Citation: *KD v Canada Employment Insurance Commission*, 2025 SST 406

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (441085) dated December 7, 2021 (issued by Service Canada)

Tribunal member:	Bret Edwards
Type of hearing:	Videoconference
Hearing date:	April 8, 2025
Hearing participant:	Appellant's representative
Decision date:	April 22, 2025
File number:	GE-25-605

Decision

[1] The appeal is allowed. I agree with the Appellant.

[2] The Appellant has shown that she was available for work while in school, specifically from November 29, 2020 to June 29, 2021. This means she isn't disentitled from receiving Employment Insurance (EI) benefits during that period.

[3] The Appellant was already paid EI benefits during the above period, so she doesn't have to repay those benefits.

Overview

[4] The Appellant established a claim for EI benefits as of November 9, 2020. She was subsequently paid benefits.[1]

[5] In October 2021, the Canada Employment Insurance Commission (Commission) decided to review the Appellant's entitlement to the benefits she had received. Upon finishing its review, it decided the Appellant wasn't entitled to benefits from November 29, 2020 onwards because she wasn't available for work while in school.[2]

[6] Upon reconsideration, the Commission kept its original decision.[3]

[7] The Appellant then appealed the Commission's reconsideration decision to the Tribunal's General Division (GD).

[8] Once the appeal reached the GD, the Appellant decided to initiate a Charter challenge too. The GD dismissed the Appellant's Charter Challenge. The Tribunal's Appeal Division (AD) then dismissed the Appellant's appeal of the GD's decision on her Charter Challenge.

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[1] GD4-1.
[2] GD3-31.
[3] GD3-42 to GD3-43.

[9] After the GD and AD dismissed the Appellant's Charter Challenge, the GD then considered the Appellant's appeal of the Commission's reconsideration decision. The GD allowed the appeal, finding the Commission hadn't acted fairly when it decided to review the Appellant's claim.

[10] The Commission appealed the GD's decision to the AD. The AD allowed the appeal, finding the Commission had acted fairly when it decided to review the Appellant's claim and returning the appeal to the GD for a decision on the issue of the Appellant's availability for work.

[11] A person has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means a person has to be searching for a job.

[12] 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 she has to show that it is more likely than not that she was available for work.

[13] The Commission says the Appellant wasn't available for work because she's failed to rebut the presumption of non-availability while in high school and couldn't have found suitable employment during that period.

[14] The Appellant says she has rebutted the presumption of non-availability while in high school and was available for suitable work during that period.

Matters I have to consider first

The Appellant wasn't at the hearing

[15] The Appellant wasn't at the hearing.

[16] A hearing can go ahead without the Appellant if the Appellant got the notice of hearing.[4]

[4] Section 58 of the *Social Security Tribunal Rules of Procedures* sets out this rule.

[17] I think that the Appellant got the notice of hearing because her representative agreed to be contacted by email[5] and the notice was emailed to her on March 31, 2025.[6]

[18] Also, the Appellant's representative confirmed at the hearing that the Appellant couldn't attend as she was writing a final exam for one of her university courses.

[19] So, the hearing took place when it was scheduled, but without the Appellant.

The Appellant's representative was at the hearing

[20] The Appellant's representative (who is her mother) was at the hearing. She provided a sworn affirmation at the start of the hearing. She then provided information on behalf of the Appellant during the hearing.

I can't look at the Commission's decision to review the Appellant's claim

[21] In this case, the Commission paid the Appellant benefits and then later decided to review her claim. This review led the Commission to decide that the Appellant wasn't entitled to benefits because she wasn't available for work.

[22] The GD allowed the Appellant's appeal of the Commission's reconsideration decision. It found that the Commission didn't act fairly when it decided to review the Appellant's claim.[7]

[23] But the Commission appealed the GD's decision to the AD. And the AD found that the Commission did act fairly when it decided to review the Appellant's claim and that the appeal should be returned to the GD for a decision on the issue of the Appellant's availability.[8]

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[5] GD2-8.
[6] RGD1-1.
[7] GD decision, GE-22-105.
[8] AD decision, AD-24-474.

