Citation: *AD v Canada Employment Insurance Commission*, 2024 SST 1606

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. D.
Representative:	T. D.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (653865) dated May 7, 2024 (issued by Service Canada)

Tribunal member:	Audrey Mitchell
Type of hearing:	In writing
Decision date:	August 12, 2024
File number:	GE-24-1945

Decision

[1] The appeal is dismissed with modification. I disagree with the Appellant.

[2] The Appellant hasn't shown that she was available for work while in school. This means that she can't receive Employment Insurance (EI) benefits.

[3] The Appellant received earnings. The Canada Employment Insurance Commission (Commission) correctly allocated (in other words, assigned) those earnings to the weeks where the Appellant did work for her employer.

Overview

[4] The Commission decided that the Appellant is disentitled from receiving EI regular benefits from March 1, 2021, to June 28, 2021, and from September 7, 2021, to February 11, 2022, because she wasn't available for work. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[5] I have to decide whether the Appellant has proven that she was available for work. The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she was available for work.

[6] The Commission says the Appellant wasn't available because she was in school full-time.

[7] The Appellant disagrees and says exceptional circumstances due to the COVID-19 pandemic allowed her to look for full-time work at her part-time place of employment and at other places.

[8] The Appellant got paid for work she performed for the employer. But the Commission says she didn't declare all her earnings. It decided that the money is "earnings" under the law because it is wages.

[9] The law says that all earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.[1]

[10] The Commission allocated the earnings to the weeks that the Appellant did work for the employer.

[11] The Appellant agrees with the Commission that the wages her employer paid her are earnings. But she says the Commission didn't allocate those earnings correctly.

Issues

[12] Was the Appellant available for work while in school?

[13] Did the Appellant get wages and are they earnings?

[14] If the wages are earnings, did the Commission allocate the earnings correctly?

Analysis

Availability while in school

[15] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Appellant was disentitled under both of these sections. So, she has to meet the criteria of both sections to get benefits.

[16] First, the *Employment Insurance Act* (Act) says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.[2] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[3]

[17] The Commission says it disentitled the Appellant under section 50 of the Act along with section 9.001 of the Regulations for failing to prove her availability for work.

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[1] See section 36 of the *Employment Insurance Regulations* (EI Regulations).
[2] See section 50(8) of the *Employment Insurance Act* (Act).
[3] See section 9.001 of the *Employment Insurance Regulations* (Regulations).

In its submissions, it says it may ask a claimant to prove that they are making reasonable and customary efforts to obtain suitable employment.

[18] The Commission's notes don't reflect that it asked the Appellant to prove her availability by sending a detailed job search record.

[19] I find a decision of the Appeal Division on disentitlements under section 50 of the Act persuasive. The decision says the Commission can ask a claimant to prove that they have made reasonable and customary efforts to find a job. It can disentitle a claimant for failing to comply with this request. But it has to ask the claimant to provide this proof and tell the claimant what kind of proof will satisfy its requirements.[4]

[20] I don't find that the Commission asked the Appellant to provide her job search record to prove her availability. So, I don't find that she is disentitled under this part of the law.

[21] Second, the Act 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.[5] Case law gives three things a claimant has to prove to show that they are "available" in this sense.[6] I will look at those factors below.

[22] The Commission decided that the Appellant was disentitled from receiving benefits because she isn't available for work based on this section of the law.

[23] In addition, the Federal Court of Appeal has said that claimants who are in school full-time are presumed to be unavailable for work.[7] This is called "presumption of non-availability." It means we can suppose that students aren't available for work when the evidence shows that they are in school full-time.

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[4] See *L. D. v. Canada Employment Insurance Commission*, 2020 SST 688
[5] See section 18(1)(a) of the Act.
[6] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[7] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

[24] I will start by looking at whether I can presume that the Appellant wasn't available for work. Then, I will look at whether she was available based on the section of the law on availability.

