Citation: *Canada Employment Insurance Commission v AS*, 2024 SST 1366

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Nikkia Janssen
Respondent:	A. S.

Decision under appeal:	General Division decision dated August 1, 2024 (GE-24-2311)

Tribunal member:	Glenn Betteridge
Type of hearing:	Videoconference
Hearing date:	October 30, 2024
Hearing participants:	Appellant's representative Respondent
Decision date:	October 7, 2024
File number:	AD-24-551

Decision

[1] I am allowing the Canada Employment Insurance Commission's (Commission) appeal.

[2] The General Division made legal errors. I have fixed the errors by rescinding the General Division decision and deciding the two disqualification issues.

[3] A. S. voluntarily left her job without just cause, twice. So, she is disqualified from getting Employment Insurance (EI) regular benefits starting November 22, 2020 and starting August 27, 2021. This means she has an overpayment and debt for all the benefits the Commission paid to her.

[4] The Claimant earned $313 for the week of July 25, 2021. The Commission can now use this amount to correctly calculate her overpayment.

Overview

[5] A. S. is the Claimant.

[6] In August 2020, she stopped working at a long-term care facility (employer). In September 2020, she went back to school to continue her full-time nursing program. In November 2020, she made a claim for Employment Insurance (EI) regular benefits.

[7] The Commission paid her benefits starting the week of November 29, 2020.

[8] She worked for the employer the next summer, for the weeks of May 2, 2021 to August 22, 2021. She stopped work and returned to her nursing program full-time from September 2021 through May 2022.

[9] Later on, the Commission reconsidered her claim. It made five decisions, which resulted in an overpayment for all the benefits it had paid to her. The Commission disqualified the Claimant twice for leaving her job without just cause—in 2020 and in 2021. It disentitled her for not showing she was available for work while in school full time. It decided she hadn't reported her earnings correctly, so it allocated the correct

earrings to weeks in her claim. The Commission sent the Claimant a notice of debt for $14,726.

[10] The Claimant asked the Commission to reconsider. The Commission maintained its decisions except it removed the penalty for misrepresentation. The Claimant appealed to the General Division.

[11] The General Division allowed the Claimant's appeal and cancelled her debt.

[12] I gave the Commission permission to appeal. The Commission argues the General Division made seven legal errors, two important factual errors, and a jurisdictional error. The Claimant argues the General Division didn't make any errors.

Issues

[13] I am going to decide four issues.

- Did the General Division make any legal errors?
- Did the General Division make an important factual error when it found the Claimant had a history of working while in school full time?
- Did the Claimant voluntarily leaving her job without just cause in August 2020 and in August 2021 when she returned to her nursing program?
- What is the correct amount of the Claimant's earnings for the week of July 25, 2021?

The General Division's errors

[14] The Appeal Division's role is different than the General Division's role. The law lets me step in and fix a General Division error where a party can show the General Division used an unfair process, or made a legal error, a jurisdictional error, or an important factual error.[1]

[15] If I find the General Division didn't make an error, I have to dismiss the Commission's appeal.

The General Division made legal errors

– The General Division didn't use the *Peace* decision to decide whether the Claimant voluntarily left her job

[16] In a voluntary leaving appeal under the *Employment Insurance Act* (EI Act), the General Division has to decide two things:[2]

- Did the person have a choice to leave their job and choose to leave?[3]
- If so, had the person shown they had just cause for leaving in the circumstances that existed when they left?[4]

[17] The Claimant stopped working for the same employer twice during her EI claim. Both times she returned to school to continue her full-time nursing program.

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[1] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) calls these the "grounds of appeal." I have called them errors. Section 59(1) of the DESD Act gives the Appeal Division the power to fix General Division errors.
[2] See *Canada (Attorney General) v White*, 2011 FCA 190.
[3] See *Canada (Attorney General) v Peace*, 2004 FCA 56 at paragraph 15.
[4] See section 29(c) of the *Employment Insurance Act* (EI Act). And see *Canada (Attorney General) v Lamonde*, 2006 FCA 44; *Canada (Attorney General) v Thompson*, 2007 FCA 391; *Canada (Attorney General) v Furey*, A-819-95 (FCA); and *Tanguay v Unemployment Insurance Commission*, A-1458-84 (FCA).