[24] Since the AD overturned the GD's decision on the issue of the Commission's review of the Appellant's claim, I can't look at that issue again here. The AD has already decided it.

[25] This means I must look only at the decision the Commission made upon finishing its review of the Appellant's claim, specifically on the issue of her availability for work. The AD didn't make a decision on that issue and instead has instructed me (the GD) to consider it instead.

The Commission now agrees the Appellant has proven her availability from June 30, 2021 onwards

[26] Initially, the Commission decided the Appellant wasn't available for work from November 29, 2020 onwards.[9]

[27] But the Commission now says it has "no issue" with the Appellant's availability "in the period following the end of her high school studies based on the information on file".[10]

[28] The Commission also says the Appellant still hasn't proven her availability while she was in high school, specifically from November 29, 2020 to June 29, 2021.[11]

[29] Based on the above, I find the Commission now agrees that the Appellant has proven her availability from June 30, 2021 onwards. Otherwise, it's reasonable to believe the Commission wouldn't have said it has "no issue" with the Appellant's availability after she ended high school.

[30] As a result, I don't need to consider whether the Appellant was available for work from June 30, 2021 onwards since the Commission now agrees that the Appellant has proven her availability during that period. Rather, I only need to consider whether the

[9] GD3-31, GD3-42 to GD3-43.
[10] RGD2-2.
[11] RGD2-2 to RGD2-3.

Appellant was available for work from November 29, 2020 to June 29, 2021, which is the remaining area of disagreement between the Appellant and the Commission.

I accepted the Appellant's post-hearing documents

[31] The Appellant's representative sent in a post-hearing document.[12] I accepted the document as it relates to the Appellant's representative's arguments concerning the Appellant's availability.

Issue

[32] Was the Appellant available for work from November 29, 2020 to June 29, 2021?

Analysis

[33] To get regular EI benefits, you need to meet certain conditions. One of those conditions is that you need to show you are available for work during the time you want benefits.

[34] Two different sections of the law require you to show that you are available for work.

[35] First, the law says that a person has to prove that they are making "reasonable and customary efforts" to find a suitable job.[13] If asked to do so, they can't get benefits until they provide that proof.[14]

[36] Second, the law says that a person has to prove that they are "capable of and available for work" but aren't able to find a suitable job.[15]

[37] The Commission says that the Appellant can't get benefits because she hasn't shown that she was available for work based on both of these sections of the law.[16]

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[12] RGD5-1 to RGD5-3.
[13] See section 50(8) of the *Employment Insurance Act* (EI Act).
[14] See section 50(1) of the EI Act.
[15] See section 18(1)(a) of the EI Act.
[16] GD4-2.

[38] But the AD has said that the Commission can't refuse to pay benefits to someone for failing to show that they are making reasonable and customary efforts to find a job if the Commission doesn't first ask them to provide proof of their job search and explain to them what kind of proof would meet a "reasonable and customary" standard.[17]

[39] Even though I'm not bound by the AD's decision in this case, I will follow it here as I find its reasoning to be persuasive.

[40] I find there's insufficient evidence that the Commission asked the Appellant to prove that she was making reasonable and customary efforts to find a job from November 29, 2020 onwards. While the Commission initially appears to have asked the Appellant for a job search[18], I find it later backtracked when it told her she "may not need it".[19] And while the Commission also appears to have told the Appellant in very general terms what her job search should include[20], there's no indication that the Commission ever specifically informed the Appellant what kind of proof would meet a "reasonable and customary" standard.

[41] So, I find the second part of the law doesn't apply in these circumstances.

[42] This means I'm only going to consider the first part of the law here, specifically whether the Appellant was capable of and available for work from November 29, 2020 to June 29, 2021.

[43] But before I do that, I have to look at something else first, specifically whether the Appellant can be presumed to be unavailable for work while she was in school during the above period.

Can the Appellant be presumed to be unavailable for work while she was in school from November 29, 2020 to June 29, 2021?