Presuming full-time students aren't available for work

[25] The presumption that students aren't available for work applies only to full-time students.

– **The Appellant was a full-time student**

[26] The Appellant agrees that she was a full-time student, and I see no evidence that shows otherwise. So, I accept that the Appellant was in school full-time.

[27] The presumption applies to the Appellant.

– **The Appellant was a full-time student**

[28] The Appellant was a full-time student. But the presumption that full-time students aren't available for work can be rebutted (that is, shown to not apply). The Federal Court of Appeal says that I have to do a contextual analysis when deciding whether the Appellant has rebutted the presumption of non-availability.[8]

[29] The Appellant says that due to exceptional circumstances around the COVID-19 pandemic, she was able to look for full-time work.

[30] The Commission says despite the Appellant's statements that she was capable of and available for full-time work while in school, her job search efforts don't reflect those of someone who wants to secure a job as soon as possible. It also says the Appellant wasn't willing to leave school but wanted to work after school and on weekends.

[31] I find that the Appellant hasn't rebutted the presumption of non-availability while in school.

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[8] See *Page* v *Canada (Attorney General)*, 2023 FCA 169.

[32] The Appellant applied for benefits due to shortage of work. She clarified with the Commission that she had applied because her hours at her place of employment were reduced.

[33] In her application for benefits, the Appellant said she was not taking or would not be taking a course or training program. Later, she completed a training questionnaire saying she was a full-time high school student. She declared that she spent 15 to 24 hours per week on her studies and that she had to attend scheduled classes. When asked what she would do if she found full-time work that conflicted with school, the Appellant said she would change her course schedule to accept the job.

[34] The Appellant also completed a training information form[9] and an entitlement questionnaire[10].

[35] In the training information form, the Appellant gave details of her studies in high school for the 2020/2021 and 2021/2022 school years, when she was in Grade 9 and Grade 10, respectively. She said she spent 25 to 30 hours per week on her studies and attended classes Monday to Friday, from 9:00 a.m. to 3:00 p.m. The Appellant said that she intended to find full-time work while in school and she would change her course schedule to accept a job.

[36] The Appellant said she has part-time work experience dating back to July 2020. She worked as a store clerk for the same company, working up to 24 hours a week. Because of this, she said she would work as a store clerk and in retail.

[37] In the entitlement questionnaire, the Appellant said she could not work from 9:00 a.m. to 3:00 p.m. on days she was in school. And in her training information form, she said that considering the days and times she attended class, she was prepared to work Monday to Friday, 3:00 p.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. up to 11:00 p.m.

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[9] See pages GD3-25 to GD3-26.
[10] See pages GD3-27 to GD3-28.

[38] The Appellant stated that she had made job contacts at three companies. She completed a job search record form that gave the details. She applied for one job on March 19, 2021, and another job on June 8, 2021. The third company the Appellant contacted is the one where she said she has part-time work experience. She said she had made ongoing attempts to get full-time work there without success.

[39] I find that the Appellant has a history of working while in school. I accept her evidence as fact that she worked four to 20 hours a week from July 2020 to February 2021, and up to 24 hours a week from March 2021. But I don't find that she has enough of a history of regular work on weekdays while in school based on which she can rebut the presumption of non-availability.

[40] The Appellant started working about eight months before the start of her benefit period. She said she worked full-time in the summers, but that was only in the summers in 2023 and 2024, after the periods in question. So that means that the real time that the Appellant's work history overlapped with her time in school was six months of part-time work.

[41] The Appellant said in her training information form that she didn't usually work Monday to Friday, and she didn't usually work during the day. I acknowledge that a claimant can prove availability for work while working hours other than the traditional Monday to Friday, 9:00 a.m. to 5:00 p.m. But I find that the Appellant's statement that she didn't usually work Monday to Friday means that she usually worked on weekends. I don't find that a six-month history of working usually on weekends while in school is enough to rebut the presumption of non-availability.

