



Citation: *AP v Canada Employment Insurance Commission*, 2024 SST 488

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** A. P.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Marcus Dirnberger

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**Decision under appeal:** General Division decision dated January 16, 2024  
(GE-22-751)

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**Tribunal member:** Melanie Petrunia

**Type of hearing:** In Writing

**Decision date:** May 7, 2024

**File number:** AD-24-119

## Decision

[1] The appeal is allowed. The Appellant is entitled to benefits for the period from October 4, 2020, to September 11, 2021.

## Overview

[2] The Appellant, A. P. (Claimant) received regular employment insurance (EI) benefits from October 4, 2020 to September 11, 2021. He was studying full time at a university while he was receiving benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), later reassessed the Claimant's entitlement. It decided that he was not entitled to benefits because he was not available for work while enrolled in a full-time program.

[4] The Claimant appealed to the Tribunal's General Division, arguing that he was available for work while attending university. His appeal was dismissed, and he unsuccessfully appealed to the Tribunal's Appeal Division.

[5] The Claimant then asked the Federal Court of Appeal to review the Appeal Division's decision. The Commission and the Claimant asked the Court to allow the Claimant's application for judicial review and find that he was entitled to benefits. The Court found the Appeal Division's decision unreasonable but returned the matter to the Appeal Division for redetermination.<sup>1</sup>

[6] I have decided that the General Division erred in law. I have also decided to give the decision that the General Division should have given, which is that the Claimant was available for work and entitled to benefits from October 4, 2020, to September 5, 2021.

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<sup>1</sup> *Pilavdjian v. Attorney General of Canada*, A-110-23

## **Preliminary matters**

[7] I held a case conference in this matter to determine whether either party wanted to oral hearing in this matter. The parties agreed to proceed by way of written submissions.

## **The parties agree on the outcome of the appeal**

[8] The parties agree that the General Division made erred by misapplying the law when considering the Claimant's availability for suitable employment.<sup>2</sup> The parties also agree that the appropriate remedy is for me to make the decision that the General Division should have made and find that the Claimant was available for work and is entitled to benefits for the period from October 4, 2020 to September 5, 2021.

## **I accept the proposed outcome**

[9] In its decision, the General Division set out the legal test for determining availability.<sup>3</sup> It considered the three factors applicable to this test:

- (1) the desire to return to the labour market as soon as a suitable job is offered;
- (2) the expression of that desire through efforts to find a suitable job; and
- (3) not setting personal conditions that might unduly limit the chances of returning to the labour market.<sup>4</sup>

[10] The General Division found that the Claimant did have a desire to return to the labour market as soon as possible but was not making enough efforts to find a suitable job.<sup>5</sup> It found that the Claimant was only applying to summer jobs and internships.<sup>6</sup>

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<sup>2</sup> See AD10 and AD11.

<sup>3</sup> General Division decision at para 28.

<sup>4</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96

<sup>5</sup> General Division decision at paras 30 to 33.

<sup>6</sup> General Division decision at para 35.

[11] The General Division also found that the Claimant set personal conditions that unduly limited his chances of returning to the labour market.<sup>7</sup> It relied on the fact that the Claimant was only looking for jobs that worked around his course schedule and that he confirmed he would not leave his program to accommodate a job.<sup>8</sup>

[12] A recent decision from the Federal Court of Appeal, *Page v. Canada (Attorney General)*, has clarified the law concerning availability for students. The Court found that there was no rule disentitling full-time students who are looking for work around their course schedule.<sup>9</sup> The Court stated that a contextual analysis is required to determine whether the presumption of unavailability has been rebutted.<sup>10</sup>

[13] The parties say that the General Division erred in law by finding that the Claimant set personal conditions that limited his chances of finding work by looking for jobs that accommodated his course schedule. The Claimant was looking for work that was similar to the type of employment he previously held, and on which he paid premiums. The parties say that this was suitable employment.

[14] I agree with the parties. The Claimant was making efforts to find a suitable job by searching for work similar to the job he previously held. He did not set personal conditions that unduly limited his chances of finding work by trying to find a job that worked with his course schedule.

## Conclusion

[15] The appeal is allowed. The General Division made an error of law in its application of the test for availability when it found that the Claimant did not make

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<sup>7</sup> General Division decision at para 36.

<sup>8</sup> General Division decision at paras 39 to 41.

<sup>9</sup> See *Page v. Canada (Attorney General)*, 2023 FC 169 at para 55.

<sup>10</sup> See *Page* at para 69.

sufficient efforts to find a suitable job and set personal conditions that limited his chances of finding work.

[16] I have made the decision that the General Division should have made. The Claimant was available for work and entitled to benefits for the period from October 4, 2020, to September 5, 2021.

Melanie Petrunia  
Member, Appeal Division