Citation: *JG v Canada Employment Insurance Commission*, 2023 SST 2005

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	J. G.
Representative:	R. V.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (623227) dated October 11, 2023 (issued by Service Canada)

Tribunal member:	Elyse Rosen
Type of hearing:	Teleconference
Hearing date:	November 21, 2023
Hearing participants:	Appellant Appellant's representative
Decision date:	November 24, 2023
File number:	GE-23-3041

Decision

[1] The appeal is allowed.

[2] The Appellant has shown that he was available for work. So, he's entitled to receive Employment Insurance (EI) benefits.

Overview

[3] The Appellant was laid off from his job on March 1, 2023. He was told he would be recalled by the end of May 2023.[1]

[4] He applied for, and began receiving, EI benefits.

[5] The Appellant's son suffers from severe autism, as well as other emotional and cognitive issues. The provincial youth protection authorities took custody of his son, who was exhibiting violent behaviour. Proceedings ensued. It was ultimately determined that the Appellant's son, who had been living with his mother, should be placed with the Appellant. This is what was determined to be in the child's best interest.

[6] While the proceedings were pending, the Appellant informed his employer that he would likely not be able to return to work at the end of May, as had been agreed at the time of his lay off. This is because his son's custody was still up in the air. His employer agreed to push back his return to work to June 15, 2023.

[7] On May 15, 2023, the youth protection authorities turned over custody of the Appellant's son to the Appellant. That same day, the Appellant's employer called him back to work, despite having agreed to give him until June 15, 2023, to resolve the matter of his son's care.

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[1] The Commission has produced notes of a conversation where it states that the Appellant would have said he wasn't laid off (see GD3-36). However, the employer confirmed that the Appellant was laid off on March 1, 2023, and the Appellant and his wife both testified to that effect. I conclude that the Commission's notes are incorrect. The evidence is clear that between March 1, 2023, and May 15, 2023, the Appellant was on lay-off.

[8] The Appellant told his employer he wasn't in a position to return, as he had to care for his son until he could make other arrangements for him. His employer wasn't prepared to give him more time to do that.

[9] The Canada Employment Insurance Commission (Commission) decided it couldn't pay the Appellant benefits as and from March 6, 2023, because he hadn't shown that he was available for work.

[10] It issued a notice of debt calling upon the Appellant to repay the benefits he received for the weeks of March 5 to July 16, 2023.

[11] The Appellant says that he was, and continues to be, available for work.

[12] He says that prior to May 15, 2023, he wasn't actively looking for work because he had an expected recall date in the near future. He says it didn't make sense to try to find other work, only to have to quit when he was recalled by his employer.

[13] After May 15, 2023, when he obtained custody of his son, he did look for work, but wasn't able to find anything suitable. This is because his son needed constant care and he wasn't able to make any other arrangements for him, despite making every effort to do so.

Issues

[14] Was the Appellant available for work between March 1 and May 15, 2023? This is the period during which the Appellant had been laid off.

[15] Was the Appellant available for work after May 15, 2023? This is the date he resigned because his childcare obligations prevented him from returning to work.

[16] Can the Appellant be considered to be available even though his childcare obligations would make most jobs unsuitable for him?

[17] Did the Commission exercise its discretion judicially when it reconsidered the Appellant's entitlement to benefits and asked him to repay the benefits he had received?

Matters I have to consider first

There are two appeals before the Tribunal

[18] The Appellant has appealed two separate decisions of the Commission—one regarding his disqualification from receiving benefits for voluntarily leaving his job, and a second decision regarding his disentitlement to receive benefits because of his lack of availability. I have written separate decisions for each appeal. The present decision relates only to the issue of availability.

[19] In the other matter, I found that the Appellant isn't disqualified from receiving benefits because he had just cause to leave his job.

[20] To minimize the time and effort the Appellant had to devote to the appeals, and in order to avoid delays, I scheduled one hearing for both issues.

[21] I find that despite there having been only one hearing, the Appellant isn't prejudiced by there being two separate decisions. Each appeal raises a separate issue that is independent from the other. And, the appeals arise from two separate reconsideration decisions. So, having two separate decisions makes each decision clearer and more concise. It also allows the Appellant to appeal either decision further if he so chooses.

