Citation: *RM v Canada Employment Insurance Commission*, 2023 SST 1478

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	R. M.
Respondent:	Canada Employment Insurance Commission
Representative:	Angèle Fricker

Decision under appeal:	General Division decision dated May 10, 2023 (GE-22-4142)

Tribunal member:	Stephen Bergen
Type of hearing:	In person
Hearing date:	November 2, 2023
Hearing participants:	Appellant
Decision date:	November 10, 2023
File number:	AD-23-586

Decision

[1] I am allowing the appeal. The General Division made errors in how it reached its decision. I have corrected those errors and made the decision that the General division should have made.

[2] The Claimant was available for work and not disentitled for certain additional periods, namely, April 2021, September 2021, and October 2021.

Overview

[3] R. M. is the Appellant. He applied for Employment Insurance (EI) benefits so I will call him the Claimant. The Claimant is in Canada on a Study Permit. When he applied for EI benefits, he had just lost a part-time job that he had held while he was going to school in Canada.

[4] The Respondent, the Canada Employment Insurance Commission (Commission) approved the claim and paid him EI benefits. However, it later decided that he should not have received benefits during three different periods because he was a student and not available for work. It would not change this decision when the Claimant asked it to reconsider.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed his claim. It agreed with the Commission that he was not available for work. The Claimant next appealed to the Appeal Division.

[6] I am allowing the appeal in part. The General Division made errors of fact and an error of jurisdiction in how it reached its decision. I have made the decision that the General Division should have made. I decided that the Claimant was available for work and not disentitled for certain additional periods, namely, April 2021, September 2021, and October 2021.

Preliminary Issue

New Evidence

[7] The Claimant included a document from his university with his application to the Appeal Division.[1]

[8] With very limited exceptions, the Appeal Division cannot consider new evidence.[2] This document does not meet any exception for the consideration of new evidence, and I will not be considering it.

[9] In his hearing, the Claimant occasionally strayed into areas that had not been part of the General Division record. I told the Claimant that I would not be considering anything that he told me unless it was already on the record.

Application of presumption of non-availability

[10] The General Division found as fact that the Claimant was not a full-time student. Because of this finding, it did not consider the presumption of non-availability for full-time students.

[11] The Claimant initially argued that the General Division made an error and should have accepted that he was a full-time student. However, he explicitly abandoned this argument at his hearing.

[12] The Commission asserted in its submissions that the evidence before the General Division supported a finding that the Claimant was a full-time student. At the same time, the Commission conceded that this was not a reviewable error within the available grounds of appeal. It said this because the General Division had not based its decision on the finding.

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[1] See AD1-9.

[2] Although the context is somewhat different, the Appeal Division applies the same exceptions as those that were listed by the Federal Court of Appeal in *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8 and by the Federal Court in *Greeley v Canada (Attorney General)*, 2019 FC 1493 at para 28.

[13] Neither party is asserting that the General Division's finding represented a reviewable error of fact. Therefore, I will not consider whether the General Division properly found that the Claimant was a part-time student.

Issues

[14] The issues in this appeal are.

a) Did the General Division make an error of fact when it found that the Claimant did not desire to return to work based only on evidence that the Claimant did not look for work for a period?

b) Did the General Division make an error of fact when it found that the Claimant did not expand his job search to different kinds of work?

c) Did the General Division make an error of jurisdiction when it decided that the Claimant had not made reasonable and customary job search efforts?

Analysis

[15] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

a) The General Division hearing process was not fair in some way.
b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
c) The General Division made an error of law when making its decision.
d) The General Division based its decision on an important error of fact.[3]

[3] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

Error of fact

[16] Although the General Division found that the Claimant was a part-time student only, it decided that he was not capable of or available for work.[4] To do so, it considered each of three factors in the test for availability. I will call this the *Faucher* test.[5]

[17] The General Division made errors in how it evaluated each of the factors in the *Faucher* test.

– The first Faucher factor: Desire to return to work

[18] The first *Faucher* factor requires that a claimant desire to go back to work as soon as a suitable job was available.

[19] The General Division made an error of fact when it found that he did not desire to return to work based only on evidence that the Claimant did not look for work for a period.

[20] The General Division decision states that the Claimant said that he was overwhelmed by caring for his wife, getting her mother to help, and also completing his education. It also noted that the Claimant stated he did not look for work "during this time." From this, the General Division concluded that the Claimant did not want to go back to work.