[42] The Appellant said that she attended her high school classes both in-person and online. She explained that if there were no COVID-19 cases and if she felt safe to do so, she attended classes in-person. Otherwise, she attended online. But she said she attended most times in-person even though she wasn't obligated to do so, since all course material, lectures, tests, and essays were available online.

[43] I asked the Appellant when, given her school schedule, she was available for work. She said she was available all hours of the day and all days of the week. She said she did not say that she could not work Monday to Friday, 9:00 a.m. to 3:00 p.m., and she referred to pages GD3-20 and GD3-25 in the Commission's reconsideration file. But the entitlement questionnaire she completed asked if there were any hours each day when she "cannot or would not work". The Appellant replied, "9 - 3 on days I was in school".[11]

[44] I find that the details the Appellant gave in the training information form and the entitlement questionnaire form are consistent. In the training information form, the Appellant said she was prepared to work from 3:00 p.m. to 10:0 p.m. I find that this is consistent with her statement in the entitlement questionnaire form that she could not or would not work from 9:00 a.m. to 3:00 p.m. on the days she was in school. So, I give more weight to the information in these forms than to the Appellant's statement that she could work all hours of the day and days of the week.

[45] In light of the above, despite her statement that she would change her school schedule if she found a job that conflicted with school, I find it more likely than not that this is not the case. And the Appellant didn't say she was willing to give up school to accept a job. I find this shows that the Appellant's priority was her high school studies.

[46] The Appellant said she tried to get a full-time job in 2021 and 2022 during the COVID-19 pandemic since her courses were available online. But other than periodically asking her employer for more hours up to full-time hours, she applied for one job on March 19, 2021, and one job on June 8, 2021.

[47] I don't doubt that the Appellant had flexibility to do schoolwork online so she could work full-time during the day. But I don't find that her efforts support her stated intention to do this.

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[11] See page GD3-27.

[48] The Appellant's employer said it would not have given her full-time work hours because she was in school.[12] I find this from this that the Appellant continuing to work at her part-time job would likely have meant that she continued to work mostly on weekends as she had in the past.

[49] The Appellant said her employer didn't tell her that she could not get full-time hours because she was in school. She said the employer said it didn't have extra hours to give her. Whether her employer told her why it would not give her more hours, I don't find that the Appellant's ongoing attempts to do so were realistic if the employer kept refusing her requests.

[50] So, I don't find that any flexibility in her school schedule during the pandemic is an exceptional circumstance in her case based on which she can rebut the presumption of non-availability. This is because the Appellant wasn't making enough and realistic efforts to take advantage of any flexibility in her schedule.

[51] The Appellant pointed to three Tribunal decisions and one Federal Court of Appeal decisions that she said closely resembles her situation. I am not persuaded on reading these cases that they are so similar to the Appellant's that I can find that she has rebutted the presumption of non-availability.

[52] The General Division of the Tribunal found that a full-time high school student had proven that she was available for work.[13] But I find that the facts in that case are somewhat different from the Appellant's. The claimant had applied for six jobs over ten months and had re-visited each employer. And she had pointed to over 100 absences from school during the school year because she chose to work rather than attend school.

[53] By contrast, the Appellant applied to only two jobs and asked her employer for more work hours. And she said she could not and would not work during school hours.

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[12] See page GD3-30.
[13] See *RM v Canada Employment Insurance Commission*, 2024 SST 157.

[54] The Appeal Division of the Tribunal found that a full-time student had proven that he was available for work.[14] It found that the claimant had a work-study history, and he was looking for a job offering the same conditions.

[55] The Appeal Division relied on a finding of the *Page* decision that the Appellant also cited.[15] In that decision, it was held that a demonstrated ability to maintain part-time employment over the long term while in school full-time is an exceptional circumstance that is enough to rebut the presumption of non-availability.