[17] See *TM v Canada Employment Insurance Commission*, 2021 SST 11.
[18] GD3-26.
[19] GD3-29.
[20] GD3-29.

[44] No. I find the Appellant can't be presumed to be unavailable for work while she was in school from November 29, 2020 to June 29, 2021. Here are my reasons.

[45] The Appellant was a student during the above period. The Federal Court of Appeal (Court) says that people who are taking training full-time are presumed to be unavailable for work.[21] This is called the "presumption of non-availability". It means I can presume that students aren't available for work when the evidence shows that they are taking training full-time.

[46] But it is also possible to rebut the presumption that a full-time student is unavailable.

[47] So, the first thing I need to do is decide if the Appellant was a full-time student. Then, if she was, I have to decide if she has rebutted the presumption of non-availability.

[48] I find the Appellant was a full-time student from November 29, 2020 to June 29, 2021.

[49] I find the parties don't appear to dispute that the Appellant was a full-time student. The Appellant's representative says that the Appellant was in school Monday to Friday on a modified curriculum schedule due to the COVID-19 pandemic during this period.[22] And the Appellant indicated on her on all of her training questionnaires that her schooling was full-time during this period.[23]

[50] Since the Appellant was a full-time student, I now have to look at whether she has rebutted the presumption of non-availability.

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[21] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.
[22] RGD3-3.
[23] GD3-14, GD3-19, GD3-22.

[51] The Court says in a recent decision that I have to do a contextual analysis when deciding whether a full-time student has rebutted the presumption of non-availability.[24] This means looking at the student's specific circumstances. From now on, I will refer to this decision as "Page".

[52] In Page, the Court mentions different fact patterns where the presumption has been successfully rebutted. These include circumstances where a person indicated a willingness to give up their studies to accept employment or where a person has a history of being regularly employed while attending school and is searching for work at hours similar to those formerly worked. Other considerations might be relevant too, such as the ability of a person to follow classes online at a time of their choice.[25]

[53] The Commission says the Appellant hasn't rebutted the presumption of non-availability while in high school because she doesn't have a work history during her schooling that can be described as regular. Rather, she has a brief work history that "at best…can be described as casual"[26] because she had a total of 160 hours of work between two jobs over a 72-day period, specifically from September 19, 2020 to November 29, 2020.[27]

[54] The Commission also says that Page refers to another Court decision ("Lalonde") that itself endorses another Court decision ("Loder") that found "a two-month history would be insufficient" for a person to show "having regularly held a job while studying."[28]

[55] The Appellant's representative says the Appellant has rebutted the presumption of non-availability while she was in high school because her work pattern during that period was "firm, serious, and genuine" and not casual or intermittent.[29]

[56] The Appellant's representative also says the Appellant had regular part-time employment at two different jobs: "B", a restaurant, where she was a hostess, and "G",

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[24] See *Page* v *Canada (Attorney General)*, 2023 FCA 169.
[25] See *Page v Canada (Attorney General)*, 2023 FCA 169, paragraph 69.
[26] RGD2-2.
[27] RGD2-1 to RGD2-2.
[28] RGD2-2.
[29] RGD3-3.

where she helped with a store opening. Between these two jobs, she worked 2-3 part-time afternoon or evening shifts on weekdays and at least 1 full day on the weekend each week. She also says after those jobs ended, the Appellant then continued to look for work at those same times while she remained in high school.[30]

[57] After reviewing the evidence myself, I find the Appellant has rebutted the presumption of non-availability. Contrary to what the Commission says, she has a history of regular employment while she was in high school and continued to look for work at hours similar to those she previously worked.

[58] More specifically, I find that the Appellant's work schedule between September 19, 2020 and November 29, 2020 can be described as regular rather than casual or intermittent. I make this finding because I'm persuaded that the Appellant had a **pattern of consistent employment** for more than two months while studying full-time because she had a **steady work schedule each week** (2-3 shifts in the afternoons or evenings on weekdays and 1 shift on weekends, between her two jobs) during that period. To me, this clearly means she had regular, rather than irregular, employment.

