

Citation: *N. A. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 40

Appeal #: GE-13-2052

BETWEEN:

N. A.

Appellant
Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Richard Sterne

HEARING DATE: February 11, 2014

TYPE OF HEARING: Teleconference

DECISION: Appeal is dismissed.

PERSONS IN ATTENDANCE

The Claimant, N. A., attended the hearing by teleconference.

DECISION

[1] The Tribunal finds that the Claimant is disentitled to receiving employment insurance benefits (EI benefits), pursuant to section 33 of the *Employment Insurance Act Regulations* (EI Regulations).

INTRODUCTION

[2] The Claimant was employed under contract by the District School Board of Niagara (employer) until August 31, 2013.

[3] On July 16, 2013, the Claimant applied for EI benefits, indicating that his last day of work was June 28, 2013.

[4] On August 24, 2013, the Canada Employment Insurance Commission (Commission) advised the Claimant that they were unable to pay him EI benefits from July 1, 2013 to August 30, 2013, because no benefits can be paid to teachers during a non-teaching period.

[5] On September 19, 2013, the Claimant filed a request for reconsideration of the Commission's August 24, 2013 decision.

[6] On October 25, 2013, the Commission advised the Claimant that they had not changed their August 24, 2013 decision regarding their ability to pay him EI benefits from July 1st, 2013 to August 30th, 2013.

FORM OF HEARING

[7] The hearing was by teleconference for the reasons provided in the Notice of Hearing dated January 27, 2014.

ISSUE

[8] Is the Claimant disentitled from receiving EI benefits for the period July 1st, 2013 to August 30th, 2013 due to the Claimant's teaching status during the summer non-teaching period?

THE LAW

[9] Paragraph 54(j) of the Act:

The Commission may, with the approval of the Governor in Council, make regulations

(j) prohibiting the payment of benefits, in whole or in part, and restricting the amount of benefits payable, in relation to persons or to groups or classes of persons who work or have worked for any part of a year in an industry or occupation in which, in the opinion of the Commission, there is a period that occurs annually, at regular or irregular intervals, during which no work is performed by a significant number of persons engaged in that industry or occupation, for any or all weeks in that period;

[10] Section 33 of the Regulations:

(1) The definitions in this subsection apply in this section.

"non-teaching period" means the period that occurs annually at regular or irregular intervals during which no work is performed by a significant number of people employed in teaching.

"teaching" means the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school.

(2) A claimant who was employed in teaching for any part of the claimant's qualifying period is not entitled to receive benefits, other than those payable under sections 22 and 23 of the Act, for any week of unemployment that falls in any non-teaching period of the claimant unless

- (a) the claimant's contract of employment for teaching has terminated;
- (b) the claimant's employment in teaching was on a casual or substitute basis;
- or
- (c) the claimant qualifies to receive benefits in respect of employment in an occupation other than teaching.

(3) Where a claimant who was employed in teaching for any part of the claimant's qualifying period qualifies to receive benefits in respect of employment in an occupation other than teaching, the amount of benefits payable for a week of unemployment that falls within the claimant's nonteaching period shall be limited to the amount that is payable in respect of the employment in that occupation.

EVIDENCE

[11] The Claimant was employed by the District School Board of Niagara (employer) from February 1, 2012 to August 31, 2013.

[12] On July 16, 2013, the Claimant applied for EI benefits. In his application, the Claimant indicated that his last day worked was June 28, 2013.

[13] On August 19, 2013, the employer issued the Claimant's record of employment (ROE) that confirmed the dates of employment as February 1, 2012 to August 31, 2013, and gave the reason for issuing the ROE as Shortage of Work/End of Contract or season.

[14] On August 21, 2013, the employer confirmed with the Commission that the Claimant's contract ended on August 31, 2013, and that his benefits were paid until August 31, 2013. They stated that the Claimant would be returning as a .33 long term occasional teacher on September 3, 2013 and that his benefits would be available again on September 3, 2013.

[15] On August 21, 2013, the Claimant confirmed with the Commission that his current contract was ending on August 31, 2013, and his benefits continuing until August 31, 2013.