[18] The General Division recognized the Commission disqualified the Claimant for voluntarily leaving her job without just cause two times—on August 17, 2020 and on August 27, 2021.[5] Then it found the Claimant didn't resign her job until May 10, 2022.[6]

[19] The Commission argues the General Division made an important factual error. It ignored the evidence the Claimant didn't work between August 27, 2021 and when she submitted her formal resignation on May 10, 2022.[7] It argues she had no intention of working during this period despite being in a permanent part-time position.

[20] The General Division made a legal error when it didn't decide whether the Claimant had a choice to continue working. That is the legal test it had to apply, from the *Peace* decision. Instead, it made its decision based solely on evidence about the end of the legal employment relationship between the Claimant and her employer.

[21] I also agree with the Commission that the General Division made an important factual error. It ignored evidence that the Claimant twice made the choice to stop working to go back to school full time. It made that error because it didn't use the correct legal test to decide whether the Claimant had a choice and chose to stop working.

– **The General Division didn't consider section 153.161, but should have**

[22] The General Division makes a legal error when it doesn't use a section of the EI Act it should have used to decide a legal issue.

[23] Before deciding the four legal issues, the General Division had to decide whether the Commission had followed the law when it went back and reconsidered the Claimant's EI claim.

[24] The General Division used section 52 of the EI Act. It found the Commission had 36 months to complete its reconsideration of the Claimant's claim under section 52(1).[8]

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[5] See paragraphs 7, 9, and 40 of the General Division decision.
[6] See paragraph 42 of the General Division decision.
[7] See AD5-7.
[8] See paragraph 27 of the General Division decision.

It decided the Commission didn't have legal authority to review the Claimant's claim because it didn't complete its review by that deadline.[9]

[25] The Commission argues the General Division made a legal error when it didn't consider section 153.161 of the EI Act. I agree.

[26] Because student availability was an issue, it should also have considered section 153.161 of the EI Act. The government put that section in place during the COVID-19 pandemic. It gave the Commission the power to verify whether a student was available for work at any point after benefits are paid to a student.

[27] The General Division made a legal error when it decided the Commission ran out of time to reconsider whether the Claimant had shown she was available for work based on section 52(5) rather than section 153.161 of the EI Act.

– **The General Division misinterpreted section 52(5) when it failed to follow binding court decisions**

[28] The General Division makes a legal error when it misinterprets a section of the EI Act or doesn't follow a court decision it had to follow.

[29] Section 52(5) says the Commission can reconsider a claim within 72 months after benefits were paid if the Commission believes that a false or misleading statement was made in connection with the claim.

[30] Section 38 of the EI Act allows the Commission to impose a penalty on a person who **knowingly** gave false information or made a misrepresentation to the Commission.[10]

[31] The General Division decided that the Commission could only go back 36 months when it reconsidered the Claimant's claim.[11] It reasoned the Commission

[9] See paragraph 31 of the General Division decision.
[10] See section 38(1)(a) to (d) of the EI Act..
[11] See paragraphs 24 to 27 of the General Division decision.

reversed its decision to impose a penalty for false claims. This meant the Claimant didn't **knowingly** make false statements. So, the 72-month extended time didn't apply.

[32] The Federal Court of Appeal (FCA) has decided the Commission can go back 72 months if it is reasonably satisfied a false or misleading statement exists.[12] The Commission doesn't need to believe the person intended to make a false or misleading statement.

[33] So, the General Division misinterpreted section 52(5) when it didn't follow the FCA decisions it had to. In other words, it made a legal error.

– The General Division made a legal error when it used *Ontario Regulation 146/20* to decide the Claimant had proven she was available but unable to find suitable work

[34] A person who wants to get EI regular benefits has to show they are available for suitable work under two sections of the EI Act. The General Division had to use the three *Faucher* factors to decide whether the Claimant was available for suitable work under section 18(1)(a). Under 50(8), the General Division had to decide whether the Claimant proved she made reasonable and customary efforts to find a suitable job.

[35] The Claimant was studying nursing full time. As part of her studies, she had to do a practicum in a long-term care home. *Ontario Regulation 146/20* limited employees (including people doing placements) to working in one long-term care home at a time. This limit was in effect from April 2020 until March 28, 2022.

[36] At the General Division, the Claimant argued that her nursing program and *Ontario Regulation 146/20* were not personal restrictions that unduly limited her availability. She says she was available for work. *Ontario Regulation 146/20* made it impossible for her to work as a personal support worker—not her nursing program.