[59] I might have made a different finding if the Appellant had a work schedule that significantly varied from week to week. But while the ROEs for her jobs with B and G do show some variance in her work hours[31], I'm not persuaded that there is enough variance that would lead me to doubt that she wasn't working 2-4 shifts per week **between those two jobs**.

[60] In other words, I find the ROEs aren't sufficient evidence to show that the Appellant doesn't have a history of regular employment. Because of that, I don't give them much weight here.

[61] I also find the Appellant continued to look for work at hours similar to those she previously worked. Her representative says she did this and I accept that these job efforts were sincere and sufficient, as discussed more in the next section.

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[30] RGD3-3.
[31] GD38-3, GD38-5.

[62] I acknowledge that the Appellant's representative has provided the information about the Appellant's work schedule and job search efforts rather than the Appellant herself.

[63] But I think it's reasonable to believe that since the Appellant's representative is her mother, she would have a better understanding of the Appellant's work schedule and job search efforts than almost anyone else. And from speaking to the Appellant's representative at the hearing, I didn't see any reason to doubt the information she provided, particularly since she has made the same arguments in writing multiple times prior to the hearing.[32]

[64] For these reasons, I give significant weight to all of the information from the Appellant's representative here.

[65] I acknowledge that the Appellant's period of employment while in high school was less than three months.

[66] But when I look at the Appellant's circumstances, I find she still has a history of regular employment despite the fact that she worked for less than three months while in high school.

[67] At the hearing, the Appellant's representative said that the two jobs the Appellant had between September 2020 and November 2020 were her first jobs. She was a competitive dancer and split her time between that and school. But she decided to start working to try and save some money for university the next year.

[68] In my view, the Appellant can't be penalized for not having a longer work history. She was only in Grade 12 (and therefore still a teenager) at the time she was employed. In my view, it's not uncommon for people in the Appellant's situation to have not started working at all yet, let alone found part-time employment with two different employers at once. And I accept that prior to securing that employment the Appellant was a competitive dancer, which would likely have taken up a significant amount of her free

[32] GD43-2 to GD43-3, RGD3-3 to RGD3-4.

time and made it nearly impossible to work alongside school and her dancing commitments. Because of those things, I don't think the Appellant's specific work history can be held against her.

[69] In other words, in light of the Appellant's young age and other life circumstances, I must focus on how often she worked when she was working, not how long she worked for. And when I do that, it's clear to me that she has a history of regular employment while in high school.

[70] I acknowledge that the Commission says that Lalonde refers to another Court decision (Loder) that found "a two-month history would be insufficient" for a person to show "having regularly held a job while studying."[33]

[71] But I find the Commission's argument doesn't change my above findings.

[72] While I acknowledge Lalonde's findings, I note that Page was released more recently than Lalonde and find that it delivers a more fulsome and nuanced analysis of whether students can be found to be available for work under EI law.

[73] As discussed above, Page says that a contextual analysis is needed to decide whether a full-time student has rebutted the presumption of non-availability, which means looking at a student's circumstances. It also says that one fact pattern where the presumption has been successfully rebutted is when a person has a history of being regularly employed while attending school and is searching for work at hours similar to those formerly worked. And it says that there is no need for a student's employment while in school to have been full-time.

[74] In other words, I find that Page builds upon and extends the analysis of previous Court cases that concern a student's availability for work and eligibility for EI benefits. And I give it more weight than previous Court cases on the same subject.

[75] As a result, for the reasons set out above, when I follow Page's guidance and do a contextual analysis of the Appellant's circumstances, I find she has a history of regular

[33] RGD2-2.

employment while in high school and was searching for work at hours similar to those she previously worked.

[76] This means the Appellant has done enough to rebut the presumption of non-availability while she was in high school.

[77] Since I've found that the presumption of non-availability doesn't apply to the Appellant, I now have to go on and consider if the first part of the availability law (which I've discussed above) applies to the Appellant, specifically whether she was capable of and available for work while she was in high school, from November 29, 2020 to June 29, 2021. I will look at that now.

Was the Appellant capable of and available for work from November 29, 2020 to June 29, 2021?