[56] In *Page*, the claimant had often worked up to 30 hours a week before his lay-off and while in school before the pandemic. And the claimant had worked for several years while in school full-time. I don't find that the Appellant has shown that she had regular, part-time work over a long term while in school as explained already. So, I find that her situation is different from the one in *Page*.

[57] The Appeal Division of the Tribunal found that a full-time student had not shown that she was available for work.[16] In this case, the Appeal Division found that the claimant was willing to work only on weekends while in school. The claimant had also found a job that offered her a few hours in the week, which was consistent with her statements that she was only looking for part-time or casual work so she could focus on her studies.

[58] I have already found that the Appellant's statement that she didn't usually work Monday to Friday means that she usually worked on weekends. So, I do agree with the Appellant that her situation is similar to this case. But as already noted, the Appeal Division found that the claimant had not proven her availability for work.

[59] The Appellant hasn't rebutted the presumption that she is unavailable for work.

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[14] See *AE v Canada Employment Insurance Commission*, 2024 SST 112.
[15] See *Page v Canada (Attorney General)*, 2023 FCA 169.
[16] See *PN v Canada Employment Insurance Commission*, 2024 SST 108.

[60] I am now going to continue on to decide the section of the law dealing with availability.

Capable of and available for work

[61] I also have to consider whether the Appellant was capable of and available for work but unable to find a suitable job.[17] Case law sets out three factors for me to consider when deciding this. The Appellant has to prove the following three things:[18]

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

b) She has made efforts to find a suitable job.

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

[62] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[19]

– **Wanting to go back to work**

[63] The Appellant has shown that she wanted to go back to work as soon as a suitable job was available.

[64] As noted above, the Appellant said she applied for EI benefits to supplement her part-time income after the hours of work were reduced. She said she made ongoing efforts to get more hours of work from her employer. I'll look at whether the efforts she made to find work were enough below. But I am satisfied that the efforts she did make are enough for this factor.

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[17] See section 18(1)(a) of the Act.
[18] These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision paraphrases those three factors for plain language.
[19] 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.

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

[65] The Appellant hasn't made enough effort to find a suitable job.

[66] The application for benefits lists some job search activities claimants are expected to do to increase their chances of finding work.[20] As noted above, the Appellant completed a job search form and sent it to the Commission.

[67] I asked the Appellant if she had applied for any jobs between February 28, 2021, and February 1, 2022, other than the ones listed on this form. The Appellant said she periodically asked her employer for more hours. She added that she had networked with family, friends and the community. And she checked the Job Bank weekly for job opportunities.

[68] I find that the activities the Appellant undertook are of the type listed in the law to look for work. But I don't find that her efforts were enough.

[69] The Commission noted that labour market information showed 17 jobs posted in the area where the Appellant lives. The Commission said the Appellant lives in a very rural area and that she would be expected to look for and travel to areas where most residents of her community travel to work.

[70] I asked the Appellant about what the labour information showed. She said she would not have qualified for any of those jobs because she was 15 years old. She said the only one that may have related to her skills as a cashier would be the customer service job that was listed.

[71] The Appellant said in her entitlement questionnaire that she has a car. She named two locations in her province where she was looking for work. The Commission included these areas its Job Bank Tool search. I find that if the Appellant wasn't qualified for any of the jobs in the two locations where she was looking for work, she could have expanded her search if her intent was to find a full-time job.

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[20] See page GD3-12 for the list of job search activities.

[72] Aside from asking her employer for more hours, the Appellant applied for only one job in March 2021, and one job in August 2021. So, I asked the Appellant about the Commission's submission that her job search efforts don't support that she was capable of and available for full-time work. In her response, the Appellant questioned what was sufficient and what more she had to do.

[73] I find that if the Appellant wanted to get regular part-time work, it was not enough to apply for two jobs and to periodically ask her employer for more work, especially since this wasn't working. And I make this finding knowing that jobs may have been more difficult to find during the pandemic.