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[12] See *Canada (Attorney General) v Dussault*, 2003 FCA 372; and *Canada (Attorney General) v Langelier*, 2002 FCA 157.

[37] The General Division considered what employment was suitable for the Claimant while she was in school. It decided the Claimant wasn't able to find a suitable job (as a personal support worker) because of *Ontario Regulation 146/20*.[13]

[38] The General Division accepted the Claimant's argument under the third *Faucher* factor:

> I find that the Appellant didn't limit her chances of going back to work by being in school. The Ontario Regulations 146/20 imposed the limitations and made it impossible for her to work while in school. It wasn't school that limited her availability to work.[14]

[39] The General Division also found the Claimant had shown reasonable and customary efforts to a find a suitable job. It based that finding in part on the fact she wasn't able to find a suitable job because of *Ontario Regulation 146/20*.

[40] At the Appeal Division, the Claimant supported the General Division's findings.[15] She argues *Ontario Regulation 146/20* was a legal barrier that prevented her from working as a personal support worker. She also argues it's an exceptional circumstance the General Division had to consider when it decided whether she overcame the presumption that full-time students aren't available for work.

[41] The Commission argued the General Division made a legal error when it relied on *Ontario Regulation 146/20* as a justification to find the Claimant was available for work. It relies on the *Leblanc* decision. That decision says that to get benefits person has to show they are available, not justify their unavailability.[16]

[42] I agree with the Commission.

[43] Two recent Federal Court decisions support the Commission's position.[17] One applies *Leblanc* in the context of the COVID-19 pandemic. These decisions say the

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[13] See paragraph 73 of the General Division decision.
[14] See paragraph 92 of the General Division decision.
[15] See AD6-4 and AD6-7.
[16] See *Canada (Attorney General) v Leblanc*, 2010 FCA 60 at paragraph 5.
[17] See *Nikhat v Canada (Attorney General)*, 2023 FC 372 at paragraph 16; and *Otoman v Canada (Attorney General)*, 2023 FC 1766 at paragraphs 37 and 38.

COVID-19 pandemic doesn't excuse a person from looking for work and doesn't factor into the availability test under section 18(1)(a).

[44] One of those decisions (*Otoman*) goes directly against the Claimant's arguments that she was available while in school, but the Regulation prevented her from taking work. Mr. Otoman wasn't vaccinated against COVID-19—this was his choice. He could not work as a deckhand because of an interim order that required vaccination. He was waiting for it to be lifted so he could return to work as a deckhand. He refused to look for work in any other field. The Federal Court wrote:

> Thus, what evidence there is on record confirms that Mr. Otoman didn't make any efforts to look for work in the period in question and that he was waiting for the lifting of the interim order. Vaccination issues are not relevant in this case.[18]

[45] These court decisions show the General Division made a legal error when it used *Ontario Regulation 146/20* to decide the Claimant had proven she was available for work but unable to find suitable employment. *Ontario Regulation 146/20* was a direct response to the pandemic. It came into effect in April 2020. Then the Claimant chose to go to her third year of nursing program knowing she would have to leave her personal support worker (PSW) job and couldn't get a similar job.

The General Division ignored evidence the Claimant didn't have a history of regularly working while going to school full time

[46] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding relevant evidence.[19] In other words, there is some evidence that goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

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[18] See *Otoman v Canada (Attorney General)*, 2023 FC 1766 at paragraph 43.
[19] Section 58(1)(c) of the DESD Act says it is a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the Act and the cases that have interpreted the Act.

[47] The General Division considered the Claimant's history of working while going to school full time.[20] It refers to one piece of evidence—a letter from the Executive Director of the care facility where the Claimant worked as a PSW.[21] Based in part on that letter it found the Claimant had overcome the presumption of unavailability.

[48] The General Division didn't have to refer to every piece of evidence.[22] But it had to show that it considered relevant evidence that undermined its finding. [23]

[49] The Commission argues the General Division ignored evidence the Claimant didn't have a history of being regularly employed while attending school.[24] The Commission refers to the Claimant's EI application, notes of calls with her, her testimony at the General Division hearing, and her records of employment.