[78] Yes. I find the Appellant was capable of and available for work from November 29, 2020 to June 29, 2021.

[79] As discussed above, the part of the law that I need to look at says that a person has to prove that they are capable of and available for work but aren't able to find a suitable job.[34]

[80] On the one hand, I find the Appellant was capable of work while she was in high school. The parties don't dispute that she was able to work then.

[81] But, as discussed above, it isn't enough for a person to prove that they are capable of work. They also have to show they are available for work.

[82] Case law (in other words, decisions of the courts) explains that there are three things a person has to prove to show that they're available for work:

a) They want to go back to work as soon as a suitable job is available.

b) They've made enough effort to find a suitable job.

[34] See section 18(1)(a) of the EI Act.

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

[83] These three things are commonly called the Faucher factors.[35]

[84] The Appellant has to prove that she has met all three Faucher factors in order for me to conclude she was available for work.

[85] When I decide if the Appellant has met the Faucher factors, I have to look at the Appellant's attitude and the things that she did or didn't do to make herself available for work.[36]

[86] In this case, I find the Appellant has met all three Faucher factors during her disentitlement period, specifically from November 29, 2020 to June 29, 2021. This means she has shown that she was available for work while she was in high school.

[87] Here is my analysis of each Faucher factor, one at a time.

– **Wanting to go back to work**

[88] I find the Appellant has shown that she wanted to go back to work from November 29, 2020 to June 29, 2021.

[89] At the hearing, the Appellant's representative said that the Appellant wanted to work while she was in high school. She was a hostess with B but lost that job in late November 2020 due to the COVID-19 lockdowns in Ontario that limited in-person gatherings. She was in touch regularly with B immediately afterwards to find out when they were reopening and initially thought the lockdowns would be lifted after the holidays. But she started to look for other work in early January 2021 after the lockdowns were extended.

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[35] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[36] 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.

[90] I acknowledge that the Appellant wasn't at the hearing to testify herself. But I've already found that I give significant weight to the information from the Appellant's representative about the Appellant's availability.

[91] I also don't see any evidence that would lead me to question the information from the Appellant's representative about the Appellant's desire to work while she was in high school. And I've already found that I give significant weight to all of the information that her representative provided here.

[92] Based on the available evidence, I'm satisfied that the Appellant's attitude and actions show that she wanted to work during her disentitlement period.

[93] This means the Appellant meets the first Faucher factor.

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

[94] I find the Appellant made enough effort to find a suitable job from November 29, 2020 to June 29, 2021.

[95] As discussed above, the Appellant's representative said at the hearing that she was a hostess with B but lost that job in late November 2020 due to the COVID-19 lockdowns in Ontario that limited in-person gatherings. She was in touch regularly with B afterwards to find out when they were reopening and initially thought the lockdowns would be lifted after the holidays. But she started to look for other work in early January 2021 after the lockdowns were extended.

[96] The Appellant's representative also said the following about the Appellant's job search efforts:

- The Appellant regularly looked for work starting in early January 2021, after she realized B wasn't reopening in the near future.
- The Appellant looked for jobs in retail (because she thought those employers might hire minors, like her) and in the restaurant industry (where she had worked before, with B).

- The Appellant went to malls (when they were open in between the lockdowns) to hand out resumes to employers in person and also looked for jobs online.\
- The Appellant looked for work in person once or twice a week and looked online the other days.
- The majority of employers told the Appellant that they were struggling because their hours were reduced and couldn't hire her right now because they didn't even have enough work for their current employees.
- The Appellant did have an interview with Foot Locker, but they told her they couldn't hire her right now due to the lockdowns.
- The Appellant also asked her network (friends and family) about potential job opportunities.

[97] Based on the above information, I find that suitable employment for the Appellant while she was in high school was work that she had recently done, specifically in restaurants and retail. Since she already worked at a restaurant (B), I think it's reasonable to believe she would be qualified to accept similar work. I also think it's reasonable that retail employers would generally consider her to be an acceptable employee despite her young age as many would have entry level positions that pay close to minimum wage. And while I acknowledge the Appellant wasn't at the hearing to provide testimony on this subject herself, I've already found that I give significant weight to the information that her representative provided in her absence.