Documents were added to the record

[22] At the hearing the Appellant said that although the Commission's notes say that he told them he didn't have a resumé, wasn't on any online job sites, and hadn't been looking for work, this wasn't true. He said he would provide documents to support his testimony to this effect.

[23] The Appellant sent the Tribunal the documents he had referred to during his testimony. These documents have been labelled GD6.

[24] I haven't given the Commission an opportunity to provide submissions on GD6 because:

- they aren't late documents
- the Commission chose not to attend the hearing
- in his original statement to the Commission the Appellant said he was looking for work, so the documents shouldn't take the Commission by surprise[2]
- providing the Commission with a delay to respond will further delay my decision, and the Appellant has been without benefits for some time
- there aren't any other fairness considerations that would require me to do so

[25] So, GD6 will form part of the record.

Analysis

[26] Not everyone who stops working can get EI benefits.

[27] One of the things you have to show to get EI benefits is that you are available for work, but unable to find a suitable job.

[28] Two different sections of the law require claimants to show that they are available for work.

[29] The law says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.[3] It also says that a claimant has to prove that they are "capable of and available for work" but aren't able to find a suitable job.[4] Case

[2] See GD3-21.
[3] See section 50(8) of the *Employment Insurance Act* (Act).
[4] See section 18(1)(a) of the Act.

law says a claimant has to prove three things to show that they are "capable of and available for work."[5] I will explain what those three things are, below.

[30] The Commission says that the Appellant can't get benefits because he hasn't shown he is available for work based on both of these sections of the law. However, the Commission can't refuse to pay a claimant benefits for failing to show that they are making reasonable and customary efforts to find a job if they don't first ask the claimant to provide proof of their job search.

[31] I have no evidence that the Commission asked the Appellant to prove that he was making reasonable and customary efforts to find a job.[6] So, I'm not going to consider that section of the law. I'm only going to look at whether the Appellant was capable of and available for work.

Was the Appellant capable of and available for work?

[32] I find that the Appellant was capable of and available for work both during his lay-off, and after he took custody of his son.

[33] As mentioned above, case law sets out three things I must consider when deciding whether the Appellant was capable of and available for work, but unable to find a suitable job.

[34] The Appellant has to prove the following three things (which are commonly called the Faucher factors):[7]

1) He wanted to go back to work as soon as a suitable job was available.

2) He made efforts to find a suitable job.

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[5] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[6] In fact, there is evidence that he was never asked to prove his job search (see GD3-36).
[7] These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision uses plain language to describe them.

3) He didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[35] When I consider each of the Faucher factors, I have to look at the Appellant's attitude and his conduct. I also have to consider all of the circumstances that might impact his availability.[8]

[36] Claimants only have to prove their availability for suitable employment.[9]

[37] The law doesn't define what suitable employment is, but it does provide some guidance as to what might make employment unsuitable.[10] Suitability depends on a person's usual occupation, personal circumstances, past earnings, previous working conditions, and restrictions related to their health, religious beliefs, and family obligations.

[38] The Appellant's circumstances were quite different before and after May 15, 2023, which is the date at which he took custody of his son. So, when I decide if he's met the Faucher factors, I'm going to treat the period before May 15, during which the Appellant was laid-off, and the period after May 15, when the Appellant had to care for his son, separately.

– **Wanting to go back to work**

[39] I find that the Appellant wanted to go back to work, both prior to and after May 15, 2023.

[8] Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.
[9] See section 18(1) of the Act.
[10] See section 6 of the Act and section 9.002 of the *Employment Insurance Regulations* (Regulations).

i. Prior to May 15, 2023

[40] The Appellant testified that when he was laid off on March 1, 2023, he was told he would be recalled by May 31, 2023.[11] He had every expectation that he would be back at work by May 31, 2023, or sooner.

[41] He says that up until May 15, 2023, when he took custody of his son, he wanted to return to work with his employer. And he intended to return as soon as his employer recalled him. He claims that had he been recalled to work prior to May 15, 2023, he would have returned.

[42] I believe the Appellant's testimony regarding his intention to return to work as soon as he was recalled. And I have no evidence to the contrary. So, I find that prior to May 15, 2023, he wanted to return to work.

ii. After May 15, 2023

[43] Once the Appellant took custody of his son, returning to work with his employer was no longer possible. This is because his son required his constant care.