[16] On August 24, 2013, the Commission advised the Claimant that they were unable to pay him EI benefits from July 1, 2013 to August 30, 2013 because no benefits can be paid to teachers during a non-teaching period. They advised him that there are some exceptions to this rule: he could receive benefits if his service contract was ended, if he was a substitute or casual teacher and had not signed another contract, or if he had worked in an occupation other than teaching. However, there was no indication that these conditions applied in his case.

[17] On August 24, 2013 the Commission advised the Claimant that they were unable to pay him EI benefits, because his application showed that he was still employed or receiving earnings.

[18] On September 19, 2013, the Claimant filed a request for reconsideration of the Commission's August 24, 2013 decisions, arguing that because he was made redundant in June 2013, therefore he should be entitled to partial EI benefits during the summer months as his income had been substantially reduced.

[19] On October 25, 2013, the Commission advised the Claimant that they had overturned their August 24, 2013 decision and had established a claim for benefits effective June 30, 2013. However, they advised him that they had not changed their August 24, 2013 decision regarding their ability to pay him EI benefits from July 1st, 2013 to August 30th, 2013 because no benefits can be paid to teachers during a non-teaching period. They said that they considered him to have been under a contract of service with the employer during the summer non-teaching period.

SUBMISSIONS

[20] The Claimant submitted that:

- a) he was made redundant and pink slipped by his employer on April 24, 2013.
- b) he was notified in June 2013 that he would be recalled part time.
- c) he was notified at the end of August 2013 that he would be teaching in September 2013.
- d) he would like to receive partial EI benefits for the months of July and August 2013.

[21] The Respondent submitted that:

- a) no EI benefits could be paid to the Claimant as the Claimant was considered to have been under a contract of service with the employer during the summer non-teaching period.

ANALYSIS

[1] Subsection 33(1) of the EI Regulations defines the non-teaching period as the period that occurs annually, at regular or irregular intervals, during which no work is performed by a significant number of people engaged in teaching. Generally, a school year is comprised of teaching from September through June with July and August as the primary non-teaching period. The Claimant has stated that he was not teaching from June to September 2013. The Tribunal finds that July and August 2013 were non-teaching periods for the Claimant, pursuant to subsection 33(1) of the EI Regulations.

[22] Subsection 33(2) of the EI Regulations, states that a teacher is not entitled to EI benefits other than maternity or parental benefits, during a non-teaching period, unless they meet the exempting conditions specified in subsection 33(2) of the EI Regulations, which are:

- (a) that the contract of employment for teaching has terminated;
- (b) that the claimant's employment in teaching was on a casual or substitute basis; or
- (c) that during the qualifying period, the claimant accumulated enough insured hours in an occupation other than teaching to qualify to receive employment insurance benefits.

[23] The Claimant has confirmed that he was under contract with the employer, and his benefits were paid until August 31, 2013. The Tribunal finds that the Claimant is not exempt from disentitlement pursuant to subsection 33(2)(a) of the EI Regulations because his contract of employment for teaching had not terminated until August 31, 2013.

[24] The Tribunal finds that the Claimant's employment in teaching was not on a casual or substitute basis because he was under contract until August 31, 2013, and therefore not exempt from disentitlement pursuant to subsection 33(2)(b) of the EI Regulations.

[25] The Tribunal finds that the Claimant continued under a new teaching contract in September 2013, such there was no interruption in his working as a teacher.

[26] The Claimant did not provide any evidence that the Claimant qualified to receive EI benefits from an occupation other than teaching. The Tribunal finds that the Claimant is not exempt from being disentitled to receiving EI benefits because he had earned enough qualifying hours in an occupation other than teaching, pursuant to subsection 33(2)(c) of the EI Regulations.

[27] The Tribunal finds that the Claimant is not entitled to receive EI benefits during the summer non-teaching period from July 1st, 2013 to August 30th, 2013 because the Claimant failed to prove that he met any of the exempting conditions specified under subsection 33(2) of the EI Regulations.

[28] The Federal Court of Appeal has stated that the legislative intent behind section 33 of the EI Regulations is based on the clear premise that, unless there is a veritable break in the continuity of a teacher's employment, the teacher will not be entitled to benefits for the non-teaching period.

Freddy Giammatei and al (A-664-01); Charlotte Oliver and al (A-811-00)

CONCLUSION

[29] The appeal is dismissed.

Richard Sterne
Member, General Division

DATED: May 20, 2014.