[50] The Claimant's testimony goes against the General Division's finding. She testified she started her four-year nursing program on September 5, 2018.[25] She started working as a PSW after her first-year school year. She didn't remember whether she worked during her second school year. She worked during the summer before her third year. But stopped in August before school started.

[51] I have reviewed the documents the Commission relies on. They are relevant to the issue. And what they say goes against the General Division's finding.

[52] So, the General Division ignored relevant evidence that went against its finding that the Claimant had a history of regularly working while coming to school full time. It based its decision on this finding. This means it made an important factual error.

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[20] See paragraph 59 of the General Division decision.
[21] See GD2-31.
[22] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.
[23] See *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498 at paragraph 51.
[24] See AD5-8.
[25] Listen to the General Division hearing from 25:30 to 33:00.

Fixing the error by making the decision

[53] I am going to fix the General Division's error by making the decision. This is what the Claimant asked me to do.

[54] The Commission said I should send the case back to the General Division to reconsider. It gave two reasons.

[55] First, it said the evidence before the Tribunal wasn't complete, and identified three gaps—the Claimant's history of work while attending school, the reason she separated from her employer the first time, her statements about her availability on her biweekly reports, and her employment status from August 27, 2021 to May 10, 2022.[26]

[56] Second, the Commission said it made a mistake when it allocated the Claimant's earnings. For one period, it used $373 instead of $313. And the General Division confirmed the incorrect amount, so sending the case back to the General Division is the way to fix the mistake.

[57] I disagree with the Commission.

[58] The most important thing I have to consider is whether the parties had a full and fair opportunity to present their cases. If the evidence is incomplete or contradictory but the parties had that opportunity, then I can decide each legal issue based on the evidence from the General Division and the burden of proof. I also disagree because I am only going to look at three issues to decide the appeal. The Commission argues there is a gap in the evidence about whether the Claimant chose to leave her job in August 2020. I disagree.

[59] I will decide this appeal by deciding three issues:

- Did the Commission follow the law when it reviewed the Claimant's EI claim?

[26] See AD5-9.

- Did the Claimant voluntarily leave her employer without just cause in August 2020 to return to her nursing program full time?

- Did the Claimant voluntarily leave her employer without just cause in August 2020 to return to her nursing program full time?

[60] I don't have to decide whether the Claimant has overcome the presumption of unavailability and shown she was available to work while in school from November 21, 2020 to April 30, 2021. My decision about the first disqualification for voluntarily leaving makes a decision on that issue irrelevant to the outcome of the appeal.

The Commission used its power to reconsider properly

[61] The Commission has to show it acted judicially when it decided to reconsider the Claimant's claim under section 52 of the EI Act. It also has to show it reconsidered her claim within the time limit allowed under that section.

[62] The Commission acted judicially when it decided to reconsider her claim. It had 72 months to reconsider her claim.[27] And it completed its reconsideration within 72 months of the first week it paid her benefits.

– The Commission acted judicially when it decided to reconsider the claim

[63] The Commission's power to reconsider a claim under section 52 of the EI Act is discretionary. This means it may reconsider a claim—within the legal time period—but it doesn't have to.

[64] When the Commission decides whether to reconsider a claim, it has to act judicially. This means the Commission can't act in bad faith or for an improper purpose, discriminate, consider irrelevant factors, or fail to consider relevant factors.[28]

[65] The law doesn't tell the Commission what factors to consider. The Tribunal's Appeal Division says the Commission should consider factors that favour finality

[27] See section 52(5) of the EI Act.
[28] See *Attorney General of Canada v Purcell*, A-694-94 (FCA).

(claimants should be able to rely on Commission decisions) or accuracy (mistakes and misrepresentations should be corrected).[29] This includes the factors in its reconsideration policy.[30] The Appeal Division said the Commission should not consider the claimant's personal factors—such as the ability to pay or stress.

[66] When the Commission acts judicially, the Tribunal can't interfere with its decision to reconsider a claim. When the Commission doesn't act judicially, the Tribunal can decide whether to reconsider a claim.

[67] The General Division asked the Commission whether it acted judicially.[31] The Commission sent submissions and the record of its section 52 decision.[32] The Commission argues it understood the ramifications of the retroactive reconsideration of the claim.[33] And it afforded all interested parties an opportunity to provide relevant facts to avoid an overpayment.