[44] The Appellant confirmed at the hearing that despite taking custody of his son, he continued to want to work. But his current employment was no longer suitable, given that the hours he was required to work now conflicted with his family obligations.

[45] I believe the Appellant when he says he wanted to work after May 15, 2023.

[46] He asked his employer for more time to make arrangements for his son so that he could return to work, but his employer refused. His request for more time demonstrates that his intention was to return to work, and that he truly wanted to work, but was constrained from returning immediately.

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[11] I believe his testimony, even though his record of employment indicates that his date of recall was unknown. This is because he indicated a May 31, 2023, date of recall on his application for benefits (see GD3-7).

[47] He testified that he has to work in order to be able to finance his son's special needs. He claims that not working has been very difficult financially. It has created a vicious circle where he can't return to work, because he can't afford to hire someone to help care for his son. And he can't afford to hire someone, in part because he isn't working.

[48] He maintains that he would much prefer to work than to be home.

[49] He's looked into obtaining training to acquire skills that would open up other job opportunities for him.

[50] As set out below, he made serious efforts to find another job that would be compatible with his family obligations. And he made serious efforts to find childcare for his son so that he could be more available to work.

[51] I find that the Appellant's attitude and conduct demonstrate that he wanted to work both before and after May 15, 2023.

– **Making efforts to find a suitable job**

[52] I find that the Appellant made enough effort to find a suitable job, both before and after May 15, 2023.

i. Before May 15, 2023

[53] The Appellant testified that prior to May 15, 2023, he wasn't looking for another job. He was assured by his employer that he would be called back to work by May 31, 2023, and had every expectation that he would be.

[54] Case law confirms that a claimant who has been laid off, and who expects to be called back within a reasonable amount of time, isn't necessarily required to look for work immediately.[12]

[12] See *Page v Canada (Attorney General)*, 2023 FCA 169, at paragraph 82 of the decision.

[55] Three months has been considered a reasonable amount of time to wait to be recalled before looking for work.[13]

[56] In all events, from the evidence, I find that the Appellant's best chance of returning to the workforce quickly after March 1, 2023, was to wait to be recalled.

[57] First, the evidence shows that the Appellant was in fact recalled to work on May 15, 2023. So, his expectation that he would be recalled within the timeframe set out by his employer proved to be realistic.

[58] Second, although the Commission has produced evidence that there were a number of open positions for truck drivers in the city where the Appellant lives[14], I'm unable to conclude that the Appellant would have been able to easily obtain another suitable position during the period of his lay off. This is because:

- these posting were available between June 30 and October 10, 2023, and are not necessarily reflective of the labour market between March 1 and May 15, 2023
- there's no evidence that the wages and working conditions for these positions were comparable to the position the Appellant expected to return to, or that they were otherwise suitable
- several of the postings are for owner-operators, and there's no evidence that the Appellant owns his own truck
- there are only 11 job postings in a period of over three months, and some of the postings seem to be reposts of the same position that wasn't yet filled
- it's unlikely that a new employer would have hired the Appellant if he was honest about the fact that he intended to return to his previous employer as soon as he was called back to work

[13] See *Carpentier v Canada (Attorney General),* A-474-97 (FCA).
[14] See GD3-39 and GD3-40.

[59] So, I find that even though the Appellant didn't look for another job during his lay-off, and simply waited to be recalled, he has satisfied the requirement of making enough effort to return to the job market as soon as a suitable job became available.

ii. After May 15, 2023

[60] On May 15, 2023, the Appellant's employer called him back to work. But, because he had just taken custody of his son, and hadn't made arrangements for his care, the Appellant couldn't return to work. He asked for more time, but his request was refused. His employer insisted that he resign so that they could hire someone to replace him.[15]

[61] The Appellant says he set out to try to find other work, but was limited in his efforts by the fact that his son needed constant care.

[62] The Appellant's son was only in school a few hours a week on an irregular schedule. The Appellant often received calls from the school requiring him to pick his son up because he had made inappropriate threats or had been violent. He says that to this day, his son has never been in school for a full school day. So, the Appellant needed a job with extremely flexible hours, in close proximity to his home, and that he could leave on a moment's notice.

