



[TRANSLATION]

Citation: *LC v Canada Employment Insurance Commission*, 2023 SST 984

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

**Decision**

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

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (563334) dated January 20, 2023 (issued by Service Canada)

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**Tribunal member:** Guillaume Brien  
**Type of hearing:** Videoconference  
**Hearing date:** May 11, 2023  
**Hearing participant:** Appellant  
**Decision date:** May 17, 2023  
**File number:** GE-23-316

## Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't shown that the Canada Employment Insurance Commission (Commission) acted in a non-judicial manner when it exercised its discretion under section 153.161 of the *Employment Insurance Act* (Act).

## Overview

[3] The Claimant established a claim for Employment Insurance (EI) benefits effective December 13, 2020.<sup>1</sup>

[4] On September 13, 2021, the automated claims processing system approved the Claimant for regular benefits because he had reported spending one to nine hours per week on his training.<sup>2</sup>

[5] On October 22, 2021, the Claimant completed an electronic questionnaire about his participation in a training course.<sup>3</sup> Among other things, he said that he spent more than 25 hours per week on his studies. It was his personal choice to take training. He was available and capable of working in the same kind of job and under the same or better conditions as he had before the start of his program.

[6] On November 22, 2021, the Claimant testified that he isn't and wasn't available full-time, but only part-time.<sup>4</sup>

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<sup>1</sup> GD3-3 to GD3-12.

<sup>2</sup> GD4-1.

<sup>3</sup> GD3-15 to GD3-18.

<sup>4</sup> GD3-19.

[7] On November 30, 2022, the Commission tried to contact the Claimant. He says that he believed it was a scam and refused to identify himself and answer questions.<sup>5</sup> The Commission then retroactively issued a refusal, explaining that the Claimant took a training course on his own initiative and that he could not show that he was available for work.<sup>6</sup>

[8] On December 11, 2022, the Commission told the Claimant that the disenfranchisement decision resulted in an overpayment of \$2,194.<sup>7</sup>

[9] The Claimant requested a reconsideration on December 13, 2022. He said that he thought that the November 30, 2022, call was fraudulent.<sup>8</sup> He then said that he didn't try to contact the Commission because he was busy and had other things to do besides waiting two or three hours before being able to talk to someone.

[10] On January 19, 2023, the Commission contacted the Claimant to verify the information on file.<sup>9</sup> He was notified the same day by phone that the refusal was being upheld.<sup>10</sup>

[11] On January 20, 2023, a notice of decision was issued informing the Claimant that the previous decision was being upheld.<sup>11</sup> The letter also contained a table explaining the overpayment that he owed.<sup>12</sup> The overpayment is for five weeks of benefits for the weeks of September 5, 2021, to October 3, 2021.

[12] On January 27, 2023, the Claimant filed his notice of appeal with the Social Security Tribunal (Tribunal). He says that he disagrees with using a period after his claim to prove that he wasn't available for full-time work during his claim.

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<sup>5</sup> GD3-20 and GD3-24 to GD3-27.

<sup>6</sup> GD3-21.

<sup>7</sup> GD3-22 to GD3-23.

<sup>8</sup> GD3-24 to GD3-27.

<sup>9</sup> GD3-28 to GD3-29.

<sup>10</sup> GD3-30.

<sup>11</sup> GD3-31.

<sup>12</sup> GD3-33.

## Issue

[13] Did the Commission act judicially when it exercised its discretion under section 153.161 of the Act?

## Analysis

### Section 153.161(1) of the Act

[14] The first paragraph of section 153.161 of the Act says that a claimant who attends a non-referred training program (that is, one they attend voluntarily) isn't entitled to be paid benefits for any working day in a benefit period for which the claimant is unable to prove that on that day they were capable of and available for work.

[15] This means the requirement that a claimant prove their availability applies throughout their claim for each working day in a benefit period.

[16] In his notice of appeal, the Claimant argued that the Commission used a period after his claim to prove that he wasn't available for full-time work during his claim.

[17] I disagree. The record shows that the Commission used the fall 2021 and winter 2022 university terms to determine the Claimant's availability. The overpayment that resulted covers the five weeks from September 5, 2021, to October 3, 2021. So it covers the fall 2021 term.

[18] The January 19, 2023, conversation between the Commission and the Claimant showed the following:

- a) The Commission focused on the fall 2021 and winter 2022 terms in reviewing the Claimant's availability.
- b) The Claimant said that he started his classes on September 8, 2021, and finished his classes on December 20, 2021.
- c) He says that his classes were full-time.
- d) He was in his fifth term out of eight. The training lasted four years.