[68] I reviewed the Commission's arguments and documents to support its reconsideration of the claim. I didn't find any evidence the Commission acted in bad faith, for an improper purpose, or in a discriminatory way towards the Claimant.

[69] The Commission's decision focused on the accuracy of the decisions in the claim and evidence that the Claimant was responsible for the overpayment. The Commission considered that the Claimant made numerous false statements, at various points in her claim. Its reasons include her acknowledgement that she quit her employment twice. It also considered what the Claimant said during its investigation about the effect of *Ontario Regulation 146/20*. The Commission cites its reconsideration policy.

[70] Based on my review of the Commission's reconsideration documents and its reconsideration policy, I find it's more likely than not the Commission used is discretion

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[29] See *Canada Employment Insurance Commission v MA*, 2022 SST 1018 at paragraphs 18 to 23.
[30] See Chapter 17.3.3 (Reconsideration Policy) of the *Digest of Benefit Entitlement Principles*.
[31] See GD7.
[32] See GD8.
[33] See GD8-3.

judicially. This means I can't interfere with the Commission's decision to reconsider the Claimant's claim.

– **The Commission had to reconsider the claim within 72 months, which it did**

[71] The Commission can go back 72 months when it reconsiders a claim if it believes a person has made a false or misleading statement in their claim.[34] The Commission doesn't need to satisfy itself the person did that intentionally or knowingly.

[72] The Commission says it believes the Claimant made misleading reports about her income while she was working and receiving EI benefits.[35] It also says she didn't report she voluntarily left her job on two occasions.[36]

[73] The Claimant admits she didn't accurately report her earnings on her biweekly reports. She says the amounts her employer reported to the Commission are accurate.

[74] So, under section 52(5), the Commission had 72 months to reconsider her claim. Sending a notice of debt is the last step to complete the reconsideration process.[37]

[75] The Commission completed its review within 72 months of its first payment to the Claimant. The Commission's first paid the Claimant benefits for the week starting November 22, 2020. It sent the Claimant a notice of debt dated March 15, 2024—less than 40 months after the first benefit payment. This means the Commission was in time to reconsider the Claimant's entire benefit period.

The Claimant voluntarily left her job twice

– **The Claimant chose to leave her job in August 2020 to return to her full-time nursing program**

[76] The Claimant and the General Division focused on the end of the Claimant's legal employment relationship. But that's not the legal test to decide whether someone

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[34] See *Canada (Attorney General) v Dussault*, 2003 FCA 372; and *Canada (Attorney General) v Langelier*, 2002 FCA 157.
[35] See GD4 and GD8.
[36] See GD4 and GD8.
[37] See *Canada (Attorney General) v Laforest*, 1988 CanLII 5629 (FCA); *Brière v. Canada (Employment and Immigration Commission)*, 1988 CanLII 9339 (FCA).

voluntarily left their job. As I set out above, the test is whether the person had a choice to stay or leave their job and chose to leave.

[77] The evidence shows me the Claimant had a choice and chose to leave her job. In other words, she voluntarily left her job. Her last day of work was August 17, 2020.

[78] The Claimant could have continued to work for her employer but chose not to. She left her job to return to the third year of her nursing program. This program included a mandatory, unpaid clinical placement. She knew that because of *Ontario Regulation 146/*20 she would have to leave active employment with her employer if she wanted to do the placement. And that's what she did. In other words, she made herself unemployed.

[79] I am giving significant weight to the evidence that came into being the closest to the time the Claimant left her job. I am also giving significant weight to what she initially told the Commission. Her record of employment states she quit to return to school (code E).[38] The Commission's notes say the Claimant agreed with what her employer wrote on her ROE.[39] The Claimant also said she was going to come back to the employer next summer, which she also wrote on her EI application.[40] The idea that she would come back to the employer supports my finding that she left her employer. It tells me she had the choice to leave and the choice to come back. In the circumstances, these were her decisions to make because her employer wanted her to return to work.

[80] I prefer this evidence to the Claimant's resignation letter, dated May 5, 2022 and to the Claimant's other evidence that her employer was supposed to put her on leave of absence.[41] Neither piece of evidence shows me she had no choice but to leave her job in August 2021. It was her decision to go back to school.

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[38] See GD3-22.
[39] See GD3-42.
[40] See GD3-7 and GD3-42.
[41] See GD3-53, GD3-58, and GD3-60.