[63] The Appellant felt that his best option for returning to work was to try to find work through people who knew him, might want to help him, and would understand and be willing to accommodate his limitations. So, he spoke with all of his contacts to see if anyone might be willing to engage him, despite the restrictions his childcare obligations placed on him.[16]

[64] The Appellant says he was also registered on Indeed and had uploaded his resumé to the site. He consulted the site regularly, and also set up an alert to receive

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[15] The Appellant testified that his employer told him this was his only option. He says his employer said they weren't able to fire him because he was on lay-off. Because he didn't understand his rights and wanted to accommodate his employer in the hopes that he could eventually return to work there, he obliged, and tendered his resignation.
[16] He provided a list of those he contacted (see GD6-4).

information about potential job opportunities via email.[17] However, all of the opportunities he came across conflicted with his childcare obligations.

[65] The Appellant testified that he's only worked as a manual laborer, and that this is all he's qualified to do. He was hoping to find work that would allow him to work from home, as it would be more compatible with his childcare obligations. But he hasn't found any postings for jobs that he has the skills or experience for.

[66] In my view, although the Appellant's efforts to look for work were limited, he made sufficient efforts to find a job given his circumstances. It's clear to me from his testimony, and that of his ex-wife, that the reason his efforts were as limited as they were had nothing to do with his desire to return to the job market. His efforts were limited because there weren't any suitable jobs available to him. This is because every job opportunity he came across conflicted with his childcare obligations.

[67] I find that the Appellant's efforts to find work, as limited as they were, demonstrate that he wanted to find a suitable job.

[68] Based on the very credible testimony that the Appellant and his ex-wife gave at the hearing, I find that the Appellant's job search efforts were limited due to the following factors:

- returning to work as a truck driver would require the Appellant to be away from home for significant periods, which conflicted with his childcare obligations
- all the remote work options the Appellant came across required skills and/or experience that he didn't have
- any unskilled or manual labour jobs the Appellant came across conflicted with his ability to care for his son or to be available on a moment's notice if the school were to call, which happened regularly

[17] GD6 supports his testimony.

- the Appellant was turned down by every prospective employer he spoke with because his childcare obligations conflicted with the required hours of work

[69] So, I find that the Appellant did everything he could reasonably do in his situation to find a suitable job, both before and after taking custody of his son.

– **Not setting personal conditions that unduly limited his chances of finding work**

[70] I find that the Appellant didn't, at any point, set personal conditions that unduly limited his chances of going back to work.

i. Prior to May 15, 2023

[71] Prior to May 15, 2023, the only job the Appellant was interested in was the job he had been laid off from on March 1, 2023.

[72] As I've explained, above, case law holds that a claimant is entitled to wait to be recalled from a lay-off for a reasonable amount of time. I've already decided that it was reasonable for the Appellant to wait to be recalled between March 1 and May 15, 2023.

[73] During his lay-off, the Appellant hadn't yet taken custody of his son, so childcare wasn't an issue at that time.

[74] I find that waiting to be recalled isn't a personal condition that unduly limited the Appellant's chances of returning to work during the period prior to May 15, 2023. And the Appellant hadn't set any other personal conditions during that time.

ii. After May 15, 2023

[75] Once the Appellant took custody of his son, his obligation to care for him limited his ability to work. However, I don't consider this obligation to be a personal condition that he set.

[76] The third Faucher factor only applies to **personal** conditions that a claimant **sets**. In other words, it applies to conditions that are within the claimant's control.

[77] As I mentioned above, the law says that certain restrictions on a claimant's ability to work related to health, religious beliefs, or family obligations, make a job unsuitable.[18] These restrictions are normally beyond a person's control.

[78] So, in order to decide whether the Appellant's obligation to care for his son is a personal condition, or a restriction that impacts suitability of employment, I have to determine if that obligation was within his control.

[79] I find that the Appellant's childcare issues aren't a personal condition that he set. The requirement that he be constantly available for his son's care is entirely beyond his control.

[80] I have come to this conclusion based on the following facts, which the Appellant and his ex-wife testified to:

- the Appellant ended up with custody of his son because his mother could no longer handle him and because this is what the youth protection authorities determined was in his son's best interest
- his son's mental, emotional, and cognitive difficulties are severe, and he requires constant care and supervision and can't be left alone, even for short periods
- because his son exhibits severe behavioural issues, his school will only take him for limited days and hours, and the Appellant is required to be on stand-by to pick him up if he acts out inappropriately, which happens regularly[19]
- his son hasn't been in school for a full day since May 15, 2023, and is currently only in school three days a week for two hours a day, unless he is sent home, in which event he's there even less time

[18] See section 9.002 of the Regulations.
[19] The Appellant and his ex-wife testified that the school has gone on lockdown on numerous occasions because of their son's violent behaviour and because he has made death threats.