[21] At his Appeal Division hearing, the Claimant argued that his desire to work and his job search efforts are not the same thing. He acknowledged that he told the General Division that there was a period when he was not looking for work for a period and that this was due to his wife's pregnancy. However, he never said that he did not want or need to find work.

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[4] See section 18(1) of the *Employment Insurance Act*.
[5] The test for availability is found in a Federal Court of Appeal decision cited as *Faucher v. Canada (Attorney General)*; A-56-96, A-57-96.

[22] That the Claimant may have ceased searching for work for some period is clearly relevant to the second *Faucher* factor. The second *Faucher* factor is the one that concerns whether the Claimant expressed his desire through a job search.

[23] However, either the "desire" factor or the "job search effort" factor would be redundant if a claimant could be found to have no desire to return to work solely based on the existence or sufficiency of his job search.

[24] *Faucher* did not intend for these factors to be redundant. *Faucher* decided that it is improper to make a finding on availability by considering only one of the three factors. This necessarily implies that each factor must be evaluated by considering some circumstance or circumstances that distinguish it from the other factors.

[25] I do not accept that the Claimant's lack of desire can be proven based only on evidence that he was not looking for work. But even if this were enough to show a lack of desire, it could only speak to his desire during the period in which he was not seeking work.

[26] Section 18(1) of the *Employment Insurance Act* (EI Act) states that a claimant is disentitled to benefits for **each working day** for which they cannot prove that they are capable and available for work. It does not permit the Commission to extend the disentitlement beyond the period in which the Claimant is unable to prove availability.

[27] The General Division failed to define the period in which the Claimant stopped looking for work because of his wife's pregnancy.

[28] The Claimant testified that he was not looking for work for about two months around the time that his baby was born.[6] He testified that his baby was born August 28, 2021. However, he also testified that he had attended a job interview on July 25, 2021, one month before the birth of his baby.[7] So, the evidence could support a finding that he

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[6] Listen to the audio recording of the General Division at timestamp 49:30.
[7] Listen to the audio recording of the General Division at timestamp 44:15.

did not look for work due to his wife's pregnancy - but only for a maximum of two months beginning from July 25, 2021.

[29] If the General Division heard correctly and the Claimant stopped working because of difficulties with his wife's pregnancy, he could not have stopped his search for work for two months.[8] He could only have stopped for about one month; between July 25 and August 28, 2021.

[30] The disentitlement decision that was before the General Division concerned periods from March 29 to April 9, 2021, September 3 to December 3, 2021, and from January 22, 2022, forward (the "disentitlement periods"). July 25 to August 28, 2021, does not overlap with any of the disentitlement periods. The Claimant's failure to look for work at this period could not establish that he did not meet the second *Faucher* factor during any part of any of the disentitlement periods that were before the General Division.

[31] On the other hand, if the Claimant stopped working for a period because of difficulties *associated* with his wife's pregnancy around the birth of his son, that period may have gone beyond the birthdate and into the second disentitlement period.

[32] In any event, the fact that the Claimant did not look for work for a specific period does not permit the General Division to generalize to other periods. It does not support a finding that the Claimant did not satisfy the second *Faucher* factor for the entirety of all the disentitlement periods. This is an error of fact.

[33] I appreciate the Commission's argument that the General Division did not imply that the Claimant's wife's pregnancy applied to his desire to work for all the disentitlement periods. However, I disagree. The General Division must look at all of the *Faucher* factors for each period in which the Claimant is disentitled. Therefore, it must consider whether he had the desire in each of the disentitlement periods. Because the

[8] The General Division referred to difficulties with the Claimant's wife's pregnancy, but the audio recording is not clear if the pregnancy itself was difficult or if the Claimant's difficulties were associated with the pregnancy.

General Division did not rely on any other evidence to find that the Claimant did not have the desire to work, I must assume that the General Division found that his wife's pregnancy was the reason he did not have a desire to return to work throughout all the disentitlement periods.

[34] The Commission did not attend the oral hearing, so I was unable to ask it to clarify its submissions. But if the Commission meant to argue that his wife's difficult pregnancy was only one of the circumstances that the General Division relied on, and that it was actually basing its conclusion on a broader array of "personal circumstances" spanning a longer period, I still disagree.

