

Court File No. A-84-23

FEDERAL COURT OF APPEAL

BETWEEN:

Guillem Valles **PUIG**

Applicant

and

Attorney General of Canada

Respondent

FILED	FEDERAL COURT COUR FÉDÉRALE	DÉPOSÉ
	MAR 22 2023	
	EVA KAN (AL)	
VANCOUVER, BC		1

APPLICATION UNDER s. 28(1)(g.1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court of Appeal, 701 West Georgia Street, Vancouver, BC, V7Y 1B6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

ORIGINAL SIGNED BY

EVA KAN
REGISTRY OFFICER
~~AGENT DU GREFFE~~

Issued by: _____

Pacific Centre P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia, V7Y 1B6

TO:

Attorney General of Canada
British Columbia Regional Office
Department of Justice Canada
900 - 840 Howe Street
Vancouver, British Columbia V6Z 2S9

AND TO:

Social Security Tribunal
235 Queen Street,
Room S143
Ottawa, Ontario K1A 0H5

APPLICATION

This is an application for judicial review in respect of Social Security Tribunal - Appeal Division (the “Appeal Division”) decision number AD-22-589 rendered by Member Charlotte McQuade (the “Member”) on February 22, 2023 (the “Appeal Division Decision”). The Appeal Division Decision dismissed the applicant’s appeal and held that the Canada Employment Insurance Commission (the “Commission”) exercised its discretion judicially in verifying the applicant’s entitlement to Employment Insurance (“EI”) benefits and reconsidering the applicant’s EI claim. The Appeal Division Decision was first communicated to the applicant on February 23, 2023.

THE APPLICANT MAKES APPLICATION FOR:

1. An order setting aside the Appeal Division Decision;
2. An order remitting this matter to the Appeal Division with directions to allow the applicant’s appeal and to rescind the March 17, 2021 decision and April 26, 2021 reconsideration decision of the Commission, or such other directions as this honourable Court deems just;
3. Costs; and
4. Any further order that this honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

A. The Member erred in law by concluding that Policy 17.3.3 in the Commission’s *Digest of Benefit Entitlement Principles* (the “Reconsideration Policy”) did not apply to the reconsideration of the applicant’s claim.

The Reconsideration Policy applies to all reconsiderations under s. 52 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the “*EI Act*”). The Member confirmed that the authority to reconsider the applicant’s claim and impose an overpayment was indeed s. 52 of the *EI Act*. It is internally inconsistent and unreasonable to conclude

that the Reconsideration Policy did not apply to the reconsideration of the applicant's claim.

The Reconsideration Policy reflects an underlying policy intent "to prevent creating debt when the claimant was overpaid through no fault of their own". The Member expressly concluded the applicant's debt was created through no fault of his own. It is unreasonable to allow the Commission to reconsider the claim and impose a substantial debt in these circumstances.

B. The Member erred in fact and law by concluding that the Commission's decision to reconsider the applicant's claim engaged s. 153.161(2) of the *EI Act*.

The applicant's claim had already been verified in October of 2020, five months before the Commission reconsidered the applicant's claim. An agent reviewed the file, called the applicant, interviewed him at length, gathered information, and allowed him to continue collecting benefits knowing he was a student. The Member's conclusion that this call is irrelevant because the agent did not ask the applicant any questions about his availability is unsupported. It is absurd to suggest that the Commission had the time and resources to conduct a fulsome investigation regarding the applicant's reasons for separation, but could not at the same time verify facts related to his studies and availability.

The applicant's claim had already been verified by the time the Commission imposed the debt in March of 2021. Section 153.161 of the *EI Act* is not engaged.

C. The Member erred in law by concluding that the term "verify" in s. 153.161(2) of the *EI Act* allows the Commission to retroactively change a decision regarding availability absent any new and relevant information.

Even if s. 153.161(2) of the *EI Act* were engaged, it does not allow the Commission to retroactively reconsider and change a decision involving a judgement call – such as

availability – absent some new fact or information. The purpose of verification is to verify the facts and information originally provided by the claimant. It is not an opportunity to render a second decision based on the exact same information that was originally provided. Otherwise, a claimant who provided honest and accurate information would face years of uncertainty that the Commission might one day just change its mind and demand that benefits be returned. This would undermine the goal of the EI system, which is to provide some measure of financial security to the unemployed. It would also undermine the principle of finality in decision making.

D. The Member erred in fact and law by concluding that the Commission had exercised its discretion to retroactively reconsider the claim judicially.

Any power the Commission has to retroactively reconsider a claim is discretionary. All discretion must be exercised judicially, which includes considering all factors that are relevant in the circumstances.

The Member's conclusion that the Commission exercised its discretion judicially is internally inconsistent and unreasonable. The Member confirmed that the Commission had proceeded on the erroneous understanding that the March 17, 2021 decision was an initial decision on availability, not a reconsideration decision. The Commission cannot be said to have exercised its discretion judicially when it did not even contemplate that it was exercising a discretion.

E. The Member erred in fact and law by concluding that the applicant's conversations with Service Canada agents and the Commission's delay in retroactively reconsidering the claim were not relevant when assessing whether the Commission had exercised its discretion judicially.

The applicant's conversations with Service Canada were relevant. These agents led the applicant to believe he could collect EI despite knowing he was a student. This misinformation is highly relevant when assessing whether the Commission acted

judicially in later demanding that benefits be returned. The fact that an agent later called the claimant in October of 2021 to review his claim is also highly relevant. Again, the Commission had all relevant information at that point and allowed the applicant to continue collecting benefits. The fact that the EI scheme creates a statutory time-limit to reconsider a claim does not make the Commission's misinformation and delay irrelevant when assessing whether it has exercised its discretion to retroactively reconsider a claim judicially.

F. The decision to retroactively reconsider the applicant's claim is unreasonable in all the circumstances.

The Member confirmed that:

- a. the applicant was not at fault;
- b. the applicant was fully honest and cooperative throughout; and
- c. the situation created a real hardship for the applicant.

Given the Member's own findings of fact, it is unreasonable and unjust to conclude that the claim should be reconsidered, resulting in a substantial overpayment.

THIS APPLICATION WILL BE SUPPORTED BY: The Appeal Division's record of proceedings.

The applicant requests the Social Security Tribunal to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Social Security Tribunal to the applicant and to the Registry:

- a. A list of all material in the applicant’s Social Security Tribunal file; and
- b. Copies of all material in the applicant’s Social Security Tribunal file that were not distributed to the parties in the course of the appeal.



March 22, 2023

Kevin Love, Counsel for the Applicant
 Community Legal Assistance Society
 Suite 300-1140 West Pender Street
 Vancouver, B.C. V6E 4G1
 P: 604-673-3104
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I HEREBY CERTIFY that the above document is a true
 copy of the original issued out of filed in the Court on the
22 day of MAR A.D. 20 23
 Dated this 22 day of MAR 20 23


EVA KAN
REGISTRY OFFICER
AGENT DU GREFFE