- the Appellant is a single father who has no friends or family who could assist him with his childcare obligations
- the Appellant's ex-wife isn't able to participate in their son's care
- given his son's issues, not just anyone could look after him
- the Appellant has enlisted the help of the youth protection authorities to help him find daytime care for his son, but because of his son's age and the severity of his issues, no care facilities are available
- the Appellant is on a waiting list to receive funding for respite care, which would involve engaging a private caregiver for a few hours a day
- the Appellant doesn't have the means to engage a private caregiver and requires financial assistance to do so
- given his son's very severe mental, emotional, and cognitive issues, it's unclear whether anyone other than the Appellant would be able to handle his son
- his son is receiving treatment for his issues, but as of yet there hasn't been any significant change in his behaviour

[81] It's clear to me from this evidence that the Appellant's caregiving obligations aren't a personal choice. He's currently the only person able to provide care for his son. And he's done everything in his power to obtain assistance with his caregiving obligations so that he can return to work.

[82] The Commission's notes say that the Appellant's salary expectations are between $25-$35 an hour. But when I asked him about this, he said that's what he was making as a truck driver. He says he would now accept any job at any wage.

[83] So, I find that the Appellant hasn't set any personal conditions that unduly impact his ability to return to work.

Is the Appellant available if most jobs would be unsuitable for him?

[84] Based on my analysis of the Faucher factors, I find that the Appellant has proven that he's been capable of and available for work since his lay off on March 1, 2023. I find that he's available for work despite the fact that most jobs would be unsuitable for him. This is because he must constantly be available to care for his son.

[85] I'm aware that there are a number of decisions of the Federal Court of Appeal (FCA) that say if a claimant's ability to work is so restricted that they have little or no chance of obtaining work, that claimant isn't available for work.[20]

[86] Although these decisions are more than a decade old, they continue to be referred to by many of my colleagues at the Tribunal to support the conclusion that a claimant must be capable of doing some type of work, for a number of hours similar to the hours they were working previously, in order to prove that they are available as required by law.[21]

[87] However, I don't agree that a claimant whose availability is restricted by family obligations, to such an extent that they have little or no chance of obtaining work, must necessarily be found to be unavailable.

[88] First, the FCA decisions that would appear to support this principle were all decided before the regulation on suitable employment was enacted and came into force.[22]

[89] Since the coming into force of that regulation, a job which requires a claimant to work hours that are incompatible with their family obligations must be held to be unsuitable. This means that if a claimant can show that their childcare responsibilities

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[20] See *Canada (Attorney General) v Bertrand*, 1982 CanLII 3003 (FCA), *Canada (Attorney General) v Maughan*, 2012 FCA 35, and *Canada (Attorney General) v Leblanc*, 2010 FCA 60. It should be noted that the Tribunal is normally bound by decisions of the Federal Court of Appeal.
[21] See, for example, *SA v Canada Employment Insurance Commission*, 2022 SST 1490.
[22] Section 9.002 of the Regulations, entitled Suitable Employment, came into force on January 6, 2013 (see SOR/2012-162, s.2).

are truly an obligation, rather than a personal condition, they don't have to be available for any job where the hours conflict with their family obligations.

[90] The fact that there may be virtually no jobs that would be suitable for that claimant as a result of their family obligations is, in my view, irrelevant. They must nonetheless be considered to be available in accordance with the law.[23]

[91] This is, of course, only true so long as the claimant otherwise meets the Faucher factors (in other words, they can show that they want to work and are making sufficient efforts to find a job, as limited as their prospects may be, and that they haven't set any personal conditions that would unduly limit their chances of returning to work).

[92] So, I find that the FCA decisions mentioned above aren't applicable to claimants who can show that they come within the meaning of the regulation on suitable employment and can show that they meet this Faucher factors. I find this to be the case even if their family obligations would make most jobs unsuitable.