- e) He was taking 21 hours of classes per week, and he was studying 3 to 4 hours per week—spending a total of about 25 hours on his training.
- f) He had an academic internship from November 8, 2021, to December 20, 2021. That internship was full-time Monday to Friday from 9 a.m. to 4 p.m. He had four internships per year.
- g) The course schedule was fixed and not subject to change.
- h) The winter 2022 term started on January 8, 2022, and ended on April 20, 2022.
- i) The Claimant says that he didn't work from October 11, 2021, to January 6, 2022.
- j) The Claimant says that he was capable of full-time work but only after classes and on weekends.
- k) The Claimant was looking for jobs only on the internet and only for food service jobs because of his course schedule.
- l) He says that he isn't and wasn't looking for daytime jobs because of his tight schedule of classes during the day.
- m) He says that he worked about 15 hours per week while in school and that he maintained this number of hours worked during the winter 2022 term.
- n) He says that he has never worked and studied full-time at the same time in his life.
- o) He says that he would be available for full-time work as of April 20, 2023, when his training is completely done.

[19] The information for the fall 2021 and winter 2022 terms is essentially the same, since the Claimant studied full-time and worked about 15 hours per week and had to complete mandatory full-time internships during both terms.

[20] After reviewing the record and hearing the Claimant, I have no reason to believe that the Commission considered any period after his claim for benefits to prove that the Claimant wasn't available for full-time work.

[21] The fact that the Commission asked for information about the winter 2022 term simply shows a desire to make an informed decision based on all the available information. Since the Claimant's information was similar for both terms, this information could not have unfairly affected the Claimant's non-availability decision.

### **Section 153.161(2) of the Act**

[22] The second paragraph of section 153.161 of the Act gives the Commission discretion to verify, at any point after benefits are paid to a claimant, that the claimant was entitled to them by requiring proof that they were capable of and available for work on any working day of their benefit period.

[23] A decision from this Tribunal confirms that the Commission can retroactively verify a claimant's entitlement to benefits they applied for.<sup>13</sup>

[24] Since this power is discretionary, I can intervene only if the Commission exercised its power in a non-judicial manner.

[25] In using its discretion, the Commission must have exercised its discretion in good faith, by considering all factors relevant to the case, and by ignoring irrelevant factors.<sup>14</sup>

[26] I asked the Claimant whether the Commission acted in bad faith in his case. He told me he didn't believe so, but he told me the money was allocated a little too easily. There was no verification when he was asked whether he was available for full-time work. The forms should have a better definition.

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<sup>13</sup> *GV v Canada Employment Insurance Commission*, 2022 SST 872.

<sup>14</sup> *Canada (Attorney General) v Sirois*, A-600-95; *Canada (Attorney General) v Chartier*, A-42-90.

[27] So, I find that, in this case, the Commission didn't act in bad faith in using its discretion. The Commission had a legal right to verify the Claimant's entitlement retroactively, and it did this.

[28] I asked the Claimant whether he felt the Commission had failed to consider a factor relevant to his case. He said again that the forms should have a better definition of full-time availability.

[29] So, I find that the Commission didn't fail to consider a relevant factor in the Claimant's case.

[30] I asked the Claimant whether he thought the Commission had considered an irrelevant factor in its review of his file. He told me that it was the fact it verified his hours of work later on or earlier and didn't take his needs into account. He said that the Commission relied on entirely different periods to determine his needs.

[31] I disagree with the Claimant. The Commission had a legal right to retroactively verify whether the Claimant qualified for benefits he received in advance. As discussed above, the Commission considered the fall 2021 and winter 2022 periods—periods covering the school year in progress at the time of the claim and involving similar facts. Finally, EI benefits aren't based on a claimant's needs. As its name suggests, Employment Insurance is an insurance program that you have to qualify for to get benefits.

[32] So, I find that the Commission didn't consider irrelevant factors in its review of the Claimant's file.

[33] I also asked the Claimant whether there were any exceptional circumstances in his case that might make his situation different from those of other full-time students in a similar situation. He told me that there weren't.

[34] The Federal Court of Appeal has reiterated the principle that a person enrolled in a full-time course is presumed to be unavailable for work—a presumption that can be rebutted only in exceptional circumstances.<sup>15</sup>

[35] After reviewing the record, I find that the Claimant hasn't proven, on a balance of probabilities, that the Commission acted in a non-judicial manner when it made use of its discretion under section 153.161 of the Act.

## **Conclusion**

[36] The appeal is dismissed.

Guillaume Brien  
Member, General Division – Employment Insurance Section

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<sup>15</sup> *Canada (Attorney General) v Gagnon*, 2005 FCA 321.