[98] I further find the Appellant made sufficient efforts to look for work from November 29, 2020 to early January 2021. This is because she was waiting to see if B would call her to return to her job.

[99] In Page, the Court says that it's reasonable to allow a person a reasonable opportunity to wait to be recalled.[37]

[37] See *Page v Canada (Attorney General)*, 2023 FCA 169, paragraph 82.

[100] I find that aspect of Page applies here since it was less than a two-month waiting period before the Appellant began to apply for other work. And I think it was reasonable for the Appellant to initially expect that she might be recalled until it became clear that the COVID-19 lockdowns would continue for longer than expected.

[101] In other words, the Appellant didn't need to look for other work from November 29, 2020 to early January 2021 because she was waiting for B to recall her. And it was reasonable for her to do that in light of the circumstances.

[102] I also find the Appellant made sufficient efforts to look for work from early January 2021 to June 29, 2021.

[103] I find the Appellant's efforts during that period were sufficient because she took different steps to look for work regularly. She alternated between looking for work in person and online during a time when many employers were not even open due to the COVID-19 lockdowns, let alone hiring. She applied for suitable jobs as much as she could, given the extraordinary circumstances of the time. She also asked her network about available suitable work. And she had an interview with an employer, but they couldn't hire her because they had no work immediately available. To me, this shows that she used various methods to try and find a suitable job during that period.

[104] I also find there's no evidence that the Appellant ever refused the Commission's request to submit her job search efforts. On the contrary, the Commission's own records indicate that they told the Appellant's representative that they "may not need" her job searches after all and then never brought up the subject again.[38] To me, this shows that the Commission sent mixed messages to the Appellant about whether she would need to produce her job searches to prove her availability. And it shows the Appellant never disregarded an order from the Commission for her job search history.

[105] I acknowledge that the Appellant hasn't submitted any written evidence of her job search efforts.

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[38] GD3-29.

[106] I also acknowledge that the Appellant wasn't at the hearing and didn't testify about her job search efforts.

[107] But I find the Appellant doesn't need to submit any written evidence of her job search efforts and didn't need to testify at the hearing to show that she was actively looking for work while she was in high school. She's already persuaded me that she did this based on the information that her representative provided prior to and at the hearing. And I've explained above why I give the information from her representative significant weight here.

[108] I also find the available evidence from the Appellant directly also persuades me that she was regularly looking for work during this period. On each of her training questionnaires, she indicates that she was available to look for work and made efforts to look for work since the start of her course.[39] To me, this supports the information her representative provided about her job efforts while she was in high school.

[109] As a result, it's clear to me that the Appellant took many different steps to look for work on an ongoing and sustained basis while she was in high school and that those efforts were focused specifically on finding suitable work.

[110] Taken together, I find the Appellant has shown that she made enough effort to find suitable work during her disentitlement period.

[111] This means the Appellant meets the second Faucher factor too.

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

[112] I find the Appellant didn't set personal conditions that might have unduly limited her chances of going back to work from November 29, 2020 to June 29, 2021.

[113] At the hearing, the Appellant's representative said that the Appellant was in her last year of high school (Grade 12) starting in September 2020 and was on a modified curriculum schedule that year. She alternated between in person and online classes

[39] GD3-15, GD3-19, GD3-23.

Monday to Thursday each week and between in person and online classes every Friday. This meant her in person class hours were about half the normal amount. Her online classes also finished earlier than in person classes, around 11am, which gave her more flexibility to work on those days.

[114] The Appellant's representative also said that the Appellant was available to work anytime outside of her class hours, specifically afternoons and evenings. That is when she was working for B and G from September to November 2020. And those shift times were common in the areas where she continued to look for work (in restaurants and retail) after she lost those jobs.

[115] The Commission says the type of employment that could be considered suitable for the Appellant as a high school student unduly limited her chances of returning to the labour market because she had "extremely limited work experience" and was barred by provincial rules from abandoning her studies.[40]

[116] I disagree with the Commission.