[35] The General Division found that the Claimant did not look for work because of a combination of circumstances over a couple of months, but what was going on with his wife's pregnancy caused or exacerbated all those circumstances. The evidence did not support a finding that the Claimant was not looking for work in periods unaffected by his wife's pregnancy, where one or more of those other circumstances may have been present. I do not interpret the decision to be saying that.

– The other Faucher factors: "Job search efforts" and "setting personal conditions"

[36] The second *Faucher* factor concerns the claimant's job search efforts.

[37] There was evidence that the Claimant had registered for "bank job," Indeed, and LinkedIn.[9] He told the General Division that he checked the "job bank," that he made six job applications, and that he had one interview.

[38] The General Division decided that the Claimant's job search efforts were not enough for two reasons. It found that he did not follow up with the employers to whom he applied, and that he should have expanded his job search to other kinds of work.

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[9] See GD3-42.

[39] The General Division again relied on the finding that the Claimant had not expanded his job search to also conclude that the Claimant did not meet the final *Faucher* factor; that he unduly limited his chances of finding work.

[40] The General Division made an error of fact by ignoring evidence that the Claimant applied to jobs that were outside of his usual occupation.

[41] As I noted in the leave to appeal decision, there was evidence that the Claimant applied to a variety of jobs, and not just to his usual occupation.

a) The Claimant's usual occupation was given as "construction," but his Record of Employment indicated that he was employed as a handyman. The title "handyman" suggests a position requiring a variety of skills and tasks.

b) The Claimant's Training Course Information form stated that the Claimant could work at painting, landscaping, or flooring.

c) The Claimants' Job Search Form documented his efforts to find work as a Walmart cashier, a textile pattern maker, a labourer, a Best Buy sales adviser, and an office coordinator.[10]

d) The Claimant testified that he was looking for work in construction as either a painter or labourer.[11] He said that he also applied as an office coordinator.[12] He suggested that he applied to other jobs when he heard they were hiring.[13] He also stated that he had been willing to take "handy work such as moving" that did not require great English language skills.[14]

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[10] I note that one or more of these job applications appears to be dated as occurring in 2022. However, the form on which they are noted is itself dated January 26, 2022, so I read the year of all the applications listed as 2021.
[11] Listen to the audio recording of the General Division at timestamp 42:55.
[12] Listen to the audio recording of the General Division at timestamp 43:20.
[13] Listen to the audio recording of the General Division at timestamp 46:30.
[14] Listen to the audio recording of the General Division at timestamp 48:10.

[42] The General Division did not mention any of this evidence when it found that the Claimant should have expanded his job search[15] It relied on its finding that he should have expanded his job search for two conclusions. It used it to conclude that the Claimant's job search efforts were inadequate. It also used it to conclude that he set personal conditions that unduly limited his job search.

Error of jurisdiction

[43] The General Division made an error of jurisdiction by considering whether the Claimant should be disentitled for not having made "reasonable and customary" efforts. This issue was not before the General Division. Neither party argued that the General Division made a decision that it did not have the power to make. Still, I cannot confirm any part of the decision that was outside the General Division's jurisdiction.

[44] According to section 50(1) of the EI Act, the Commission may disentitle a claimant for failing to comply with a request under section 50(8) to supply proof of reasonable and customary efforts. Reasonable and customary efforts" is defined by section 9.001 of the *Employment Insurance Regulations.* The regulation lists a number of job search activities, and says that such efforts must be "sustained."

[45] However, the EI Act does not authorize the Commission to disentitle a claimant because they do not make reasonable and customary efforts. Under section 50(1), a claimant may be disentitled for refusing to comply with a Commission request for information. This includes proof of reasonable and customary efforts.

[46] There is no suggestion in the file that the Claimant failed to comply with a request to provide proof of reasonable or customary efforts. The Commission did not decide to disentitle him for failing to comply with such a request.

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[15] It acknowledged elsewhere in its decision that the Claimant testified to handing out resumes at places like Walmart.

[47] The reconsideration decision shows that the Claimant was disentitled because he was not available for work under section 18(1) of the EI Act. The General Division may only consider the issues that the reconsideration decision addressed.[16]

[48] The Claimant exceeded its jurisdiction when it decided that he was disentitled for not having made reasonable and customary efforts.