[81] I give little weight to the three letters the employer's executive director wrote.[42] They were written almost four years after the Claimant left her job for the first time to return to school. Each letter seems designed to directly support the Claimant's arguments in her appeal. There is no supporting evidence that the employer was required to place the Claimant on a temporary leave of absence, or evidence from her employer that it did that.

[82] That isn't what *Ontario Regulation 146/20* required the employer to do at that time. The Claimant hadn't started her placement at a health care facility. It was the Claimant's choice to give up her job to go back to school, not her employer's compliance with *Ontario Regulation 146/20*, that caused her unemployment in August 2020.

[83] The executive director's letters go against what the employer's payroll specialist told the Commission during its investigation.[43] I prefer the payroll specialist's evidence. It is specific, detailed, factual, and taken from records. For August 2020, the payroll specialist said the Claimant went back to school and would come back when school was over if they wanted her back. There was no expected return date. The Claimant gave verbal notice and mentioned school, so the employer started the process of paying vacation or any other money owing. In 2021, she was paid out for unused vacation in September 2021, after she left. "She worked August 27, 2021 and then never heard from her again, we tried contacting her and never got anything back so we assumed they got a new job and didn't tell us."[44]

[84] The Federal Court of Appeal has decided that voluntarily leaving a job to go to school doesn't count as just cause under the EI Act.[45] In other words, it isn't a reason the law accepts.

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[42] See GD2-22, GD2-28, and GD2-31.
[43] See GD3-29.
[44] See GD3-30.
[45] See for example *Lakic v Canada (Attorney General)*, 2013 FCA 4; *Canada (Attorney General) v Macloed*, 2010 FCA 301; and *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.

[85] So, the Claimant didn't have just cause for leaving her job in August 2020. This means she is disqualified from getting EI benefits effective November 22, 2020. This date is based on when she applied for benefits. And she can't use the hours she worked in that job to establish a claim for benefits.

– The Claimant chose to leave her job in August 2021 to return to her full-time nursing program

[86] The Claimant told the Commission she quit her employment on August 27, 2021 to go into the third year of her nursing program.[46] She had to do a nursing placement in the hospital. And because of *Ontario Regulation 146/20*, she was unable to work for her employer at the same time as she did her placement.

[87] I have no reason to doubt this evidence. Above, I didn't accept the Claimant's position her employer put her on a leave of absence.

[88] So, I find the Claimant voluntarily left her job in August 2021. She could have continued to work, but she chose to leave her job.

[89] Because she left her job to return to school, the Claimant didn't have just cause for leaving her job in August 2021. This means she is disqualified from getting EI benefits effective August 27, 2020. And she can't use the hours she worked in that job to establish a claim for benefits.

[90] The law can be harsh. But I have to apply the law. I can't change it.

[91] The Claimant had very good reasons for wanting to continue school and complete her nursing program. She is now a registered nurse contributing her knowledge, skills, and experience to the health care system. Unfortunately for the Claimant, the court decisions I have to follow are clear that leaving a job to go to school doesn't qualify as just cause.

[92] It's also true the COVID-19 pandemic messed up the Claimant's plans to continue working and earning money while studying nursing. She needed to replace

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[46] See GD3-42.

that income. But EI is for people who are involuntarily unemployed. Unless a person is in a program or course approved by the Commission, EI isn't bursary program to support education and training.

– **The typo in the Claimant's earnings for July 25, 2021**

[93] I accept the evidence that the Claimant's earned $313 in the week of July 25, 2021.[47] I find it more likely than not the Commission made a transcription error (typo) when it wrote $373. There is no evidence from source documents that shows the correct amount was $373.

Conclusion

[94] I am allowing the Commission's appeal. I am rescinding the General Division decision and replacing it with my decision.

[95] I have decided the Claimant is disqualified from getting benefits. This is because she voluntarily left her job without just cause twice to return to her full-time nursing program. This means the benefits the Commission paid to her are an overpayment, and a debt that she has to repay.

[96] I have also decided the Claimant's earnings for the week of July 25, 2021 were $313. The Commission can now use this amount to recalculate the overpayment.

Glenn Betteridge
Member, Appeal Division

[47] See the inconsistencies in the income in the week of July 25, 2021 at GD3-26 and GD3-27 *versus* GD3-31, GD3-150, GD3-169