68] 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 he was always honest with the

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<sup>58</sup> See section 17.3.3.2 of the Digest.

<sup>59</sup> See section 52(1) of the Act.

<sup>60</sup> See section 52(5) of the Act. See also the following Court decisions: *Dussault*, 2003 FCA 372; and *Pilote*, A-868-97.

<sup>61</sup> See GD4-9.

<sup>62</sup> See GD4-9.

<sup>63</sup> See GD2-18 and GD2-19.

Commission, whether in his claims, in answering questions about his training, or on his claimant reports.

[69] 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)**

[70] I find that there is no evidence that the Appellant ought to have known (had "knowledge") that he wasn't entitled to the benefits received.

[71] The Commission argues as follows:

- a) On August 28, 2020, and September 25, 2020, the government issued interim orders to ease the transition from the EI Emergency Response Benefit to the normal EI program.<sup>64</sup>
- b) The goal of these interim orders was to avoid delays in the payment of benefits. Measures were introduced to make sure there were no payment delays just because the claimants had declared training. Even though benefits had been paid, the fact is 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.<sup>65</sup>
- c) Although these measures allowed thousands of claimants to get the benefits they were entitled to within a reasonable time frame, inevitably, some people, like the Appellant, were unfortunately disentitled to benefits later on.<sup>66</sup>
- d) Even though the claims involving training were set up and benefits were paid, the fact is that claimants taking training not authorized by a designated authority were still required by the Act to prove that they were capable of

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<sup>64</sup> See GD4-6, GD4-9, GD6-2, and GD8-2.

<sup>65</sup> See GD4-6, GD4-9, GD6-2, and GD8-2.

<sup>66</sup> See GD4-9.

working and ready to work. Section 153.161(2) of Part VIII.5 of the Act was added precisely so that the Commission could retroactively impose disentitlements.<sup>67</sup>

- e) Concerning the Appellant's argument that the [translation] "designated agents who work for that service" didn't tell him that he wasn't entitled to benefits, the Commission says that call centre agents or citizen services officers have neither the responsibility nor the qualifications to decide a claimant's availability or any other issue. They can provide general information or support for many administrative formalities, but they can't determine entitlement to benefits.<sup>68</sup>
- f) Even though the Appellant finds it unfair that he has to pay back the money he was overpaid in benefits (overpayment), and he is unable to come up with this money, the fact is that he hasn't shown his availability for work while taking training full-time. The Act has to be applied indiscriminately so that it is fair and impartial toward all claimants.<sup>69</sup>
- g) Neither the Commission nor the Tribunal has the jurisdiction to decide liability to return benefits. The Appellant's liability to return an overpayment doesn't stem from a Commission decision. He takes on this liability as a "debtor" and not a "claimant." His recourse for this issue is to apply to the Federal Court of Canada for judicial review. He can also make a payment arrangement with the Canada Revenue Agency (CRA). The CRA collects debts on behalf of Employment and Social Development Canada (ESDC).<sup>70</sup>

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<sup>67</sup> See GD4-9, GD6-2, and GD8-2.

<sup>68</sup> See GD4-9.

<sup>69</sup> See GD4-9.

<sup>70</sup> See GD4-9 and GD4-10.

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

- a) The Appellant applied for benefits after losing his job on January 17, 2021, when his employment contract ended.<sup>71</sup>
- b) He visited the Commission (Service Canada) website and contacted the Commission to find out whether he might be entitled to benefits.<sup>72</sup>
- c) The Commission helped him fill out his application for benefits. On it, he indicated that he was taking training full-time, that he spent 25 hours per week on it, and that he was ready and willing to work.<sup>73</sup>
- d) When he applied for benefits, no Commission representative told him that he would not be entitled to benefits in light of the information he had given to the Commission.<sup>74</sup>
- e) He also didn't know that [translation] "computer systems" were going to process his application for benefits, since the Commission had changed how it processed claims because of the COVID-19 pandemic.<sup>75</sup>
- f) When he made his renewal claim for benefits after he stopped working in August 2021, he followed the same steps as in January 2021. He gave the same answers as in January 2021 and got the same response from the Commission.<sup>76</sup>
- g) He answered the questions about his training correctly by indicating that he was studying full-time, and he received benefits until the end of December 2021.<sup>77</sup>

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<sup>71</sup> See GD2-17, GD2-18, GD3-71, and GD3-72.

<sup>72</sup> See GD2-17 and GD2-18.

<sup>73</sup> See GD2-17, GD2-18, GD3-71, and GD3-72.

<sup>74</sup> See GD2-17, GD2-18, GD3-71, and GD3-72.

<sup>75</sup> See GD2-17 and GD2-18.

<sup>76</sup> See GD2-17, GD2-18, GD3-71, and GD3-72.

<sup>77</sup> See GD2-17 and GD2-18.



- h) He has looked for work while in training.<sup>78</sup>
- i) It isn't fair that he has to pay back the benefits he was overpaid because of the Commission's administrative errors.<sup>79</sup>
- j) The Commission suggested that he challenge its decision.<sup>80</sup>

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

[74] 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.

[75] 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.

[76] 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>81</sup>

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

[78] I note that the Commission had ample opportunity to verify what the Appellant had indicated in his claims, in the training questionnaires, and on his claimant reports. From the moment he applied for benefits in January 2021, the Commission knew that he was taking training full-time and the conditions he could work under.

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<sup>78</sup> See GD2-17, GD2-18, GD3-73, GD3-74, and GD10-3 to GD10-13.

<sup>79</sup> See GD2-17, GD2-18, GD3-71, and GD3-72.

<sup>80</sup> See GD2-17 and GD2-18.

<sup>81</sup> See section 17.3.3 of the Digest.

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

[80] I am of the view that the Appellant could reasonably believe that when his claims were approved and he received benefits, this meant he was entitled to those benefits.

[81] 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.

[82] 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 his claims, in the training questionnaires, and on his claimant reports.

[83] 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.

[84] 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.

[85] 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**

[86] 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 his case.<sup>82</sup>

[87] This means that there is no need to determine whether the Appellant has shown his availability for work while in training for the periods from January 18, 2021, to April 30, 2021, and from September 1, 2021.<sup>83</sup>

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<sup>82</sup> See sections 52 and 153.161 of the Act.

<sup>83</sup> See sections 18(1)(a) and 153.161 of the Act and sections 9.001 and 9.002(1) of the Regulations.

[88] There is also no need to determine whether the Appellant has to pay back the benefits that he was overpaid and that the Commission says he owes.<sup>84</sup>

## **Conclusion**

[89] 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.

[90] So, there is no need to determine whether the Appellant has shown his availability for work while in training for the periods from January 18, 2021, to April 30, 2021, and from September 1, 2021, and whether he is entitled to benefits.

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

[92] This means that the appeal is allowed.

Normand Morin  
Member, General Division – Employment Insurance Section

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<sup>84</sup> See sections 43, 44, and 52 of the Act.