[74] I find that the Commission's Job Bank Tool search shows it was likely there were more jobs available to the Appellant in the period in question that the Appellant could have applied to than the two she did. And I find that if she didn't find jobs in her preferred locations of work, she could have looked for work in other areas.

[75] I acknowledge the Appellant's efforts to work full-time for her employer. But her employer said it would not give her full-time hours because she was a student. So, I don't find that relying on this employer for regular part-time weekday work or the full-time work she said she wanted was realistic.

[76] Based on the above, I don't find that the Appellant's efforts were enough to meet the requirements of this second factor.

– **Unduly limiting chances of going back to work**

[77] The Appellant has set personal conditions that might have unduly limited her chances of going back to work.

[78] I have already found that the Appellant hasn't rebutted the presumption of non-availability while she was in school. The Appellant said that the Commission's question to her about quitting school if she found a full-time job wasn't relevant because she didn't have to quit; she could have adjusted her schedule. I don't agree that the

Commission's question is irrelevant. Rather, it's an indicator of what a claimant's priority is, work or school.

[79] I accept as fact that the Appellant may have wanted to work more in the periods in question because of flexibility in her school schedule. But I find from her limited, very local job search despite being unable to get more work around her school schedule, that her priority was her studies. And this is understandable.

[80] So, I find that the Appellant's choice to stay in school, while understandable, might have unduly limited her chances of returning to work.

– **So, was the Appellant capable of and available for work?**

[81] Based on my findings, I find that the Appellant hasn't shown that she was capable of and available for work but unable to find a suitable job.

Retroactive review of availability

[82] In her notice of appeal, the Appellant said the decision to deny her benefits was unfair and that the Commission didn't follow the law regarding the evidence she gave.

[83] The Appellant didn't specifically question the Commission's decision to review her availability for work after it paid her benefits, when it already knew she was attending school. But I will consider whether the Commission could do so, and if so, whether it did so judicially.

[84] In response to the COVID-19 global pandemic, the government of Canada amended the Act using a series of interim orders. The interim orders could add provisions to, adapt provisions or cause provisions of the Act not to apply.[21]

[85] Under Interim Order No. 10, the Act was amended by adding a new section. The new section created by the interim order allowed the Commission to verify the

[21] See subsection 153.3(1) of the Act.

availability of students enrolled in non-referred training even after benefits were paid.[22] It refers to section 18 of the Act that concerns availability for work.

[86] The Appellant applied for EI benefits on March 11, 2021. The Commission said an initial claim for EI benefits was established on February 28, 2021. But the Commission decided that the Appellant hadn't proven her availability for work while in school. And it did so after it had paid her benefits. So, this resulted in an overpayment of benefits.

[87] In its submissions, the Commission explained that during the COVID-19 pandemic, it postponed determining entitlement to EI benefits for claimants who said they were in school. It did so to process claims more quickly. But that meant that it would verify entitlement to benefits even after benefits were paid.[23] Because of when the Appellant applied for EI benefits and when her benefit period was established, I find that this is what happened in her case.

[88] The Commission has a choice to reconsider, or as in this case, verify claims for benefits. That means that it is a discretionary decision. Discretionary decisions should not be disturbed unless the Commission failed to act in a judicial way. This means acting in good faith, having regard to all the relevant factors, and ignoring any irrelevant factors.[24]

[89] The Commission said it considered the Appellant's class schedule, her efforts to find a job, the priority she gave to her studies and the restrictions she imposed on her availability. It said that these factors are relevant to the analysis of her availability for work.

[90] The notes from the Commission's reconsideration file show that in addition to the information in her training information form and entitlement questionnaire, the Appellant

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[22] See section 153.161 of the Act.
[23] The Commission says section 153.161 of the Act allows for this modified operational approach.
[24] *Canada (AG) v. Sirois*, A-600-95; *Canada (AG) v. Chartier*, A-42-90

gave details of her high school studies. The Appellant didn't raise any additional relevant factors in her written response to the questions sent to her.