[93] Second, although I recognize that the EI system isn't meant to be a childcare support system, the law clearly recognizes that childcare obligations that restrict a claimant's ability to work don't necessarily disqualify or disentitle them from receiving benefits.[24] Some would argue that these situations are exceptions which confirm the rule.

[94] In my view, maternity, parental, and family caregiver benefits aren't the only situations where a claimant can receive financial support while they fulfill childcare obligations. Rather, they are the only situations where a claimant whose ability to work is restricted by their childcare obligations doesn't have to show that they want to work,

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[23] This is because, as I explained, above, a claimant only has to show that they are available for suitable employment.

[24] See for example, section 29(c)(v) of the Act, which recognizes that a claimant may have just cause to leave their job as a result of childcare obligations, sections 22 and 23 of the Act, which provide for maternity and parental benefits, and section 23.2 of the Act, which provides for benefits when caring for a critically ill child (also known as family caregiver benefits).

are making efforts to find work, and haven't placed any other restrictions, outside of their childcare obligations, on the work they can or will accept.

[95] So, I conclude that a claimant who has little chance of finding work as a result of a genuine obligation to care for a family member, but is able to meet the Faucher factors, is available for work in accordance with the law.

[96] In this case, having decided that the Appellant's childcare issues are an obligation, and that he meets the Faucher factors, I find that he's proven his availability to work. This is the case even though there are virtually no jobs that would be suitable for him.

[97] The Appellant is temporarily unemployed through no fault of his own. If youth protection services are able to find a childcare facility for the Appellant's son, if he receives funding for respite care, or if his son's issues improve to the extent that he's able to spend more time in school, there will be more opportunities for the Appellant to return to the labour market. And I have no doubt of his desire and intention to seize on those opportunities as soon as they become available to him.

[98] In my view, it's entirely in keeping with the purpose of the EI system for the Appellant to receive income replacement benefits until his desire and efforts to find work bear fruit, and he re-enters the labour market.

Did the Commission act judicially when it decided the Appellant had to repay the benefits he received?

[99] After paying the Appellant benefits for the week of March 5 to the week of June 18, 2023, it reconsidered its decision to pay him benefits for those weeks. It decided it shouldn't have paid him benefits for those weeks because it concluded his family obligations prevented him from accepting work.[25]

[25] See GD3-25.

[100] It also issued a notice of debt calling upon the Appellant to repay the benefits he received during those weeks.[26]

[101] I find that the Commission didn't act judicially when it reconsidered the Appellant's entitlement to benefits during those weeks.

[102] The law allows the Commission to reconsider a claim for benefits on its own initiative.[27] It has the discretion to decide whether or not it should do so. In other words, it has the freedom to apply its own judgement as to whether or not it should revisit the claim. When it does this, the Tribunal must be respectful of the Commission's discretion.

[103] However, when the Commission makes a discretionary decision, it must act judicially.[28] This means it has to act in good faith and in a consistent and fair manner. It must consider all of the relevant facts, but only the relevant facts, to arrive at its decision. If it doesn't, then the Tribunal can substitute its own decision for the decision the Commission made.

[104] In this case, the Commission made its decision based on a mistake. It understood that the Appellant had custody of his son, and had the obligation to look after him, as of March 6, 2023. But this isn't the case. The Appellant only took custody of his son on May 15, 2023.

[105] The Appellant insists he was clear with the Commission about the date he took custody of his son. He doesn't understand how it could have concluded that it was in March.

[106] The Commission also failed to consider that from March 1 to May 15, 2023, the Appellant was on lay-off, and that he was waiting to be recalled.

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[26] See GD3-27.
[27] See section 52 of the Employment Insurance Act (EI Act).
[28] See *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

[107] It also failed to consider many of the facts set out, above, which I have relied on to conclude that the Appellant meets the Faucher factors, and was in fact available for work within the meaning of the law.

[108] By relying on mistaken facts and failing to consider relevant facts, the Commission failed to act judicially.

[109] Because I have found that the Commission didn't act judicially, I can make the decision that it should have made in its place.

[110] I find that the Appellant is entitled to all of the benefits he received. Therefore, the notice of debt should be cancelled.

Conclusion

[111] The appeal is allowed.

[112] The Appellant has shown that he's been available for work since March 1, 2023. This means he isn't disentitled from receiving benefits and doesn't have to repay the benefits he received.

Elyse Rosen
Member, General Division – Employment Insurance Section