Remedy

[49] I have found an error in how the General Division reached its decision, so I must now decide what I will do about it. I can make the decision that the General Division should have made, or I can send the matter back to the General Division for reconsideration.[17]

[50] The Claimant has asked that I make the decision the General Division should have made. He believes I have evidence on each issue that I need to decide.

[51] The Commission did not take a position on what I should do if I find an error. However, much of its submission highlights additional evidence that the General Division might have used to support its decision. If I were making the decision that the General Division should have made, these submissions could be relevant.

[52] I accept that the appeal record is complete and that I may make the decision that the General Division should have made. My decision follows.

Presumption of non-availability

[53] Neither party has suggested that the General Division made a reviewable error when it decided that the presumption of non-availability does not apply. I have not considered it, which means I have not found that the General Division made any error on this issue.

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[16] See section 113 of the EI Act.
[17] See section 59(1) of the DESDA.

[54] Therefore, I have no reason to intervene to disturb this part of the General Division's decision.

Availability for work

– What is suitable employment?

[55] The Claimant told the General Division that he only wanted to find part-time work, and that he was only looking for part-time work. According to how he understood the terms of his Study Permit at the time, he was not permitted to work for more than 20 hours per week.

[56] The Claimant's main argument was that he should not be required to be available for full-time work. He said that his previous employment had been part-time and that he had paid EI premiums on that part-time employment. He noted that he had accumulated the hours he needed to qualify for benefits from part-time employment.

[57] Section 18(1)(a) of the EI Act requires that a claimant be capable of and available for "suitable employment." If full-time work is not "suitable employment," then I will not need to consider that the Claimant was only available for part-time work.

[58] The Regulations define "suitable employment" having certain characteristics. It is work that a claimant is physically capable of accessing and performing. It must also be compatible with a claimant's family obligations or religious beliefs. Finally, it cannot be contrary to the claimant's moral convictions or religious obligations.[18] The Regulations do not suggest that suitable work is work that is similar in any way to the claimant's work history.

[59] Section 6 of the EI Act also has something to say about suitable employment. It allows that work may not be suitable for a reasonable interval, where it is on conditions less favourable than those a claimant might reasonably expect to obtain, having regard to their usual employment.

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[18] See section 9.04 of the EI Regulations.

[60] In my view, section 6 does not assist the Claimant. I think it would be a stretch to find that a job that offers only full-time hours is offering less favourable conditions than a job that offers part-time hours.

[61] However, the Federal Court of Appeal recently released a decision that is helpful to understand "suitable employment." In *Page v Canada (Attorney General)* the Court considered the case of another full-time student with a history of part-time work.[19]

[62] With reference to the meaning of "suitable employment," the Court stated that it was **not** an error of law … to conclude that a claimant is available if they are available for employment in accordance with their previous schedule.[20] It also said that this would be consistent with other EI Act provisions and regulations that require claimants to pay premiums from their part-time wages.[21]

[63] The Court in *Page* also noted that the nature of work has changed over time and that jobs with regular evening hours or irregular hours were more prevalent.[22] It said that case law has not established a "bright-line rule" to disentitle students even where they are required to attend classes full-time during weekday hours, Monday to Friday.[23]

[64] The Commission argues that the facts were different in *Page* and that the decision does not apply here. It noted a number of differences:

- The claimant in the *Page* decision had worked for seven months, while the Claimant only worked three.
- In *Page*, the claimant worked part-time but often 30 hours per week (The Claimant here only worked 20 hours per week).

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[19] See the decision in *Page v Canada (Attorney General),* 2023 FCA 169.
[20] Ibid. para 70.
[21] Supra note 19, para 71.
[22] Supra note 19, para 54.
[23] Supra note 19, para 49.

- It noted that the Claimant would not even have qualified for benefits if not for a temporary reduction in the number of hours required because of Covid.

- The Commission also noted that the Claimant had an additional restriction that did not affect the claimant in Page. The Claimant was only legally allowed to work 20 hours per week.

- Finally, the Commission noted that the Claimant was not looking for work for a period preceding the birth of his child.

[65] I agree that *Page* would not help the Claimant to prove his availability over periods in which he was not looking for work. *Page* allowed that the claimant was available during an extended period in which he was not looking for work. The Court said that there was no hard and fast rule that a claimant must immediately engage in a job search in all circumstances.