[91] I don't find from the Commission's notes that it acted in bad faith. Rather, I find that it reviewed the Appellant's claim so it could verify her availability for work. It used information from the Appellant's training information form, her entitlement questionnaire and from its conversations with her when making its decision. And I don't find that it considered any irrelevant factors. So, I find that the Commission acted judicially when it made the decision to disentitle the Appellant from receiving EI benefits.

Earnings

– **Are the Appellant's wages earnings?**

[92] Yes, the bi-weekly wages the Appellant got from her employer are earnings.

[93] The law says that earnings are the entire income that you get from any employment.[25] The law defines both "income" and "employment."

[94] **Income** can be anything that you got or will get from an employer or any other person. It doesn't have to be money, but it often is.[26]

[95] **Employment** is any work that you did or will do under any kind of service or work agreement.[27]

[96] The Appellant has to prove that the money is **not** earnings. The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that the money isn't earnings.

[97] I find that the wages the Appellant received from her employer are earnings.

[98] The Appellant's employer paid her for work she did. The employer reported the Appellant's wages in a record of employment it issued, and in a form letter the

[25] See section 35(2) of the EI Regulations.
[26] See section 35(1) of the EI Regulations.
[27] See section 35(1) of the EI Regulations.

Commission sent for the employer to complete. The Commission decided that this money was wages paid to the Appellant for work she did for the employer from the week of February 28, 2021, to the week of February 6, 2022.

[99] Generally, the Appellant agrees with the Commission that the money her employer paid her is earnings. But she says that the Commission didn't correctly allocate the earnings.

[100] Despite the Appellant's agreement, I find that there are clerical errors in the earnings amounts for the week of February 28, 2021, and the week of February 6, 2022. The Commission said it "prorated" the Appellant's weekly earnings as detailed by her employer. But the prorated earnings amount in the Commission's calculation for the week of February 28, 2021, is $47, not $109 as listed in the initial decision letter. And for the week of February 6, 2022, the prorated earnings amount is $107, not $122 as listed in the initial decision letter.

[101] With the correction of the two amounts noted above, I agree with the Commission and find that the wages are earnings paid for work done for the employer from the week of February 28, 2021, to the week of February 6, 2022.

– **Did the Commission allocate the earnings correctly?**

[102] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.[28]

[103] The Appellant's earnings were wages. The Appellant's employer paid her those earnings because she did work for them.

[104] The law says the earnings you get for work done for an employer have to be allocated in the period the work is done.[29]

[105] The Appellant agrees that her employer paid her for the weeks in question. But she says the Commission didn't allocate her earnings correctly. She said her employer

[28] See section 36 of the EI Regulations.
[29] See section 36(4) of the EI Regulations.

reported her earnings to the Commission from Monday to Sunday, instead of from Sunday to Saturday.

[106] The Commission asked the Appellant's employer to provide details of her earnings. The employer completed the Request for Payroll Information form the Commission sent, but it said the weekly earnings it reported covered Monday to Sunday. The employer told the Commission that it paid the Appellant $13 per hour and 4% vacation that was included with each pay.

[107] The Commission sent a Request for Clarification of Employment Information form with the employer's details of her weekly earnings to the Appellant.[30] It used the Monday to Sunday earnings that the employer provided. The Appellant responded and explained why her declared earnings were different than what the employer had reported.

[108] The Commission sent a second Request for Clarification of Employment Information form to the Appellant.[31] The Commission said that in this second form, it had removed the 4% vacation pay.