[117] I find the Appellant's schooling wasn't a personal condition that might have limited her chances of going back to work.

[118] I accept that the Appellant was able to work around her schooling and that she was working while she was in high school until she lost her jobs. While I acknowledge she wasn't at the hearing, I've already found that I give significant weight to the information from her representative, who said that the Appellant could and did accept work in the afternoons and evenings while she was on a modified curriculum schedule during her last year of high school.

[119] In my view, the Appellant's school schedule was flexible enough to allow her to be available for work. Aside from mornings and afternoons on the days when she had in person classes (a maximum of 3 days a week), she had no restrictions on when she could work. I've also already found that she has a history of regular employment while in

[40] RGD2-2.

high school, as discussed above. And in my view, it's reasonable to believe that suitable work for her, which in this case means restaurants and retail, would have been available in the afternoons and evenings, particularly restaurants, which often open early and close late.

[120] In Page, the Court also says that it isn't necessary for a student to show that they are available during regular hours for every working day. They may be found to be available for work even if they're only available during irregular hours.[41]

[121] In other words, I find the Appellant was available for work in spite of her schooling. Although she wasn't legally allowed to abandon her studies, her modified course schedule in Grade 12 still allowed her to accept suitable employment outside of her school hours. This means her schooling wasn't a personal condition that overly restricted her ability to find work.

[122] I also find the fact the Appellant couldn't legally abandon her studies wasn't a personal condition that limited her ability to find work either. This is because it was set in the law and therefore beyond her control. It wasn't something that she did or didn't do that jeopardized her return to the labour market. And because of that, it can't be considered a personal condition.

[123] Additionally, I find the Appellant applied for all suitable employment while she was in high school.

[124] As discussed above, I find that suitable employment for the Appellant was work she had recently done, specifically in restaurants and retail.

[125] And, as discussed above, I find the Appellant made sufficient efforts to look for suitable work while she was in high school. She has persuaded me through the information her representative provided that she took various steps to find work in the restaurant and retail industries on an ongoing and sustained basis during this period.

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[41] See *Page v Canada (Attorney General)*, 2023 FCA 169, paragraph 74.

[126] So, I find this means the Appellant didn't set a personal condition in terms of suitable employment. She didn't restrict her job search to avoid jobs she could do and had done before. Rather, she applied for those jobs and would have been able to work for employers around her school schedule.

[127] Taken together, I find the Appellant didn't set any personal conditions that unduly limited her availability during her disentitlement period.

[128] This means the Appellant meets the third Faucher factor too.

[129] I therefore find the Appellant has shown that he was capable of and available for work but unable to find a suitable job from November 29, 2020 to June 29, 2021. This is because she meets all three Faucher factors for that period.

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

[130] Based on my findings, I find the Appellant has shown that she was capable of and available for work but unable to find a suitable job from November 29, 2020 to June 29, 2021.

[131] The Appellant was already paid benefits for the above period. My decision means she is entitled to those benefits and therefore doesn't have to repay them.

[132] It also appears to me that the Appellant might now be entitled to receive more weeks of benefits during that same benefit period.

[133] The Commission told the Appellant it was stopping her benefit payments in early September 2021.[42] But, as discussed above, the Commission now says the Appellant has proven her availability from June 30, 2021 onwards. So, depending on the temporary EI rules in place at the time (which allowed the Appellant to qualify for benefits with a reduced number of insurable hours of employment), the Appellant may qualify for additional weeks of benefits after early September 2021.

[42] GD3-26.

[134] That said, I ask the Commission to promptly reach out to the Appellant to verify whether she does now qualify for additional weeks of benefits during that benefit period, and, if so, to begin the process of paying her those benefits.

Conclusion

[135] The Appellant has shown that she was available for work within the meaning of the law from November 29, 2020 to June 29, 2021.

[136] This means the Appellant isn't disentitled from receiving EI benefits during this period. Since she already received benefits, she doesn't have to repay them now.

[137] This also means the appeal is allowed.

Bret Edwards
Member, General Division – Employment Insurance Section