[66] However, the Claimant's circumstances were significantly different in this regard. In *Page*, the claimant worked in the hotel industry which was particularly hard hit by Covid closures. His employer held out hope that the hotel would reopen and that he would recall the claimant to work, but continued to postpone the reopening date. The claimant was not working while he was waiting for his employer to reopen.

[67] In this case, the Claimant did not look for work for a period for reasons that had nothing to do with a recall or an anticipated employment opportunity.

[68] However, I see no reason any of the factual distinctions identified by the Commission mean that I should not apply other principles from the *Page* decision. The Commission is correct that the Claimant's Study Permit only permitted him to work 20 hours per week, that he had only worked 20 hours per week, and that he had only worked for three months before he claimed EI benefits. However, this does not mean that I cannot find that the Claimant was available for work if he was available "according to his previous schedule."

[69] *Page* implied a policy justification for allowing suitability to consider a claimant's previous schedule: It said that it is consistent with provisions of the EI Act and regulations that require students to pay EI premiums from their part-time wages. [24]

[70] On these facts, the EI Act should not be interpreted in such a way as to require the Claimant to demonstrate his availability by conforming to a full-time pattern of work. His previous pattern was working 20 hours a week outside his school schedule. He paid EI premiums to insure him against the loss of that part-time job.

[71] The EI Act took into account the Claimant's limited earnings as a part-time student when it calculated his benefit rate. The Claimant might reasonably expect that EI would pay him those benefits while he looked for a way to find another part-time job that would allow him to continue his school.

[72] The Commission does not think three months of part-time is sufficient to establish a pattern of work. However, the Claimant does not have any other work history in Canada. He has only ever worked part-time, and he has never worked more than 20 hours per week. In one sense, there could not be a clearer pattern. He worked part-time for three out of three months of employment.

[73] I find that the Claimant has a history of part-time employment while attending school, and that he should only be required to prove his availability for work according to his previous schedule. In this claimant's circumstances, "suitable employment," is employment not exceeding 20 hours per week.

[74] Having said that, I must still consider the *Faucher* factors to determine whether the Claimant was available.

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[24] Supra note 19, para 71.

– **Did the Claimant have a desire to return to work as soon as suitable employment was available?**

[75] The Claimant testified that he needed money and that he wanted to work even during his wife's pregnancy. While there may have been a period of about two months associated with the pregnancy in which he was not applying for work, he still attended an interview one month before his baby was born on August 28, 2021.

[76] The Claimant searched for work but discovered that many jobs were seeking full-time employees. I have found that full-time employment was not suitable for him. He only needs to show that he has the desire to return to work at suitable employment.

[77] The Claimant had school and family commitments, which may have meant that he was not thinking of finding work at every moment, but I am satisfied that he had the desire to return to suitable employment for the entirety of each disentitlement period.

– **Did the Claimant express that desire through job search efforts?**

[78] The Claimant testified that he was not, but he thinks that there was a period of about two months[25] around the birth of his baby, when it was a "hard time" and he did not look for any jobs. However, his only interview occurred on July 25, 2021, so the "two months" could not all have been before the baby was born. Furthermore, his Job Search Form shows two applications on September 13 and 14, 2021, which does not allow a full two months between his interview and the applications.

[79] The only way I can reconcile this is to accept that the period of "two months" is a rough estimate and I find that the period between his July 25 interview and his mid-September applications is this "hard time" in which he was not applying for work. I appreciate that this period goes beyond the birthdate of the Claimant's baby, but he was not specific as to when the two months occurred. He did not even specify that the period related only to prenatal difficulties. He referred to the difficulties he was having "at that time."

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[25] Listen to the audio recording of the General Division at timestamp 49:50.

[80] I accept that the Claimant did not apply for any jobs between July 26, 2021, and September 12, 2021.

[81] Beyond the one interview (which was between disentitlement periods), the Claimant's job search efforts were comprised of reviewing online job boards and handing out his resume in-person. He applied for only six jobs. He said that his prospects were limited because he only wanted part-time work. He also said that he applied only to those jobs he felt he was able to do; that were "suitable."[26] He did not feel his English was good enough for some jobs, and he gave a cashier job as an example. He said that he would have had trouble answering any questions from customers.