[109] The Commission noted in its reconsideration file that when it sent out the two earlier Request for Clarification of Employment Information forms, it missed the information the employer gave, that the weekly earnings were reported from Monday to Sunday. It showed what it called a prorated calculation of the Appellant's weekly earnings, from Sunday to Saturday, for the weeks in question, with and without the 4% vacation pay.[32] So, it sent the Appellant a third Request for Clarification of Employment Information form.[33]

[110] The Commission sent the Appellant a fourth for Clarification of Employment Information form.[34] But the reported earnings that the Commission says it prorated for

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[30] See pages GD3-37 to GD3-42.
[31] See pages GD3-45 to GD3-48.
[32] See pages GD3-53 and GD3-54.
[33] See pages GD3-55 to GD3-60.
[34] See pages GD461 to GD3-66.

the weeks from September 26, 2021, to February 6, 2022, are different from those listed in the prorated calculation and the third form sent to the Appellant. But the Commission didn't give a reason for the differences.

[111] The Commission said the Appellant agreed with the earnings in the fourth Clarification of Employment Information form. And these are the reported earnings that the Commission used in its initial decision letter.[35] But, the Appellant said she doesn't agree with the earnings the Commission listed in its decision letter.

[112] The Appellant explained that in her conversation with the Commission on January 10, 2024, when the Commission asked her if she agreed, she said she guessed so. But she said the Commission didn't say how the earnings were prorated and she doesn't know how it arrived at the amounts listed. She insists that the correct weekly earnings are those that she reported based on her hourly wage of $13.00 and the hours she worked, from Sunday to Saturday.

[113] The Appellant said she doesn't have proof of her declared earnings. She said she and her mother kept track of the hours she worked in their phone calendars, but they have since been deleted. Despite this, the Appellant detailed her calculation of her earnings based on the hours she says she worked in each of the weeks in question. She also gave an example to demonstrate that the Commission didn't allocate her earnings correctly.

[114] The Appellant said that she reported $0 earnings for the week of November 28, 2021, but the Commission says she had earnings of $93. The Appellant said she worked seven hours on Sunday, December 5, 2021. She said she reported these seven hours along with the 8 hours she said she worked in the week of December 5, 2021.

[115] I find that there are anomalies in earnings details of both the Appellant and the Commission. For example, the Appellant said in her request for reconsideration that she doesn't know exactly how much she was paid per hour, so she reported her

[35] See pages GD3-70 and GD3-71.

earnings at $13.00. She said she may have been paid a bit more. And as noted above, she said some of the records of her hours worked have been deleted.

[116] On the Commission's part, as noted above, there are errors in its initial decision letter in what it says the Appellant actually earned in the week February 28, 2021, and the week February 6, 2022. And the Commission didn't explain why the reported earnings in the third and fourth Clarification of Employment Information forms are different for some weeks.

[117] Ultimately, the Commission used information from the employer, who holds payroll records for the Appellant, to determine what the Appellant's weekly earnings are. And the Appellant doesn't have complete records of the hours she worked and isn't sure of her hourly wage for the entire period in question. So, I give more weight to the Commission's listed "prorated" weekly earnings than to the Appellant's declared earnings, except for the weeks February 28, 2021, and February 6, 2022. I find for these two weeks, the earnings to be allocated are $47 and $107, respectively.

[118] I find that the Appellant had weekly earnings that must be allocated. But because of what appears to be a clerical error, I find that Commission didn't properly allocate those earnings. For clarity, I find that $47 should be allocated to the week February 28, 2021, the earnings amounts in the Commission's decision letter for the weeks May 7, 2021, to January 30, 2022, should be allocated to those weeks, respectively, and $107 should be allocated to the week February 6, 2022.

Conclusion

[119] The Appellant hasn't shown that she was available for work within the meaning of the law. Because of this, I find that the Appellant can't receive EI benefits.

[120] The Appellant received earnings. These earnings are allocated to the weeks the Appellant did work for the employer but modified for the weeks February 29 2021 and February 6, 2022.

[121] This means that the appeal is dismissed with modification.

Audrey Mitchell

Member, General Division – Employment Insurance Section