

Court File No. **A-85-23**

FEDERAL COURT OF APPEAL

BETWEEN:

**Euodia T- GIORGIS**

Applicant

and

Attorney General of Canada

Respondent

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	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

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**NOTICE OF APPLICATION**

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**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

Issued by: REGISTRY OFFICER  
AGENT DU GREFFE

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 the Social Security Tribunal - Appeal Division (the "Appeal Division") decision number AD-22-474 rendered by Member Charlotte McQuade (the "Member") on February 24, 2023 (the "Appeal Division Decision"). The Appeal Division Decision allowed the appeal by the Canada Employment Insurance Commission (the "Commission") in part and held that the Commission had exercised its discretion judicially in reconsidering the applicant's claim for Employment Insurance ("EI") benefits from December 16, 2020 to September 4, 2021. The Appeal Division Decision was first communicated to the applicant on February 24, 2023.

### THE APPLICANT MAKES APPLICATION FOR:

1. An order setting aside that portion of the Appeal Division Decision that allowed the Commission's appeal in part;
2. An order remitting this matter to the Appeal Division with directions to dismiss the Commission's appeal in its entirety, 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 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 Commission approved the applicant's schooling on October 27, 2020, February 7, 2021, and May 20, 2021. Section 153.161 of the *EI Act* provides no authority to verify, revisit, or retroactively revoke a decision to approve training. Section 153.161 of the *EI Act* has no application in the present case. It is irrational to suggest that the Commission could approve full-time training, but then still require that the applicant demonstrate availability. Even if s. 153.161 of the *EI Act* did apply, the claim was

verified long before the Commission made the decision to reconsider the claim and impose an overpayment.

**B. 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 from December 16, 2020 to September 4, 2021.**

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 confirmed that the applicant had been honest with the Commission throughout. It is unreasonable to allow the Commission to reconsider the claim and impose a substantial debt in these circumstances.

**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 or the approval of a training course – 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 January 22, 2022 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 decision to reconsider the applicant's claim is unreasonable in all the circumstances.**

The decision to reconsider the applicant's claim in these circumstances is unreasonable and unjust. The applicant was not at fault. She was open and honest throughout. Indeed, she told the Commission no less than 23 times that she was a fulltime student. Despite having all the relevant information from the outset, the Commission waited until after the applicant's claim had ended before imposing the 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 SST file; and
- b. Copies of all material in the applicant's SST 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  
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 Vancouver, B.C. V6E 4G1  
 P: 604-673-3104  
 F: 604-685-7611

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