[82] I have listened to the audio recording of the General Division hearing from May 2023. Even then, the Claimant demonstrated difficulty in understanding English, and making himself understood in English. He relied often on the assistance of his interpreter. At his Appeal Division hearing in November 2023, he again appeared with an interpreter. He chose to communicate in English for the most part. While it was clearly challenging for him, I believe that he would have had sufficient English skills for the kind of conversation required of a cashier or similar customer-service job.

[83] Nonetheless, the Claimant has been in Canada for about a year and a half since he was on benefits and required to job search, and he has been going to school in Canada for part of that time. He has had both time and opportunity to significantly improve his English skills, and I would be surprised if he had not.

[84] I accept that he had significant difficulty communicating in English at the time that he was collecting benefits. I accept that any job requiring anything more than short and simple interactions in English would have exceeded his physical capability. That means that many or most customer service jobs would not have been "suitable employment."

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[26] Listen to the audio recording of the General Division at timestamp 33:50.

[85] I also accept that the Claimant was looking for suitable jobs of which he was capable, and not limiting his job search to those jobs that he "wanted" to do. It is clear from his testimony that he hoped to find work in construction, and it is reasonable for a claimant to put more effort into finding employment in an occupation in which they have experience or qualifications. However, the Claimant did not do this exclusively. He stated his willingness to take a job in a variety of occupations and demonstrated that willingness through his applications to other kinds of jobs.

[86] Like the General Division, I am troubled by the fact that the Claimant applied to only six jobs over nearly a year while he received benefits. Even where opportunities are limited, it is insufficient to apply for only six jobs over this long a period. This cannot support the Claimant's availability for his entire disentitlement.

[87] I understand that the Claimant's job search efforts included registering for job banks and reviewed job opportunities, and that he attended one interview. But there is little downside to applying—even where it seems unlikely that it will produce an interview and job offer. It is usually simple, quick, and free to apply through online job banks.

[88] At the same time, I appreciate that the Claimant's opportunities were limited to part-time work which did not require significant interaction with the public. This would have significantly limited the number of job opportunities to which the Claimant could have applied. Furthermore, I take judicial notice that there were continuing or residual impacts of Covid lockdown policies that likely limited the employment opportunities throughout 2021.

[89] Therefore, I find that the Claimant's job search efforts satisfied the second *Faucher* factor for the months of April 2021, September 2021, and October 2021 (from within the disentitlement periods). In each of those months, the Claimant made at least one application.

[90] Earlier, I found that the Claimant did not make an application between July 25 and September 13, 2021. This would include some September days within the second disentitlement period. Despite this, I still accept that the Claimant engaged in job search activities for the entire month of September. Applications normally follow from identifying a prospect through a review of employment opportunities. Where applications result in interviews, this is generally at some later date. The Claimant was registered on multiple job banks. Given his part-time and language constraints, he may well have reviewed a large number of opportunities for each application he made.

– **Did the Claimant unreasonably limit their re-employment opportunities by setting personal conditions?**

[91] I have found that full-time work is not suitable work for the Claimant, given his history in Canada of part-time work only. The conditions of the Claimant's Study Permit are not a "personal condition." Nor is the Claimant's limited ability in English.

[92] Within those constraints, the Claimant was willing to accept employment in a variety of jobs, with a variety of working conditions.

[93] The Claimant did not set personal conditions that unreasonably limited his job search at any time during his disentitlement periods.

– **When was the Claimant available?**

[94] The Claimant satisfies the first and third *Faucher* factor throughout the entirety of his three disentitlement periods. He satisfied the second *Faucher* factors only in April 2021, September 2021, and October 2021. These are the only months (of those in the reconsideration periods other than those months in which the Commission has already found that the Claimant was available) in which the Claimant satisfied all three of the *Faucher* factors.

[95] Of those periods for which the Commission disentitled the Claimant, I find that the Claimant remained available for April 2021, September 2021, and October 2021.

Conclusion

[96] I am allowing the appeal. The General Division made errors of fact in considering each of the *Faucher* factors and an error of jurisdiction in assessing the Claimant's disentitlement for not having shown that he made reasonable and customary job search efforts.

[97] I have made the decision the General Division should have made. The Claimant was available for work and should not be disentitled to benefits for April 2021, September 2021, and October 2021.

[98] He remains disentitled from March 29 to March 31, 2021, from November 1 to December 3, 2021, and from January 22, 2022, forward.

Stephen Bergen
Member, Appeal Division